

*I Mina'Trentai Dos Na Liheslaturan Guahan*  
**Bill Log Sheet**

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	FISCAL NOTES
<b>196-32 (COR), P.L. 32-091</b>	T.C. Ada R.J. Respicio	AN ACT TO AMEND SECTIONS 51301(c) AND 53105 OF CHAPTER 53, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO ENSURING THE ADEQUATE REPAIR AND RESTORATION OF GUAM'S PUBLIC ROADWAYS BY CONTRACTORS WHO OPEN AND EXCAVATE THESE ROADS.	09/25/13 2:34 p.m.	09/26/13	Committee on Public Safety, Infrastructure, & Maritime Transportation	10/09/13 3:00 p.m.	10/29/13 10:06 a.m.	<b>Fiscal Note Requested 10/01/13</b>
	<b>DATE PASSED</b>	<b>TITLE</b>	<b>TRANSMITTED</b>		<b>DUE DATE</b>	<small>DATE SIGNED BY I MAGA'LAHEN GUAHAN</small>	<b>PUBLIC LAW NO.</b>	<b>NOTES</b>
	11/12/2013	AN ACT TO AMEND §§ 53101(c), 53105 AND 53110 OF CHAPTER 53, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO ENSURING THE REPAIR AND RESTORATION OF GUAM'S PUBLIC ROADWAYS BY CONTRACTORS AND PUBLIC AGENCIES WHO EXCAVATE THESE ROADWAYS.	11/15/13	11:28 a.m.	11/27/2013	11/27/2013	32-091	As substituted by the Committee on Public Safety, Infrastructure and Maritime Transportation; and amended on the Floor.

EDDIE BAZA CALVO  
Governor



RAY TENORIO  
Lieutenant Governor

*Office of the Governor of Guam*

NOV 27 2013

Honorable Judith T. Won Pat, Ed.D.  
Speaker  
*I Mina' trentai Dos Na Liheslaturan Guåhan*  
155 Hesler Street  
Hagåtña, Guam 96910

32-12-1022  
Office of the speaker  
Judith T. Won Pat, Ed. D.  
Date 11-29-13  
Time 10:00am  
Received by: [Signature]

2013 NOV 29 AM 11:11

Dear Madame Speaker:

Transmitted herewith is Bill No. 196-32 (COR) "AN ACT TO AMEND §§ 53101(c), 53105 AND 53110 OF CHAPTER 53, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO ENSURING THE REPAIR AND RESTORATION OF GUAM'S PUBLIC ROADWAYS BY CONTRACTORS AND PUBLIC AGENCIES WHO EXCAVATE THESE ROADWAYS" which I signed into law on November 27, 2013 as Public Law 32-091.

*Senseramente,*

  
EDDIE BAZA CALVO



*I MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN*  
2013 (FIRST) Regular Session

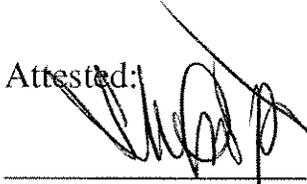
**CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'LAHEN GUÅHAN**

This is to certify that Substitute Bill No. 196-32 (COR), "AN ACT TO AMEND §§ 53101(c), 53105 AND 53110 OF CHAPTER 53, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO ENSURING THE REPAIR AND RESTORATION OF GUAM'S PUBLIC ROADWAYS BY CONTRACTORS AND PUBLIC AGENCIES WHO EXCAVATE THESE ROADWAYS", was on the 12<sup>th</sup> day of November 2013, duly and regularly passed.



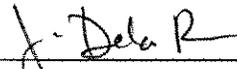
Judith T. Won Pat, Ed.D.  
Speaker

Attested:



Tina Rose Muña Barnes  
Legislative Secretary

This Act was received by *I Maga'lahen Guåhan* this 15<sup>th</sup> day of Nov.,  
2013, at 11:28 o'clock A.M.



Assistant Staff Officer  
*Maga'lahi's Office*

APPROVED:



EDWARD J.B. CALVO  
*I Maga'lahen Guåhan*

Date: NOV 27 2013

Public Law No. 32-091

*I MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN*  
**2013 (FIRST) Regular Session**

**Bill No. 196-32 (COR)**

As substituted by the Committee on Public Safety,  
Infrastructure and Maritime Transportation;  
and amended on the Floor.

Introduced by:

T. C. Ada  
R. J. Respicio  
V. Anthony Ada  
FRANK B. AGUON, JR.  
B. J.F. Cruz  
Chris M. Dueñas  
Michael T. Lintiaco  
Brant T. McCreadie  
Tommy Morrison  
T. R. Muña Barnes  
Vicente (ben) C. Pangelinan  
Dennis G. Rodriguez, Jr.  
Michael F. Q. San Nicolas  
Aline A. Yamashita, Ph.D.  
Judith T. Won Pat, Ed.D.

**AN ACT TO AMEND §§ 53101(c), 53105 AND 53110 OF  
CHAPTER 53, TITLE 5, GUAM CODE ANNOTATED,  
RELATIVE TO ENSURING THE REPAIR AND  
RESTORATION OF GUAM'S PUBLIC ROADWAYS BY  
CONTRACTORS AND PUBLIC AGENCIES WHO  
EXCAVATE THESE ROADWAYS.**

1           **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2           **Section 1.** §53101(c) of Chapter 53, Title 5, Guam Code Annotated, is  
3 hereby *amended* to read as follows:

4                   “(c) *Roadway, highway, road, or street* (hereinafter “roadway”) means  
5 all or any part of the entire width of right of way, whether or not such entire

1 area is actually used by the general public for the passage of vehicles and  
2 persons.”

3 **Section 2.** §53105 of Chapter 53, Title 5, Guam Code Annotated, is  
4 hereby *amended* to read as follows:

5 **“§ 53105. Condition for Deposit Fees and/or Bond.**

6 (a) All applications for excavation of a roadway *shall* have a  
7 schedule of work that sets the timeline of construction or work events, and  
8 deadline when the roadway will be restored to its original condition or  
9 better. The contractor or public agency *shall* be required to close the opening  
10 and restore the roadway *no later than* the date as specified on the permit, or  
11 by the DPW Director.

12 (b) Deposit Fee.

13 (1) In addition to the permit application fee, and *except* as  
14 provided herein, any project by a private contractor or public agency  
15 which would require an opening or excavation for any purpose in a  
16 roadway *shall* be required to provide a deposit fee of *no less than* Five  
17 Hundred Dollars (\$500) or *no less than* five percent (5%) of the total  
18 cost of the project impacting the roadway, whichever is greater.

19 (2) *No* permit *shall* be granted to a contractor or public  
20 agency *unless* the deposit fee is paid in full or a performance bond,  
21 provided by a surety company authorized to do business on Guam,  
22 guarantees repairs on a single project or multiple projects anticipated  
23 to be undertaken over a period of time is provided.

24 (3) The prerequisite for a deposit fee *shall not* be applicable  
25 to government-funded projects that necessitate bond insurance  
26 coverage as a stipulation of the project; or for other projects for which  
27 there is a performance bond, upon such terms and in such amount as

1 may be required by the Department at its discretion. This requirement  
2 for a deposit fee *shall not* preclude the Department's condition for a  
3 bond, as may be imposed herein.

4 (4) Inspection and Repair.

5 (A) The deposit fee *shall* be retained by the  
6 Department for *up to* three (3) months from the completion of  
7 the roadway repair, during which time the Department *shall*  
8 conduct a site inspection of the roadway project area in which  
9 the opening or excavation had occurred to ascertain if the  
10 repairs were conducted and completed properly in accordance  
11 with applicable Federal Highway Administration and  
12 Department of Public Works standards.

13 (B) If the roadway area is identified to be insufficiently  
14 repaired, then the Director *shall* assess a penalty against the  
15 deposit fee or performance bond, exclusive of the requirement  
16 for the contractor or public agency to return and ensure that  
17 proper repair is conducted. On unpaved roadways, "insufficient  
18 repair" *shall not* include degradation, including, but *not* limited  
19 to, erosion, weathering, and the impacts of traffic, which would  
20 otherwise have been expected in the absence of the excavation  
21 in question.

22 (C) If the contractor or public agency fails to make  
23 proper repairs within fourteen (14) days of notification of the  
24 Department's findings, the Department is authorized to procure  
25 road repair services in accordance with 5 GCA Chapter 5,  
26 §5213, and 2 GAR Div. 4, §3111. The Department *shall* retain  
27 as much of the performance bond or deposit fee as may be

1 required to compensate the Department for damages arising  
2 from permittee's failure to complete satisfactory road repair;  
3 and the Department may also bring an action in the Superior  
4 Court of Guam against the contractor for direct damages, if any,  
5 beyond the amount of the performance bond or deposit fee  
6 posted.

7 (D) Should the area repaired meet the Department's  
8 standards set forth for the repair of the roadway, the  
9 Department *shall* return the deposit fee in full; however, the  
10 permit application fee *shall not* be returned. The party  
11 responsible for the roadway repair *shall* provide a one (1) year  
12 warranty on the work that was completed. For unpaved  
13 roadways, the warranty requirement *shall* be for a period of  
14 ninety (90) days.

15 (5) In lieu of multiple deposit fees by a public agency or  
16 contractor to guarantee repair of excavations needed for recurring  
17 maintenance, repairs, and upgrades of its buried facilities, the  
18 Department may authorize the posting of a performance bond to cover  
19 multiple excavations in such amount and under such term as the  
20 Department deems sufficient to ensure compliance with this Chapter.  
21 In the event of forfeiture of the deposit fee or performance bond, the  
22 proceeds *shall* be deposited in the Public Rights-Of-Way Account of  
23 the Territorial Highway Fund for the purpose of paying for roadway  
24 repairs.

25 (c) All proceeds from the deposit fee established by this Section  
26 *shall* be deposited in the Public Rights-Of-Way Account of the Territorial  
27 Highway Fund, and interest derived therefrom *shall* remain in the Fund.

1 Sufficient funds *shall* be reserved for the refund of deposits, pursuant to this  
2 Section.

3 (d) Emergency Excavations. An emergency excavation may be  
4 made without prior permit or deposit if the reason for the excavation is to  
5 prevent loss of life or damage to property that appears to be imminent if the  
6 excavation is delayed, or to perform critical unscheduled repairs to remedy  
7 unanticipated interruptions to services. In such emergency situations, the  
8 contractor or public agency responsible *shall* contact the Department on the  
9 first working day following the commencement of excavation to complete  
10 and secure a formal permit. The contractor or public agency responsible  
11 *shall* provide justification for the emergency excavation. In the event the  
12 Department deems that the excavation was *not* an emergency, the applicant  
13 *shall* be penalized Five Hundred Dollars (\$500) for failure to properly secure  
14 a permit prior to excavating, and will still be required to pay the appropriate  
15 fees and deposits. *Except* for the prior permit requirement, none of the  
16 application fee, deposit, bond, or penalty provisions of this Section *shall* be  
17 waived for emergency situations.

18 (e) Before granting a permit under any provision of this Chapter,  
19 the Department may require the applicant to file with the Department a  
20 satisfactory bond, payable to the government of Guam in such amount and  
21 term as the Department deems sufficient, conditioned on the proper  
22 compliance by the permittee with the provisions of this Chapter. In the event  
23 of forfeiture of the bond, the proceeds *shall* go to the Public Rights-Of-Way  
24 Account of the Territorial Highway Fund.

25 (f) Prior to the start of excavation work, the permittee *shall* duly  
26 inform the Mayor of the district where the excavation is to be made, and  
27 notify the Mayor upon completion of the roadway restoration. In the event of

1 emergency excavations, as provided for in Subsection (d), the permittee  
2 *shall* notify the Mayor on the next working day.”

3 **Section 3.** §53110 of Chapter 53, Title 5, Guam Code Annotated, is  
4 hereby *amended* to read as follows:

5 “§ **53110.** Fines Collected from Public Rights-of-Way Violations.  
6 All fines generated by this Chapter *shall* be deposited in a special account  
7 known as the Public Rights-Of-Way Account of the Territorial Highway  
8 Fund, and any interest derived *shall* remain in the Fund. The Director of the  
9 Department of Public Works is authorized to use revenues in the Account to  
10 purchase equipment and supplies, pay for roadway repairs, and to procure  
11 the services of licensed surveyors, as required by the Department to  
12 effectively enforce the public’s compliance with applicable highway care  
13 and maintenance laws.”

14 **Section 4. Effective Date.** The provisions contained in this Act *shall*  
15 become effective upon enactment.

16 **Section 5. Severability.** *If* any of the provisions of this law or its  
17 application to any person or circumstance is found to be invalid or contrary to law,  
18 such invalidity *shall not* affect other provisions or applications of this law which  
19 can be given effect without the invalid provisions or application, and to this end the  
20 provisions of this law are severable.



FILE COPY

**I MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN**  
THIRTY-SECOND GUAM LEGISLATURE  
155 Hesler Place, Hagåtña, Guam 96910

November 13, 2013

**The Honorable Edward J.B. Calvo**  
*I Maga'lahren Guåhan*  
*Ufisinan I Maga'lahi*  
*Hagåtña, Guam 96910*

OFFICE OF THE GOVERNOR  
CENTRAL FILES  
*J. Dela Rosa*  
RECEIVED BY  
TIME 11:28 AM DATE 11/15/13

Dear *Maga'lahi* Calvo:

Transmitted herewith are Bill and Substitute Bill Nos. 35-32(COR), 74-32(LS), 75-32(LS), 91-32(COR), 94-32(COR), 98-32(LS), 99-32(LS), 108-32(COR), 112-32(COR), 116-32(COR), 133-32(COR), 134-32(COR), 140-32(COR), 141-32(COR), 143-32(COR), 145-32(LS), 150-32(COR), 153-32(COR), 154-32(COR), 156-32(COR), 157-32(COR), 158-32(COR), 160-32(COR), 161-32(COR), 162-32(LS), 165-32(COR), 170-32(LS), 176-32(COR), 189-32(COR), 193-32(COR), 194-32(COR), 195-32(COR), 196-32(COR), 200-32(COR), 205-32(COR), 210-32(COR), 211-32(COR) and 217-32(LS) which were passed by *I Mina'Trentai Dos Na Liheslaturan Guåhan* on November 12, 2013.

Sincerely,

**Tina Rose Muña Barnes**  
**Legislative Secretary**

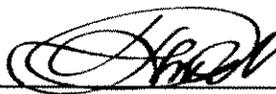
Enclosures (38)

FILE COPY

**I MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN  
2013 (FIRST) Regular Session**

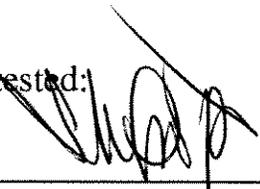
**CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'LAHEN GUÅHAN**

This is to certify that **Substitute Bill No. 196-32 (COR), "AN ACT TO AMEND §§ 53101(c), 53105 AND 53110 OF CHAPTER 53, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO ENSURING THE REPAIR AND RESTORATION OF GUAM'S PUBLIC ROADWAYS BY CONTRACTORS AND PUBLIC AGENCIES WHO EXCAVATE THESE ROADWAYS"**, was on the 12<sup>th</sup> day of November 2013, duly and regularly passed.



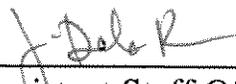
**Judith T. Won Pat, Ed.D.  
Speaker**

Attested:



**Tina Rose Muña Barnes  
Legislative Secretary**

This Act was received by *I Maga'lahen Guåhan* this 15<sup>th</sup> day of Nov., 2013, at 11:28 o'clock A.M.



**Assistant Staff Officer  
*Maga'lahi's Office***

APPROVED:

**EDWARD J.B. CALVO  
*I Maga'lahen Guåhan***

Date: \_\_\_\_\_

Public Law No. \_\_\_\_\_

***I MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN***  
**2013 (FIRST) Regular Session**

**Bill No. 196-32 (COR)**

As substituted by the Committee on Public Safety,  
Infrastructure and Maritime Transportation;  
and amended on the Floor.

Introduced by:

T. C. Ada  
R. J. Respicio  
V. Anthony Ada  
FRANK B. AGUON, JR.  
B. J.F. Cruz  
Chris M. Dueñas  
Michael T. Lintiacó  
Brant T. McCreadie  
Tommy Morrison  
T. R. Muña Barnes  
Vicente (ben) C. Pangelinan  
Dennis G. Rodriguez, Jr.  
Michael F. Q. San Nicolas  
Aline A. Yamashita, Ph.D.  
Judith T. Won Pat, Ed.D.

**AN ACT TO AMEND §§ 53101(c), 53105 AND 53110 OF  
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RELATIVE TO ENSURING THE REPAIR AND  
RESTORATION OF GUAM'S PUBLIC ROADWAYS BY  
CONTRACTORS AND PUBLIC AGENCIES WHO  
EXCAVATE THESE ROADWAYS.**

1           **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2           **Section 1.** §53101(c) of Chapter 53, Title 5, Guam Code Annotated, is  
3 hereby *amended* to read as follows:

4                   “(c) *Roadway, highway, road, or street* (hereinafter “roadway”) means  
5 all or any part of the entire width of right of way, whether or not such entire

1 area is actually used by the general public for the passage of vehicles and  
2 persons.”

3 **Section 2.** §53105 of Chapter 53, Title 5, Guam Code Annotated, is  
4 hereby *amended* to read as follows:

5 **“§ 53105. Condition for Deposit Fees and/or Bond.**

6 (a) All applications for excavation of a roadway *shall* have a  
7 schedule of work that sets the timeline of construction or work events, and  
8 deadline when the roadway will be restored to its original condition or  
9 better. The contractor or public agency *shall* be required to close the opening  
10 and restore the roadway *no later than* the date as specified on the permit, or  
11 by the DPW Director.

12 (b) Deposit Fee.

13 (1) In addition to the permit application fee, and *except* as  
14 provided herein, any project by a private contractor or public agency  
15 which would require an opening or excavation for any purpose in a  
16 roadway *shall* be required to provide a deposit fee of *no less than* Five  
17 Hundred Dollars (\$500) or *no less than* five percent (5%) of the total  
18 cost of the project impacting the roadway, whichever is greater.

19 (2) *No* permit *shall* be granted to a contractor or public  
20 agency *unless* the deposit fee is paid in full or a performance bond,  
21 provided by a surety company authorized to do business on Guam,  
22 guarantees repairs on a single project or multiple projects anticipated  
23 to be undertaken over a period of time is provided.

24 (3) The prerequisite for a deposit fee *shall not* be applicable  
25 to government-funded projects that necessitate bond insurance  
26 coverage as a stipulation of the project; or for other projects for which  
27 there is a performance bond, upon such terms and in such amount as

1 may be required by the Department at its discretion. This requirement  
2 for a deposit fee *shall not* preclude the Department’s condition for a  
3 bond, as may be imposed herein.

4 (4) Inspection and Repair.

5 (A) The deposit fee *shall* be retained by the  
6 Department for *up to* three (3) months from the completion of  
7 the roadway repair, during which time the Department *shall*  
8 conduct a site inspection of the roadway project area in which  
9 the opening or excavation had occurred to ascertain if the  
10 repairs were conducted and completed properly in accordance  
11 with applicable Federal Highway Administration and  
12 Department of Public Works standards.

13 (B) If the roadway area is identified to be insufficiently  
14 repaired, then the Director *shall* assess a penalty against the  
15 deposit fee or performance bond, exclusive of the requirement  
16 for the contractor or public agency to return and ensure that  
17 proper repair is conducted. On unpaved roadways, “insufficient  
18 repair” *shall not* include degradation, including, but *not* limited  
19 to, erosion, weathering, and the impacts of traffic, which would  
20 otherwise have been expected in the absence of the excavation  
21 in question.

22 (C) If the contractor or public agency fails to make  
23 proper repairs within fourteen (14) days of notification of the  
24 Department’s findings, the Department is authorized to procure  
25 road repair services in accordance with 5 GCA Chapter 5,  
26 §5213, and 2 GAR Div. 4, §3111. The Department *shall* retain  
27 as much of the performance bond or deposit fee as may be

1 required to compensate the Department for damages arising  
2 from permittee's failure to complete satisfactory road repair;  
3 and the Department may also bring an action in the Superior  
4 Court of Guam against the contractor for direct damages, if any,  
5 beyond the amount of the performance bond or deposit fee  
6 posted.

7 (D) Should the area repaired meet the Department's  
8 standards set forth for the repair of the roadway, the  
9 Department *shall* return the deposit fee in full; however, the  
10 permit application fee *shall not* be returned. The party  
11 responsible for the roadway repair *shall* provide a one (1) year  
12 warranty on the work that was completed. For unpaved  
13 roadways, the warranty requirement *shall* be for a period of  
14 ninety (90) days.

15 (5) In lieu of multiple deposit fees by a public agency or  
16 contractor to guarantee repair of excavations needed for recurring  
17 maintenance, repairs, and upgrades of its buried facilities, the  
18 Department may authorize the posting of a performance bond to cover  
19 multiple excavations in such amount and under such term as the  
20 Department deems sufficient to ensure compliance with this Chapter.  
21 In the event of forfeiture of the deposit fee or performance bond, the  
22 proceeds *shall* be deposited in the Public Rights-Of-Way Account of  
23 the Territorial Highway Fund for the purpose of paying for roadway  
24 repairs.

25 (c) All proceeds from the deposit fee established by this Section  
26 *shall* be deposited in the Public Rights-Of-Way Account of the Territorial  
27 Highway Fund, and interest derived therefrom *shall* remain in the Fund.

1 Sufficient funds *shall* be reserved for the refund of deposits, pursuant to this  
2 Section.

3 (d) Emergency Excavations. An emergency excavation may be  
4 made without prior permit or deposit if the reason for the excavation is to  
5 prevent loss of life or damage to property that appears to be imminent if the  
6 excavation is delayed, or to perform critical unscheduled repairs to remedy  
7 unanticipated interruptions to services. In such emergency situations, the  
8 contractor or public agency responsible *shall* contact the Department on the  
9 first working day following the commencement of excavation to complete  
10 and secure a formal permit. The contractor or public agency responsible  
11 *shall* provide justification for the emergency excavation. In the event the  
12 Department deems that the excavation was *not* an emergency, the applicant  
13 *shall* be penalized Five Hundred Dollars (\$500) for failure to properly secure  
14 a permit prior to excavating, and will still be required to pay the appropriate  
15 fees and deposits. *Except* for the prior permit requirement, none of the  
16 application fee, deposit, bond, or penalty provisions of this Section *shall* be  
17 waived for emergency situations.

18 (e) Before granting a permit under any provision of this Chapter,  
19 the Department may require the applicant to file with the Department a  
20 satisfactory bond, payable to the government of Guam in such amount and  
21 term as the Department deems sufficient, conditioned on the proper  
22 compliance by the permittee with the provisions of this Chapter. In the event  
23 of forfeiture of the bond, the proceeds *shall* go to the Public Rights-Of-Way  
24 Account of the Territorial Highway Fund.

25 (f) Prior to the start of excavation work, the permittee *shall* duly  
26 inform the Mayor of the district where the excavation is to be made, and  
27 notify the Mayor upon completion of the roadway restoration. In the event of

1 emergency excavations, as provided for in Subsection (d), the permittee  
2 *shall* notify the Mayor on the next working day.”

3 **Section 3.** §53110 of Chapter 53, Title 5, Guam Code Annotated, is  
4 hereby *amended* to read as follows:

5 “§ **53110.** Fines Collected from Public Rights-of-Way Violations.  
6 All fines generated by this Chapter *shall* be deposited in a special account  
7 known as the Public Rights-Of-Way Account of the Territorial Highway  
8 Fund, and any interest derived *shall* remain in the Fund. The Director of the  
9 Department of Public Works is authorized to use revenues in the Account to  
10 purchase equipment and supplies, pay for roadway repairs, and to procure  
11 the services of licensed surveyors, as required by the Department to  
12 effectively enforce the public’s compliance with applicable highway care  
13 and maintenance laws.”

14 **Section 4. Effective Date.** The provisions contained in this Act *shall*  
15 become effective upon enactment.

16 **Section 5. Severability.** *If* any of the provisions of this law or its  
17 application to any person or circumstance is found to be invalid or contrary to law,  
18 such invalidity *shall not* affect other provisions or applications of this law which  
19 can be given effect without the invalid provisions or application, and to this end the  
20 provisions of this law are severable.

# LEGISLATIVE SESSION

## I MINA'TRENTAI DOS NA LIHESLATURAN

### 2013 (FIRST) Regular Session

### Voting Sheet

**Bill No. 196-32 (COR)**

As substituted by the Committee on Public Safety,  
Infrastructure and Maritime Transportation; and  
amended on the Floor.

Speaker Antonio R. Unipingco Legislative Session Hall

November 12, 2013

NAME	Yea	Nay	Not Voting/ Abstained	Out During Roll Call	Absent
Senator Thomas "Tom" C. ADA	✓				
Senator V. Anthony "Tony" ADA	✓				
Senator Frank Blas AGUON Jr.	✓				
Vice-Speaker Benjamin J.F. CRUZ	✓				
Senator Christopher M. DUENAS	✓				
Senator Michael LIMTIACO	✓				
Senator Brant McCREADIE	✓				
Senator Thomas "Tommy" MORRISON	✓				
Senator Tina Rose MUÑA BARNES	✓				
Senator Vicente (ben) Cabrera PANGELINAN	✓				
Senator Rory J. RESPICIO	✓				
Senator Dennis G. RODRIGUEZ, Jr.	✓				
Senator Michael F. Q.SAN NICOLAS	✓				
Speaker Judith T. WON PAT, Ed.D.	✓				
Senator Aline A. YAMASHITA, Ph.D.	✓				

**TOTAL**

15

Yea

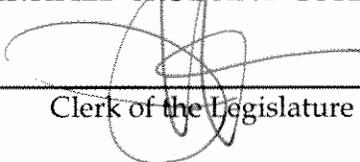
Nay

Not Voting/  
Abstained

Out During  
Roll Call

Absent

CERTIFIED TRUE AND CORRECT:



Clerk of the Legislature

I = Pass



**Senator Thomas C. Ada**

Chairman - Committee on Public Safety, Infrastructure & Maritime Transportation  
*I Mina'trentai Dos Na LiheSlaturan Guåhan* • 32<sup>nd</sup> Guam Legislature

October 28, 2013

**The Honorable Judith T. Won Pat, Ed.D.**

Speaker  
I Mina'trentai Dos Na LiheSlaturan Guåhan  
155 Hesler Place  
Hagåtña, Guam 96910

**VIA: The Honorable Rory J. Respicio**  
Chairperson, Committee on Rules

**RE: Committee Report on Bill No. 196-32 (COR) As Substituted**

Dear Speaker Won Pat:

Transmitted herewith is the Committee Report on Bill No. 196-32 (COR), As Substituted – “An act to amend Sections 53101(c) and 53105 of Chapter 53, Title 5, Guam Code Annotated, relative to ensuring the repair and restoration of Guam’s public roadways by contractors and public agencies who excavate these roadways.”

Committee votes are as follows:

- 5 TO DO PASS
- \_\_\_\_\_ TO NOT PASS
- 2 TO REPORT OUT ONLY
- \_\_\_\_\_ TO ABSTAIN
- \_\_\_\_\_ TO PLACE IN INACTIVE FILE

*Si Yu'os ma'ase',*  
  
Thomas C. Ada

2013 OCT 29 11:10:06  




**Senator Thomas C. Ada**

Chairman - Committee on Public Safety, Infrastructure & Maritime Transportation  
*I Mina'trentai Dos Na Libeslaturan Guahan* • 32<sup>nd</sup> Guam Legislature

## **COMMITTEE REPORT ON**

**Bill No. 196-32 (COR), As Substituted**

**“An act to amend Sections 53101(c) and 53105 of Chapter 53, Title 5, Guam Code Annotated, relative to ensuring the repair and restoration of Guam’s public roadways by contractors and public agencies who excavate these roadways”**

**As Substituted by the  
Committee on Public Safety,  
Infrastructure and Maritime Transportation**



## Senator Thomas C. Ada

Chairman - Committee on Public Safety, Infrastructure & Maritime Transportation  
*I Mina'trentai Dos Na Libeslaturan Guåban • 32<sup>nd</sup> Guam Legislature*

October 24, 2013

### MEMORANDUM

To: **All Members**  
Committee on Public Safety, Infrastructure and Maritime Transportation

From: **Senator Thomas C. Ada**  
Committee Chairperson

Subject: **Committee Report on Bill No. 196-32 (COR) As Substituted**

Transmitted herewith for your consideration is the Committee Report on Bill No. 196-32 (COR), As Substituted - "An act to amend Sections 53101(c) and 53105 of Chapter 53, Title 5, Guam Code Annotated, relative to ensuring the repair and restoration of Guam's public roadways by contractors and public agencies who excavate these roadways."

This report includes the following:

- Committee Vote Sheet
- Committee Report Digest
- Copy of Bill No. 196-32 (COR), As Introduced
- Copy of Bill No. 196-32 (COR), As Substituted
- Public Hearing Sign-in Sheet
- Copies of Submitted Testimony and Supporting Documents
- COR Referral of Bill No. 196-32 (COR)
- Notices of Public Hearing
- Public Hearing Agenda

Please take the appropriate action on the attached vote sheet. Your attention to this matter is greatly appreciated. Should you have any questions or concerns, please do not hesitate to contact me.

*Si Yu'os ma'åse'!*

Thomas C. Ada



## Senator Thomas C. Ada

Chairman - Committee on Public Safety, Infrastructure & Maritime Transportation  
*I Mina'trentai Dos Na Libeslaturan Guahan* • 32<sup>nd</sup> Guam Legislature

### COMMITTEE VOTE SHEET

**Bill No. 196-32 (COR), As Substituted** – An act to amend Sections 53101(c) and 53105 of Chapter 53, Title 5, Guam Code Annotated, relative to ensuring the repair and restoration of Guam's public roadways by contractors and public agencies who excavate these roadways.

COMMITTEE MEMBERS	SIGNATURE	TO DO PASS	TO NOT PASS	TO REPORT OUT ONLY	TO ABSTAIN	TO PLACE IN INACTIVE FILE
SENATOR THOMAS C. ADA Chairperson	10-24-13 <i>T.C. Ada</i>	✓				
SENATOR RORY J. RESPICIO Vice Chairperson	<i>R. Respicio</i>	<i>✓</i> 10/29/13				
VICE SPEAKER BENJAMIN J.F. CRUZ Member	<i>B. Cruz</i>	✓				
SENATOR FRANK B. AGUON, JR. Member	<i>F. Agun, Jr.</i> 10/28/13	✓				
SENATOR MICHAEL F.Q. SAN NICOLAS Member	<i>M. San Nicolas</i> 10/28/13	✓				
SENATOR ALINE A. YAMASHITA, PH.D. Minority Member	<i>A. Yamashita</i>			/		
SENATOR V. ANTHONY ADA Minority Member	<i>V. Anthony Ada</i>			10/28 ✓		
SENATOR BRANT McCREADIE Minority Member						



### **Dan Tydingco**

*Provided oral and written testimony (see attached)*

Mr. Dan Tydingco, representing GTA, testified in favor of Bill 196-32. He believes the measure strikes a balance between the protection of public assets and the need to provide for the responsible development and repair of island infrastructure. He notes that a significant amount of GTA's network lies underneath the roadways of Guam, and millions of dollars are spent to repair and maintain this critical infrastructure. He further notes that over 20,000 pedestals are included in this large communications infrastructure, and it quickly becomes onerous and impractical to submit individual deposit fees for each maintenance or repair project, particularly when such work is conducted on a fairly regular basis. He thanks Senator Ada and Senator Respicio for revisiting existing law and incorporating the use of global performance bonds to reduce the costly paperwork and overhead required by the current process, while still ensuring that roadwork restoration is completed properly and to a high standard.

### **Mayor Jesse Gogue**

*Provided oral testimony*

During the Question and Answer portion of the Public Hearing, Mayor Jesse Gogue of Ordot-Chalan Pago stepped forward and provided additional testimony on the measure. His comments are outlined in the subsequent "Question and Answer" portion of this Committee Report.

### **Question and Answer**

**Chairman Tom Ada** provided an introduction to Bill 196-32 prior to the submittal of oral testimony. He began by noting that this legislation was prompted by a growing concern regarding the state of Guam's roadways. He shared that he recently drove some main thoroughfares of Guam with the aim of measuring roadway damage. On northbound Route 8, over a stretch of 2.7 miles, he counted an average of 13.3 significant bumps in the road. He notes that when counting of these bumps he did not include minor bumps or manhole covers; he only recorded instances significant roadwork damage (the type that often results from poorly restored excavation work). On the southbound lane of the same roadway, over the course of 3 miles, he counted an average of 3.3 significant bumps. Similarly, on northbound Route 16, over 4.1 miles, he measured 2 significant bumps per mile; and on the southbound lane, over 3.6 miles, he measured 3 significant bumps per mile. Lastly, on Route 1, over 1.4 miles, he recorded 5 bumps per mile.

These numbers highlight the general sentiment that Guam's roadways need to be better protected. Current law stipulates that DPW is provided a year to inspect and approve completed restoration work; Bill 196-32 proposes moving that timeline up to three months. Additionally, the bill provides for a global performance bond to allow contractors and utilities to provide a large bond to cover repair and maintenance work over a number of assets, thus reducing the cost and administrative paperwork incurred by both DPW and the contractors/utilities. He also notes that he anticipates further amending the bill to allow for DPW to utilize the small purchase portion of Guam procurement law in hiring its own contractor; such action will be taken in order to repair poorly completed restoration work only if the contractor/public agency does not complete the work itself. He also intends to direct recovered fines and fees into a fund that is more easily accessible by DPW management. Lastly, he also anticipates amending the bill to

include a 1-year warranty on completed projects, thus addressing DPW's concern regarding moving up the deadline for certifying completed restoration projects to 3 months.

After Mr. Carl Dominguez and Mr. Dan Tydingco each read their respective written testimonies into the record (as summarized in the "Testimony" portion of this Committee Report), Chairman Ada opened the floor to questions and answers by the Senators present.

**Chairman Ada** asked Mr. Dominguez if the DPW Building & Design Fund would be the best place to direct fines, including forfeited deposit fees and bonds, in order to allow the Director quick access to the funds when hiring a third-party contractor to repair poorly completed restorations.

**Mr. Carl Dominguez** replied that the Building & Design Fund falls under the CIP Division of DPW, while highway encroachment processes fall under the Highways Division. He has not thought about the implications of using the Building & Design Fund, or if there may be a better fund to direct monies into, but he will research the matter and follow-up with the Committee about it.

**Chairman Ada** clarified that the Committee will continue to work with stakeholders, possibly even holding a mark-up meeting, in order to address concerns brought up during the public hearing.

**Mr. Dominguez** strongly recommends allowing DPW the flexibility to review restoration work up to 1 year following completion. He notes that the Highway Encroachment section of DPW currently has two employees; one needs to stay in the office continuously to work with members of the public, while the other uses the section's only vehicle to do spot inspections on roadway repairs island-wide. Due to this limited staffing, it is not possible to be present at every roadway repair site at key moments during the restoration process. And because the DPW inspector may not be present during the pouring of concrete (specifically, a required mix called "flowable fill" that is best suited for roadway repair work), it is impossible to determine afterward whether the pouring process was conducted properly. The 1-year inspection period allows for DPW to observe, after a period of normal roadway use, if more damage was incurred than expected; if so, then lesser quality fill was likely used.

**Chairman Ada** replied that he intends to address that concern by requiring a 1-year warranty on all roadway restorations. In that manner, the contractor/public agency is able to free up their funds earlier, while DPW still maintains an ability to levy penalties on poorly completed projects up to 1 year following completion.

**Mr. Dan Tydingco** replied that GTA has no problem with that stipulation. He believes the need for a 1-year warranty is well founded; however, he believes that unpaved roads should not require a 1-year warranty. Such gravel roads already incur significant wear and tear by way of normal use. His concern is that this normal degradation will not be taken into consideration when conducting site inspections, and, consequently, the 1-year warranty may be improperly invoked to require additional improvements to a road beyond the true impact of the original excavation work.

**Chairman Ada** replies that Mr. Tydingco brings up a good point, and he will note it for inclusion in the substitute version of the legislation. He then yields the floor to Senator Muña Barnes.

**Senator Muña-Barnes** asks whether the Mayors should be included in the restoration process, as they are very knowledgeable of the condition and history of village roadways. She also notes that the Mayors often have to respond to constituent questions and concerns regarding roadway excavations, so it may be useful to include them in the process.

**Mayor Jesse Gogne** came up to the table to provide input on the legislation. He says that the current process requires a signature from a village Mayor both prior to, and upon completion of, any roadway work. He wishes to emphasize Mr. Dominguez's point that the shortage of DPW personnel means that there is often no direct observation of whether restoration work was properly completed. And while he is a trained engineer by profession, the skill sets of Mayors are different and varied; so while some Mayors may be able to be present and identify poorly conducted work, others may not know what to look for. Nevertheless, he believes maintaining communication with Mayors throughout the permitting and inspection process is extremely important, and that the village Mayors are often the first person the public calls when they observe damage on roadways.

**Chairman Ada** stated that the feedback was valuable, and that the Committee will work to address his concerns with the substitute bill. He concluded by stating that the Committee will continue working with stakeholders to further develop the legislation. The public hearing was adjourned at 4:45 pm.

### **III. FINDINGS AND RECOMMENDATIONS**

On October 9, 2013, the Committee on Public Safety, Infrastructure and Maritime Transportation held a public hearing on Bill 196-32, "An act to amend Sections 51301(c) and 53105 of Chapter 53, Title 5, Guam Code Annotated, relative to ensuring the adequate repair and restoration of Guam's public roadways by contractors who open and excavate these roads", authored by Senator Tom Ada and Senator R.J. Respicio.

The intent of Bill 196-32 is to better protect the roadways of Guam by allowing the Department of Public Works to require a general performance bond as assurance that contractors and public agencies properly restore excavation work. The use of performance bonds will reduce costs and paperwork, allowing both DPW and the entities conducting excavations to more efficiently respond to roadwork needs.

Following input provided during the Public Hearing on Bill 196-32, further amendments were made to the bill in order to address the concerns of stakeholders. In addition to minor formatting and grammar edits, the following substantive changes were made:

- In §53105(b)(2), language was added requiring the performance bond to be provided by a surety company authorized to do business on Guam.

- In §53105(b)(3), the recommendation by DPW was incorporated, with the new language reading as follows: “or for other projects which a performance bond, upon such terms and in such amount, as may be required by the Department at its discretion.” Such a change will provide DPW with better flexibility in determining the terms of each performance bond.
- In §53105(b)(4)(B), language was added to the end of the subsection to clarify that normal wear and tear that is expected on unpaved roadways shall not constitute “insufficient repair”.
- A new §53105(b)(4)(C) was added to require a contractor or public agency to repair, within 14 days, any site found to be insufficiently repaired. Should the entity fail to do so, DPW is permitted to use existing procurement law to secure a third-party entity to repair the roadway.
- In §53105(b)(4)(d), language was added requiring all entities undertaking roadway excavations to provide a 1-year warranty on their restoration work.
- In §53105(b)(5), existing GCA is now amended to redirect all proceeds to the Building Permits & Inspection Revolving Fund.
- In §53105(b)(d), language was added to allow for “critical unscheduled repairs to remedy unanticipated interruptions to service” to be included as an acceptable reason for emergency excavations. The Committee finds such inclusion warranted as water/wastewater line ruptures and power outages, while not “loss of life” or “damage to property”, are nevertheless significant and time-sensitive issues worthy of immediate redress.
- Lastly, a new §53105(f) was added to further establish that Mayors should be notified prior to, and following, completion of restoration work. Additionally, if an emergency excavation is undertaken, the Mayors of affected villages should be notified on the next business day.

A copy of Bill 196-32 incorporating the changes listed above was circulated among all stakeholders who have contacted our office or attended the Public Hearing. Having received positive feedback, the Committee finds that Bill 196-32, as Substituted, effectively addresses the concerns of both DPW and the contractors and public agencies who conduct excavations, and that the legislation will contribute significantly toward more effectively protecting Guam’s roadways.

The Committee on Public Safety, Infrastructure and Maritime Transportation hereby reports out Bill 196-32 (COR), As Substituted by the Committee, with the recommendation TO DO PASS.

**I MINA'TRENTAI DOS NA LIHESLATURAN GUÁHAN**  
**2013 (FIRST) Regular Session**

Bill No. HG-32(WP)

Introduced by:

T.C. Ada   
R.J. Respicio 

**AN ACT TO AMEND SECTIONS 51301(c) AND 53105 OF  
CHAPTER 53, TITLE 5, GUAM CODE ANNOTATED,  
RELATIVE TO ENSURING THE ADEQUATE REPAIR  
AND RESTORATION OF GUAM'S PUBLIC  
ROADWAYS BY CONTRACTORS WHO OPEN AND  
EXCAVATE THESE ROADS.**

2013 SEP 25 PM 2:34 

1        **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2        **Section 1. §51301(c) of Chapter 53, Title 5, Guam Code Annotated, is**  
3 **hereby amended to read as follows:**

4                “Roadway, highway, road, or street (hereinafter “roadway”) means all  
5 or any part of the entire width of right of way, whether or not such entire  
6 area is actually used by the general public for highway purposes the passage  
7 of vehicles and persons.”

8

9        **Section 2. §53105 of Chapter 53, Title 5, Guam Code Annotated, is**  
10 **hereby amended to read as follows:**

11        **“§ 53105. Condition for Deposit Fees and/or Bond.**

12                (a) All applications for excavation of a roadway *shall* have a schedule  
13 of work that sets the timeline of construction or work events and ~~maximum~~  
14 ~~time before~~ deadline when the road is roadway will be restored to original  
15 condition or better. The contractor *shall* be required to close the opening and

1 restore the roadway ~~upon expiration of time as no later than the date~~  
2 specified ~~by~~ on the permit or the DPW Director ~~Chief Engineer~~.

3 (b) Deposit Fee.

4 (1) In addition to the permit application fee, and except as  
5 provided herein, any project by a ~~public or private contractor or public~~  
6 agency which would require an opening or excavation for any purpose  
7 in a ~~highway or public~~ roadway *shall* be required to provide a deposit  
8 fee of *no less than* Five Hundred Dollars (\$500) or *no less than* five  
9 percent (5%) of the total cost of the project impacting the roadway,  
10 whichever is greater.

11 (2) *No* permit shall be granted to a contractor or public agency  
12 *unless* the deposit fee is paid in full or a performance bond that  
13 guarantees repairs on a single project or multiple projects anticipated  
14 to be undertaken over a period of time is provided.

15 (3) The prerequisite for a deposit fee *shall not* be applicable to  
16 government-funded projects that necessitate bond insurance coverage  
17 as a stipulation of the project, or for other projects for which a  
18 performance bond may be required by the Department at its  
19 discretion. This requirement for a deposit fee *shall not* preclude the  
20 Department's condition for a bond, as may be imposed herein.

21 (4) The deposit fee ~~highlighted herein~~ *shall* be retained by the  
22 Department for ~~one (1) year~~ up to three (3) months from the  
23 completion of the excavation and roadway repair, ~~and until such~~  
24 during which time that the Department shall conducts a site inspection  
25 of the roadway ~~or highway~~ project area in which the opening or  
26 excavation had occurred, and can ascertain that the repairs were  
27 conducted and completed properly in accordance with applicable

1 Federal Highway Administration and/or Department of Public Works  
2 standards. *If* the roadway ~~or highway~~ area is identified to be  
3 insufficiently repaired, then the deposit fee or similar amount from the  
4 posted performance bond shall be assessed as a penalty, exclusive of  
5 the requirement for the contractor or public agency to return and  
6 ensure that proper repair is conducted. Should the area repaired meet  
7 the Department's standards set forth for the repair of the roadway ~~or~~  
8 ~~highway~~, the Department *shall* return the deposit fee in full, *however*,  
9 the permit application fee *shall not* be returned. Inspection of the  
10 roadway ~~or highway~~ project area *shall* be performed by DPW within  
11 the ~~one (1) year~~ three (3) month period following completion of the  
12 roadway repair.

13 (5) In lieu of multiple deposit fees by a Utility or contractor for  
14 recurring maintenance and repairs or upgrade of its buried facilities,  
15 the Department may authorize the posting of a global performance  
16 bond to cover multiple excavations in such amount and under such  
17 term as the Department deems sufficient to ensure compliance with  
18 this Chapter. In the event of forfeiture of the bond, the proceeds shall  
19 be deposited into the Guam Highway Fund.

20 (c) All proceeds from the deposit fee established by this Section *shall*  
21 be deposited into the ~~Territorial~~ Guam Highway Fund, and interest derived  
22 therefrom *shall* remain in the Fund. Sufficient funds *shall* be reserved for the  
23 refund of deposits, pursuant to this Section.

24 (d) Emergency Excavations. An emergency excavation may be made  
25 without prior permit or deposit if the reason for the excavation is to prevent  
26 loss of life or damage to property that appears to be imminent if the  
27 excavation is delayed. In such emergency situations the contractor or public

1 agency responsible *shall* contact the Department on the first working day  
2 following the commencement of excavation and complete and secure a  
3 formal permit. The contractor or public agency responsible *shall* provide  
4 justification for the emergency excavation. In the event the Department  
5 deems that the excavation was *not* an emergency, the applicant *shall* be  
6 penalized Five Hundred Dollars (\$500) for failure to properly secure a  
7 permit prior to excavating and will still be required to pay the appropriate  
8 fees and deposits. *Except* for the prior permit requirement, none of the  
9 application fee, deposit, bond, or penalty provisions of this Section shall be  
10 waived for emergency situations.

11 (e) Before granting a permit under any provision of this Chapter, the  
12 Department may require the applicant to file with the Department a  
13 satisfactory bond, payable to the government of Guam in such amount and  
14 term as the Department deems sufficient, conditioned on the proper  
15 compliance by the permittee with the provisions of this Chapter. In the event  
16 of forfeiture of the bond, the proceeds *shall* go to the ~~affected agency~~ Guam  
17 Highway Fund.”

18  
19 **Section 3. Effective Date.** The provisions contained in this Act *shall*  
20 become effective upon enactment.

21  
22 **Section 4. Severability.** If any of the provisions of this law or its  
23 application to any person or circumstance is found to be invalid or contrary to law,  
24 such invalidity shall not affect other provisions or applications of this law which  
25 can be given effect without the invalid provisions or application, and to this end the  
26 provisions of this law are severable.

*I MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN*  
2013 (FIRST) Regular Session

**Bill No. 196-32 (COR)**

As Substituted by the Committee on Public Safety,  
Infrastructure and Maritime Transportation

Introduced by:

T.C. Ada  
R.J. Respicio

**AN ACT TO *AMEND* SECTIONS 53101(c) AND 53105 OF  
CHAPTER 53, TITLE 5, GUAM CODE ANNOTATED,  
RELATIVE TO ENSURING THE REPAIR AND  
RESTORATION OF GUAM'S PUBLIC ROADWAYS BY  
CONTRACTORS AND PUBLIC AGENCIES WHO  
EXCAVATE THESE ROADWAYS.**

**BE IT ENACTED BY THE PEOPLE OF GUAM:**

**Section 1. §53101(c) of Chapter 53, Title 5, Guam Code Annotated, is  
hereby amended to read as follows:**

“Roadway, highway, road, or street (hereinafter “roadway”) means all  
or any part of the entire width of right of way, whether or not such entire  
area is actually used by the general public for highway purposes the passage  
of vehicles and persons.”

**Section 2. §53105 of Chapter 53, Title 5, Guam Code Annotated, is  
hereby amended to read as follows:**

**“§ 53105. Condition for Deposit Fees and/or Bond.**

(a) All applications for excavation of a roadway *shall* have a schedule  
of work that sets the timeline of construction or work events and ~~maximum~~

1 ~~time before~~ deadline when the road is roadway will be restored to original  
2 condition or better. The contractor or public agency shall be required to  
3 close the opening and restore the roadway ~~upon expiration of time as no later~~  
4 than the date specified ~~by~~ on the permit or the DPW Director Chief  
5 Engineer.

6 (b) Deposit Fee.

7 (1) In addition to the permit application fee, and except as  
8 provided herein, any project by a ~~public or~~ private contractor or public  
9 agency which would require an opening or excavation for any purpose  
10 in a ~~highway or public~~ roadway *shall* be required to provide a deposit  
11 fee of *no less than* Five Hundred Dollars (\$500) or *no less than* five  
12 percent (5%) of the total cost of the project impacting the roadway,  
13 whichever is greater.

14 (2) *No* permit shall be granted to a contractor or public agency  
15 *unless* the deposit fee is paid in full or a performance bond, provided  
16 by a surety company authorized to do business in Guam, guarantees  
17 repairs on a single project or multiple projects anticipated to be  
18 undertaken over a period of time is provided.

19 (3) The prerequisite for a deposit fee *shall not* be applicable to  
20 government-funded projects that necessitate bond insurance coverage  
21 as a stipulation of the project, or for other projects for which a  
22 performance bond, upon such terms and in such amount, as may be  
23 required by the Department at its discretion. This requirement for a  
24 deposit fee *shall not* preclude the Department's condition for a bond,  
25 as may be imposed herein.

26 (4) Inspection and Repair.

1           (A) The deposit fee ~~highlighted herein~~ shall be retained  
2 by the Department for ~~one (1) year~~ up to three (3) months from  
3 the completion of the roadway repair, ~~and until such~~ during  
4 which time ~~that~~ the Department shall conducts a site inspection  
5 of the roadway ~~or highway~~ project area in which the opening or  
6 excavation had occurred, ~~and can~~ to ascertain ~~that~~ if the repairs  
7 were conducted and completed properly in accordance with  
8 applicable Federal Highway Administration and/or Department  
9 of Public Works standards.

10           (B) If the roadway or highway area is identified to be  
11 insufficiently repaired, then the Director shall assess a penalty  
12 against the deposit fee or performance bond ~~shall be assessed~~  
13 ~~as a penalty~~, exclusive of the requirement for the contractor or  
14 public agency to return and ensure that proper repair is  
15 conducted. On unpaved roadways, "insufficient repair" shall  
16 not include degradation, including but not limited to erosion,  
17 weathering, and the impacts of traffic, which would otherwise  
18 have been expected in the absence of the excavation in  
19 question.

20           (C) If the contractor or public agency fails to make  
21 proper repairs within fourteen (14) days of notification of the  
22 Department's findings, the Department is authorized to procure  
23 road repair services in accordance with 5 GCA Chapter 5 §5213  
24 and 2GAR Div 4 §3111. The Department shall retain as much  
25 of the performance bond or deposit fee as may be required to  
26 compensate the Department for damages arising from  
27 permittee's failure to complete satisfactory road repair, and the

1                    Department may also bring an action in the Superior Court of  
2                    Guam against the contractor for direct damages, if any, beyond  
3                    the amount of the performance bond or deposit fee posted.

4                    (D) Should the area repaired meet the Department's  
5                    standards set forth for the repair of the roadway ~~or highway~~, the  
6                    Department *shall* return the deposit fee in full, *however*, the  
7                    permit application fee *shall not* be returned. The party  
8                    responsible for the roadway repair shall provide a one (1) year  
9                    warranty on the work that was completed. For unpaved  
10                   roadways, the warranty requirement shall be for a period of  
11                   ninety (90) days. ~~Inspection of the road or highway project area~~  
12                   ~~shall be performed by DPW within the one (1) year period~~  
13                   following completion of the road repair.

14                   (5) In lieu of multiple deposit fees by a public agency or  
15                   contractor to guarantee repair of excavations needed for recurring  
16                   maintenance, repairs, and upgrades of its buried facilities, the  
17                   Department may authorize the posting of a performance bond to cover  
18                   multiple excavations in such amount and under such term as the  
19                   Department deems sufficient to ensure compliance with this Chapter.  
20                   In the event of forfeiture of the deposit fee or performance bond, the  
21                   proceeds shall be deposited into the Building Permits and Inspection  
22                   Revolving Fund for the purpose of paying for contracted roadway  
23                   repairs.

24                   (c) All proceeds from the deposit fee established by this Section *shall*  
25                   be deposited into the ~~Territorial Highway~~ Building Permits and Inspection  
26                   Revolving Fund, and interest derived therefrom *shall* remain in the Fund.

1 Sufficient funds *shall* be reserved for the refund of deposits, pursuant to this  
2 Section.

3 (d) Emergency Excavations. An emergency excavation may be made  
4 without prior permit or deposit if the reason for the excavation is to prevent  
5 loss of life or damage to property that appears to be imminent if the  
6 excavation is delayed, or to perform critical unscheduled repairs to remedy  
7 unanticipated interruptions to services. In such emergency situations the  
8 contractor or public agency responsible *shall* contact the Department on the  
9 first working day following the commencement of excavation ~~and~~ to  
10 complete and secure a formal permit. The contractor or public agency  
11 responsible *shall* provide justification for the emergency excavation. In the  
12 event the Department deems that the excavation was *not* an emergency, the  
13 applicant *shall* be penalized Five Hundred Dollars (\$500) for failure to  
14 properly secure a permit prior to excavating and will still be required to pay  
15 the appropriate fees and deposits. *Except* for the prior permit requirement,  
16 none of the application fee, deposit, bond, or penalty provisions of this  
17 Section shall be waived for emergency situations.

18 (e) Before granting a permit under any provision of this Chapter, the  
19 Department may require the applicant to file with the Department a  
20 satisfactory bond, payable to the government of Guam in such amount and  
21 term as the Department deems sufficient, conditioned on the proper  
22 compliance by the permittee with the provisions of this Chapter. In the event  
23 of forfeiture of the bond, the proceeds *shall* go to the ~~affected agency~~  
24 Building Permits and Inspection Revolving Fund.

25 (f) Prior to the start of excavation work, the permittee shall duly  
26 inform the Mayor of the district wherein the excavation is to be made, and  
27 upon completion of roadway restoration. In the event of emergency

1           excavations as provided for in subsection (d), the permittee shall notify the  
2           Mayor on the next working day.”

3  
4           **Section 3. Effective Date.** The provisions contained in this Act *shall*  
5 become effective upon enactment.

6  
7           **Section 4. Severability.** If any of the provisions of this law or its  
8 application to any person or circumstance is found to be invalid or contrary to law,  
9 such invalidity shall not affect other provisions or applications of this law which  
10 can be given effect without the invalid provisions or application, and to this end the  
11 provisions of this law are severable.







*The Honorable*  
**Eddie Baza Calvo**  
*Governor*

*The Honorable*  
**Ray Tenorio**  
*Lieutenant Governor*



**Carl V. Dominguez**  
*Director*

**Jessie B. Palican**  
*Deputy Director*

The Honorable Thomas C. Ada, Chairperson  
 Committee on Public Safety, Infrastructure & Maritime Transportation  
 I Mina'trentai Dos Na Liheslaturan Guåhan  
 Suite 207, Ada Plaza Center  
 Hagåtña, Guam 96910

**Re: Bill No. 196-32(COR), AN ACT TO AMEND SECTIONS 51301(c) AND 53105 OF CHAPTER 53, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO ENSURING THE ADEQUATE REPAIR AND RESTORATION OF GUAM'S PUBLIC ROADWAYS BY CONTRACTORS WHO OPEN AND EXCAVATE THESE ROADS.**

Buenas yan Hafa Adai Senator Ada!

Bill 196-32 seeks to amend sections of Chapter 53, Title 5, Guam Code Annotated relative to ensuring the adequate repair and restoration of Guam's public roadways by contractors and public agencies who excavate these roads. The Bill makes changes to P.L. 31-83 which was enacted on September 30, 2011.

The Bill before us now allows for a contractor or public agency to post a performance bond for single or multiple projects. This may be done through the posting of a global performance bond. The Bill also lowers the amount of time that the deposit or bond is held by the DPW from one (1) year down to three (3) months.

The DPW is not opposed to Bill 196-32's primary objective that allows the Director to require bonds in lieu of deposit fees. This revision serves to alleviate excessive paperwork and administrative time imposed upon both the department and contractor under the current law. We would however proposed revising Section 53105(b)(3) language to "or for other projects which a performance bond, *upon such terms and in such amount, as may be required by the Department at its discretion.*

Further, the stated purpose of P.L. 31-83 was to address the many concerns expressed by Guam's residents that highways are not properly restored to the original condition resulting in safety hazards to island drivers. I mention this as I am concerned that the Department, whose resources are already taxed, may not be able to adequately inspect excavation and roadway repair in the proposed three (3) month period. Accordingly, we recommend that Section 53105(b)(4)'s inspection and compliance period remain one (1) year.

Finally, we are concerned that the proceeds from forfeiture of bonds due to improper road repair be deposited to the Guam Highway Fund and not given to the DPW to make such repairs should the contractor or public agency fail to take corrective action. We ask that this be changed and funds be given directly to the DPW for the necessary repairs.

Si Yu'os Ma'ase,

**CARL V. DOMINGUEZ**  
 Director

TESTIMONY

By

Daniel J. Tydingco

Executive Vice-President

TELEGUAM HOLDINGS, LLC, dba GTA

On

Bill 196

Wednesday, October 9, 2013

Legislative Public Hearing Room

Hagatna, Guam

Hafa Adai Yan Buenas Mr. Chairman and Committee Members:

ON BEHALF OF THE 350 EMPLOYEES OF GTA, I AM HERE TODAY TO TESTIFY IN FAVOR OF BILL 196.

THIS MEASURE STRIKES A MUCH NEEDED BALANCE BETWEEN THE PROTECTION OF PUBLIC ASSETS AND THE NEED TO PROVIDE RESPONSIBLE DEVELOPMENT AND REPAIR OF ISLAND INFRASTRUCTURE.

AS THE ISLAND'S CARRIER OF LAST RESORT AND INCUMBENT LOCAL EXCHANGE CARRIER, AS WELL AS SERVING AS THE COMMUNICATIONS GATEWAY TO THE WORLD WITH A LOCAL NETWORK OF HUNDREDS OF MILES OF COPPER AND FIBER FACILITIES, A SIGNIFICANT AMOUNT OF OUR NETWORK IS BURIED TO PROVIDE RESILIENCY AND RELIABILITY.

WE INVEST MILLIONS IN THIS OUTSIDE PLANT ANNUALLY FOR MEETING RESIDENTIAL, BUSINESS AND GOVERNMENT CONSUMER DEMANDS WITH NEW DEVELOPMENT PROJECTS, AS WELL AS DAILY REPAIRS AND MAINTENANCE TO THE COMMUNICATIONS INFRASTRUCTURE, INCLUDING OVER 20,000 PEDESTALS SITED ALL OVER THE ISLAND.

WHEN THIS LAW FIRST WAS ENACTED, WE HAD TESTIFIED IN SUPPORT OF ITS PASSAGE, TO ENSURE PUBLIC ASSETS SUCH AS THE ROADWAYS AND HIGHWAYS ALL OF US TRAVEL ON EACH DAY ARE PROTECTED, FIXED AND REPAIRED PROPERLY, ONCE ANY CONTRACTOR HAS TO DO WORK ON OR NEAR ANY OF THE ROADS OR HIGHWAYS.

UNFORTUNATELY, SOMEHOW, THE ORIGINAL LEGISLATION WHICH IS PRESENTLY LAW, DID NOT TAKE INTO ACCOUNT THE POTENTIALLY UNDUE ECONOMIC IMPACT AND BURDEN IT HAS ON COMPANIES SUCH AS OURS WHO UNDERTAKE LARGE NUMBERS OF PROJECTS ON A FAIRLY REGULAR BASIS.

THE LAW, AT PRESENT, REQUIRES BOTH A DEPOSIT FEE AND A BOND TO ENSURE ADEQUATE AND PROPER REPAIRS AND RESTORATION TO ROADS AND HIGHWAYS TAKES PLACE BY CONTRACTORS WHO HAVE TO EXCAVATE.

AGAIN, WE AGREE WITH THE NEED FOR ALL CONTRACTORS AND DEVELOPERS TO RESTORE OR REPAIR, IF NOT MAKE BETTER, THE ROADS AND HIGHWAYS WE ALL USE ON A DAILY BASIS. HOWEVER, THE REQUIREMENT FOR BOTH DEPOSIT FEE AND BOND IS ONEROUS AND OVERKILL, AS IT IMPACTS CASHFLOW AND OUR ABILITY TO CHANNEL REDUNDANT FUNDS FOR ADDITIONAL NETWORK UPGRADES FOR CONSUMERS.

AS AN EXAMPLE, SINCE JANUARY 2012, ACCORDING TO INTERNAL INFORMATION, THERE HAVE BEEN OVER 670 PEDESTAL REPAIRS WHICH OUR OUTSIDE PLANT TECHNICIANS HAVE ATTENDED TO. IN THAT SAME TIME PERIOD, OUR ENGINEERING DIVISION HAS HAD TO SECURE 439 PERMITS. WHEN ONE DOES THE CALCULUS, MULTIPLYING EACH BY AT LEAST \$500, REQUIRING A BOND ON TOP OF THAT, AND THE GOVERNMENT HOLDING SUCH FUNDS AND TAKING UP TO A YEAR TO INSPECT AND DETERMINE IF PROPER REPAIRS AND RESTORATION HAVE TAKEN PLACE, ONE CAN CLEARLY GET A BETTER APPRECIATION OF THE FINANCIAL IMPACT SUCH LAW HAS ON DEVELOPMENT AND REPAIRS FOR CRITICAL INFRASTRUCTURE SUCH AS OURS.

WE ARE GRATEFUL THAT SENATOR TOM ADA SENATOR AND SENATOR RORY RESPICIO HAVE TAKEN A BROADER LOOK AT THE EXISTING LAW AND ARE SEEKING TO STRIKE THAT NEEDED BALANCE FOR RESPONSIBLE DEVELOPMENT AND REPAIR OF THE ISLAND ROAD AND HIGHWAY INFRASTRUCTURE.

THE ALTERNATIVE FOR A BOND, IN LIEU OF THE RECURRING DEPOSIT FEES, AS WELL AS STREAMLINING THE INSPECTION AND REVIEW OF REPAIRS AND RESTORATION ARE SOUND COMMON SENSE PROVISIONS THAT FACILITATE WHAT NEEDS TO BE DONE.

ON BEHALF OF GTA, I RESPECTFULLY REQUEST YOUR FAVORABLE CONSIDERATION AND PASSAGE OF THIS MEASURE.



## COMMITTEE ON RULES

*I Mina'trentai Dos na Liheslaturan Guåhan* • The 32nd Guam Legislature  
155 Hesler Place, Hagåtña, Guam 96910 • [www.guamlegislature.com](http://www.guamlegislature.com)  
E-mail: [roryforguam@gmail.com](mailto:roryforguam@gmail.com) • Tel: (671)472-7679 • Fax: (671)472-3547

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Rory J. Respicio  
CHAIRPERSON  
MAJORITY LEADER

Senator  
Thomas C. Ada  
VICE CHAIRPERSON  
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Senator  
V. Anthony Ada  
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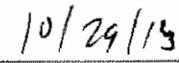
# Certification of Waiver of Fiscal Note Requirement

This is to certify that the Committee on Rules submitted to the Bureau of Budget and Management Research (BBMR) a request for a fiscal note, or applicable waiver, on **BILL NO. 196-32 (COR) – “AN ACT TO AMEND SECTIONS 51301(c) AND 53105 OF CHAPTER 53, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO ENSURING THE ADEQUATE REPAIR AND RESTORATION OF GUAM’S PUBLIC ROADWAYS BY CONTRACTORS WHO OPEN AND EXCAVATE THESE ROADS.”** – on October 29, 2013. COR hereby certifies that BBMR confirmed receipt of this request on October 1, 2013 at 4:27 P.M.

COR further certifies that a response to this request was not received. **Therefore, pursuant to 2 GCA §9105, the requirement for a fiscal note, or waiver thereof, on Bill No. 196-32 (COR) to be included in the committee report on said bill, is hereby waived.**

Certified by:

  
\_\_\_\_\_  
**Senator Rory J. Respicio**  
Chairperson, Committee on Rules

  
\_\_\_\_\_  
Date



## COMMITTEE ON RULES

*I Mina'trentai Dos na Liheslaturan Guåhan* • The 32nd Guam Legislature  
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Member

Senator  
Michael F.Q. San Nicolas  
Member

Senator  
V. Anthony Ada  
Member  
MINORITY LEADER

Senator  
Aline Yamashita  
Member

September 26, 2013

### MEMORANDUM

**To:** **Rennae Meno**  
*Clerk of the Legislature*

**Attorney Therese M. Terlaje**  
*Legislative Legal Counsel*

**From:** **Senator Rory J. Respicio**  
*Majority Leader & Rules Chair*

**Subject: Referral of Bill No. 196-32(COR)**

As the Chairperson of the Committee on Rules, I am forwarding my referral of **Bill No. 196-32(COR)**.

Please ensure that the subject bill is referred, in my name, to the respective committee, as shown on the attachment. I also request that the same be forwarded to all members of *I Mina'trentai Dos na Liheslaturan Guåhan*.

Should you have any questions, please feel free to contact our office at 472-7679.

*Si Yu'os Ma'åse!*

Attachment

*I Mina'Trentai Dos Na Liheslaturan Guahan*

**Bill Log Sheet**

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERREO	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	FISCAL NOTES
196-32 (COR)	T.C. Ada R.J. Respicio	AN ACT TO AMEND SECTIONS 51301(c) AND 53105 OF CHAPTER 53, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO ENSURING THE ADEQUATE REPAIR AND RESTORATION OF GUAM'S PUBLIC ROADWAYS BY CONTRACTORS WHO OPEN AND EXCAVATE THESE ROADS.	09/25/13 2:34 p.m.	09/26/13	Committee on Public Safety, Infrastructure, & Maritime Transportation			



Senator Tom Ada

Cyrus Luhr <cyrus@senatorada.org>

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## Public Hearing Notice: Oct. 9, 2013 at 3:00 pm

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Cyrus Luhr <cyrus@senatorada.org>

Wed, Oct 2, 2013 at 11:05 AM

To: phnotice@guamlegislature.org, media@senatorada.org

Hafa Adai,

Please see the attached notice regarding a Public Hearing being conducted by the Committee on Public Safety, Infrastructure & Maritime Transportation. This hearing will take place on **Wed, Oct 9, at 3:00 pm**, in the Public Hearing room of *I Liheslatura*.

On the Agenda are the following items:

**Bill 173-32** – T.R. Muña Barnes

An act to amend Section 2 1(G) of Public Law 32-053 relative to flood mitigation projects of the Department of Public Works.

**Bill 196-32** – T.C. Ada, R.J. Respicio

An act to amend Sections 51301(c) and 53105 of Chapter 53, Title 5, Guam Code Annotated, relative to ensuring the adequate repair and restoration of Guam's public roadways by contractors who open and excavate these roads.

**Bill 131-32** – T.C. Ada

An act to amend subsection (f) and add a new subsection (g) to §3301 of Chapter 3, Title 16 Guam Code Annotated, relative to establishing speed limits.

Please let me know if you have any questions or concerns.

Thank you,  
Cyrus

---

Cyrus Luhr  
Senior Policy Analyst  
Office of Senator Thomas C. Ada  
*I Mina'trentai Dos na Liheslaturan Guåhan* - 32nd Guam Legislature  
671-473-3301



**PH - 1st notice - 10-09-13.pdf**

511K



## Senator Thomas C. Ada

Chairman - Committee on Public Safety, Infrastructure & Maritime Transportation  
*I Mina'trentai Dos Na Liheslaturan Guåhan* • 32<sup>nd</sup> Guam Legislature

Oct. 2, 2013

### MEMORANDUM

To: All Senators, Media and Stakeholders  
Fr: Senator Thomas C. Ada  
Subject: **Public Hearing Notice: Oct. 9, 2013 at 3:00 pm**

Please be advised that the Committee on Public Safety, Infrastructure and Maritime Transportation is holding a public hearing on **Wed, Oct. 9, at 3:00 pm**. This meeting will take place in the Public Hearing Room of *I Liheslatura*, and be broadcast on MCV channel 13 and GFA channel 21. The agenda is as follows:

#### 3:00 pm

**Bill 173-32** – T.R. Muña Barnes

An act to amend Section 2 1(G) of Public Law 32-053 relative to flood mitigation projects of the Department of Public Works.

**Bill 196-32** – T.C. Ada, R.J. Respicio

An act to amend Sections 51301(c) and 53105 of Chapter 53, Title 5, Guam Code Annotated, relative to ensuring the adequate repair and restoration of Guam's public roadways by contractors who open and excavate these roads.

**Bill 131-32** – T.C. Ada

An act to amend subsection (f) and add a new subsection (g) to §3301 of Chapter 3, Title 16 Guam Code Annotated, relative to establishing speed limits.

Testimonies should be addressed to Senator Thomas C. Ada, and will be accepted via hand delivery to our mailbox at the Main Legislature Building at 155 Hesler Place, Hagåtña, Guam 96932, via email to [office@senatorada.org](mailto:office@senatorada.org), or via facsimile to (671) 473-3303 until Wednesday, Oct. 23, 2013 at 5:00 pm. Individuals with questions or concerns, including requests for special accommodations, auxiliary aids or services, should contact Cyrus Luhr at my office at (671) 473-3301.

*Si Yu'os Ma'ase.*

Thomas C. Ada



Senator Tom Ada

Cyrus Luhr <cyrus@senatorada.org>

---

## Public Hearing - 2nd Notice - Wed, Oct 9, at 3:00 pm

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Cyrus Luhr <cyrus@senatorada.org>

Mon, Oct 7, 2013 at 11:37 AM

To: phnotice@guamlegislature.org, media@senatorada.org

Hafa Adai,

Please see the attached notice regarding a Public Hearing being conducted by the Committee on Public Safety, Infrastructure & Maritime Transportation. This hearing will take place on **Wed, Oct 9, at 3:00 pm**, in the Public Hearing room of *I Liheslatura*.

On the Agenda are the following items:

**Bill 173-32** – T.R. Muña Barnes

An act to amend Section 2 1(G) of Public Law 32-053 relative to flood mitigation projects of the Department of Public Works.

**Bill 196-32** – T.C. Ada, R.J. Respicio

An act to amend Sections 51301(c) and 53105 of Chapter 53, Title 5, Guam Code Annotated, relative to ensuring the adequate repair and restoration of Guam's public roadways by contractors who open and excavate these roads.

**Bill 131-32** – T.C. Ada

An act to amend subsection (f) and add a new subsection (g) to §3301 of Chapter 3, Title 16 Guam Code Annotated, relative to establishing speed limits.

Please let me know if you have any questions or concerns.

Thank you,  
Cyrus

---

Cyrus Luhr  
Senior Policy Analyst  
Office of Senator Thomas C. Ada  
*I Mina'trentai Dos na Liheslaturan Guåhan* - 32nd Guam Legislature  
671-473-3301



**PH - 2nd notice - 10-09-13.pdf**

515K



## Senator Thomas C. Ada

Chairman - Committee on Public Safety, Infrastructure & Maritime Transportation  
*I Mina'trentai Dos Na Liheslaturan Guåban • 32<sup>nd</sup> Guam Legislature*

Oct. 6, 2013

### MEMORANDUM

To: All Senators, Media and Stakeholders  
Fr: Senator Thomas C. Ada  
Subject: **Public Hearing Notice: Oct. 9, 2013 at 3:00 pm**

Please be advised that the Committee on Public Safety, Infrastructure and Maritime Transportation is holding a public hearing on **Wed, Oct. 9, at 3:00 pm**. This meeting will take place in the Public Hearing Room of *I Liheslatura*, and be broadcast on MCV channel 13 and GTA channel 21. The agenda is as follows:

#### 3:00 pm

**Bill 173-32** – T.R. Muña Barnes

An act to amend Section 2 1(G) of Public Law 32-053 relative to flood mitigation projects of the Department of Public Works.

**Bill 196-32** – T.C. Ada / R.J. Respicio

An act to amend Sections 51301(c) and 53105 of Chapter 53, Title 5, Guam Code Annotated, relative to ensuring the adequate repair and restoration of Guam's public roadways by contractors who open and excavate these roads.

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An act to amend subsection (f) and add a new subsection (g) to §3301 and of Chapter 3, Title 16 Guam Code Annotated, relative to establishing speed limits.

Testimonies should be addressed to Senator Thomas C. Ada, and will be accepted via hand delivery to our mailbox at the Main Legislature Building at 155 Hesler Place, Hagåtña, Guam 96932, via email to [office@senatorcraada.org](mailto:office@senatorcraada.org), or via facsimile to (671) 473-3303 until Friday, Oct. 25, 2013 at 5:00 pm. Individuals with questions or concerns, including requests for special accommodations, auxiliary aids or services, should contact Cyrus Luhr at my office at (671) 473-3301.

*Si Yu'os Ma'ase.*

Thomas C. Ada

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## Senator Thomas C. Ada

Chairman - Committee on Public Safety, Infrastructure & Maritime Transportation

*I Mina'trentai Dos Na Liheslaturan Guåhan* • 32<sup>nd</sup> Guam Legislature

### AGENDA

#### PUBLIC HEARING

Wednesday, October 9, 2013

Public Hearing Room, *I Liheslaturan Guåhan*

The agenda is as follows:

#### 3:00 pm

##### **Bill 173-32** – T.R. Muña Barnes

An act to amend Section 2 1(G) of Public Law 32-053 relative to flood mitigation projects of the Department of Public Works.

##### **Bill 196-32** – T.C. Ada / R.J. Respicio

An act to amend Sections 51301(c) and 53105 of Chapter 53, Title 5, Guam Code Annotated, relative to ensuring the adequate repair and restoration of Guam's public roadways by contractors who open and excavate these roads.

##### **Bill 131-32** – T.C. Ada

An act to amend subsection (f) and add a new subsection (g) to §3301 of Chapter 3, Title 16, Guam Code Annotated, relative to establishing speed limits.

Testimonies should be addressed to Senator Thomas C. Ada, and will be accepted via hand delivery to our mailbox at the Main Legislature Building at 155 Hesler Place, Hagåtña, Guam 96932, via email to [office@senatorada.org](mailto:office@senatorada.org), or via facsimile to (671) 473-3303 until Wednesday, October 23, 2013 at 5:00 pm. Individuals requiring special accommodations, auxiliary aids or services should submit their request to Cyrus Luhr at 473-3301. Please feel free to contact my office at 473-3301 should you have any questions.

# Route 3 commercial boom imminent with GRMC opening

By Aldwin Fajardo  
afajardo@mvguam.com  
Variety News Staff

The anticipated opening of a private hospital on Route 3 in Dededo is generating a significant number of real estate transactions, providing a much-needed boost to the island's property market that has become practically dormant following a series of multimillion-dollar sales last year.

Cornerstone Valuation Guam President Siska Hutapea said Route 3 – the site of the Guam Regional Medical City – is giving the island's lukewarm real estate market "a lot of exciting" developments that include the possibility of a commercial boom around the new hospital's location.

Hutapea mentioned recent Route 3 property acquisitions by the owners of Micronesia Mall and the future Tumon Bay Mall – Goodwind Development Corp. and Grandview Development Corp.

"Two pieces of property were recently acquired by the Micronesia Mall owners. They also last month acquired another 10



Cornerstone Valuation Guam President Siska Hutapea said Route 3 – the site of the Guam Regional Medical City – is giving the island's lukewarm real estate market "a lot of exciting" developments that include the possibility of a commercial boom around the new hospital's location. Variety News photo.

acres of land for \$90 per square meter. Based on these alone, we might see retail and other commercial developments in the vicinity," Hutapea said.

Apparently, this is the same property that was purchased in 2008 for \$74 per square meter but was later rezoned to M-1 and subsequently sold at \$90



per square meter.

Government records disclosed that Goodwind Development has purchased 26,568 square meters of properties on May 8 from Gregory Blas on administrator's deed. The properties, consisting of at least three parcels or more, were acquired by Goodwind Development for more than \$2.0 million at \$77 per square meter. The company, in August, also closed a real estate purchase deal on a property along Route 3 across from the new hospital site. This property is in addition to the May 8 acquisition.

#### Abundant supply

Hutapea said that about 32,000 square meters of property along Route 3, including

the hospital site, have been sold since 2008 at a total price of \$20 million. "There's an abundant supply of fairly affordable M-1 and multiple family dwelling properties in the area, which is keeping prices within reasonable value despite the area being a real estate hotspot."

She said the area surrounding the Guam Regional Medical City – including the hospital property – is comprised of about 3,000 acres of land mostly available for commercial, retail and multiple-family dwelling developments.

Hutapea mentioned that the Guam Economic Development Authority is in charge of a property in the area and is also planning a retail development.

"This area is mostly zoned M-1 but some are already zoned H and R-2. It will be very exciting to see developments in the Route 3 vicinity in the coming years."

Route 3 and Tumon are the only areas seeing a significant number of real estate transactions so far this year, pushing property sales volume in 2013 back to the 2009 levels at around \$250 million.

Compared with 2012, the island's real estate market dropped by 46 percent to \$257.4 million from \$472.9 million but Hutapea attributed the significant decline to huge property sales last year.

According to the Guam Real Estate News, more than half of 2012's sales volume was just from five transactions – the \$142 million sale of Guam Premier Outlets and Tumon Sands Plaza to Japanese billionaire Katsuhiko Kinoshita's group; the \$20.5 million sale of the Tumon Bay Mall property to Filipino tycoon Lucio Tan's local companies; two Tumon sales totaling \$22.4 million to one of Taiwan's largest construction firms Lih Pao; and the \$52.5 million sale of Ladera Tower to Jack Bai.

Hutapea said these five major real estate sales in 2012 explain the disparity in the total number of transactions and sales volume for this year. The number of transactions in 2013 rose by 3 percent to 1,035 from the previous year's 1,005, while sales volume shrank by 46 percent.

## Department of Revenue & Taxation BOARD OF EQUALIZATION General Membership Meeting

The Board of Equalization will hold a general membership meeting on Tuesday, October 15, 2013, 3:30 p.m. at the Department of Revenue and Taxation (Director's Conference Room 2nd floor), 1240 Army Drive, Barrigada.



## Senator Tom Ada

Chairman, Committee on Infrastructure  
32nd Legislature

### Public Hearing Notice

Wednesday, October 10, 2013  
3:00pm • Public Hearing Room, Guam Legislature

#### AGENDA

##### Bill 173-32

Relative to flood mitigation projects of the Department of Public Works. (Intro by T.R. Muna Barnes)

##### Bill 196-32

Relative to ensuring the adequate repair of Guam's roadways by contractors and public agencies who open and excavate them. (Intro by T.C. Ada and R.J. Respicio)

##### Bill 131-32

Relative to establishing speed limits. (Intro by T.C. Ada)

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Paid for with public funds by the Committee

## AGO seeks dismissal of inmate's case

By Gina Laborares-Retley  
gins@mvguam.com  
Variety News Staff

THE Attorney General's Office has filed an opposition asking the District Court of Guam to deny an inmate's motion to amend his complaint against the Department of Corrections.

Vicente G. Perez, 48, a convicted sex offender, filed his original complaint on May 17. He alleged that since being taken into custody in DOC, he has not received proper medical and dental treatment.

When he broke his wrist, Perez said DOC officials gave him medication and a bandage but did not provide him with a splint or assign him a lower bunk for sleeping.

On July 30, an amended complaint by Perez was docketed and the inmate sought damages in the amount of \$3.5 million for negligent infliction of emotional distress.

Vicente G. Perez, 48, a convicted sex offender, filed his original complaint on May 17. He alleged that since being taken into custody in DOC, he has not received proper medical and dental treatment. When he broke his wrist, Perez said DOC officials gave him medication and a bandage but did not provide him with a splint or assign him a lower bunk for sleeping.

On Aug. 21, indicating that his previous amended complaint contained an error, Perez submitted a new complaint and wants to seek punitive damages in the amount of \$1.5 million and damages in the amount of \$3.5 million for negligent infliction of mental and emotional distress.

Assistant Attorney General Marianne Woloschuk moved to dismiss the amended complaint, saying the inmate failed to state a claim upon which relief can be granted, based on the defendant named in the complaint and the nature of the remedy sought.

Similarly, the AGO said any

amendment in the case would be futile because Perez's claims against the defendants concern their actions as DOC officials and employees.

"He makes no allegations concerning their actions in an individual capacity. Moreover, he still names DOC as a defendant and continues to seek money damages from the defendants," Woloschuk said in her filing.

The AGO attorney also told the court that Perez's motion to amend should be denied as prejudicial because his complaint supplies insufficient notice of his claims.

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**7 - CEMENT MASON WITH 1 YR. EXP.**.....\$12.87/HR.  
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**3 - CARPENTER WITH 1 YR. EXP.**.....\$13.96/HR.  
 Duties: Constructs, erects, installs and repairs structures and fixtures of wood, wallboard and plywood, including framework. Uses carpenter's hand tools and power tools conforming to local building codes. Reads blueprints, sketches, or building plans to determine type of work required and materials needed. Prepares layout using ruler, framing square, and calipers. Erects framework for structure and lay subfloor board. Builds and installs stairs, cabinets, closets, windows, and doorframes.

**3 - REINFORCING METAL WORKER WITH 1 YR. EXP.**.....\$12.66/HR.  
 Duties: Positions and secures steel bars in concrete forms to reinforce concrete. Determines numbers, sizes, shapes, and locations of reinforcing rods from blueprints, sketches, or oral instructions. Seeks and places rods in forms and spacing, and fastens them together using wire and pliers, cuts bars to required lengths using hacksaw, bar cutters, or acetylene torch.

*The recruitment associated with this job offer is closely monitored by the Department of Labor, Statistics and Planning U.S. workers are encouraged to apply. Should you qualify for the job and are not hired, you will agree with the Department of Labor who will independently review matter.*

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**Senator Tom Ada**  
 Chairman - Committee on Public Safety, Infrastructure & Maritime Transportation  
 12nd Guam Legislature

**PUBLIC HEARING NOTICE**  
**WED., OCTOBER 9, 2013**  
**3:00PM at I Liheslaturan Guåhan**  
**AGENDA**

**Bill 173-32**  
 Relative to flood mitigation projects of the Department of Public Works. (Intro by T.R. Muña Barnes)

**Bill 196-32**  
 Relative to ensuring the adequate repair of Guam's roadways by contractors and public agencies who open and excavate them. (Intro by T.C. Ada and R.J. Respicio)

**Bill 131-32**  
 Relative to establishing speed limits. (Intro by T.C. Ada)

Individuals requiring special accommodations, auxiliary aids or services should submit their request to William Brennan at 473-3301. Please feel free to contact our office at 473-3301 should you have any questions.

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October 1, 2013

VIA E-MAIL

[john.rios@bbmr.guam.gov](mailto:john.rios@bbmr.guam.gov)

**John A. Rios**  
**Director**  
**Bureau of Budget & Management Research**  
**P.O. Box 2950**  
**Hagåtña, Guam 96910**

**RE: Request for Fiscal Notes– Bill Nos. 194-32(COR) through 201-32(COR)**

*Hafa Adai* Mr. Rios:

Transmitted herewith is a listing of *I Mina'trentai Dos na Liheslaturan Guåhan's* most recently introduced bills. Pursuant to 2 GCA §9103, I respectfully request the preparation of fiscal notes for the referenced bills.

*Si Yu'os ma'åse'* for your attention to this matter.

Very Truly Yours,

**Senator Rory J. Respicio**  
*Chairperson, Committee on Rules*

Attachments (1)

Cc: Clerk of the Legislature

2013 OCT - 1 PM 4: 26

Bill Nos.	Sponsor	Title
194-32 (COR)	Michael F.Q. San Nicolas	AN ACT TO ADD A NEW CHAPTER 55 TO DIVISION 2, TITLE 12, GUAM CODE ANNOTATED AND A NEW SUBSECTION (i) TO §103104 OF CHAPTER 10, TITLE 11, GUAM CODE ANNOTATED, RELATIVE TO THE ESTABLISHMENT OF A GUAM INTRASTATE SECURITIES EXCHANGE UNDER THE INTRASTATE OFFERING EXEMPTION OF THE SECURITIES ACT OF 1933.
195-32 (COR)	Frank B. Aguon, Jr.	AN ACT RELATIVE TO PROTECTING INFANTS WHO ARE BORN ALIVE AS A RESULT OF AN ABORTION, THROUGH THE ESTABLISHMENT OF THE "INFANT CHILD'S RIGHT TO LIFE ACT"; THROUGH ADDING A NEW CHAPTER 91 TO TITLE 9, GUAM CODE ANNOTATED.
196-32 (COR)	T.C. Ada R.J. Respicio	AN ACT TO AMEND SECTIONS 51301(c) AND 53105 OF CHAPTER 53, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO ENSURING THE ADEQUATE REPAIR AND RESTORATION OF GUAM'S PUBLIC ROADWAYS BY CONTRACTORS WHO OPEN AND EXCAVATE THESE ROADS.
197-32 (COR)	Judith T. Won Pat, Ed.D., T. R. Muña Barnes	AN ACT TO ADD A NEW §3223 TO CHAPTER 3 OF TITLE 17 GUAM CODE ANNOTATED, RELATIVE TO HONORARY HIGH SCHOOL DIPLOMAS FOR CERTAIN SENIOR CITIZENS.
198-32 (COR)	Judith T. Won Pat, Ed.D., T. R. Muña Barnes	AN ACT TO ADD A NEW §5013 TO TITLE 5, CHAPTER 5 OF TITLE 5 GUAM CODE ANNOTATED, RELATIVE TO GOVERNMENT PROCUREMENT POLICY IN FAVOR OF WOMEN OWNED BUSINESSES.
199-32 (COR)	Judith T. Won Pat, Ed.D., T.C. Ada	AN ACT TO AMEND §22425(q)(4) AND (q)(5) OF TITLE 5 GUAM CODE ANNOTATED, RELATIVE TO FUNDING THE FACILITIES AND MAINTENANCE DIVISION OF THE GUAM DEPARTMENT OF EDUCATION.
200-32 (COR)	R.J. Respicio, T.C. Ada, B.J.F. Cruz	AN ACT TO AMEND TITLE 10 GUAM CODE ANNOTATED §77135 RELATIVE TO POLICE CLEARANCES, TO BE KNOWN AS THE "POLICE CLEARANCE CLARITY ACT OF 2013."
201-32 (COR)	B.J.F. Cruz	AN ACT TO ADD A NEW §5141 TO CHAPTER 5 OF TITLE 5 OF THE GUAM CODE ANNOTATED; RELATIVE TO ESTABLISHING SYSTEM OF TRAINING, CONTINUING EDUCATION, AND CERTIFICATION FOR GOVERNMENT OF GUAM PROCUREMENT PERSONNEL.



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Legislative Secretary  
Tina Rose Muña Barnes  
Member

Senator  
Frank Blas Aguon, Jr.  
Member

Senator  
Michael F.Q. San Nicolas  
Member

Senator  
V. Anthony Ada  
Member  
MINORITY LEADER

Senator  
Aline Yamashita  
Member

September 26, 2013

### MEMORANDUM

**To:** **Rennae Meno**  
*Clerk of the Legislature*

**Attorney Therese M. Terlaje**  
*Legislative Legal Counsel*

**From:** **Senator Rory J. Respicio**  
*Majority Leader & Rules Chair*

**Subject:** **Referral of Bill No. 196-32(COR)**

As the Chairperson of the Committee on Rules, I am forwarding my referral of **Bill No. 196-32(COR)**.

Please ensure that the subject bill is referred, in my name, to the respective committee, as shown on the attachment. I also request that the same be forwarded to all members of *I Mina'trentai Dos na Liheslaturan Guåhan*.

Should you have any questions, please feel free to contact our office at 472-7679.

*Si Yu'os Ma'åse!*

Attachment

**I MINA'TRENTAI DOS NA LIHESLATURAN GUÁHAN**  
**2013 (FIRST) Regular Session**

Bill No. 196-32(COR)

Introduced by:

T.C. Ada   
R.J. Respicio 

**AN ACT TO AMEND SECTIONS 51301(c) AND 53105 OF  
CHAPTER 53, TITLE 5, GUAM CODE ANNOTATED,  
RELATIVE TO ENSURING THE ADEQUATE REPAIR  
AND RESTORATION OF GUAM'S PUBLIC  
ROADWAYS BY CONTRACTORS WHO OPEN AND  
EXCAVATE THESE ROADS.**

2013 SEP 25 PM 2:34 

1        **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2        **Section 1. §51301(c) of Chapter 53, Title 5, Guam Code Annotated, is**  
3 **hereby amended to read as follows:**

4                “Roadway, highway, road, or street (hereinafter “roadway”) means all  
5 or any part of the entire width of right of way, whether or not such entire  
6 area is actually used by the general public for highway purposes the passage  
7 of vehicles and persons.”

8  
9        **Section 2. §53105 of Chapter 53, Title 5, Guam Code Annotated, is**  
10 **hereby amended to read as follows:**

11        **“§ 53105. Condition for Deposit Fees and/or Bond.**

12                (a) All applications for excavation of a roadway *shall* have a schedule  
13 of work that sets the timeline of construction or work events and ~~maximum~~  
14 ~~time before~~ deadline when the road is roadway will be restored to original  
15 condition or better. The contractor *shall* be required to close the opening and

1 restore the roadway ~~upon expiration of time as~~ no later than the date  
2 ~~specified by~~ on the permit or the DPW ~~Director~~ Chief Engineer.

3 (b) Deposit Fee.

4 (1) In addition to the permit application fee, and except as  
5 provided herein, any project by a ~~public or~~ private contractor or public  
6 agency which would require an opening or excavation for any purpose  
7 in a ~~highway or public~~ roadway *shall* be required to provide a deposit  
8 fee of *no less than* Five Hundred Dollars (\$500) or *no less than* five  
9 percent (5%) of the total cost of the project impacting the roadway,  
10 whichever is greater.

11 (2) No permit shall be granted to a contractor or public agency  
12 *unless* the deposit fee is paid in full or a performance bond that  
13 guarantees repairs on a single project or multiple projects anticipated  
14 to be undertaken over a period of time is provided.

15 (3) The prerequisite for a deposit fee *shall not* be applicable to  
16 government-funded projects that necessitate bond insurance coverage  
17 as a stipulation of the project, or for other projects for which a  
18 performance bond may be required by the Department at its  
19 discretion. This requirement for a deposit fee *shall not* preclude the  
20 Department's condition for a bond, as may be imposed herein.

21 (4) The deposit fee ~~highlighted herein~~ *shall* be retained by the  
22 Department for ~~one (1) year~~ up to three (3) months from the  
23 completion of the excavation and roadway repair, ~~and until such~~  
24 during which time that the Department shall conducts a site inspection  
25 of the roadway or highway project area in which the opening or  
26 excavation had occurred, and can ascertain that the repairs were  
27 conducted and completed properly in accordance with applicable

1 Federal Highway Administration and/or Department of Public Works  
2 standards. *If* the roadway ~~or highway~~ area is identified to be  
3 insufficiently repaired, then the deposit fee or similar amount from the  
4 posted performance bond shall be assessed as a penalty, exclusive of  
5 the requirement for the contractor or public agency to return and  
6 ensure that proper repair is conducted. Should the area repaired meet  
7 the Department's standards set forth for the repair of the roadway ~~or~~  
8 ~~highway~~, the Department *shall* return the deposit fee in full, *however*,  
9 the permit application fee *shall not* be returned. Inspection of the  
10 roadway ~~or highway~~ project area *shall* be performed by DPW within  
11 the ~~one (1) year~~ three (3) month period following completion of the  
12 roadway repair.

13 (5) In lieu of multiple deposit fees by a Utility or contractor for  
14 recurring maintenance and repairs or upgrade of its buried facilities,  
15 the Department may authorize the posting of a global performance  
16 bond to cover multiple excavations in such amount and under such  
17 term as the Department deems sufficient to ensure compliance with  
18 this Chapter. In the event of forfeiture of the bond, the proceeds shall  
19 be deposited into the Guam Highway Fund.

20 (c) All proceeds from the deposit fee established by this Section *shall*  
21 be deposited into the ~~Territorial~~ Guam Highway Fund, and interest derived  
22 therefrom *shall* remain in the Fund. Sufficient funds *shall* be reserved for the  
23 refund of deposits, pursuant to this Section.

24 (d) Emergency Excavations. An emergency excavation may be made  
25 without prior permit or deposit if the reason for the excavation is to prevent  
26 loss of life or damage to property that appears to be imminent if the  
27 excavation is delayed. In such emergency situations the contractor or public

1 agency responsible *shall* contact the Department on the first working day  
2 following the commencement of excavation and complete and secure a  
3 formal permit. The contractor or public agency responsible *shall* provide  
4 justification for the emergency excavation. In the event the Department  
5 deems that the excavation was *not* an emergency, the applicant *shall* be  
6 penalized Five Hundred Dollars (\$500) for failure to properly secure a  
7 permit prior to excavating and will still be required to pay the appropriate  
8 fees and deposits. *Except* for the prior permit requirement, none of the  
9 application fee, deposit, bond, or penalty provisions of this Section shall be  
10 waived for emergency situations.

11 (e) Before granting a permit under any provision of this Chapter, the  
12 Department may require the applicant to file with the Department a  
13 satisfactory bond, payable to the government of Guam in such amount and  
14 term as the Department deems sufficient, conditioned on the proper  
15 compliance by the permittee with the provisions of this Chapter. In the event  
16 of forfeiture of the bond, the proceeds *shall* go to the ~~affected agency~~ Guam  
17 Highway Fund.”

18  
19 **Section 3. Effective Date.** The provisions contained in this Act *shall*  
20 become effective upon enactment.

21  
22 **Section 4. Severability.** If any of the provisions of this law or its  
23 application to any person or circumstance is found to be invalid or contrary to law,  
24 such invalidity shall not affect other provisions or applications of this law which  
25 can be given effect without the invalid provisions or application, and to this end the  
26 provisions of this law are severable.