

MINA' TRENTAI UNU NA LIHESLATURAN GUÅHAN
2011 (FIRST) Regular Session

Bill No. 1 -31 (LS)

Introduced by:

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EOM

AN ACT TO AMEND §76101, §76102, §76112, §76205, § 76206, §76208, §76209, §76211, §76511, TO REPEAL §76113, §76114, §76201, §76202, §76203, §76204, §76210, §76212, §76501, §76504, AND TO ADD §76113.5, §76113.6, §76113.6A, §76113.6B, §76113.7, §76113.7A, §76113.7B, §76113.8, §76504.5 OF TITLE 21 GUAM CODE ANNOTATED, RELATIVE TO HUMAN REMAINS AND BURIAL SITES.

1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**
2 Section 1. Chapter 76 of Title 21 of the Guam Code Annotated shall be
3 renamed as the "Conservation of Human Remains and Historical Objects
4 and Sites."

1 Section 2. Section 76101 of Title 21 of the Guam Code Annotated is
2 hereby repealed and reenacted to read as follows:

3 “§ 76101. [~~Purpose. Whereas the Legislature has determined that the~~
4 ~~historic, archaeological, architectural, and cultural heritage of Guam is among~~
5 ~~her most important environmental assets and furthermore that the rapid~~
6 ~~social and economic development of contemporary society threatens to~~
7 ~~destroy the remaining vestiges of this Spanish Chamorro heritage, it is~~
8 ~~declared to be the public policy and in the public interest of this Guam to~~
9 ~~engage in a comprehensive program of historic preservation, undertaken at all~~
10 ~~levels of the government of this Guam, and to promote the use and~~
11 ~~conservation of such property for education, inspiration, pleasure, and~~
12 ~~enrichment of the residents of this Guam.] Legislative Findings and Intent~~

13 (a) I Liheslaturan Guåhan finds that:

14 (1) The present legal and administrative system in Guam for dealing
15 with the impact of real estate development on human remains has
16 resulted in a situation in which ancient human remains are being
17 disinterred in the course of development in a manner that is

1 deeply disrespectful to the island's indigenous Chamoru people,
2 whose traditional and customary practices include the reverence
3 of their ancestors' remains;

4 (2) Unmarked prehistoric and historic human remains are especially
5 vulnerable and often not afforded the protection of law that
6 assures dignity and freedom from unnecessary disturbance;

7 (3) For more than thirty years, thousands of prehistoric and historic
8 human remains disinterred in the course of development have
9 remain so disinterred and kept in sealed containers and boxes in
10 both private and public warehouses, laboratories, and museums;

11 (4) The outsourcing to private archaeological firms of virtually all
12 archaeological work since the 1980s has exacerbated the
13 disrespectful treatment of human remains discovered in the
14 course of development;

15 (5) Hotel development has been particularly problematic inasmuch as
16 it has led to a situation where hundreds of sets of human remains
17 have been disinterred and continue to be denied proper reburial;

1 (6) Because traditional prehistoric and historic Chamoru ancestor
2 veneration practices included in particular the veneration of
3 ancestors' skulls, it is culturally inappropriate to exclude from
4 legal protection disarticulated portions of human remains;

5 (7) The characterization of all human remains as mere archaeological
6 resources is injurious to the sociological wellbeing of all of the
7 people of Guam;

8 (8) Guam law, as it has been codified since the 1970s, inadequately
9 protects human remains discovered in the course of development
10 inasmuch as it:

11 i. Provides that human remains found on private property are
12 the property of the private landowner, and that said
13 landowner can be monetarily compensated for the loss of
14 said remains;

15 ii. Characterizes human remains as mere commodities of
16 primary value to scientific and other professional research
17 communities; and

1 iii. Fails to confer upon the island's indigenous Chamoru
2 inhabitants decision-making authority with regard to
3 the treatment of their ancestors' remains;

4 (9) The public has a vital interest in the proper disposition of the
5 bodies of its deceased persons, which is in the nature of a sacred
6 trust for the benefit of all, and therefore the legislature reaffirms
7 the common law rule that a landowner knowingly in possession of
8 human remains cannot own the remains but merely holds the
9 same in trust for cultural descendants, who have the right to
10 possession for purposes of proper cultural preservation or re-
11 interment; and

12 (10) It is in the public interest to ensure that no development occurs in
13 the Guam, whether on public or private land, where a developer
14 has failed to comply with this Chapter's requirement to consult
15 and, where applicable, adhere to the decisions of the Department
16 and *Inetnon Para i Inadahen I Manmofo'na (Inetnon)*, or has

1 otherwise failed to make a good faith effort to ensure that no harm
2 or threat of harm befalls any human remains or burial sites.

3 (B) It is the purpose of Chapter 76 is to:

4 (1) Disallow the characterization of prehistoric and historic human
5 remains as private property;

6 (2) Clearly delineate the responsibilities of relevant governmental
7 actors with regard to the treatment of human remains;

8 (3) Establish an entity, comprised of individuals recognized in the
9 Chamoru community as having cultural knowledge concerning
10 burials, with consultative and decision-making authority with
11 regard to the handling of human remains, particularly prehistoric
12 and historic human remains;

13 (4) Create clear, strong, consistent, enforceable operative provisions
14 governing the treatment of human remains discovered in the
15 course of development;

16 (5) Create a private right of action to enjoin any development project
17 that fails to comply with any provision of this law; and

1 (6) Provide a clear and comprehensive mandate for the respectful and
2 culturally appropriate handling of human remains deemed to be
3 the ancestors of the island’s indigenous Chamoru people.”

4 Section 3. Section 76102 of Title 21 of the Guam Code Annotated is
5 hereby repealed and reenacted to read as follows:

6 “§ 76102. Definitions. When used in this Chapter:

7 ~~(a) Historic preservation means the research, protection,~~
8 ~~restoration, and rehabilitation of sites, buildings, structures, and objects~~
9 ~~significant in the history, architecture, archaeology, or culture of~~
10 ~~Guam.~~

11 ~~(b) Historic property means any building, structure, object, area,~~
12 ~~or site that is significant in the history, architecture, archaeology, or~~
13 ~~culture of Guam or the nation.~~

14 “(a) Burial good means any item reasonably believed to have been
15 intentionally placed with the human remains of an individual or individuals
16 at the time of burial.

17 (b) Burial site means any location where prehistoric or historic human

1 skeletal remains and their associated burial goods are interred, and enough
2 of the immediate surrounding area so as to provide for its meaningful
3 conservation, deemed a unique class of historic property and not otherwise
4 included in this Chapter.

5 (c) *Department* means the *Department of Parks and Recreation*.

6 (d) *Developer* means any person, natural or corporate, public or private,
7 with any interest in real property situated within the Government of Guam.

8 (e) *Development project* means any activity undertaken by the Government
9 of Guam or supported in whole or in part through appropriations, contracts,
10 grants, subsidies, loans, or other forms of funding assistance from the
11 Government or its political subdivisions or involving any lease, permit,
12 license, certificate, land use change, or other entitlement for use issued by the
13 Government of Guam.

14 (f) *Historic preservation* means the research, protection, restoration, and
15 rehabilitation of buildings, structures, objects, districts, areas, and sites,
16 including underwater sites and burial sites, significant in the history,
17 architecture, archaeology, or culture of Guam.

1 (g) Historic property means any building, structure, object, area, or site
2 that is significant in the history, architecture, archaeology, or culture of Guam.

3 (h) Human remains means the body or any part of the body of a deceased
4 human being that is sufficiently indicative of a burial or other honorific
5 funerary practice, even if isolated or disarticulated.

6 (i) Prehistoric and historic human remains means the body or any part of
7 the body of a deceased human being that is sufficiently indicative of a burial
8 or other honorific Chamoru funerary practice, even if isolated or
9 disarticulated, that appears to be from Guam’s pre-contact and early- contact
10 periods (4,500 B.C. to 1898).

11 Section 4. Subsection (b) of Section 76112, Title 21 of the Guam Code
12 Annotated is repealed:

13 “§ 76112. Excavation and Removal of Prehistoric and Historic Remains
14 or Objects on Private Lands.

15 ~~(a)~~ Before any prehistoric remains or objects are excavated or removed
16 from private lands by the Department, the Department or its designated
17 representatives may, for the purpose of examining the remains or objects,

1 enter upon the land and make investigations. The entry shall not constitute a
2 cause of action in favor of the owner of the land, except for damages resulting
3 from willful acts or negligence on the part of the Department or its designated
4 representatives.

5 ~~[(b) Removal of any prehistoric or historic remains or objects from~~
6 ~~private lands shall be made in the presence of the owner as witness.~~
7 ~~Whenever any prehistoric or historic remains or objects are excavated or~~
8 ~~removed from private lands by the Department or its designated~~
9 ~~representatives, the owner of such lands shall be compensated for the loss of~~
10 ~~such remains or objects at a sum mutually agreed upon by the Department~~
11 ~~and the owner, or if no agreement is reached, the amount of compensation~~
12 ~~shall be determined by trial in the Superior Court and measured by the fair~~
13 ~~market value of such remains, assessed as of the date of its removal by the~~
14 ~~Department or its designated representatives, and established by the~~
15 ~~testimony of experts qualified in the appraisal of such remains or objects.]”~~

16 Section 5. Section 76113 of Title 21 of the Guam Code Annotated is
17 hereby amended to read as follows:

1 “§ 76113. “Enforcement, Court Action and Penalty.

2 (a) Where any violation of this Chapter occurs, or is likely to occur,
3 which will result in unauthorized or improper demolition, alteration, or
4 transfer or historic property, the Attorney General, any agency of the Guam,
5 any person, partnership, corporation, association, organization, or other legal
6 entity may maintain an action in the Superior Court for declaratory and
7 equitable relief against the Guam, any person, partnership, corporation,
8 association, organization, or other legal entity for the protection of a historic
9 property and the public trust therein. Any party who prevails in an action
10 brought under the provisions of this section shall be awarded his costs,
11 including reasonable attorney fees.

12 (b) If the Department determines that any person has violated or is
13 violating this chapter, or any rule adopted pursuant to this chapter, the
14 Department shall serve written notice by certified mail or personal service
15 upon the alleged violator or violators specifying the alleged violation and may
16 include with the notice:

17 (1) An order specifying a reasonable time during which that person shall

1 be required to take such measures as may be necessary to correct
2 the violation and to give periodic progress reports;

3 (2) An order imposing penalties provided in section 76113 and

4 (3) An order that the alleged violator or violators appear before the

5 Department for a hearing at a time and place specified in the notice
6 or to be set later and answer the charges complained of.

7 (b) If the Department determines that any person is continuing to violate
8 this chapter or any rule adopted pursuant to this chapter after having been
9 served notice of violation, the Department shall serve written notice by
10 certified mail or personal service upon the alleged violator or violators
11 specifying the alleged violation. With the notice, the Department:

12 (1) Shall order the alleged violator or violators to submit a written

13 schedule within thirty days specifying the measures to be taken

14 and the time within which the measures shall be taken to bring

15 that person into compliance with this chapter or any rule adopted

16 thereunder. The Department shall accept or modify the submitted

17 schedule within sixty days of receipt of the schedule. Any

1 schedule not acted upon after sixty days of receipt by the _____

2 Department shall be deemed accepted by the Department;

3 (2) Shall order the alleged violator or violators to cease and desist from

4 the activities that violate this chapter or any rule adopted

5 thereunder, if that person does not submit a written schedule to the

6 Department within thirty days. This order shall remain in effect

7 until the Department accepts the written schedule;

8 (3) May impose penalties as provided in section 76113; and

9 (4) May order the alleged violator or violators to appear before the

10 Department for a hearing to answer the charges issued, at a time

11 and place specified in the notice or otherwise set by the

12 Department.

13 (c) If the Department determines that any person has violated an

14 accepted schedule or an order issued pursuant to this section, the Department

15 shall impose penalties by sending a notice in writing, either by certified mail

16 or by personal service to that person, describing such non-adherence or

17 violation with reasonable particularity.

1 (d) Any order issued pursuant to this chapter shall become final, unless
2 the person or persons named therein requests in writing, not later than twenty
3 days after notice of violation and order is served, a hearing before the
4 Department. Upon request for a hearing, the Department shall require that
5 the alleged violator or violators appear before the Department for a hearing to
6 answer the charges issued, at a time and place specified in the notice or
7 otherwise set by the Department.

8 (e) Any penalty imposed pursuant to this chapter shall become due and
9 payable twenty days after the notice of penalty is served, unless the person or
10 persons named therein requests in writing a hearing before the Department.
11 Whenever a hearing is requested on any penalty imposed pursuant to this
12 chapter, the penalty shall become due and payable only upon completion of
13 all review proceedings and the issuance of a final order confirming the
14 penalty in whole or in part.

15 (f) Any hearing conducted pursuant to this section shall be conducted in
16 accordance with Chapter 9, 5 Guam Code Annotated. If, after a hearing held
17 pursuant to this section, the Department finds that a violation or

1 violations has occurred, the Department shall:

2 (1) Affirm or modify any penalties imposed;

3 (2) Modify or affirm the order previously issued; or

4 (3) Issue an appropriate order or orders for the prevention, abatement,

5 or control of the violation or for the taking of such other corrective

6 action as may be appropriate.

7 Any order issued after a hearing may prescribe timetables for necessary

8 action in preventing, abating, or controlling the violation. If, after a

9 hearing on an order or penalty contained in a notice, the Department

10 finds that no violation has occurred or is occurring, the Department

11 shall rescind the order or penalty.

12 (g) If the amount of any penalty is not paid to the Department within

13 thirty days after it becomes due and payable, the Department may institute a

14 civil action in the name of the Guam to collect the administrative penalty,

15 which shall be a government realization. In any proceeding to collect the

16 administrative penalty imposed, the Department need only show that:

17 (1) Notice was given;

1 (2) A hearing was held, or the time granted for requesting

2 a hearing has run without such a request;

3 (3) The administrative penalty was imposed; and

4 (4) The penalty remains unpaid.

5 (h) In connection with any hearing held pursuant to this section, the

6 Department may subpoena the attendance of witnesses and the production of

7 evidence on behalf of all parties.”

8 (i) It shall be unlawful for any person, natural or corporate, to take,

9 appropriate, excavate, injure, destroy, or alter any historic site, including a

10 burial site, or human remains, located upon the private lands of any owner

11 thereof without the owner's written permission being first obtained.

12 (j) It shall be unlawful for any person, natural or corporate, to

13 knowingly take, appropriate, excavate, injure, destroy, or alter any historic

14 site, including a burial site, or human remains located on private lands or

15 lands owned or controlled by the Guam or any of its political subdivisions,

16 except as permitted by the Department.

17 (k) It shall be unlawful for any person to take, appropriate, excavate,

1 injure, destroy, or alter any historic site, including a burial site, or human
2 remains during the course of land development or land alteration activities
3 to which Sections 76205 and 76208 apply, without obtaining the required
4 approval. The penalties imposed pursuant to subsections (f) and (g) shall be
5 in addition to any other penalties that may be imposed pursuant to law.

6 (l) It shall be unlawful for any person who inadvertently discovers a
7 burial site to fail to stop work in the immediate area and report the discovery,
8 as required by section 76208.

9 (m) Any person who violates this section shall be fined not more than
10 \$10,000 for each separate offense. If the violator directly or indirectly has
11 caused the loss of, or damage to, a historic site, including a burial site, or
12 human remains, the violator shall be fined an additional amount determined
13 by the court to be equivalent to the value of the lost or damaged historic
14 property or burial site. Each day of continued violation of this provision shall
15 constitute a distinct and separate offense for which the offender may be
16 punished. Equipment used by a violator for the taking, appropriation,
17 excavation, injury, destruction, or alteration of any historic site, including a

1 burial site, or human remains, for the transportation of the violator to or from
2 said site, shall be subject to seizure and disposition by the Department
3 without compensation to its owner or owners.

4 (n) Any person, natural or corporate, who knowingly violates this
5 section with respect to burial sites shall also be prohibited from participating
6 in the construction of any Guam funded project for ten years.

7 (o) Civil penalties. Any person who violates this chapter, or any rule
8 adopted pursuant to this chapter shall be fined not less than \$5000 nor more
9 than \$10,000 for each separate offense. Each day of each violation constitutes a
10 separate offense."

11 (p) Administrative penalties. In addition to any other administrative or
12 judicial remedy provided by this chapter, or by rules adopted pursuant to this
13 chapter, the Department may impose by order the penalties specified in this
14 section. Factors to be considered in imposing an administrative penalty
15 include:

16 (1) The nature and history of the violation and of any prior violations;

17 (2) The economic benefit to the violator, or anticipated by the violator,

1 resulting from the violation;

2 (3) The opportunity, difficulty, and history of corrective action;

3 (4) Good faith efforts to comply; and

4 (5) Such other matters as justice may require.

5 (q) It is presumed that the violator's economic and financial conditions
6 allow payment of the penalty, and the burden of proof to the contrary is on
7 the violator.

8 (r) In any judicial proceeding to recover the administrative penalty
9 imposed, the Department need only show that:

10 (1) Notice was given;

11 (2) A hearing was held, or the time granted for requesting a hearing has
12 run without such a request;

13 (3) The administrative penalty was imposed; and

14 (4) The penalty remains unpaid."

15 (s) Crimes. A person, natural or corporate, commits the offense of
16 appropriation, excavation, injury, destruction, or alteration of a historic site,
17 including a burial site, or the contents thereof, if the person, natural or

1 corporate:

2 (1) Takes, appropriates, excavates, injures, destroys, or alters any
3 historic site, burial site, or contents thereof, located upon the private
4 lands of any owner thereof without the owner's written permission
5 being first obtained; and

6 (2) Takes, appropriates, excavates, injures, destroys, or alters any
7 historic site, burial site, or contents thereof, located upon lands
8 owned or controlled by the Guam or any of its political
9 subdivisions, except as permitted by the Department.

10 (t) Appropriation, excavation, injury, destruction, or alteration of any
11 historic site, including a burial site, of the contents thereof, is a misdemeanor
12 for which a fine not to exceed \$10,000 may be imposed in addition to any
13 other penalty provided by chapter 70, 9 Guam Code Annotated for a
14 misdemeanor.

15 (u) Each day of a continued violation of this section shall constitute a
16 distinct and separate offense."

17 (v) Failure to Stop. Failure to stop work upon discovery of a burial site.

1 (1) A person, natural or corporate, commits the offense of failure to
2 stop work upon discovery of a burial site if the person discovers a
3 burial site and fails to stop work in the immediate area and report
4 the discovery as required by section 76208.

5 (2) It is not a defense to a prosecution of a violation of this section that
6 the discovery of the burial site was inadvertent.

7 (3) Failure to stop work upon discovery of a burial site is a
8 misdemeanor for which a fine not to exceed \$25,000 may be
9 imposed in addition to any other penalty provided by any
10 chapter of 9 Guam Code Annotated for a misdemeanor.

11 (4) Each day of a continued violation of this section shall constitute a
12 distinct and separate offense.

13 (w)Criminal penalties not in lieu of civil or administrative penalties.

14 The criminal penalties imposed by this part are in addition to, and not in lieu
15 of, any civil or administrative penalties provided by law.

16 (x) Injunctive relief.

17 (1) In addition to, and without limiting the other powers of the attorney

1 general and without altering or waiving any criminal penalty,
2 civil, or administrative provisions of this chapter, the attorney
3 general shall have the power to bring an action in the name of the
4 Guam in any court of competent jurisdiction for restraining orders
5 and injunctive relief to restrain and enjoin violations or threatened
6 violations of this chapter.

7 (2) Any person may maintain an action in the trial court having
8 jurisdiction where the alleged violation occurred or is likely to
9 occur for restraining orders or injunctive relief against the
10 Department, its political subdivisions, or any person upon a
11 showing of irreparable injury, for the protection of any historic
12 site, including a burial site, or human remains, and the public trust
13 therein from unauthorized or improper demolition, alteration, or
14 transfer of said site."

15 Section 15. Section 76114, Title 21 of the Guam Code Annotated is
16 hereby repealed.

1 ~~["§ 76114. Guam Museum as a Depository for Certain Specimens and~~
2 ~~Objects. Any specimen and object of natural history and of botanical,~~
3 ~~ethnological, or archaeological value or interest, and any book, treatise, or~~
4 ~~pamphlet relating to natural history, botany, ethnology, or archaeology now~~
5 ~~in the possession of the University of Guam, or any territorial Department,~~
6 ~~bureau, or Department, or which may hereafter come into the possession of~~
7 ~~the university or the Department, bureau, or Department, if and when the~~
8 ~~same is no longer needed for scientific investigation, for study, or for any~~
9 ~~other purpose by the university or the Department, bureau, or Department~~
10 ~~may, at the request of the museum be transferred and delivered by and with~~
11 ~~the consent of such Department, bureau, or Department having possession of~~
12 ~~to the museum or exchanged with the museum, and whereupon, in any such~~
13 ~~case, the title thereto shall become vested in the museum, provided, that the~~
14 ~~specimens and objects so transferred to the museum are made available at all~~
15 ~~reasonable times by the museum for study and examination by the officials of~~
16 ~~the university or such Department, bureau, or Department.""]~~

17 Section 16. Section 76201, Guam Code Annotated is hereby repealed:

1 ~~["§ 76201. Declaration of Legislative Intent. The Legislature declares~~
2 ~~that the public has an interest in the preservation and protection of the~~
3 ~~Guam's archaeological resources; that the public has a right to the knowledge~~
4 ~~to be derived and gained from a scientific study of these resources, and that~~
5 ~~the therefore it is the purpose of this article to provide that activities for the~~
6 ~~preservation, excavation, study, and exhibition of the Guam's archaeological~~
7 ~~resources be undertaken in a coordinated and organized manner for the~~
8 ~~general welfare of the public as a whole."]~~

9 Section 17. Section 76202, Title 21 of the Guam Code Annotated is
10 hereby repealed.

11 ~~["§ 76202. Definitions. As used in this article: (a) *Field investigation* means~~
12 ~~the study of the traces of human culture at any land or water site by means of~~
13 ~~surveying, digging, sampling, excavating, or removing surface or subsurface~~
14 ~~objects, or going on a site with that intent.~~

15 ~~(b) *Site* means any aboriginal mound, homesite, earthwork, village~~
16 ~~location, burial ground, historic or prehistoric ruin, quarry, cave, or other~~
17 ~~location which is or may be the source of important archaeological data.~~

1 ~~(c) *Specimens* means all relics, artifacts, remains, objects, or any other~~
2 ~~evidence of a historical, prehistorical, archaeological, or anthropological~~
3 ~~nature, which may be found on or below the surface of the earth, and which~~
4 ~~have scientific or historic value as objects of antiquity, as aboriginal relics or as~~
5 ~~archaeological samples.”]~~

6 SECTION 18. Section 76203, Title 21 of the Guam Code Annotated is
7 hereby repealed.

8 ~~[“§ 76203. Archaeological Resources on Government Land. The Guam~~
9 ~~reserves to itself the exclusive right and privilege of field investigation on sites~~
10 ~~owned or controlled by the Guam, its agencies, Departments, or institutions in~~
11 ~~order to protect and preserve archaeological and scientific information and~~
12 ~~objects. All new information and objects deriving from government lands~~
13 ~~shall remain the property of the Guam and be utilized for scientific or public~~
14 ~~educational purposes.”]~~

15 SECTION 19. Section 76204, Title 21 of the Guam Code Annotated is
16 hereby repealed.

17 ~~[“§ 76204. Archaeological Investigation, Recording, and Salvage;~~

1 ~~Appropriations. Whenever any public construction or improvement of any~~
2 ~~nature whatsoever is undertaken by any government agency on lands which~~
3 ~~are controlled or owned by the Guam and which are sites of historic or~~
4 ~~prehistoric interest and value, or locations of prehistoric or historic remains,~~
5 ~~one percent of the appropriation for such public construction or improvement,~~
6 ~~or so much thereof as may be necessary, shall be expended by the Department~~
7 ~~for the archaeological investigation, recording, and salvage of such sites or~~
8 ~~remains when it is deemed necessary by the Department.”]~~

9 SECTION 20. Section 76205, Title 21 of the Guam Code Annotated is
10 hereby amended to read as follows:

11 “(a) The Department shall locate, identify, and preserve in the Guam
12 Register of Historic Places information regarding prehistoric and historic sites,
13 locations, and remains. The Department of Land Management shall clearly
14 designate on its records and cadastral maps of the Guam, the location of all
15 prehistoric and historic sites, or locations and remains. Before any agency or
16 officer of the Guam or its political subdivisions approves any project
17 involving a permit, license, certificate, land use change, subdivision, or other

1 entitlement for use, which may affect any potential historic site, including a
2 burial site, or prehistoric or historic human remains, the agency or officer shall
3 advise the Department and prior to any approval allow the Department an
4 opportunity for review and comment on the effect of the proposed
5 development project on any possible said sites or remains, consistent with
6 Section 76208, including those listed in the Guam Register of Historic Places.

7 ~~(b) [Before any public construction or improvement of any nature~~
8 ~~whatsoever is undertaken by the Guam, or any governmental agency or~~
9 ~~officer, the head of such agency or such officer shall first examine the~~
10 ~~Department's records and cadastral map of the area to be affected by such~~
11 ~~public construction or improvement to determine whether any site listed~~
12 ~~upon the Guam Register of Historic Places is present. If so designated, the~~
13 ~~proposed public construction or improvement shall not be commenced, or, in~~
14 ~~the event it has already begun, continued, until the head of such agency or~~
15 ~~such other officer shall have; advised the Department of the proposed public~~
16 ~~construction or improvement; secured the concurrence of the Department, or,~~
17 ~~as hereafter provided, shall have secured the written approval the Governor.~~

1 ~~If the concurrence of the Department is not obtained within ninety days~~
2 ~~after the filing of a request therefore with the Department or after the filing of~~
3 ~~a notice of objections by the Department with the agency or officer seeking to~~
4 ~~proceed with any project, such agency or officer may apply to the Governor~~
5 ~~for permission to proceed notwithstanding the nonconcurrence of the~~
6 ~~Department and the Governor may take such action as he deems best in~~
7 ~~overruling or sustaining the Department.”]~~

8 (b) Any construction, alteration, or other development of any areas
9 listed in the Guam Register of Historic Places, or enclosed within latte stones,
10 or immediately seaward of coastal latte sets, or any other area where
11 prehistoric and historic human remains are reasonably foreseeable to be
12 found, shall not commence or, in the event that it has already begun, continue,
13 until the developer notifies the Department and *Inetnon para i Inadahen i*
14 *Manmofo’na (Inentnon)*, and complies with the requirements of an
15 archaeological impact statement as set forth by the Department and *Inetnon*.
16 In completing such a statement, the Department and *Inetnon* shall conduct, in
17 consultation with each other, an on-site investigation, a review of available

1 information inclusive of oral history, and promulgate additional guidelines to
2 further the purpose of this section.

3 (1) If the archaeological impact statement concludes that there will be no
4 anticipated discovery of human remains, or if the archaeological
5 impact statement reaches an uncertain conclusion, the Department
6 shall allow the planned construction, alteration, or other
7 development to proceed, on the condition that should any human
8 remains be discovered, such discovery will be governed by section
9 76208, 21 Guam Code Annotated.

10 (2) If the archaeological impact statement concludes
11 that there will be an anticipated discovery, the development shall
12 not commence until *Inetnon* reaches a decision about how to
13 proceed, based upon their duties in section 76208, 21 Guam Code
14 Annotated.

15 (3) The developer shall bear responsibility for the
16 cost of the archaeological impact statement, as determined by the
17 Guam Historic Preservation Office.

1 ~~["(c)Before any construction, alteration, or improvement of any nature~~
2 ~~whatsoever is undertaken or commenced on a designated private prehistoric~~
3 ~~or historic site listed on the Guam Register of Historic Places by any person,~~
4 ~~he shall give to the Department three (3) months notice of intention to~~
5 ~~construct, alter, or improve the site. After the expiration of the three month~~
6 ~~notification period, the Department shall either commence condemnation~~
7 ~~proceedings for the purchase of the site or remains, permits the owner to~~
8 ~~proceed with his construction, alteration, or improvement, or undertake or~~
9 ~~permit the recording and salvaging of any historical information deemed~~
10 ~~necessary to preserve Spanish Chamorro history, by any qualified agency for~~
11 ~~this purpose.~~

12 ~~Any developer who violates the provisions of the first paragraph of this~~
13 ~~subsection shall be guilty of a petty misdemeanor."]~~

14 SECTION 21. Section 76206, Title 21 of the Guam Code Annotated is
15 hereby amended to read as follows:

16 "§ 76206. Permits to Examine Ruins, Excavate, and Gather Objects on
17 Public Lands. Permits for the examination of ruins, excavation of

1 archaeological sites, and the gathering of objects of antiquity upon lands
2 owned or controlled by the Guam may be granted by the Department to
3 persons or institutions which they deem properly qualified to conduct such
4 examination, excavation, or gathering, subject to such rules and regulations as
5 the Department may prescribe; provided, that the examinations, excavations,
6 and gatherings are undertaken for the benefit of public museums, universities,
7 colleges, or other recognized public scientific or educational institutions, with
8 a view to increasing the knowledge of such objects and that the gatherings
9 may be made for permanent preservation in public museums if so deemed by
10 the Department[-], and provided that this section does not apply to any
11 human remains or burial goods."

12 SECTION 22. Section 76208, Title 21 of the Guam Code Annotated is
13 hereby amended to read as follows:

14 ~~"[Before any prehistoric or historic remains are excavated or removed~~
15 ~~from private lands by the Department, the Department or its designated~~
16 ~~investigators shall first secure the written approval of the owner of such lands.~~

1 ~~Whenever the value of the private prehistoric or historic site is diminished by~~
2 ~~the excavation or removal of prehistoric or historic remains~~
3 ~~by the Department, the owner of the site, shall be compensated for the loss, at~~
4 ~~a monetary sum mutually agreed upon by the Department and the owner or~~
5 ~~at a monetary sum set by the court.]~~

6 (a) If, in the course of any permitted development, any human remains
7 are found, all development activity in the immediate area that could damage
8 the remains or burial site shall immediately cease until the requirements of
9 subsections (b) through (f) have been met.

10 (b) The developer shall immediately report the discovery to the
11 Department, the appropriate medical examiner or coroner, and the
12 appropriate police Department. The Department shall notify the chairperson
13 of Inetnon within three hours of receiving notice of the discovery.

14 (c) After the notification of the discovery of any number of skeletons, the
15 following shall be done within two working days:

16 (1) A representative of the medical examiner or coroner's office and a
17 qualified archaeologist shall examine the remains to determine

1 jurisdiction. If the remains are the responsibility of the medical
2 examiner or coroner, the Department's involvement shall end. If
3 the remains are prehistoric and historic human remains, then the
4 remainder of this section shall apply;

- 5 (2) The Department and *Inetnon* shall gather sufficient information,
6 including oral history, to document the nature of the burial
7 context and determine appropriate treatment of the remains.

8 Members of *Inetnon* shall be allowed to oversee the on-site
9 examination and shall be empowered to determine, through a
10 majority vote of its members, appropriate action;

- 11 (3) If *Inetnon* determines that human remains do not sufficiently
12 indicate a burial site, the developer shall be allowed to proceed
13 with the proposed development;

- 14 (4) If *Inetnon* determines that preservation in place is the appropriate
15 action for the remains found, the developer shall be allowed to
16 redesign the proposed development so as to avoid burials or, if
17 this is impossible, the government of Guam, through the

1 Department, shall purchase the land through condemnation
2 proceedings. Factors that *Inetnon* shall consider in making such a
3 determination include the number of sets of human remains found
4 on the burial site, and the estimated age of the human remains as
5 determined by oral history and the opinion of a qualified
6 archaeologist. *Inetnon* shall promulgate regulations to further the
7 purpose of this subsection; and

8 (5) If removal of the remains is warranted, based on criteria
9 developed by the Department and *Inetnon*, a mitigation plan shall
10 be prepared by *Inetnon*, or with the concurrence of the
11 Department.

12 (d) In cases involving the discovery of a single skeleton, the
13 requirements of subsection (c) shall be fulfilled in one working day.

14 (e) The mitigation plan developed by or with the concurrence of *Inetnon*
15 pursuant to subsection (c)(5), shall be carried out in a culturally appropriate
16 manner.

1 (f) In cases where human remains are removed, Inetnon shall determine
2 the place of relocation, after consultation with the Department and affected
3 property owner(s), as appropriate. Relocation shall conform with
4 requirements imposed by the Department of Public Health and Social
5 Services, and may be accompanied by traditional ceremonies, as determined
6 by Inetnon.”

7 SECTION 23. Section 76209 of Title 21 of the Guam Code Annotated, is
8 hereby amended to read as follows:

9 “§ 76209. Cooperation of Other Governmental Units. All agencies,
10 Departments, institutions, and commissions, shall cooperate fully with the
11 Department in the preservation, protection, excavation, and evaluation of
12 [~~specimens~~] human remains and sites. [~~and to that end:~~

13 ~~(a) When any agency finds or is made aware by an appropriate~~
14 ~~historical or archaeological authority that is operation in connection with any~~
15 ~~Guam, Guam assisted, Guam licensed, or contracted project, activity, or~~
16 ~~program adversely affects or may adversely affect scientific, historical, or~~
17 ~~archaeological data, such agency shall notify the Department and shall~~

1 ~~provide the Department with appropriate information concerning the project,~~
2 ~~program, or activity. The provisions of this section shall be made known to~~
3 ~~contractors by the territorial agencies doing the contracting]."~~

4 SECTION 24. Section 76210, Guam Code Annotated, is repealed.

5 [~~§ 76210. Field Investigations on Privately Owned Lands. It is the~~
6 ~~declared intention of the Legislature that field investigations on privately~~
7 ~~owned lands should be discouraged except in accordance with both the~~
8 ~~provisions and spirit of this Chapter; and persons having knowledge of the~~
9 ~~location of archaeological sites are encouraged to communicate such~~
10 ~~information to the Department."~~]

11 SECTION 25. Section 76211 of Title 21 of the Guam Code Annotated, is
12 amended to read as follows:

13 § 76211. [~~Vandalism and~~] Unlawful Taking of Historic Properties and
14 Sites. It shall be unlawful for any person to take, appropriate, [~~evacuate~~]
15 excavate, injure, or destroy any historic site, including any burial site,
16 prehistoric or historic [~~ruin~~] remains, or monument or object of antiquity
17 situated on lands owned or controlled by the Guam without the permission of

1 the Department. Any person, firm, or contractor who violates this Section
2 shall be guilty of a [petty] misdemeanor and shall be fined not more than Five
3 Thousand Dollars (\$5,000) or imprisoned not more than sixty (60) days or
4 both. Any prehistoric[al] and historic[al] [~~objects and~~] human remains or
5 burial goods [which] that have been taken, appropriated, excavated, injured,
6 destroyed, or otherwise harmed without a permit from the Department shall
7 be [~~seized, deposited, and preserved in public museums by the Department~~]
8 immediately delivered to Inetnon, which shall, by a majority vote of its
9 members, determine the final disposition of said remains.

10 SECTION 26. Section 76212 of Title 21 of the Guam Code Annotated is
11 hereby repealed.

12 [~~§ 76212. Prehistoric or Historic Objects; Public Property. The~~
13 ~~Department shall, subject to the provisions of this Chapter, determine the~~
14 ~~disposition of such prehistoric or historic properties wheresoever located~~
15 ~~within the territorial limits of the Island of Guam. Any person who disturbs~~
16 ~~properties of prehistoric or historic significance or removes such properties~~

1 ~~from their sites without approval or concurrence from the Historic~~
2 ~~Preservation Office shall be guilty of a felony of the third degree.~~

3 ~~When a private landowner or lessee in the Guam discovers properties~~
4 ~~which may be of historic significance on his property, he shall report the~~
5 ~~location of such objects, without disturbing the remains or objects, to the~~
6 ~~Department. Such private landowner shall be compensated, in accordance~~
7 ~~with 76112 for any prehistoric or historic remains or objects excavated or~~
8 ~~removed from his lands by the Department.”]~~

9 SECTION 27. Section 76501 of Title 21 of the Guam Code Annotated, is
10 hereby repealed.

11 [~~§ 76501. Declaration of Legislative Intent. The Legislature declares it to~~
12 ~~be the public policy of this Guam to provide leadership in preserving,~~
13 ~~restoring, and maintaining the historic, architectural, archaeological, and~~
14 ~~cultural environment of this Guam and that therefore it is the purpose of this~~
15 ~~article to provide that the instrumentalities of the Guam administer the~~
16 ~~historic properties under their control in a spirit of stewardship and~~
17 ~~trusteeship for future generations and conduct their activities, plans, and~~

1 ~~programs in a manner consistent with preservation and enhancement of~~
2 ~~historic properties and sites.”]~~

3 SECTION 28. Section 76504 of Chapter 76 of Title 21 of the Guam Code
4 Annotated is amended to read as follows:

5 Human remains shall receive respect and consideration when
6 discovered. Disturbance of burials shall be avoided when possible, but when
7 necessary shall be at the expense of developers, using procedures and
8 standards acceptable to the Guam Historic Preservation Officer and the
9 Inetnon outlined in this Section.

10 (a) The Department shall establish *Inetnon Para i Inadahen I Manmofo’na*
11 *(Inetnon)*, to implement sections 76205, 76208 and 76211, 21 Guam Code
12 Annotated.

13 (b) *Inetnon* shall be composed of 7 members,

14 (1) 3 of whom shall be appointed by the governor, from nominations
15 provided by Native Chamorro organizations including, but not limited to, the
16 Coalition for the Protection of Ancient Cemeteries, *I Nasion Chamoru*, the
17 Organization of People for Indigenous Rights, the Colonized Chamoru

1 Collective, and other organizations whose mission includes the preservation
2 and perpetuation of Chamorro culture and history. The Governor shall
3 develop a list of relevant organizations prior to the nomination process and
4 shall solicit nominations for *Inetnon* from those organizations.

5 (2) 3 of whom shall be appointed by the Governor from nominations
6 submitted by the Department of Chamorro Affairs, the Guam Museum, the
7 University of Guam Micronesia Area Research Center and the University of
8 Guam Micronesian Studies Program.

9 (3) 1 member shall be appointed by the Governor from a list of persons
10 developed and consented to by all of the members appointed pursuant to
11 subparagraphs (1) and (2).

12 (4) At least three members comprising *Inetnon* shall be knowledgeable in
13 the traditional and customary burial practices of the Chamoru people.

14 (5) In the event vacancies shall occur, such vacancies shall be filled by
15 the Governor in the same manner as the original appointment within 90 days
16 of the occurrence of such vacancy.

1 (c) The Department, in consultation with *Inetnon* members, appropriate
2 Chamoru organizations, shall, adopt rules necessary to carry out the purposes
3 of this section.

4 (d) *Inetnon* members shall serve without compensation, but shall be
5 reimbursed for necessary expenses incurred during the performance of their
6 duties. *Inetnon* shall be part of the Department for administrative purposes.

7 (e) *Inetnon* shall hold meetings and acquire information as its members
8 deem necessary and shall communicate its findings and recommendations to
9 the Department. Whenever the location and description of burial sites are
10 under consideration, *Inetnon* may hold closed meetings. Concurrence of a
11 majority of the members present at a meeting shall be necessary to make any
12 action of a council valid. In order for *Inetnon* to hold any meeting, at least four
13 members must be present.

14 (f) Department records relating to the location and description of
15 historic sites, including burial sites, if deemed sensitive by *Inetnon* or the
16 Historic Preservation Office, shall be confidential.

17 (g) *Inetnon* shall:

- 1 (1) Determine the preservation or relocation of prehistoric or historic
2 human remains;
- 3 (2) Assist the Department in the inventory and identification of
4 Chamoru burial sites;
- 5 (3) Make recommendations regarding appropriate management,
6 treatment, and protection of Chamoru burial sites;
- 7 (4) Receive previously identified and exhumed prehistoric and
8 historic remains and determine the appropriate treatment of such
9 remains, including re-interment;
- 10 (5) Elect a chairperson to a two-year term who shall not serve as
11 chairperson for more than two consecutive terms; and
- 12 (6) Maintain a list of appropriate Chamoru organizations, agencies,
13 and offices to notify regarding the discovery of human remains.

14 SECTION 29. Section 76511 of Title 21 of the Guam Code Annotated, is
15 hereby amended to read as follows:

16 “§ 76511. (a) Certificate of approval. A certificate of approval must be
17 issued by the Guam Historic Preservation Officer before any [~~action~~]

1 proposed development project affecting potential historic sites, including
2 burial sites, or [~~objects~~] human remains is undertaken, including, but not
3 limited to:

4 (1) Building permits;

5 (2) Grading permits;

6 (3) Clearing permits;

7 (4) Foundation permits;

8 (5) Leases and lease renewals of government land;

9 (6) Application for surplus federal real estate;

10 (7) Government infrastructure improvement projects;

11 (8) Government construction, including clearing and grading;

12 (9) Submittal of federal grant applications for construction, land use or
13 improvements; and

14 (10) Applications to Territorial Land Use Commission and Territorial
15 Seashore Protection Commission.

16 (b) The Guam Historic Preservation Officer shall have the authority to

17 prohibit activities listed in subsection (a) and may issue cease work orders on

1 projects when there is evidence of adverse impact or potential [~~destruction~~]
2 harm [of] to [cultural or historical features] any historic site, including a burial
3 site, or human remains on the property. [~~In the event that there is no alternate~~
4 ~~recourse in protecting or salvaging the cultural or historical significance of the~~
5 ~~property, the decision of the Guam Historic Preservation Officer to deny~~
6 ~~issuance of a permit or to cease work on projects shall prevail.] Where the
7 potential harm is to prehistoric or historic human remains, particularly in
8 areas where it is reasonably foreseeable that such remains are located, nothing
9 in this section shall be construed to limit the authority of *Inetnon* as provided
10 for in §76504.~~

11 (c) [~~Higher authority shall not override the decision of the Guam~~
12 ~~Historic Preservation Officer, except through procedures adopted pursuant to~~
13 ~~Subsection (d) of this Section. If work has already begun where items of~~
14 ~~cultural or historical significance have been disturbed, the developer shall be~~
15 ~~responsible for the restoration of the property to its original form and the~~
16 ~~burden of expense shall be on the developer.~~

17 (d) ~~The problems of projects with potential impact on cultural or historic~~

1 ~~features may be resolved by the Guam Historic Preservation Officer through~~
2 ~~agreement or mitigation. Such resolution may include, but need not be limited~~
3 ~~to, project redesign, relocation, curation and display of cultural resources, and~~
4 ~~land dedication to the Guam Preservation Trust. The Guam Historic~~
5 ~~Preservation Review Board shall develop the criteria for resolution of any~~
6 ~~controversial finding in accordance with the Administrative Adjudication~~
7 ~~Law.]~~

8 [(e)] After a Certificate of Approval *or* permitting approval has been
9 issued for a requested action as enumerated in subsection (a), any
10 unauthorized disturbance[s] of prehistoric *or* historic properties *shall* be
11 subject to fines of up to Fifty Thousand Dollars (\$50,000.00) and/or
12 imprisonment of up to three (3) years for each violation.”

13 SECTION 30. This Act does not affect rights and duties that matured,
14 penalties that were incurred, and proceedings that were begun before its
15 effective date.

16 SECTION 31. If any provision of this Act, or the application thereof to
17 any person or circumstance is held invalid, the invalidity does not affect other

1 provisions or applications of the Act, which can be given effect without the
2 invalid provision or application, and to this end the provisions of this Act are
3 severable.

4 SECTION 32. Statutory material to be repealed is bracketed and
5 stricken. New statutory material is underscored.

6 SECTION 33. This Act shall take effect upon its approval.

7