



OFFICE OF THE GOVERNOR
GUAM

JUL 09 2001

The Honorable Joanne M. S. Brown
Legislative Secretary
I Mina'Bente Sais na Liheslaturan Guåhan
Twenty-Sixth Guam Legislature
Suite 200
130 Aspinal Street
Hagåtña, Guam 96910

Dear Legislative Secretary Brown:

Enclosed please find Substitute Bill No. 061 (COR) entitled: "AN ACT TO *REPEAL AND REENACT* § 60107 AND TO *AMEND* § 63103 OF TITLE 5 OF THE GUAM CODE ANNOTATED, RELATIVE TO AUTHORIZING THE DEPARTMENT OF AGRICULTURE TO ISSUE CITATIONS FOR FISHING AND WILDLIFE NATURAL RESOURCES VIOLATIONS AND THE RETURN OF EXCESS LAND BY THE FEDERAL GOVERNMENT UNDER GLUP 94" which was vetoed and subsequently overridden by i Liheslatura Guåhan, the Legislature. This legislation is now designated as **Public Law No. 26-25.**


Very truly yours,


Madeleine Z. Bordallo

I Maga'Lahen Guåhan, Akto
Acting Governor of Guam

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

cc: The Honorable Antonio R. Unpingco
Speaker

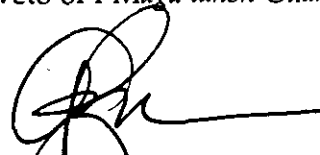
OFFICE OF THE LEGISLATIVE SECRETARY	
ACKNOWLEDGMENT RECEIPT	
Received By	
Time	10:35
Date	7/10/01

0304

MINA'BENTE SAIS NA LIHESLATURAN GUÅHAN
2001 (FIRST) Regular Session

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

This is to certify that Substitute Bill No. 61 (COR), "AN ACT TO REPEAL AND REENACT § 60107 AND TO AMEND § 63103 OF TITLE 5 OF THE GUAM CODE ANNOTATED, RELATIVE TO AUTHORIZING THE DEPARTMENT OF AGRICULTURE TO ISSUE CITATIONS FOR FISHING AND WILDLIFE NATURAL RESOURCES VIOLATIONS AND THE RETURN OF EXCESS LAND BY THE FEDERAL GOVERNMENT UNDER GLUP 94," returned without approval of *I Maga'lahaen Guåhan*, was reconsidered by *I Liheslaturan Guåhan* and after such consideration, did agree, on the 5th day of July, 2001, to pass said bill notwithstanding the veto of *I Maga'lahaen Guåhan* by a vote of Twelve (12) members.



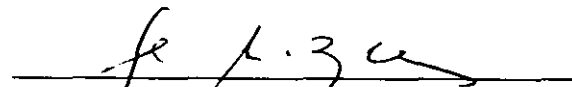
ANTONIO R. UNPINGCO
Speaker

Attested:



JOANNE M.S. BROWN
Senator and Legislative Secretary

.....
This Act was received by *I Maga'lahaen Guåhan* this 6th day of July,
2001, at 4:25 o'clock P.M.



Assistant Staff Officer
Maga'lahaen's Office

Public Law No. 26-25

MINA'BENTE SAIS NA LIHESLATURAN GUÁHAN
2001 (FIRST) Regular Session

Bill No. 61 (COR)

As substituted by the
Committee on Natural Resources
and amended on the Floor.

Introduced by:

J. M.S. Brown

J. T. Won Pat

K. S. Moylan

A. L.G. Santos

M. C. Charfauros

J. F. Ada

T. C. Ada

F. B. Aguon, Jr.

E. B. Calvo

F. P. Camacho

Mark Forbes

L. F. Kasperbauer

L. A. Leon Guerrero

V. C. Pangelinan

A. R. Unpingco

**AN ACT TO REPEAL AND REENACT § 60107 AND
TO AMEND § 63103 OF TITLE 5 OF THE GUAM
CODE ANNOTATED, RELATIVE TO
AUTHORIZING THE DEPARTMENT OF
AGRICULTURE TO ISSUE CITATIONS FOR
FISHING AND WILDLIFE NATURAL RESOURCES
VIOLATIONS AND THE RETURN OF EXCESS
LAND BY THE FEDERAL GOVERNMENT UNDER
GLUP 94.**

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

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan*
3 finds that more efficient prosecution of the illegal taking of fish and wildlife,
4 and unlawful clearing of vegetation is needed in order to protect the Island's
5 natural resources. *I Liheslaturan Guåhan* finds that fines need to match the
6 offense for damaging natural resources, hunting and/or fishing illegally to
7 facilitate prosecution.

8 This change will increase the number of prosecutions and increase the
9 amount of money collected for fines and penalties. *I Liheslaturan Guåhan* has
10 further determined that the Department needs to repeal certain existing
11 penalties of this Division to establish fee schedules where desirable. All
12 existing penalties and affiliated actions will remain in effect *until* new
13 regulations are processed through the Administrative Adjudication Law. This
14 Act is remedial legislation and should be liberally interpreted.

15 **Section 2.** Section 60107 of Article 1, Chapter 60, Division 6 of Title 5 of
16 the Guam Code Annotated is hereby *repealed and reenacted* to read as follows:

17 **"Section 60107. Violations.** The Department of Agriculture,
18 through the Administrative Adjudication Law, is hereby authorized to
19 enact schedules for penalties and citations that:

20 (a) do *not* exceed One Thousand Dollars (\$1,000.00) per
21 incident; *and*

22 (b) allow any peace officer on Guam to issue a citation for
23 a violation of Chapter 60 of Title 5 of the Guam Code Annotated as
24 is appropriate;

1 A citation issued under Chapter 60 of Title 5 of the Guam Code
2 Annotated must state the nature of the offense; the time and location of
3 the offense; the fine assessed and deadline for payment. The citation
4 shall also direct the recipient to *either* pay the specified fine or file an
5 official intention to contest the citation at the Department of Agriculture
6 by a specified date in the citation. The citation shall be in a form to be
7 created by the Department. *If* the recipient submits the contest form
8 *prior* to the specified deadline for payment, the Department shall
9 transmit the form in question to the Superior Court of Guam. The
10 Traffic Division of the Superior Court of Guam shall have jurisdiction
11 over all such matters. The Traffic Division shall notify the person cited
12 of the date and time of the person's court appearance, and shall hear the
13 case in accordance with its usual procedures.

14 All fines paid shall be deposited according to law. Nothing in this
15 statute shall nullify or modify any civil powers, penalties or obligations
16 granted by the law to the Department of Agriculture to punish offenses
17 of the hunting and fishing laws of Guam, including the right to perform
18 searches and seizures.

19 The Director of the Department of Agriculture may enter into
20 written agreements with the Superior Court of Guam and other
21 government of Guam Agencies, and create such legal forms as are
22 necessary to effectuate the purposes of this Act. The existing penalties
23 shall remain in effect until replaced by the new regulations."

24 **Section 3.** Section 63103 of Article 1, Chapter 63, Division 6 of Title 5 of
25 the Guam Code Annotated is hereby *amended* to read as follows:

1 **“Section 63103. Chief Conservation Officer: Deputies.**

2 The provisions of this Article shall be enforced by the Director, who
3 shall be *ex officio* Chief Conservation Officer, and suitable employees of
4 the Department, whom the Director may appoint as Deputy
5 Conservation Officers, as well as by peace officers, as defined in 8
6 G.C.A. § 5.55. The Chief Conservation Officer and Deputy Conservation
7 Officers acting hereunder shall have the powers of peace officers to
8 carry arms, to make arrests and to issue citations for violations.”

9 **Section 4. Return of Land by Federal Government Under GLUP 94.**

10 (a) It is the policy of the government of Guam to seek the
11 termination of Federal ownership of real property on Guam, commonly
12 known as the properties designated as excess under GLUP 94, and to
13 seek the transfer of those lands from the control of the U.S. Department
14 of Defense to local authority for whatever purposes deemed appropriate
15 by local authority, including return to original landowners.

16 In as much as this is public policy, it is inappropriate for any
17 government of Guam instrumentality to act in a manner inconsistent
18 with this policy. While Guam has its own legitimate concerns and
19 programs with respect to the preservation of peace and the enforcement
20 of private property rights, it is the position of the government of Guam
21 that the continued Federal enforcement of Federal jurisdiction over the
22 lands designated for return to the government of Guam, and subsequent
23 return by the government of Guam to the original landowners is to be
24 opposed.

1 Consequently, in the carrying out of local law enforcement and
2 local conservation initiatives and programs, it is vital that neither the
3 government of Guam nor any of its instrumentalities, implicitly or
4 explicitly convey, tacit or expressed approval of the continuous
5 jurisdiction of the Federal government in the property transferred to the
6 government of Guam pursuant to their designation as excess properties
7 under GLUP 94.

8 (b) Neither the government of Guam, nor any of its
9 instrumentalities, shall enter into any cooperative agreement or
10 memorandum of understanding with any department, agency or
11 instrumentality of the United States Federal Government, which in any
12 manner can be construed as providing tacit or expressed support of
13 continued existence of the so-called Federal jurisdiction over the
14 returned properties designated as excess under GLUP 94.

15 The use of any government of Guam resource, personnel,
16 equipment or funds to enforce any limitation of public access to these
17 properties is prohibited. Nothing in this Section shall be construed as
18 prohibiting the government of Guam from enforcement of local laws.

19 (c) The government of Guam hereby disestablishes all Federal
20 designations of Federal jurisdiction over those properties returned to the
21 government of Guam as excess properties under GLUP 94, as an act of
22 sovereignty.

23 **Section 5. Severability.** *If* any provision of this Law or its
24 application to any person or circumstance is found to be invalid or contrary to
25 law, such invalidity shall *not* affect other provisions or applications of this

- 1 Law which can be given effect without the invalid provisions or application,
- 2 and to this end the provisions of this Law are severable.



CARL T.C. GUTIERREZ
GOVERNOR OF GUAM

JUN 26 2001

The Honorable Joanne M. S. Brown
Legislative Secretary
I Mina'Bente Sais na Liheslaturan Guåhan
Twenty-Sixth Guam Legislature
Suite 200
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Hagåtña, Guam 96910

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Time	_____
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This legislation contains a completely unrelated rider in Section 4 which seeks to prevent the execution of deeds and licenses with the federal government for the return to original landowners of land designated as excess under GLUP 94. A process of land return is underway, and in the climate of cooperation between the local and federal government agencies which exists at this time, the process should be immediately completed as soon as possible without interruption.

The main body of this legislation contains a fatal defect. An executive agency cannot constitutionally set fines or penalties that may imply a criminal offense. It may only set fees or civil penalties. The language of this legislation states that the "Department of Agriculture. . . is. . . authorized to enact schedules for penalties and citations. . ." The language specifies fines which are similar to those imposed for misdemeanors, and allows peace officers to issue citations. It also equates the penalties imposed with those imposed by Traffic Court, implying criminal offenses.


The legislature can set penalties by law for offenses that may be criminal. The court can set fines for offenses that are criminal. An Executive Branch agency cannot. This legislation should be rewritten to determine what type of penalties are intended, in order to avoid unconstitutionality.

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 Antonio R. Unpingco
Speaker

OFFICE OF THE LEGISLATIVE SECRETARY	
ACKNOWLEDGMENT RECEIPT	
Received By	
Time	2:02 PM
Date	6/26/01

0285

MINA'BENTE SAIS NA LIHESLATURAN GUÅHAN
2001 (FIRST) Regular Session

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

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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 Guåhan* this 14th day of June, 2001,
at 4:45 o'clock P.M.



Assistant Staff Officer
Maga'lahaen's Office

APPROVED:



CARL T. C. GUTIERREZ
I Maga'lahaen Guåhan

Date: _____

Public Law No. _____

OFFICE OF THE LEGISLATIVE SECRETARY ACKNOWLEDGMENT RECEIPT Received By _____ Time _____ Date _____
--

**MINA'BENTE SAIS NA LIHESLATURAN GUÅHAN
2001 (FIRST) Regular Session**

Bill No. 61 (COR)

As substituted by the
Committee on Natural Resources
and amended on the Floor.

Introduced by:

J. M.S. Brown
J. T. Won Pat
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M. C. Charfauros
J. F. Ada
T. C. Ada
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- 1 Law which can be given effect without the invalid provisions or application,
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G. Orris

I MINA' BENTE SAIS NA LIHESLATURAN GUAHAN

2001 (FIRST) Regular Session

Date: 7/5/01

VOTING SHEET

Vetred
Bill No. 61

2025

Resolution No. _____

Question: _____

NAME	YEAS	NAYS	NOT VOTING/ ABSTAINED	OUT DURING ROLL CALL	ABSENT
ADA, Joseph F.	✓				
ADA, Thomas C.	✓				
AGUON, Frank B., Jr.	11 ✓				
BROWN, Joanne M. S.	✓				
CALVO, Eddie B.					✓
CAMACHO, Felix P.	11 ✓				
CHARFAUROS, Mark C.	✓				
FORBES, Mark	✓				
KASPERBAUER, Lawrence F.	✓				
LEON GUERRERO, Lourdes A.					✓
MOYLAN, Kaleo S.	✓				
PANGELINAN, Vicente C.	1 ✓				
SANTOS, Angel L.G.	✓				
UNPINGCO, Antonio R.	✓				
WON PAT, Judith T.					✓

TOTAL

12 0 0 0 3

CERTIFIED TRUE AND CORRECT:


Clerk of the Legislature

* 3 Passes = No vote
EA = Excused Absence

MINA'BENTE SAIS NA LIHESLATURAN GUÅHAN
2001 (FIRST) Regular Session

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

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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 Guåhan* this 14th day of June, 2001,
at 4:45 o'clock P.M.



Assistant Staff Officer
Maga'lahi's Office

APPROVED:



CARL T. C. GUTIERREZ
I Maga'lahaen Guåhan

Date: _____

Public Law No. _____

OFFICE OF THE LEGISLATIVE SECRETARY
ACKNOWLEDGMENT RECEIPT

Received By _____

Time _____

Date _____

Overridden
7/5/01

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2001 (FIRST) Regular Session

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9 instrumentalities, shall enter into any cooperative agreement or
10 memorandum of understanding with any department, agency or
11 instrumentality of the United States Federal Government, which in any
12 manner can be construed as providing tacit or expressed support of
13 continued existence of the so-called Federal jurisdiction over the
14 returned properties designated as excess under GLUP 94.

15 The use of any government of Guam resource, personnel,
16 equipment or funds to enforce any limitation of public access to these
17 properties is prohibited. Nothing in this Section shall be construed as
18 prohibiting the government of Guam from enforcement of local laws.

19 (c) The government of Guam hereby disestablishes all Federal
20 designations of Federal jurisdiction over those properties returned to the
21 government of Guam as excess properties under GLUP 94, as an act of
22 sovereignty.

23 **Section 5. Severability.** *If* any provision of this Law or its
24 application to any person or circumstance is found to be invalid or contrary to
25 law, such invalidity shall *not* affect other provisions or applications of this

- 1 Law which can be given effect without the invalid provisions or application,
- 2 and to this end the provisions of this Law are severable.

6

I MINA' BENTE SAIS NA LIHESLATURAN GUAHAN

2001 (FIRST) Regular Session

Date: 6/11/01

VOTING SHEET

S Bill No. 61 (COR)

Resolution No. _____

Question: _____

NAME	YEAS	NAYS	NOT VOTING/ ABSTAINED	OUT DURING ROLL CALL	ABSENT
ADA, Joseph F.	✓				
ADA, Thomas C.	✓				
AGUON, Frank B., Jr.	✓				
BROWN, Joanne M. S.	✓				
CALVO, Eddie B.	✓				
CAMACHO, Felix P.	✓				
CHARFAUROS, Mark C.	✓				
FORBES, Mark	✓				
KASPERBAUER, Lawrence F.	✓				
LEON GUERRERO, Lourdes A.					✓
MOYLAN, Kaleo S.	✓				
PANGELINAN, Vicente C.	✓				
SANTOS, Angel L.G.	✓				
UNPINGCO, Antonio R.	✓				
WON PAT, Judith T.	✓				

TOTAL

14 0 0 0 1

CERTIFIED TRUE AND CORRECT:

Clerk of the Legislature

* 3 Passes = No vote
EA = Excused Absence