

I MINA'TRENTAI DOS NA LIHESLATURAN GUÁHAN
2013 (FIRST) Regular Session

Bill No. 196-32(WR)

Introduced by:

T.C. Ada 
R.J. Respicio 

**AN ACT TO AMEND SECTIONS 51301(c) AND 53105 OF
CHAPTER 53, TITLE 5, GUAM CODE ANNOTATED,
RELATIVE TO ENSURING THE ADEQUATE REPAIR
AND RESTORATION OF GUAM'S PUBLIC
ROADWAYS BY CONTRACTORS WHO OPEN AND
EXCAVATE THESE ROADS.**

BE IT ENACTED BY THE PEOPLE OF GUAM:

**Section 1. §51301(c) of Chapter 53, Title 5, Guam Code Annotated, is
hereby amended to read as follows:**

“Roadway, highway, road, or street (hereinafter “roadway”) means all
or any part of the entire width of right of way, whether or not such entire
area is actually used by the general public for highway purposes the passage
of vehicles and persons.”

**Section 2. §53105 of Chapter 53, Title 5, Guam Code Annotated, is
hereby amended to read as follows:**

“§ 53105. Condition for Deposit Fees and/or Bond.

(a) All applications for excavation of a roadway *shall* have a schedule
of work that sets the timeline of construction or work events and ~~maximum~~
~~time before~~ deadline when the road is roadway will be restored to original
condition or better. The contractor *shall* be required to close the opening and

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1 restore the roadway ~~upon expiration of time as~~ no later than the date
2 ~~specified by~~ on the permit or the DPW ~~Director~~ Chief Engineer.

3 (b) Deposit Fee.

4 (1) In addition to the permit application fee, and except as
5 provided herein, any project by a ~~public or~~ private contractor or public
6 agency which would require an opening or excavation for any purpose
7 in a ~~highway or public~~ roadway *shall* be required to provide a deposit
8 fee of *no less than* Five Hundred Dollars (\$500) or *no less than* five
9 percent (5%) of the total cost of the project impacting the roadway,
10 whichever is greater.

11 (2) No permit shall be granted to a contractor or public agency
12 *unless* the deposit fee is paid in full or a performance bond that
13 guarantees repairs on a single project or multiple projects anticipated
14 to be undertaken over a period of time is provided.

15 (3) The prerequisite for a deposit fee *shall not* be applicable to
16 government-funded projects that necessitate bond insurance coverage
17 as a stipulation of the project, or for other projects for which a
18 performance bond may be required by the Department at its
19 discretion. This requirement for a deposit fee *shall not* preclude the
20 Department's condition for a bond, as may be imposed herein.

21 (4) The deposit fee ~~highlighted herein~~ *shall* be retained by the
22 Department for ~~one (1) year~~ up to three (3) months from the
23 completion of the excavation and roadway repair, ~~and until such~~
24 during which time that the Department shall conducts a site inspection
25 of the roadway or highway project area in which the opening or
26 excavation had occurred, and can ascertain that the repairs were
27 conducted and completed properly in accordance with applicable

1 Federal Highway Administration and/or Department of Public Works
2 standards. *If* the roadway ~~or highway~~ area is identified to be
3 insufficiently repaired, then the deposit fee or similar amount from the
4 posted performance bond shall be assessed as a penalty, exclusive of
5 the requirement for the contractor or public agency to return and
6 ensure that proper repair is conducted. Should the area repaired meet
7 the Department's standards set forth for the repair of the roadway ~~or~~
8 ~~highway~~, the Department *shall* return the deposit fee in full, *however*,
9 the permit application fee *shall not* be returned. Inspection of the
10 roadway ~~or highway~~ project area *shall* be performed by DPW within
11 the ~~one (1) year~~ three (3) month period following completion of the
12 roadway repair.

13 (5) In lieu of multiple deposit fees by a Utility or contractor for
14 recurring maintenance and repairs or upgrade of its buried facilities,
15 the Department may authorize the posting of a global performance
16 bond to cover multiple excavations in such amount and under such
17 term as the Department deems sufficient to ensure compliance with
18 this Chapter. In the event of forfeiture of the bond, the proceeds shall
19 be deposited into the Guam Highway Fund.

20 (c) All proceeds from the deposit fee established by this Section *shall*
21 be deposited into the ~~Territorial~~ Guam Highway Fund, and interest derived
22 therefrom *shall* remain in the Fund. Sufficient funds *shall* be reserved for the
23 refund of deposits, pursuant to this Section.

24 (d) Emergency Excavations. An emergency excavation may be made
25 without prior permit or deposit if the reason for the excavation is to prevent
26 loss of life or damage to property that appears to be imminent if the
27 excavation is delayed. In such emergency situations the contractor or public

1 agency responsible *shall* contact the Department on the first working day
2 following the commencement of excavation and complete and secure a
3 formal permit. The contractor or public agency responsible *shall* provide
4 justification for the emergency excavation. In the event the Department
5 deems that the excavation was *not* an emergency, the applicant *shall* be
6 penalized Five Hundred Dollars (\$500) for failure to properly secure a
7 permit prior to excavating and will still be required to pay the appropriate
8 fees and deposits. *Except* for the prior permit requirement, none of the
9 application fee, deposit, bond, or penalty provisions of this Section shall be
10 waived for emergency situations.

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

18
19 **Section 3. Effective Date.** The provisions contained in this Act *shall*
20 become effective upon enactment.

21
22 **Section 4. Severability.** If any of the provisions of this law or its
23 application to any person or circumstance is found to be invalid or contrary to law,
24 such invalidity shall not affect other provisions or applications of this law which
25 can be given effect without the invalid provisions or application, and to this end the
26 provisions of this law are severable.