

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 12th 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'lahaen Guåhan* this 15th day of Nov.,
2013, at 11:28 o'clock A.M.



Assistant Staff Officer
Maga'lahaen's Office

APPROVED:



EDWARD J.B. CALVO
I Maga'lahaen 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.