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Bill No. 111-31 (dor)

Introduced by:

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AN ACT TO ADD A NEW CHAPTER 70 TO DIVISION 6 OF TITLE 5, GUAM CODE ANOTATED, RELATIVE TO ESTABLISHING THE GUAM INVASIVE SPECIES COUNCIL; TO ESTABLISH THE GUAM INVASIVE SPECIES INSPECTION FEE AND FUND; AND, TO AUTHORIZE THE DEPARTMENT OF AGRICULTURE TO ESTABLISH A BIOSECURITY DIVISION.

1 BE IT ENACTED BY THE PEOPLE OF GUAM:

2 Section 1. Legislative Statement. *I Liheslatura* finds that island ecosystems are
3 particularly vulnerable to the destructive power of invasive pests. The unimpeded spread of invasive
4 species is one of the greatest threats to Guam's economy, natural environment, and the health and
5 lifestyle of its people. Invasive pests can cause millions of dollars in crop losses, the extinction of
6 native species, the destruction of native forests, and the spread of disease.

7 There is increasing traffic of cargo being transported into Guam without a high priority for
8 inspection of invasive species. It is most notable that there is also a lack of aquatic monitoring, or
9 rapid response measures, to handle incidences of invasive species discovered at our ports of entry
10 and inland. Thus the growing potential threat increases each year that enforcement and monitoring is
11 not mandated and, most importantly, carried out. This Act aims to combat terrestrial, marine and
12 freshwater invasive species that have been introduced into Guam and caused widespread havoc on
13 our island and aquatic ecosystems.

14 Currently, officers of the Guam Customs and Quarantine Agency provide the "First Line of
15 Defense" for the island by enforcing local and federal laws and regulations. They are also
16 responsible for protecting our borders, securing ports of entry and facilitating trade, commerce and

1 travel. These are many obligations for one department to enforce, and are certainly of utmost
2 priority. However, it is the intent of *I Liheslatura* to put a higher priority on inspection and
3 surveillance of invasive species by creating a Biosecurity Division under the Department of
4 Agriculture for the protection of our natural resources from biological invasion and threats, and the
5 protection of our geographical area from invasion by unwanted organisms.

6 The Guam Legislature further finds that nationally, invasive species councils have mobilized
7 efforts to combat invasive species through funding sources generated by fees at all ports of entry,
8 penalties for violations, eradication funding and government assisted grants.

9 Furthermore, this Act will place the value of our precious resources as a top priority in order
10 to combat harmful invasive species that have the potential to devastate our environment, agriculture,
11 and livelihood of our people.

12 **Section 2. A new Chapter 70 is added to Division 6 of Title 5, Guam Code**
13 **Annotated to read:**

14 **“Chapter 70**

15 **Guam Invasive Species Council**

16 § 70101. Short Title.

17 § 70102. Guam Invasive Species Council, established.

18 § 70103. Duties of Council.

19 § 70104. Composition of Council.

20 § 70105. Conduct of Meetings.

21 § 70106. Invasive Species Management Plan.

22 **§ 70101. Short Title.** This Chapter shall be known as the *Guam Invasive Species*
23 *Council Act of 2011*.

24 **§ 70102. Guam Invasive Species Council, established.** The Guam Invasive Species
25 Council (GISC) will be established for the special purpose of providing policy direction,
26 coordination, and planning among government of Guam departments and federal government
27 agencies; to provide local initiatives for the control and eradication of harmful invasive species
28 infestations throughout the island of Guam; and, to assist in preventing the introduction of other
29 invasive species that may be potentially harmful to Guam..

1 **§ 70103.**

2 **Duties of Council.**

3 The Council shall: (a) Draft a mission statement articulating

4 Guam's position against invasive species;

5 (b) Coordinate the preparation and approval of an invasive species management plan;

6 (c) Collaborate with the Mayors Council and residents to develop and implement a
7 systematic approach to reduce and control infestations on public lands that are near or adjacent to
8 communities;

9 (d) Advise, consult, and coordinate invasive species-related efforts with all divisions of
10 the Department of Agriculture, the University of Guam, local, federal, international, and privately
11 organized programs and policies;

12 (e) Consult with appropriate local agencies to create and implement a plan to include the
13 prevention, early detection, rapid response, control, enforcement, and public education for invasive
14 species;

15 (f) Provide annual reports on the progress made in achieving the objectives of the
16 Council;

17 (g) Maintain a broad overview of the invasive species problem on Guam;

18 (h) Coordinate and promote Guam's position with respect to federal issues, including:

19 1. Quarantine pre-emption;

20 2. International trade agreements that ignore the problem of invasive species
21 in Guam;

22 3. First class mail inspection prohibition;

23 4. Quarantine of domestic pests;

24 5. Coordinate efforts with federal and local agencies to maximize resources
25 and reduce or eliminate system gaps and leaks;

26 6. Promote the amendment of federal laws as necessary; including, but not
27 limited to, the Lacey Act Amendments of 1981, Title 16 United States
28 Code sections 3371-3378; Public Law 97-79, and laws related to
29 inspection of domestic airline passengers, baggage, and cargo; and

30 7. Coordinate efforts and issues with the Federal Invasive Species Council
 and its National Invasive Species Management Plan.

 (i) Identify and record all invasive species present on Guam;

1 (j) Designate the Department of Agriculture as the lead agency for each function of
2 invasive species control, including prevention, rapid response, eradication, enforcement, and
3 education;

4 (k) Identify all funds (both local and federal) expended for the purposes of the invasive
5 species problem on Guam;

6 (l) Identify all federal and private funds available to Guam to fight invasive species and
7 advise and assist local departments to obtain these funds;

8 (m) Advise the Governor and the Legislature on budgetary and other issues;

9 (n) Provide annual reports on budget and other related issues to the Legislature;

10 (o) Include and coordinate with the Commonwealth of the Northern Mariana Islands, the
11 Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands in
12 the fight against invasive species in order to increase resources and funding, as well as to address
13 activities that involve the education and prevention of invasive species in the region;

14 (p) Review local mandates and commercial interests that can call for the maintenance of
15 potentially destructive alien species as resources for sport hunting, aesthetic resources, or other
16 values;

17 (q) Review the structure of fines and penalties to ensure maximum deterrence for
18 invasive species-related crimes;

19 (r) Suggest appropriate legislation to improve the management of invasive species
20 programs and policies;

21 (s) Incorporate and expand the Department of Agriculture to the extent appropriate for
22 the council's invasive species control and eradication efforts; and

23 (t) Perform all functions necessary to effectuate the mission of the Council.

24 **§ 70104. Composition of Council.** (a) The Council shall be composed of: the Directors
25 of the Department of Administration, Agriculture, Bureau of Statistics and Plans, Customs and
26 Quarantine Agency, or their designated representatives; the Homeland Security Advisor, or his
27 designated representative; the Administrator of the Guam Environmental Protection Agency, or his
28 designated representative; the Executive Manager of the A. B. Won Pat Guam International Airport
29 Authority, or his designated representative; the General Managers of the Jose D. Leon Guerrero Port

1 Authority of Guam and the Guam Visitors Bureau, or their designated representative; and, the
2 President of the University of Guam or his designated representative.

3 (b) The Council shall be co-chaired by the Director of the Department of Agriculture and
4 the President of the University of Guam.

5 (c) The Council may invite additional government of Guam agency representatives to be
6 members from sub-cabinet bureaus or offices with significant responsibilities concerning invasive
7 species, and may prescribe special procedures for their participation

8 (d) The Director of the Department of Agriculture shall establish an advisory committee
9 to provide information and advice for consideration of the Council, and shall, after consultation with
10 other members of the Council, appoint members to the advisory council representing stakeholders.
11 Among other things, the advisory committee shall recommend goals and objectives of the invasive
12 species management plan in § 70107 of this Chapter. The advisory committee shall act in
13 cooperation with stakeholders and existing organizations addressing invasive species. The
14 Department of Agriculture shall provide the administrative support for the advisory committee.

15 (e) The Council shall be placed within the Department of Agriculture for administrative
16 purposes only.

17 **§ 70105. Government of Guam Agency Duties.** (a) Each government of Guam
18 agency whose actions may affect the status of invasive species shall, to the extent practicable and
19 permitted by law: (1) identify such actions; (2) subject to the availability of appropriations, and
20 within Administration's budget limits, use relevant programs and authorities to: (i) prevent the
21 introduction of invasive species; (ii) detect and respond rapidly to mitigate the population of such
22 species in a cost-effective and environmentally sound manner; (iii) monitor invasive species
23 populations accurately and reliably; (iv) provide for restoration of native species and habitat
24 conditions in ecosystems that have been invaded; (v) conduct research on invasive species and
25 develop technologies to prevent further introduction, and provide for environmentally sound control
26 of invasive species already found on island; and (vi) promote public education on invasive species
27 and the means to address them; (3) not authorize, fund, or carry out actions that it believes are likely
28 to cause or promote the introduction or spread of invasive species in the United States or elsewhere
29 unless, pursuant to guidelines that it has prescribed, the agency has determined and made public its
30 determination that the benefits of such actions clearly outweigh the potential harm caused by

1 invasive species; and that all feasible and prudent measures to minimize risk of harm will be taken in
2 conjunction with the actions.

3 (b) Government of Guam agencies shall pursue the duties set forth in this section in
4 consultation with the Guam Invasive Species Council, consistent with the Guam Invasive Species
5 Management Plan and in cooperation with stakeholders, as appropriate. The agencies shall report on
6 their participation as detailed in § 70107(c) of this Chapter.

7 § 70106. **Conduct of Meetings.** The council shall meet *no less than* two times annually
8 to discuss and assess progress, and to recommend changes to the invasive species programs based on
9 the results of current risk assessments, performance standards, and other relevant data. A simple
10 majority of voting members of the council shall constitute a quorum to do business; and any action
11 taken by the council shall be by a simple majority of the voting members.

12 § 70107. **Invasive Species Management Plan.** (a) The Council shall prepare and issue
13 the Guam Invasive Species Management Plan, which shall detail and recommend performance-
14 oriented goals and objectives and specific measures of success for government of Guam agency
15 efforts concerning invasive species. The Plan shall recommend specific objectives and measures for
16 carrying out each of the government of Guam agency duties established in § 70105 of this Chapter
17 and shall set forth steps to be taken by the Council to carry out duties assigned to it under § 70103.
18 The Plan shall be developed through a public process and in consultation with government of Guam
19 agencies and stakeholders.

20 (b) The first edition of the Plan shall include a review of existing and prospective
21 approaches and authorities for preventing the introduction and spread of invasive species on Guam,
22 including those for identifying pathways by which invasive species are introduced in order to
23 diminish the risk of introduction. It shall identify research needs and recommend measures to
24 minimize the risk where introductions might occur; such recommended measures shall provide a
25 science-based process to evaluate risks associated with the introduction and spread of invasive
26 species. It will coordinate a systematic risk-based process to identify, monitor, and interdict
27 pathways that may be involved in the introduction of invasive species. If recommended measures
28 are not authorized by current law, the Council shall develop and recommend to the Governor,
29 through its Co-Chairs, legislative proposals for necessary changes in authority.

1 (c) The Council shall update the Plan biennially and shall concurrently evaluate and
2 report on the success in achieving the goals and objectives set forth. The Plan shall identify the
3 personnel, other resources, and additional levels of cooperation needed to achieve the Plan’s
4 identified goals and objectives, and the Council shall provide each edition of the Plan and each
5 report on it to the Bureau of Budget and Management Research (BBMR). Additionally, progress
6 reports shall be submitted annually to the Office of the Governor. Within 18 months after measures
7 have been recommended by the Council in any edition of the Plan, each government of Guam
8 agency whose action is required to implement such measures shall either take the action
9 recommended or shall provide the Council with an explanation of why the action is not feasible. The
10 Council shall assess the effectiveness of this order no less than once each 3 years after the order is
11 issued and shall report to the BBMR on whether the order should be revised.”

12 **Section 3. Guam Invasive Species Inspection Fee, established.** (a) There is imposed a
13 fee for the inspection, quarantine, and eradication of invasive species contained in any freight,
14 including but not limited to marine commercial container shipment, air freight, or any other means
15 of transporting freight, foreign or domestic, that is brought into Guam. The fee shall be paid by the
16 person responsible for paying the freight charges to the transportation company, who shall collect
17 the fee and forward the payment to the Department of Administration at the port of disembarkation;
18 provided that the transportation company shall not be liable for any fee that is not paid by the person
19 responsible for paying the freight charges to the transportation company.

20 (b) A fee of One Dollar (\$1.00) per ton, or any fraction thereof, shall be imposed on all
21 freight brought into Guam.

22 (c) All fees collected shall be deposited in the Guam Invasive Species Inspection Fee
23 Fund.

24 **Section 4. Guam Invasive Species Inspection Fee Fund, created.** (a) There is hereby
25 created, separate and apart from other funds of the government of Guam, a fund to be known as the
26 “*Guam Invasive Species Inspection Fee Fund*” (hereinafter “the Fund”). The Fund shall *not* be
27 commingled with the General Fund and shall be kept in a separate bank account. All expenditures of
28 the Fund shall be made exclusively by appropriation of *I Liheslaturan Guahån* (the Guam
29 Legislature). Notwithstanding any other provision of law, any funds appropriated to the Department
30 of Agriculture pursuant to this Chapter shall be administered by the Director of Agriculture. The

1 Director of Agriculture shall be the Certifying Officer of such funds. The Fund shall not be used as a
2 pledge of security or as collateral for government loans. The Director of Administration shall make a
3 quarterly report to *I Maga'lahen Guahån* (the Governor of Guam) and *I Liheslatura* (the Legislature)
4 of the condition of, and activity within, the Fund.

5 (b) The fees collected shall be expended to: (i) support efforts to provide inspection,
6 quarantine and eradication of invasive species contained in any freight brought to Guam; (ii) support
7 efforts to eradicate invasive species present on Guam by means of a rapid response team; and (iii)
8 develop the Guam Invasive Species Management Plan and its updates.

9 **Section 5. Biosecurity Division, authorized.** The Department of Agriculture is
10 authorized to create a Biosecurity Division to function as its first responders in efforts to address
11 invasive species coming to, and already present on, Guam. The Director of Agriculture shall prepare
12 a budget plan, including projected personnel needs and other items, and submit it as part of the
13 Fiscal Year 2012 budget request for the Department of Agriculture.

14 **Section 6. Severability Clause.** If any provisions of this Act or the application thereof to
15 any person or circumstance is held invalid, such validity shall not affect other provisions or
16 applications of the Act which can be given effect without the invalid provision or application, and to
17 this end the provisions of this Act are severable.