



CARL T.C. GUTIERREZ
GOVERNOR OF GUAM

Refer to
Legislative Secretary

JUN 07 1999


OFFICE OF THE LEGISLATIVE SECRETARY	
LEGISLATIVE DEPARTMENT	
Executed by: <i>Da</i>	
Time: <i>4:53</i>	
Date: <i>6/7/99</i>	

The Honorable Antonio R. Unpingco
Speaker
I Mina'Bente Singko na Liheslaturan Guåhan
Twenty-Fifth Guam Legislature
Guam Legislature Temporary Building
155 Hesler Street
Hagåtña, Guam 96910

Dear Speaker Unpingco:

Enclosed please find Substitute Bill No. 136 (COR), "AN ACT TO AMEND §§71109 AND 71110 OF CHAPTER 71, AND TO ADD §70116(a)(19) TO CHAPTER 70, BOTH OF DIVISION 2 OF TITLE 21, AND TO AMEND §53105 OF CHAPTER 53, DIVISION 5, PART 3 OF TITLE 5, ALL OF THE GUAM CODE ANNOTATED, RELATIVE TO UNDERGROUND UTILITY DAMAGES, AND TO THE REVOCATION, SUSPENSION AND RENEWAL OF LICENSES, AND TO BONDING REQUIREMENTS", which I have signed into law today as **Public Law No. 25-34**.

Very truly yours,


Carl T. C. Gutierrez
I Maga'Lahen Guåhan
Governor of Guam

Attachment: copy attached for signed bill or overridden bill
original attached for vetoed bill

cc: The Honorable Joanne M. S. Brown
Legislative Secretary

00209

Office of the Speaker
ANTONIO R. UNPINGCO
Date: *6-7-99*
Time: *1110*
Rec'd by: *[Signature]*
Print Name: *Chastone*

MINA'BENTE SINGKO NA LIHESLATURAN GUAHAN
1999 (FIRST) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'LAHEN GUAHAN

This is to certify that Substitute Bill No. 136 (COR), "AN ACT TO AMEND §§71109 AND 71110 OF CHAPTER 71, AND TO ADD §70116(a)(19) TO CHAPTER 70, BOTH OF DIVISION 2 OF TITLE 21, AND TO AMEND §53105 OF CHAPTER 53, DIVISION 5, PART 3 OF TITLE 5, ALL OF THE GUAM CODE ANNOTATED, RELATIVE TO UNDERGROUND UTILITY DAMAGES, AND TO THE REVOCATION, SUSPENSION AND RENEWAL OF LICENSES, AND TO BONDING REQUIREMENTS," was on the 24th day of May, 1999, duly and regularly passed.



ANTONIO R. UNPINGCO
Speaker

Attested.



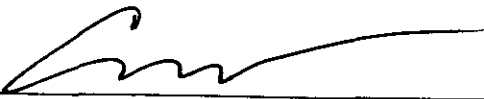
JOANNE M.S. BROWN
Senator and Legislative Secretary

This Act was received by I Maga'lahen Guahan this 26th day of May, 1999,
at 4:55 o'clock P.M.



Assistant Staff Officer
Maga'lahi's Office

APPROVED:



CARL T. C. GUTIERREZ
I Maga'lahen Guahan

Date: 6-7-99

Public Law No. 25-34

MINA'BENTE SINGKO NA LIHESLATURAN GUÅHAN
1999 (FIRST) Regular Session

Bill No. 136 (COR)

As substituted by the Committee
on Power, Public Works, Tax and
Regulatory Reform, and Municipal
and Community Affairs and amended
on the Floor.

Introduced by:

C. A. Leon Guerrero
J. M.S. Brown
E. B. Calvo
F. B. Aguon, Jr.
E. C. Bermudes
A. C. Blaz
M. G. Camacho
Mark Forbes
L. F. Kasperbauer
A.C. Lamorena, V
K. S. Moylan
V. C. Pangelinan
J. C. Salas
S. A. Sanchez, II
A. R. Unpingco

**AN ACT TO AMEND §§71109 AND 71110 OF
CHAPTER 71, AND TO ADD §70116(a)(19) TO
CHAPTER 70, BOTH OF DIVISION 2 OF TITLE 21,
AND TO AMEND §53105 OF CHAPTER 53, DIVISION
5, PART 3 OF TITLE 5, ALL OF THE GUAM CODE
ANNOTATED, RELATIVE TO UNDERGROUND
UTILITY DAMAGES, AND TO THE REVOCATION,
SUSPENSION AND RENEWAL OF LICENSES, AND
TO BONDING REQUIREMENTS.**

1

BE IT ENACTED BY THE PEOPLE OF GUAM:

1 **Section 1. Legislative Findings.** *I Liheslaturan Guåhan* finds that the costs
2 of repairing damaged underground utilities has increased considerably to the
3 Guam Telephone Authority, the Guam Power Authority and the Guam
4 Waterworks Authority since the civil penalties for damaging underground
5 utilities were established in 1980. In order to provide a more effective deterrent,
6 there is a need to increase the penalties for damaging underground utilities. *I*
7 *Liheslaturan Guåhan* further finds that in order for these government agencies to
8 recover the costs of repairing damaged underground utilities from construction
9 contractors, these contractors should be prevented from being awarded any
10 further government contracts until the repair costs have been paid.

11 **Section 2.** As used in this Act, *“utility”* shall include roadways.

12 **Section 3.** Section 71110 of Chapter 71, Division 2 of Title 21 of the Guam
13 Code Annotated is hereby *amended* to read as follows:

14 **“Section 71110. Civil Penalties.** Any person who violates any
15 provision of this Chapter may be subject to a civil penalty not to exceed
16 Five Thousand Dollars (\$5,000.00) for the first violation, and not to exceed
17 Ten Thousand Dollars (\$10,000.00) for each successive violation within a
18 five (5) year period. Actions to recover the penalty provided for in this
19 Section may be brought by an attorney representing the Operator, or by the
20 Attorney General, at the request of any person on Guam, in which the
21 cause, or some part thereof, arose or in which the defendant has its
22 principle place of business or resides. All penalties recovered in any such
23 actions shall be paid to the operator of the utility which was damaged. In
24 the case of roadways, the penalties shall be deposited into the Territorial
25 Highway Fund. This Chapter does *not* affect any civil remedies for

1 personal injury or property, including underground utilities, damage *except*
2 as otherwise specifically provided for in this Chapter.”

3 **Section 4.** Section 70116(a)(19) is hereby *added* to Chapter 70, Division 2 of
4 Title 21 of the Guam Code Annotated to read as follows:

5 “(19) willful failure to pay when due a debt or penalty incurred for
6 damaging a public utility operated by the Guam Power Authority, the
7 Guam Telephone Authority or the Guam Waterworks Authority and the
8 Department of Public Works.”

9 **Section 5.** Section 53105 of Chapter 53, Division 5, Part 3 of Title 5 of the
10 Guam Code Annotated is hereby *amended* to read as follows:

11 “**Section 53105. Bond May Be Required.** Before granting a
12 permit under any provision of this Chapter, the Department may require
13 the applicant to file with the Department a satisfactory bond, payable to the
14 government of Guam in such amount and term as the Department deems
15 sufficient, conditioned on the proper compliance by the permittee with the
16 provisions of this Chapter. In the event of forfeiture of the Bond, the
17 proceeds shall go to the affected agency.”

18 **Section 6.** Section 71109 of Chapter 71, Division 2 of Title 21 of the Guam
19 Code Annotated is hereby *amended* to read as follows:

20 “**Section 71109. Damages: Cost of Repairing.** Any person who
21 damages a utility line or roadway is subject to pay for all costs incurred by
22 the operator to restore the utility or roadway to its original condition. The
23 operator which has suffered damage, and has caused the repair of such
24 damage shall present the contractor or person responsible for the damage
25 with a bill for repair of the damage no later than sixty (60) days after the

1 damage has been repaired.

2 If the operator of a utility fails to present the contractor within sixty
3 (60) days after the damage has been repaired, the utility operator may not
4 withhold excavating clearance for other projects for which clearance have
5 been requested.

6 This Section shall apply to all government of Guam agencies
7 performing work which results in the damaging of utility infrastructure as
8 defined in this Act.”

9 **Section 7.** The Guam Contractors License Board, in consultation with the
10 Guam Telephone Authority, the Guam Power Authority, the Guam Waterworks
11 Authority, the Department of Public Works and the Guam Contractors
12 Association, shall, within ninety (90) days of the enactment of this Act, report
13 back to the Speaker of *I Liheslaturan Guåhan* its recommendations for a standard
14 procedure and fee for issuing permits for Excavation or Demolition pursuant to
15 §§71104 and 71105 of Chapter 71, Division 2 of Title 21 of the Guam Code
16 Annotated.

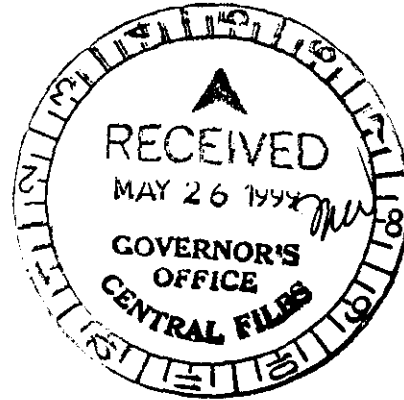


COPY

MINA' BENTE SINGKO NA LIHESLATURAN GUÅHAN
TWENTY-FIFTH GUAM LEGISLATURE
155 Hesler Street, Hagåtña, Guam 96910

May 26, 1999

The Honorable Carl T.C. Gutierrez
I Maga'lahaen Guåhan
Ufisinan I Maga'lahi
Hagåtña, Guam 96910



Dear *Maga'lahi* Gutierrez:

Transmitted herewith are Substitute Bill Nos. ~~136~~ (COR), 166 (COR), and 177 (COR) and Bill Nos. 149 (COR) and 94 (COR) which were passed by *I Mina' Bente Singko Na Liheslaturan Guåhan* on May 24, 1999.

Sincerely,

JOANNE M.S. BROWN
Senator and Legislative Secretary

Enclosure (5)


MINA'BENTE SINGKO NA LIHESLATURAN GUAHAN
1999 (FIRST) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'LAHEN GUAHAN

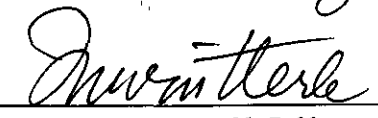
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ANTONIO R. UNPINGCO
Speaker

Attested:


JOANNE M.S. BROWN
Senator and Legislative Secretary

This Act was received by *I Maga'lahaen Guahan* this 26th day of May, 1999,
at 4:55 o'clock P.M.


Assistant Staff Officer
Maga'lahaen's Office

APPROVED:

CARL T. C. GUTIERREZ
I Maga'lahaen Guahan

Date: _____

Public Law No. _____

MINA'BENTE SINGKO NA LIHESLATURAN GUÅHAN
1999 (FIRST) Regular Session

Bill No. 136 (COR)

As substituted by the Committee
on Power, Public Works, Tax and
Regulatory Reform, and Municipal
and Community Affairs and amended
on the Floor.

Introduced by:

C. A. Leon Guerrero
J. M.S. Brown
E. B. Calvo
F. B. Aguon, Jr.
E. C. Bermudes
A. C. Blaz
M. G. Camacho
Mark Forbes
L. F. Kasperbauer
A.C. Lamorena, V
K. S. Moylan
V. C. Pangelinan
J. C. Salas
S. A. Sanchez, II
A. R. Unpingco

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16 Five Thousand Dollars (\$5,000.00) for the first violation, and not to exceed
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18 five (5) year period. Actions to recover the penalty provided for in this
19 Section may be brought by an attorney representing the Operator, or by the
20 Attorney General, at the request of any person on Guam, in which the
21 cause, or some part thereof, arose or in which the defendant has its
22 principle place of business or resides. All penalties recovered in any such
23 actions shall be paid to the operator of the utility which was damaged. In
24 the case of roadways, the penalties shall be deposited into the Territorial
25 Highway Fund. This Chapter does *not* affect any civil remedies for

1 personal injury or property, including underground utilities, damage *except*
2 as otherwise specifically provided for in this Chapter."

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11 "**Section 53105. Bond May Be Required.** Before granting a
12 permit under any provision of this Chapter, the Department may require
13 the applicant to file with the Department a satisfactory bond, payable to the
14 government of Guam in such amount and term as the Department deems
15 sufficient, conditioned on the proper compliance by the permittee with the
16 provisions of this Chapter. In the event of forfeiture of the Bond, the
17 proceeds shall go to the affected agency."

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23 operator which has suffered damage, and has caused the repair of such
24 damage shall present the contractor or person responsible for the damage
25 with a bill for repair of the damage no later than sixty (60) days after the

1 damage has been repaired.

2 *If the operator of a utility fails to present the contractor within sixty*
3 *(60) days after the damage has been repaired, the utility operator may not*
4 *withhold excavating clearance for other projects for which clearance have*
5 *been requested.*

6 *This Section shall apply to all government of Guam agencies*
7 *performing work which results in the damaging of utility infrastructure as*
8 *defined in this Act."*

9 **Section 7.** *The Guam Contractors License Board, in consultation with the*
10 *Guam Telephone Authority, the Guam Power Authority, the Guam Waterworks*
11 *Authority, the Department of Public Works and the Guam Contractors*
12 *Association, shall, within ninety (90) days of the enactment of this Act, report*
13 *back to the Speaker of I Liheslaturan Guåhan its recommendations for a standard*
14 *procedure and fee for issuing permits for Excavation or Demolition pursuant to*
15 *§§71104 and 71105 of Chapter 71, Division 2 of Title 21 of the Guam Code*
16 *Annotated.*

e

I MINA' BENTE SINGKO NA LIHESLATURAN GUAHAN

1999 (FIRST) Regular Session

Date: 5/24/99

VOTING SHEET

5 Bill No. 136 (encl)

Resolution No. _____

Question: _____

NAME	YEAS	NAYS	NOT VOTING/ ABSTAINED	OUT DURING ROLL CALL	ABSENT ROLL CALL
AGUON, Frank B., Jr.					✓
BERMUDES, Eulogio C.					✓
BLAZ, Anthony C.	✓				
BROWN, Joanne M.S.	✓				
CALVO, Eduardo B.	✓				
CAMACHO, Marcel G.	✓				
FORBES, Mark	✓				
KASPERBAUER, Lawrence F.	✓				
LAMORENA, Alberto C., V	✓				
LEON GUERRERO, Carlotta A.	✓				
MOYLAN, Kaleo Scott	✓				
PANGELINAN, Vicente C.	✓				
SALAS, John C.	✓				
SANCHEZ, Simon A., II	✓				
UNPINGCO, Antonio R.	✓				

TOTAL

13 0 0 0 2

CERTIFIED TRUE AND CORRECT:

Clerk of the Legislature

* 3 Passes = No vote
EA = Excused Absence



MINA' BENTE SINGKO NA LIHESLATURAN GUAHAN
TWENTY-FIFTH GUAM LEGISLATURE
155 Hesler Street, Hagåtña, Guam 96910

FILE

May 17, 1999

(DATE)

Memorandum

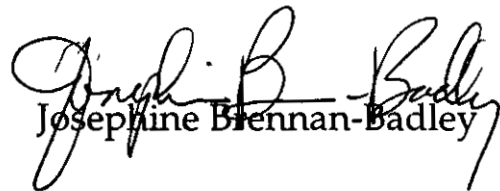
To: Senator CARLOTTA A. LEON GUERRERO

From: Clerk of the Legislature

Subject: Report on Bill No. 136 (COR)

Pursuant to §7.04 of Rule VII of the 25th Standing Rules, transmitted herewith is a copy of the Committee Report on Bill No. 136 (COR), for which you are the prime sponsor.

Should you have any questions or need further information, please call the undersigned at 472-3464/5.


Josephine Brennan-Badley

Attachment

ACKNOWLEDGEMENT RECEIPT
Received By: Tony R
Title: H.S.U.P.
Date: 5/17/99



ina'Bente Sing'ko Na Liheslaturan Guahan
SENATOR EDDIE BAZA CALVO

CHAIRMAN
COMMITTEE ON POWER, PUBLIC WORKS, TAX and REGULATORY REFORM,
MUNICIPAL and COMMUNITY AFFAIRS

Office of Senator Eddie Baza Calvo
120 Father Duenas Avenue, Capitol Plaza, Suite 109
Hagatna, Guam 96910

Tel: (671) 472-4040/4518
Fax: (671) 472-4100

May 11, 1999

The Honorable Antonio R. Unpingco
Speaker
I Mina'Bente Singko Na Liheslaturan Guahan
155 Hesler Street
Hagatna, Guam 96910

via: Committee on Rules

Dear Mr. Speaker:

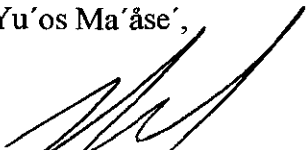
The Committee on Power, Public Works, Tax and Regulatory Reform, Municipal and Community Affairs, to which was referred **BILL NO. 136 (COR)** "AN ACT TO AMEND §71110, CHAPTER 71, DIVISION 2 OF TITLE 21 GCA RELATIVE TO UNDERGROUND UTILITY DAMAGE, AND TO ADD A NEW §70116 (a)(19), CHAPTER 70, DIVISION 2 OF TITLE 21 GCA RELATIVE TO THE REVOCATION, SUSPENSION AND RENEWAL OF LICENSES, AND TO AMEND §53105. CHAPTER 53, DIVISION 5 OF TITLE 5 GCA RELATIVE TO BONDING REQUIREMENTS", does hereby report back, with the recommendation **TO DO PASS**.

Votes of the Committee members are as follows:

To Pass	<u>7</u>
Not to Pass	<u> </u>
Abstain	<u> </u>
Off-Island	<u>1</u>
Not Available	<u>3</u>

A copy of the Committee Report is attached for your consideration.

Si Yu'os Ma'ase',



EDDIE BAZA CALVO
Chairman



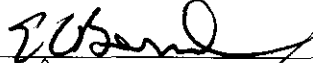
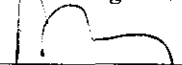
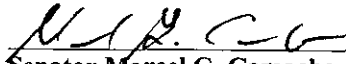


Attachments

**COMMITTEE ON POWER, PUBLIC WORKS,
TAX AND REGULATORY REFORM,
MUNICIPAL AND COMMUNITY AFFAIRS**

Mina Bente Singko Na Liheslaturan Guåhan
155 Hesler Street, Hagåtña, Guam 96910

VOTING SHEET:

BILL NO. 136 (COR) "AN ACT TO AMEND §71110, CHAPTER 71, DIVISION 2 OF TITLE 21 GCA RELATIVE TO UNDERGROUND UTILITY DAMAGE, AND TO ADD A NEW §70116 (a)(19), CHAPTER 70, DIVISION 2 OF TITLE 21 GCA RELATIVE TO THE REVOCATION, SUSPENSION AND RENEWAL OF LICENSES, AND TO AMEND §53105, CHAPTER 53, DIVISION 5 OF TITLE 5 GCA RELATIVE TO BONDING REQUIREMENTS"

<u>COMMITTEE MEMBERS</u>	<u>TO PASS</u>	<u>NOT TO PASS</u>	<u>ABSTAIN</u>	<u>TO PLACE IN INACTIVE FILE</u>
 Senator Eddie Baza Calvo Chairman	✓			
 Senator Kaleo S. Moylan Vice-Chairman	✓			
Speaker Antonio R. Unpingco Ex-Officio Member				
Senator Frank B. Aguon, Jr. 	✓			
 Senator Eulogio C. Bermudes	✓			
Senator Anthony C. Blaz				
 Senator Marcel G. Camacho	✓			
Senator Mark Forbes				
 Vice-Speaker L. F. Kasperbauer	✓			
 Senator Carlotta A. Leon Guerrero	✓			
Senator Simon A. Sanchez, II				

**COMMITTEE ON POWER, PUBLIC WORKS,
TAX AND REGULATORY REFORM,
MUNICIPAL AND COMMUNITY AFFAIRS**

Mina Bente Singko Na Liheslaturan Guåhan
155 Hesler Street, Hagåtña, Guam 96910

COMMITTEE REPORT

ON

BILL NO. 136 (COR)

BILL NO. 136 (COR) “AN ACT TO AMEND §71110, CHAPTER 71, DIVISION 2 OF TITLE 21 GCA RELATIVE TO UNDERGROUND UTILITY DAMAGE, AND TO ADD A NEW §70116 (a)(19), CHAPTER 70, DIVISION 2 OF TITLE 21 GCA RELATIVE TO THE REVOCATION, SUSPENSION AND RENEWAL OF LICENSES, AND TO AMEND §53105, CHAPTER 53, DIVISION 5 OF TITLE 5 GCA RELATIVE TO BONDING REQUIREMENTS.”

COMMITTEE MEMBERS

Chairman: Senator Eddie Baza Calvo
Vice-Chairman: Senator Kaleo S. Moylan
Ex-Officio Member: Antonio R. Unpingco

Senator Frank B. Aguon, Jr.
Senator Anthony C. Blaz
Senator Mark Forbes
Senator Carlotta A. Leon Guerrero

Senator Eulogio C. Bermudes
Senator Marcel G. Camacho
Vice-Speaker Lawrence F. Kasperbauer
Senator Simon A. Sanchez, II

PREAMBLE

The Committee on Power, Public Works, Tax and Regulatory Reform, Municipal and Community Affairs, upon proper notice, conducted a public hearing at, 8:30 a.m. on Tuesday, May 11, 1999 on Bill No. (cor), AN ACT TO AMEND §71110, CHAPTER 71 DIVISION 2 OF TITLE 21 GCA RELATIVE TO UNDERGROUND UTILITY DAMAGE, AND TO ADD A NEW §70116 (A) (19), CHAPTER 70, DIVISION 2 OF TITLE 21 GCA RELATIVE TO THE REVOCATION, SUSPENSION AND RENEWAL OF LICENSES, AND TO AMEND §53105, CHAPTER 53, DIVISION 5 OF TITLE 5 GCA RELATIVE TO BONDING REQUIREMENTS.

The public hearing was called to order by the Chairman, Senator Eddie Baza Calvo. The members who were present were Vice-Speaker Larry Kasperbauer, Senator Anthony Blaz and Senator Carlotta Leon Guerrero and Senator Kaleo Moylan. Also attending was Senator Ben Pangelinan.

TESTIMONY

The Chairman would like to note at this time that Bill No. 136(cor) was also referred to the Committee on Transportation, Telecommunications & Micronesian Affairs as a secondary referral and that the Committee on Telecommunications & Micronesian Affairs conducted a hearing on Bill No. 136(cor) on April 6, 1999 and that some written testimonies were submitted at that time and are also being used for the public hearing conducted by the Committee on Power, Public Works, Tax and Regulatory Reform, Municipal and Community Affairs conducted on May 11, 1999.

Appearing before the Committee to testify was Ms. Karen M. Storts, Executive Director of the Guam Contractors' Association, who also presented a written testimony labeled Exhibit "A" and who also presented to the Committee a copy of the testimony she presented at the hearing held by the Committee on Transportation, Telecommunications & Micronesian Affairs and is labeled Exhibit "B". The main points of Ms. Storts testimony are as follows:

- a. Most contractors apply for and receive clearance, and if a utility line is damaged, costs are recovered by the agency, either by the contractor repairing the damage at his own cost, or by charges assessed the contractor by the utility for repairs and that no further penalties should be assessed.
- b. The Guam Contractors' Association recommends that the proposed penalties be halved to 2,500 for the first violation and \$5,000 for each successive violation in a five year period.
- c. The Guam Contractors' Association also recommends that effective procedures for enforcement and collection of penalties be established within each agency.
- d. Willful failure to pay a debt or penalty is cause to revoke, suspend or refuse to renew a contractor's license as noted in Section 3 of the bill.

She recommended that to make Bill No. 136 more enforceable, the agencies affected should get together and formulate a clearance application procedure which will be uniform for all of the utility agencies. She also recommended that clearance application fees, if charged, should be consistent and posted. Additionally, a reasonable time frame for billing of repair charges and applicable penalties be established and uniform among all agencies.

Mr. Thomas Nielsen, General Manager of Maeda Pacific Corporation submitted a written testimony labeled Exhibit "C". Mr. Nielsen reiterated Ms. Storts testimony concerning the inconsistent clearance procedures among utility agency and agreed that they should be uniform. He cited cases where his company's clearing for a project is being held up because his company has not settled which were at least two and a half year old but only received them a month ago.

Mr. Nielsen also pointed out that even when a clearance is given it is sometimes not made clear by the utility agency as to the location of the utility line and what kind.

GTA General Manager Vincent Arriola submitted written testimony labeled Exhibit "E" which is the same testimony submitted on the April 6, 1999 hearing labeled Exhibit "D". In his testimony, Mr. Arriola pointed out that approximately 98 percent of GTA's network is underground and very susceptible to damages by contractor excavations. Mr. Arriola pointed out that GTA staff would mark the location of telephone lines located in a proposed excavation site but in many cases the contractor would ignore or disregard the markings resulting in damages to telephone lines. He pointed out that many of the damages include lines having 25 cable pairs up to 3,000 pairs, including fiber optic lines.

Mr. Arriola agrees with the increased penalties and the provision that the penalties be paid directly to the operator of the utility.

Mr. Joaquin Flores, Chief Engineer for the Guam Power Authority, And presented oral testimony agreeing that Bill No. 136(cor) should be enacted into law.

Mr. Bert Johnston, Assistant General Manager for the Guam Waterworks Authority also testified orally in favor of the passage of Bill No. 136(cor).

COMMITTEE FINDINGS

The Committee on Power, Public Works, Tax and Regulatory Reform, Municipal and Community Affairs finds that:

1. there is a need to standardize the procedure and the process for obtaining clearances from the appropriate agencies in order for contractors to perform excavating projects.
2. in some instances the billing for the cost of repairs to utility infrastructure were not given to the contractor in a timely manner resulting in the denial of a clearance for other projects.
3. by imposing higher penalties for damaging utility infrastructure, contractors will be forced to exercise more

caution when excavating around or near sites where utility infrastructures are present.

The Committee also finds that private contractors are not the only ones who are guilty of damaging utility infrastructures or other infrastructure such as roads. Government agencies are often guilty of inflicting damages. As an example, Guam Water Works Authority excavates a portion of a roadway to install or repair sewer or water lines. After repairs or installation have been completed, it is often the case that the damaged roadway takes months to repair and sometimes never. In some cases telephone lines were also damaged. The Committee feels that not only should private contractors be penalized for careless or negligent work, but that government agencies performing similar work should also be penalized for the same carelessness or negligence because the inconvenience and costs to repair or restore damage infrastructures do not diminish simply because a government agency did the damage.

COMMITTEE RECOMMENDATIONS

The Committee on Power, Public Works, Tax and Regulatory Reform, Municipal and Community Affairs recommends **To Do Pass** Bill No. 136(cor) as substituted by the Committee on Power, Public Works, Tax and Regulatory Reform, Municipal and Community Affairs.

EXHIBITS

- “A” Written testimony by Ms. Karen Storts, Executive Director, Guam Contractors’ Association, dated May 11, 1999.
- “B” Written testimony by Ms. Karen Storts, Executive Director, Guam Contractors’ Association, dated April 6, 1999.
- “C” Written testimony by Mr. Thomas Nielsen, General Manager, Maeda Pacific Corporation.
- “D” Written testimony by Mr. Vincent Arriola, General Manager, Guam Telephone Authority.
- “E” Bill No. 136(cor) as introduced.

**MINA'BENTE SINGKO NA LIHESLATURAN GUAHAN
1999 (FIRST) Regular Session**

Bill No.136 (COR)

As substituted by the Committee on Power, Public Works, Tax
and Regulatory Reform, and Municipal and Community Affairs

Introduced by:

C.A. Leon Guerrero
J. M. Brown
E. B. Calvo

**AN ACT TO AMEND §71110, CHAPTER 71,
DIVISION 2 OF TITLE 21 GCA RELATIVE TO
UNDERGROUND UTILITY DAMAGE, AND TO
ADD A NEW §70116 (a) (19), CHAPTER 70,
DIVISION 2 OF TITLE 21 GCA RELATIVE TO THE
REVOCATION, SUSPENSION AND RENEWAL OF
LICENSES, AND TO AMEND §53105, CHAPTER 53,
DIVISION 5 OF TITLE 5 GCA RELATIVE TO
BONDING REQUIREMENTS.**

1

2

BE IT ENACTED BY THE PEOPLE OF GUAM:

3

Section 1. Legislative Findings. *I Liheslaturan* finds that the costs of
4 repairing damaged underground utilities has increased considerably to the
5 Guam Telephone Authority, the Guam Power Authority and the Guam
6 Waterworks Authority since the civil penalties for damaging underground
7 utilities were established in 1980. In order to provide a more effective
8 deterrent, there is a need to increase the penalties for damaging underground
9 utilities. *I Liheslaturan* further finds that in order for these government
10 agencies to recover the costs of repairing damaged underground utilities from
11 Construction Contractors, these Contractors should be prevented from being

1 awarded any further government contracts until the repair costs have been
2 paid.

3 **Section 2. As used in this Act, utility shall include roadways.**

4 **Section 3.** §71110, Chapter 71, Division 2 of Title 21 of the Guam Code
5 Annotated is amended to read: “**§71110. Civil Penalties.** Any person who
6 violates any provision of this Chapter may be subject to a civil penalty not to
7 exceed ~~One Thousand Dollars (\$1,000.00)~~ Five Thousand Dollars (\$5,000.00)
8 ~~for each the first violation, and not to exceed Ten Thousand Dollars~~
9 (\$10,000.00) for each successive violation within a five year period. Actions
10 to recover the penalty provided for in this section may be brought by an
11 attorney representing the Operator or, by the Attorney General, at the request
12 of any person in ~~the territory~~ Guam in which the cause, or some part thereof,
13 arose or in which the defendant has its principle place of business or resides.
14 All penalties recovered in any such actions shall be paid ~~into the General~~
15 ~~Fund~~ to the operator of the utility which was damaged. This Chapter does
16 not affect any civil remedies for personal injury or property (including
17 underground utilities) damage except as otherwise specifically provided for
18 in this Chapter.”

19 **Section 4.** A new §70116 (a) (19), Chapter 70, Division 2, Title 21 of the
20 Guam Code Annotated is added to read: “**§70116. Revocation, Suspension**
21 **and Renewal of Licenses.** (a) The Contractors License Board may revoke any
22 license issued hereunder, or suspend the right of the licensee to use such
23 licenses, or refuse to renew any such license for any of the following causes:
24 (19) Willful failure to pay when due a debt or penalty incurred for

1 damaging a public utility operated by the Guam Power Authority, the Guam
2 Telephone Authority or the Guam Waterworks Authority."

3 **Section 5.** §53105, Chapter 53, Division 5 of Title 5 of the Guam Code
4 Annotated is amended to read: "**§53105. Bond May Be Required.** Before
5 granting a permit under any provision of this Chapter, the Department may
6 require the applicant to file with the Department a satisfactory bond, payable
7 to the government of Guam in such amount and term as the Department
8 deems sufficient, conditioned on the proper compliance by the permittee with
9 the provisions of this Chapter."

10 **Section 6.** §71109, Chapter 71, Division 2 of Title 21 GCA is amended
11 to read: "**§71109. Damages: Cost of Repairing.** Any person who damages
12 a utility line is subject to pay for all costs incurred by the operator to restore
13 the utility to its original condition. The operator which has suffered damage,
14 and has caused the repair of such damage shall present the contractor or
15 person responsible for the damage with a bill for repair of the damage no later
16 than sixty (60) days after the damage has been repaired.

17 a. If the operator of a utility fails to present the contractor within
18 sixty (60) days after the damage has been repaired, the utility
19 operator may not withhold excavating clearance for other projects
20 for which clearance have been requested.

21 This section shall apply to all government of Guam agencies performing work
22 which results in the damaging of utility infrastructure as defined in this Act.

23 **Section 7.** The Guam Contractors License Board, in consultation with
24 the Guam Telephone Authority, the Guam Power Authority, the Guam

1 Waterworks Authority, the Department of Public Works and the Guam
2 Contractors Association, shall within ninety (90) days of the enactment of this
3 Act report back to the Speaker of *I Liheslaturan* its recommendations for a
4 standard procedure and fee for issuing permits for Excavation or Demolition
5 pursuant to §§71104 and 71105, Chapter 71, Division 2 of Title 21 GCA.

6



GUAM CONTRACTORS' ASSOCIATION

May 11, 1999

Committee on Power, Public Works, Tax and Regulatory Reform, Municipal and
Community Affairs
120 Father Duenas Avenue, Capitol Plaza, Suite 109
Hagatna, Guam 96910

RE: Bill 136 (COR) An Act to amend Section 71110, Chapter 71, Division 2 of Title 21 Guam Code Annotated relative to underground utility damage, and to add a new Section 70116 (a)(19), Chapter 70, Division 2 of Title 21 GCA relative to the revocation, suspension and renewal of licenses, and to amend Section 53105, Chapter 53, Division 5 of Title 5 GCA relative to bonding requirements.

Senator Calvo & Members of the Committee:

On April 6, the Guam Contractors' Association presented written testimony on Bill 136 to the Committee on Transportation, Telecommunications and Micronesian Affairs. That testimony has been provided to you, but the main points were as follows:

a) Most contractors apply for and receive clearance, and if a utility line is damaged, costs are recovered by the agency, either by the contractor repairing the damage at his own cost, or by charges assessed the contractor by the utility for repairs. No further penalties should be assessed in these cases.

b) GCA recommended that the proposed penalties be halved to \$2,500 for the first violation and \$5,000 for each successive violation in a five year period.

c) GCA also recommended that effective procedures for enforcement and collection of penalties be established within each agency.

d) Wilful failure to pay a debt or penalty is cause to revoke, suspend or refuse to renew a contractor's license, as noted in Section 3. The last paragraph, preventing contractors from being awarded any further government contracts until the debt is paid, is redundant and should be deleted.

There was good discussion on this situation at the last public hearing, and the following points would make Bill 136 more enforceable. First, the agencies affected should meet and determine a clearance application procedure, including a special form, which would uniformly provide verification of clearances obtained. Clearance application fees, if charged, should be consistent and posted. Utilities should also establish a reasonable time frame for billing of repair charges and applicable penalties, so that contractors are able to apply the charges to the current project.

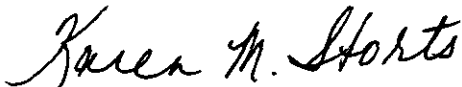
May 11, 1999
Page 2

We understand that at this time, the agencies have not been able to get together and discuss these issues. We believe that this bill will need their input and cooperation in order to properly assess and charge contractors for the damage to their utility lines.

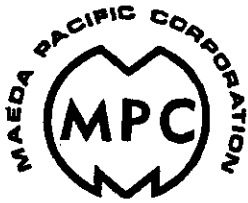
Guam Contractors' Association remains available to discuss these points and we thank you for the opportunity to provide testimony on Bill 136.

Sincerely,

GUAM CONTRACTORS' ASSOCIATION

A handwritten signature in cursive script that reads "Karen M. Storts".

Karen M. Storts
Executive Director



MAEDA PACIFIC CORPORATION

GENERAL CONTRACTOR

Legislative Committee on Transportation,
Telecommunications and Micronesian Affairs
25th Guam Legislature
Hagatna, Guam 96910

6 April 1999

Re: Bill 136 (COR)

Senator Leon Guererro and Members of the Committee:

I have the following comments regarding Bill 136 (COR). First on Section 1, Legislative Findings, the normal procedure is to request clearance from the utility operator prior to work and if this is done, there is no civil penalty. If damage is done, with or without clearance, we are billed for the repairs. Believe me, we pay dearly when we do break a utility line. We have no control over how many people are involved in the repair or cost of equipment and materials so we are at the mercy of the utility operator, who by the way have no competition so enjoy the privilege of a monopoly. I believe this is deterrent enough for us to avoid damages. As to collection of the repair fees, it's up to the utility operator to collect. We are all utility users, it would seem obvious to me that the operator could just disconnect services to whoever fails to pay their damage bill. We have also had instances where repair bills get to us months, or even years after the incident occurred. How are we to pay these bills long after a job has been closed out?

As to the last sentence of Section 1, many times we dispute repair bills and refuse to pay them immediately. In this case we may become ineligible to be awarded government contracts and held hostage by the utility. In fact, right now I have a case where 2 ½ year old bills were sent to me just a month ago and now my clearance for another project is being held until I pay these old bills. I believe this section should be deleted and these issues dealt with in Section 3 of the bill.

On Section 2, Civil Penalties, I believe the penalties should not be increased but agree they should be paid to the operator of the utility as proposed.

On Sections 3 and 4, I do not have any comments.

While we are on the issue, I have some other comments. We find that clearance procedures at each utility operator are different. Sometimes there is a charge for clearance, sometimes not. When clearance is given, often it is not clear where the lines are located exactly and of what kind they are. We try hard not to damage them, but sometimes it happens and we are still faced with large repair bills. We need a better system to identify existing utilities. We also need a set fee schedule for repair costs and the utility operator should stop sending excessive personnel to these repair jobs.

In closing, I believe it is in all our interest to protect our public utilities. I believe the problem is mainly with persons or contractors who work without clearance, or just plain disregard for property of others. Raising the civil penalty is not going to solve anything, rather let's look at quick and accurate clearance services and some standard for charges in case of damages. Also, the utility operators need to be more timely in issuing invoices and more aggressive in collection.

Sincerely,

Thomas Nielsen
General Manager

Exhibit "C"

GTA
Guam Telephone Authority
Aunian Tiliho: Gufhan

Post Office Box 9008 • Tamuning, Guam 96931 • Telephone: (671) 646-1427/5527 • Fax: (671) 649-GTA1(4821)
624 North Marine Drive, Tamuning, Guam 96911

May 11, 1999

Senator Eddie Baza Calvo
Chairman
Committee on Power, Public Works,
Tax & Regulatory Reform, Municipal &
Community Affairs
25th Guam Legislature
120 Father Duenas Avenue
Capitol Plaza
Suite 109
Hagatna, Guam 96910

Hafa Adai Senator Calvo and members of this committee.

Thank you for the opportunity to present testimony on Bill No. 136 relative to damages to underground utilities. As you probably know, GTA's telephone network is approximately 98% underground which leaves it fairly susceptible to damages by contractors' excavations. It has long been the position of GTA that any and all efforts to curtail the damages done to GTA lines would certainly be welcome and appreciated.

Currently, in order for a contractor to trench and/or dig along roadways, streets, public space, easements, and even near the location of a utility installed on the premises of a customer served by GTA, a clearance must be obtained from the Authority. Our staff physically views the proposed digging site, locates the cable within the area, and marks the areas where telephone cables exist underground. The

EXHIBIT 'D'



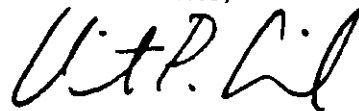
contractor then has between 3 to 10 working days to begin digging in the area. Unfortunately, even with our clearances and markings, we have experienced numerous instances where contractors disregard the markings and as a consequence, dig through and damage the phone lines. We've had damages to cables ranging in size from 25 pairs to 3,000 pairs and even including our fiber optic lines.

While we certainly welcome the stiffer penalties and "teeth" as proposed in this bill, our overall preference would be to have no damages, period. As you may know, each incidence of damage to our cables reduces the overall life span of the cable and the network. Many of you may notice the increasing number of telephone pedestals along our roadways. This is due in large part to the number of cable damages that have occurred throughout the years.

In fiscal year 1998, GTA experienced 143 damages to its facilities. So far in this fiscal year, we've experienced 89 damages.

On the proposed bill, we agree with the increased penalties and most especially the provision to pay these penalties directly to the operator of the utility. As an *autonomous agency*, it would only seem logical and fair that any restitution as a result of damages to the GTA facilities be paid directly to GTA. We also appreciate the provision that confirms property damages as a civil action that can be addressed by the Authority.

Senseramente,



VINCENT P. ARRIOLA
General Manager

MAR 10 1999

**MINA'BENTE SINGKO NA LIHESLATURAN GUAHAN
1999 (FIRST) Regular Session**

Bill No. 136 (cop)

Introduced by:

C.A. Leon Guerrero *CLG*
J. M. Brown *JMB*
E. B. Calvo *EB*

AN ACT TO AMEND §71110, CHAPTER 71, DIVISION 2 OF TITLE 21 GCA RELATIVE TO UNDERGROUND UTILITY DAMAGE, AND TO ADD A NEW §70116 (a) (19), CHAPTER 70, DIVISION 2 OF TITLE 21 GCA RELATIVE TO THE REVOCATION, SUSPENSION AND RENEWAL OF LICENSES, AND TO AMEND §53105, CHAPTER 53, DIVISION 5 OF TITLE 5 GCA RELATIVE TO BONDING REQUIREMENTS.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings. I Liheslatura finds that the costs of repairing damaged underground utilities has increased considerably to the Guam Telephone Authority, the Guam Power Authority and the Guam Waterworks Authority since the civil penalties for damaging underground utilities were established in 1980. In order to provide a more effective deterrent, there is a need to increase the penalties for damaging underground utilities. I Liheslatura further finds that in order for these government agencies to recover the costs of repairing damaged underground utilities from Construction Contractors, these Contractors should be prevented from being awarded any further government contracts until the repair costs have been paid.

Section 2. §71110, Chapter 71, Division 2 of Title 21 of the Guam Code Annotated is amended to read: "§71110. Civil Penalties. Any person who violates

EXHIBIT "E"

1 any provision of this Chapter shall be subject to a civil penalty not to exceed One
2 ~~Thousand Dollars (\$1,000.00)~~ Five Thousand Dollars (\$5,000.00) for each the first
3 violation, ~~and not to exceed Ten Thousand Dollars (\$10,000.00)~~ for each successive
4 violation within a five year period. Actions to recover the penalty provided for in this
5 section shall be brought by the Attorney General at the request of any person in the
6 territory Guam in which the cause, or some part thereof, arose or in which the
7 defendant has its principle place of business or resides. All penalties recovered in any
8 such actions shall be paid ~~into the General Fund to the operator of the utility which was~~
9 damaged. This Chapter does not affect any civil remedies for personal injury or
10 property (including underground utilities) damage except as otherwise specifically
11 provided for in this Chapter.”

12 **Section 3.** A new §70116 (a) (19), Chapter 70, Division 2, Title 21 of the Guam
13 Code Annotated is added to read: “§70116. **Revocation, Suspension and Renewal**
14 **of Licenses.** (a) The Contractors License Board may revoke any license issued
15 hereunder, or suspend the right of the licensee to use such licenses, or refuse to renew
16 any such license for any of the following causes:

17 (19) Wilful failure to pay when due a debt or penalty incurred for damaging a
18 public utility operated by the Guam Power Authority, the Guam Telephone Authority
19 or the Guam Waterworks Authority.”

20 **Section 4.** §53105, Chapter 53, Division 5 of Title 5 of the Guam Code
21 Annotated is amended to read: “§53105. **Bond May Be Required.** Before granting
22 a permit under any provision of this Chapter, the Department may require the applicant
23 to file with the Department a satisfactory bond, payable to the government of Guam in
24 such amount and term as the Department deems sufficient, conditioned on the proper
25 compliance by the permittee with the provisions of this Chapter.”