

I MINA'TRENTA NA LIHESLATURAN GUÅHAN
2009 (FIRST) Session

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Bill No. 30-148 (LS)

Introduced by:

T.C. Ada 

AN ACT TO AMEND CHAPTER 53 OF TITLE 5, GUAM CODE ANNOTATED AND TO ADOPT RULES AND REGULATIONS RELATIVE TO THE PROTECTION OF TERRITORIAL HIGHWAYS, ROADS, EASEMENTS AND RIGHTS OF WAY; AND TO CREATE A HIGHWAY PROTECTION AND MAINTENANCE FUND FOR THE DEPARTMENT OF PUBLIC WORKS

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

2 **Section 1. Legislative Intent.**

3 *I Liheslaturan Guåhan* finds that in order to protect the public's health, safety,
4 and welfare, and to ensure the safe and efficient movement of people and goods within
5 the Territory, and to preserve the functional integrity of the highways, it is necessary to
6 regulate access to Guam's public highway system, including its roads, easements and
7 rights of way.

8 This is particularly vital in light of the Government's plans to create a "Haul Road
9 Network" to accommodate the upcoming military buildup. The Haul Road Network will
10 serve as the main route for military and cargo truck traffic, as well as a major route for
11 civilian traffic. Of the \$3.5 billion that is planned to be spent on preparing Guam's roads
12 for the military buildup, more than one-third of this amount is anticipated to go towards
13 constructing the Haul Road Network. As the buildup progresses, so will the volume of

1 traffic in Guam. The number of heavy commercial vehicles carrying heavy loads will
2 increase, and they will be transporting their loads along the same highway and at the
3 same time as passenger vehicles.

4 *I Liheslaturan Guåhan* finds and declares that the protection of Guam’s roads
5 from overweight vehicles is essential to the development of a safe and efficient highway
6 system. Overweight trucks take longer to brake and are more prone to roll over in
7 crashes. Passenger cars are especially vulnerable in collisions with large commercial
8 transport trucks because of the great difference in size and weight between the vehicles.

9 *I Liheslaturan Guåhan* finds that regulation of truck weights and other highway
10 encroachments will help to reduce the very real and significant potential for serious harm
11 or death, as well as the disruption to the flow of commerce and public transportation
12 when a truck is overloaded and gets into an accident, or when the highway has been
13 illegally encroached upon. Regulation will also reduce highway maintenance costs and
14 the necessity for expensive traffic operations measures; lengthen the effective life of
15 commercial trucks and other vehicles; prevent delays in public evacuations for natural
16 storms and emergencies; enhance disaster-response readiness; mitigate environmental
17 degradation; and promote sound economic growth.

18 **Section 2.** Unless otherwise designated, references to code Sections *shall* apply
19 to code Sections within this Chapter.

20 **Section3.** Chapter 53 of Title 5 of the Guam Code Annotated is hereby amended
21 to read as follows:

22 **“CHAPTER 53.**

23 **CARE & PROTECTION OF HIGHWAYS**

24 **Article 1. General Provisions**

- 1 § 53101. Definitions.
- 2 § 53102. Encroachment Permit Required; Petty Misdemeanor and
- 3 Fine.
- 4 § 53103. Permit Terms.
- 5 § 53104. Cost of Work Supervision.
- 6 § 53105. Bond May Be Required.
- 7 § 53106. Notice Demanding Removal.
- 8 § 53107. Summary Removal by the Department.
- 9 § 53108. Removal by the Department.
- 10 § 53109. Applicability of Chapter.

Article 2. Highway Protection and Maintenance Fund

- 12 § 53201. Creation of Highway Protection and Maintenance Fund.
- 13 § 53202. Fund Sources.
- 14 § 53203. Separation of Accounts.
- 15 § 53204. Reporting Requirements.
- 16 § 53205. Interest-Bearing Accounts.
- 17 § 53206. Legislative Appropriation.

ARTICLE 1

GENERAL PROVISIONS

20 **§ 53101. Definitions.** As used in this Chapter:

21 (a) Billboard means a sign that identifies or communicates a commercial or

22 noncommercial message related to an activity conducted, an election campaign, a service

23 rendered, or a commodity sold at a location other than where the sign is located. A

24 billboard is a Highway Commercial Use.

1 (b) *Department* means the Department of Public Works.

2 (c) *Director* means the Director of Public Works.

3 (d) *Easement* means a grant by an owner of land for a specified use or uses of
4 said land to a person or persons, to the general public generally, or to the Government of
5 Guam.

6 (e) *Encroachment* means any tower, pole, pole line, pipe, pipeline, fence,
7 billboard, utility, utility line, trash or refuse, stand or building, or any structure, device or
8 item not particularly mentioned, ~~which~~ that is placed in, under or over any portion of a
9 highway. *Encroachment* also means a Highway Commercial Use involving the
10 commercial operation of any trucks meeting the HS20 designation as defined by the
11 American Association of State Highway & Transportation Officials (AASHTO), with a
12 maximum allowable weight of 76,800 pounds and/or maximum single axle weights of
13 20,000 pounds.

14 (f) *Highway* means a way or place of whatever nature, publicly maintained
15 and open to the use of the public for purposes of vehicular travel. Highway means
16 includes all or any part of the entire width of a street, road, easement, or right of way,
17 whether or not such entire area is actually used for highway or vehicular travel purposes.

18 (g) *Highway Commercial Use* means an encroaching use of the highway or of
19 public lands or of Public Rights of Ways for the purpose of providing or delivering goods
20 or services either for commercial use or within the course and scope of commerce;
21 including but not limited to any static non-moving commercial encroachment use such as
22 erection of a billboard, or of any non-static commercial use or action which necessitates
23 travel and access by motor vehicle of the highway or of public lands or of Public Rights

1 of Ways. Non-profit or not-for-profit entities are not exempt from any statutes or
2 regulations governing Highway Commercial Use.

3 (h) Permittee means the holder of a Highway Encroachment Permit and/or the
4 owner of an encroachment.

5 (i) Public Right of Way means a Right of Way where the public has the right
6 to pass unhindered.

7 (j) Right of Way is the privilege of the immediate use of the highway. It
8 includes the entire width between the property lines of a highway, street, or alley and also
9 includes, but is not limited to: (1) easements for roadways created by law or operation of
10 law; (2) those subdivision easements, access, or rights of way created by delineation on
11 approved maps, way of formal grants or dedication of easement, access, or right of way,
12 regardless of formal acceptance by the government; and (3) those rights of way mandated
13 by the Guam Subdivision Law within a subdivision or lot parceling which appear on an
14 approved final subdivision or lot parceling map as dedicated easements, dedicated access,
15 rights of way, or roadways.

16 (k) Weigh-in-Motion (WIM) System means the technology for measuring the
17 weight of moving trucks in order to monitor pavement loadings.

18 **§ 53102. ~~Permits: Petty Misdemeanor~~ Encroachment Permit Required;**
19 **Misdemeanor and Fine.**

20 (a) A public highway, road, easement, or right of way serves the public; and
21 no person or entity or governmental agency shall commit, do, or otherwise take any
22 action that would, either above or below, encroach upon, use, obstruct, place obstructions
23 upon, hinder passage over, place signs upon, or otherwise hinder the maintenance of a
24 Public Right of Way or Highway unless the person or entity shall first apply for and

1 receive a written Highway Encroachment Permit from the Department of Public Works
2 as provided for in this Chapter.

3 (b) The Department may issue written permits as provided in this Chapter
4 authorizing the Permittee to do any of the following encroaching acts:

5 (1) Make an opening or excavation for any purpose in a highway.

6 (2) Place, change or renew an encroachment.

7 (3) Place or display in, under, or over any highway, any kind of
8 billboard or advertising sign or device. Any such billboard, sign, or device placed
9 or displayed contrary to the provisions of this Section is a public nuisance, and the
10 Department may immediately remove it without notice or liability as authorized
11 by 5 G.C.A. Section 53107.

12 (4) Plant, remove, cut, cut down, injure, or destroy any tree, shrub,
13 plant, or flower growing within any highway.

14 (5) Engage in a Highway Commercial Use involving the commercial
15 operation of any trucks or other vehicles meeting the HS20 designation as defined
16 by the American Association of State Highway & Transportation Officials
17 (AASHTO), with a maximum allowable weight of 76,800 pounds and/or
18 maximum single axle weights of 20,000 pounds.

19 (c) Any person who does any of the acts specified in this Section without the
20 authority of a valid permit is guilty of a ~~petty~~ misdemeanor.

21 (d) In addition to criminal penalties, any person who does any of the acts
22 specified in this Section without the authority of a valid permit shall be required to pay a
23 civil fine of up to Ten Thousand Dollars (\$10,000.00) for each violation; together with
24 the costs and expenses of removal of the encroachment; and together with the sum of One

1 Hundred Dollars (\$100.00) for each day such encroachment remains after the date
2 scheduled for removal of the encroachment.

3 (e) Administratively Exempt Permits. By Department policy, annual
4 encroachment permits and permit fees may be waived by the Department for
5 governmental entities only. These permits are referred to as *administratively exempt*.
6 Administratively exempt permits shall be renewed annually and are subject to all of the
7 same terms and conditions as other encroachment permits, including revocation.

8 **§ 53103. Permit Terms.** (a) All work related to an encroachment for which a
9 permit is issued must be commenced within six (6) months from the date that the permit
10 is issued, otherwise the permit *shall* be voided and cancelled by the Department. All
11 permits shall provide that they are revocable upon five days' notice by the Department.

12 (b) Any permit issued under the provisions of this Chapter ~~may~~ shall provide
13 that the Permittee will pay the entire cost and expense of restoring the highway in as good
14 condition as ~~before~~ it was prior to the issuance of the permit. ~~and~~ The permit may also
15 provide such other conditions as to ~~pertaining~~ to the location and the manner in which the
16 work is to be done as the Department finds necessary for the protection of the highways,
17 including but not limited to, the requirement that weight scales or a Weigh-in-Motion
18 (WIM) system be installed for the purpose of verifying the weight of any vehicle
19 traversing or otherwise using the highway.

20 (c) If installation of permanent static weight scales or other Weigh-in-Motion
21 (WIM) system is required by the Department as a condition for issuance of an
22 encroachment permit, the Permittee *shall* be required to deliver and report its weight
23 records on a quarterly basis to the Department and to further provide on an annual basis
24 to the Department a certification of scale calibration. Failure to comply with this

1 subsection shall be grounds for revocation of the encroachment permit and for its non-
2 renewal.

3 (d) All permits shall provide that they are revocable upon five (5) business
4 days notice by the Department.

5 (e) The Permittee shall maintain the encroachment in accordance with the
6 requirements and conditions of the Department. All encroachment permits are subject to
7 any site-specific conditions that may apply.

8 (f) The Permittee is responsible for the construction, marking and
9 maintenance of any detours required, and for maintaining safety measures for the
10 protection of the public during the construction of any works in respect of the
11 encroachment.

12 (g) During construction of the encroachment, the Permittee shall ensure that
13 the operation of the highway is not interfered with and that the right of way remains free
14 of debris, earth or other material.

15 (h) Traffic shall be maintained with minimum disruption in accordance with
16 Traffic Control Plan submitted to, and approved by, the Department.

17 (i) No lanes shall be closed, nor shall stoppage or interference with traffic be
18 permitted or allowed, between the hours of 7:00 a.m. to 9:00 a.m. and 4:00 p.m. to 6:00
19 p.m. without prior Department approval. No lanes or shoulder closings shall be
20 permitted on weekends without Department approval. Any additional restrictions that are
21 stated in the approved permit shall also be applicable.

22 (j) The Permittee shall protect all survey markers and monuments in the
23 vicinity of the work and shall replace at its cost all markers and monuments if damaged.

1 (k) The Permittee shall not cut, trim or interfere with any trees or shrubs on
2 the right of way without the prior written approval of the Department.

3 (l) No permit shall be issued for any actual or proposed encroachment that
4 exceeds a height of thirty (30) feet.

5 (m) The Permittee shall indemnify and hold the Department harmless for all
6 damages and liabilities caused as a result of the encroachment or of any related works
7 undertaken pursuant to the permit.

8 (n) No rights derived from any Highway Encroachment Permit, including
9 administratively exempt permits, shall be assigned, sold, leased, subleased, encumbered
10 or hypothecated without the consent and approval of the Department, and any attempted
11 alienation of any interest in a Permit without such prior consent and approval shall be
12 void.

13 **§ 53104. Cost of Work Supervision.** The Department may, but is not required to,
14 supervise any work done under any permit issued under the provisions of this Chapter, in
15 which event, the Permittee shall pay the reasonable cost of such supervision to the
16 Department.

17 **§ 53105. Bond May Be Required.** Before granting a permit under any provision
18 of this Chapter, the Department may require the applicant to file with the Department a
19 satisfactory bond, payable to the government of Guam in such amount and term as the
20 Department deems sufficient, conditioned on the proper compliance by the Permittee
21 with the provisions of this Chapter. In the event of forfeiture of the Bond, the proceeds
22 shall go to the affected agency.

23 **§ 53106. Notice Demanding Removal.** (a) Except as otherwise provided in §
24 53108 of this Chapter, notice shall be given to the owner, occupant, or person in

1 possession of the encroachment, or to any other person causing or suffering the
2 encroachment to exist, by serving upon any such person a notice containing a demand for
3 the immediate removal of such encroachment from within such highway. Any such
4 notice *shall* describe the encroachment complained of with reasonable certainty as to its
5 character and location.

6 (b) Upon the giving of a notice demanding removal as set forth in this
7 Section, the Permittee or addressee of the notice shall within five (5) business days
8 remove the encroachment at its expense and at no cost to the Department, and the
9 highway shall be restored or left in as good a condition as it was before the encroachment
10 was installed or constructed.

11 (c) In his or her discretion, the Director of the Department may approve a
12 longer period of time for removing the encroachment; provided however, that in no case
13 shall the time permitted for removal exceed more than six (6) months from the giving of
14 a notice demanding removal.

15 (d) The Permittee or other person causing or suffering the encroachment to
16 exist shall be responsible for all costs, expenses, and liabilities involved in removing or
17 relocating the encroachment.

18 **§ 53107. Summary Removal.** (a) The Department may, without notice or
19 liability, immediately remove from any highway any encroachment ~~which~~ that:

- 20 (1) Is not removed prior to the expiration of five business days from
21 and after the service of notice.
- 22 (2) Is not removed upon the expiration or termination of a valid
23 Highway Encroachment Permit.
- 24 (3) Obstructs or prevents the use of the highway by the public; or

- 1 (4) Consists of refuse;
- 2 (5) Is an advertising sign of any description;
- 3 (6) Is one for which no authorized Highway Encroachment Permit has
- 4 been issued; or
- 5 (7) Is one deemed by the Department to be a public nuisance.

6 (b) The owner of the encroachment shall be liable for all costs and expenses
7 of removal; and if a notice demanding removal was given, then in addition thereto, a fine
8 of One Hundred Dollars (\$100.00) shall be assessed for each day the encroachment
9 remained after the date scheduled for removal.

10 (c) All encroachments removed by the Department shall become the property
11 of the Department.

12 **§ 53108. Removal by Department.** (a) The Department may, without notice or
13 liability, remove from any highway any encroachment on upon the failure of the owner to
14 comply with the notice demanding removal as provided for in this Chapter.

15 (b) The owner *shall* be liable for all costs and expenses of such removal, ~~and~~
16 ~~in addition thereto, the sum of Ten Dollars for each day such encroachment remains after~~
17 ~~the expiration of five days from the service of the notice together with the sum of One~~
18 Hundred Dollars (\$100.00) for each day the encroachment unlawfully remained after the
19 date scheduled for removal.

20 (c) All encroachments removed by the Department shall become the property
21 of the Department.

22 **§ 53109. Applicability of Chapter.** (a) The provisions of this Chapter shall
23 apply to all persons, entities, and governments, including the Government of Guam and
24 its autonomous agencies.

1 (b) Notwithstanding any other provision of law, the Highway Encroachment
2 Permit required by the provisions of this Chapter, and all other provisions applicable
3 thereto, shall not be retroactive; and any person or entity, including governmental entity,
4 who upon the date of approval of this law has a valid Permit or a lease or sublease related
5 to an Encroachment may continue to use the Permit, lease, or sublease until the expiration
6 thereof. Upon the expiration of any Permit, lease, or sublease existing on the date of
7 approval of this Chapter into law, the person or entity holding such Permit, lease, or
8 sublease shall be required to obtain a new Permit under the provisions of this Chapter.

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10 **ARTICLE 2**

11 **HIGHWAY PROTECTION AND MAINTENANCE FUND**

12 **§ 53201. Creation of Highway Protection and Maintenance Fund.** There is
13 hereby created a Highway Protection and Maintenance Fund for the Department of Public
14 Works. All money collected for the Fund shall be deposited into interest-bearing bank
15 accounts as provided for in § 53203 and § 53205 of this Article.

16 **§ 53202. Fund Sources.** (a) All income and interest earned on such income
17 received by the Department based upon fees or fines earned from the issuance of
18 Highway Encroachment Permits and the enforcement of this Chapter shall be deposited
19 into the Highway Protection and Maintenance Fund.

20 (b) Funds in the Highway Protection and Maintenance Fund shall not be subject
21 to the Governor’s transfer authority.

22 **§ 53203. Separation of Accounts.** The Department shall establish an account or
23 accounts for the Highway Protection and Maintenance Fund separate and apart from that
24 of the government of Guam General Fund accounts and the existing accounts of the

1 Department. The new account or accounts established for the Fund together with the
2 interest earned thereon shall be for the sole purpose of financing the protection and
3 maintenance of the Territory's public highways, roads, easements, and rights of way, and
4 shall be used for no other purpose.

5 **§ 53204. Reporting Requirements.** The Highway Protection and Maintenance
6 Fund shall be under the direction of the Department of Public Works. The Department
7 shall prepare, or cause to be prepared, full statements of accounts of all money received
8 and expended out of the account or accounts of the Fund, and shall transmit such report
9 to the Legislature each fiscal year, together with the Budget Request of the Department
10 for the ensuing fiscal year.

11 **§ 53205. Interest-Bearing Accounts.** The Department is hereby authorized to
12 deposit money in any of its accounts other than those established pursuant to § 53203 of
13 this Article into interest-earning checking or savings accounts. All interest so earned shall
14 be withdrawn from the checking or savings accounts and deposited into the account or
15 accounts of the Highway Protection and Maintenance Fund at the end of each calendar
16 quarter. A report of all interest so earned and deposited into the Highway Protection and
17 Maintenance Fund shall be transmitted to the Legislature at the end of each fiscal year.

18 **§ 53206. Legislative Appropriation.** The Legislature may, from time to time,
19 appropriate funds from the General Fund for deposit in the Highway Protection and
20 Maintenance Fund. Such funds, when appropriated, shall be paid directly to the Highway
21 Protection and Maintenance Fund.

22 **Section 4. Adoption of Department of Public Works Highway Encroachment**
23 **Permitting Regulations.** (a) Rules and Regulations in Bill Form. Pursuant to Guam
24 Public Law 22-96, the rules and regulations to establish the Department of Public Works

1 standards and permitting requirements for highway encroachments, transmitted to and
2 received by the Committee on Utilities, Transportation, Public Works and Veterans
3 Affairs in bill form and *incorporated* by this reference as *Appendix A*. Unless changed by
4 statute, the rules and regulations submitted in bill form *shall* be approved pursuant to the
5 Administrative Adjudication Law and be effective as the rules and regulations subject to
6 further change according to the provisions of the Administrative Adjudication Law.

7 (b) Notwithstanding any other provision of law, rule, regulation, or Executive
8 Order, the rules and regulations to establish the Department of Public Works standards
9 and permitting requirements for highway encroachments, and as hereby *incorporated* by
10 this reference as *Appendix A*, are hereby *approved* by the Thirtieth Guam Legislature
11 pursuant to Subsection (b) of Section 9303, Title 5, Guam Code Annotated; and a *new*
12 Article 6 to Title 29, Chapter 1 of the Guam Administrative Rules and Regulations is
13 hereby *enacted*.

14 **Section 5. Severability.** *If* any provision of this Law or its application to any
15 person or circumstance is found to be invalid or contrary to law, such invalidity *shall* not
16 affect other provisions or applications of this Law which can be given effect without the
17 invalid provisions or application, and to this end the provisions of this Law are severable.

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I MINA'TRENTA NA LIHESLATURAN GUÅHAN
2009 (FIRST) Session

Appendix A to Bill No. 30-168(LS)

TITLE 29

GUAM ADMINISTRATIVE RULES AND REGULATIONS

CHAPTER 1 – DIRECTOR OF PUBLIC WORKS

**ARTICLE 6 – HIGHWAY ENCROACHMENT PERMITTING
REGULATIONS**

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ARTICLE 6
HIGHWAY ENCROACHMENT PERMITTING REGULATIONS

- § 1600. Authority.
- § 1601. Definitions.
- § 1602. Encroachment Permit Required; Petty Misdemeanor.
- § 1603. Encroachment Permit Application
- § 1604. Permit Terms.
- § 1605. Protection of Public Right of Way.
- § 1606. Cost of Work Supervision.
- § 1607. Bond May Be Required
- § 1608. Expiration of Permit; Removal of Encroachment
- § 1609. Notice Demanding Removal.
- § 1610. Summary Removal.
- § 1611. Removal by Department.
- § 1612. Renewal of Highway Encroachment Permit

§ 1600. Authority. (a) Pursuant to GUAM PUBLIC LAW 27-118:2 [21 G.C.A. § 62112(c)], the Department of Public Works has oversight responsibility for the development of Public Rights of Way through the highway encroachment permitting process.

(b) EXECUTIVE ORDER 83-011 issued by the Governor of Guam and dated May 5, 1983 authorizes the Director of the Department of Public Works to direct and coordinate the operations and activities of the Department; and to establish and enforce policies for the management and supervision of the Department.

§ 1601. Definitions. As used in this Article:

(a) *Billboard* means a sign that identifies or communicates a commercial or noncommercial message related to an activity conducted, an election campaign, a service rendered, or a commodity sold at a location other than where the sign is located. A *billboard* is a Highway Commercial Use.

(b) *Department* means the Department of Public Works.

(c) *Director* means the Director of Public Works.

(d) *Easement* means a grant by an owner of land for a specified use or uses of said land to a person or persons, to the general public generally, or to the Government of Guam.

(e) *Encroachment* means any tower, pole, pole line, pipe, pipeline, fence, billboard, utility, utility line, trash or refuse, stand or building, or any structure, device or item not particularly mentioned, that is placed in, under or over any portion of a highway. *Encroachment* also means a Highway Commercial Use involving the commercial operation of any trucks meeting the HS20 designation as defined by the American

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Association of State Highway & Transportation Officials (AASHTO), with a maximum allowable weight of 76,800 pounds and/or maximum single axle weights of 20,000 pounds.

(f) *Highway* means a way or place of whatever nature, publicly maintained and open to the use of the public for purposes of vehicular travel. Highway includes all or any part of the entire width of a street, road, easement, or right of way, whether or not such entire area is actually used for highway or vehicular travel purposes.

(g) *Highway Commercial Use* means a use of the highway or of public lands or of Public Rights of Ways for the purpose of providing or delivering goods or services either for commercial use or within the course and scope of commerce; including but not limited to any static non-moving commercial encroachment use such as erection of a billboard, or of any non-static commercial use or action which necessitates travel and access by motor vehicle of the highway or of public lands or of Public Rights of Ways. Non-profit or not-for-profit entities are not exempt from any statutes or regulations governing *Highway Commercial Use*.

(h) *Permittee* means the holder of a Highway Encroachment Permit and/or the owner of an encroachment.

(i) *Public Right of Way* means a Right of Way where the public has the right to pass unhindered.

(j) *Right of Way* is the privilege of the immediate use of the highway. It includes the entire width between the property lines of a highway, street, or alley and also includes, but is not limited to: (1) easements for roadways created by law or operation of law; (2) those subdivision easements, access, or rights of way created by delineation on approved maps, way of formal grants or dedication of easement, access, or right of way, regardless of formal acceptance by the government; and (3) those rights of way mandated by the Guam Subdivision Law within a subdivision or lot parceling which appear on an approved final subdivision or lot parceling map as dedicated easements, dedicated access, rights of way, or roadways.

(k) *Weigh-in-Motion (WIM) System* means the technology for measuring the weight of moving trucks in order to monitor pavement loadings.

SOURCE: Subsections (b), (c), (e), and (f) from 5 G.C.A. § 53101; Subsection (d) from 21 G.C.A. § 62105(c); Subsection (i) from 21 G.C.A. § 62105(a); Subsection (j) from 16 G.C.A. § 11022(ee) and 21 G.C.A. § 62105(a) and (n).

§ 1602. Encroachment Permit Required; Petty Misdemeanor and Fine.

(a) A public highway, road, easement, or right of way serves the public, and no person or entity shall commit, do, or otherwise take any action that would, either above or below, encroach upon, use, obstruct, place obstructions upon, hinder passage over, place signs upon, or otherwise hinder the maintenance of a Public Right of Way or Highway unless the person or entity shall first apply for and receive a written Highway Encroachment Permit as provided for in this Article.

(b) The Department may issue written permits, as provided in this Article, authorizing the Permittee to do any of the following encroaching acts:

- (1) Making an opening or excavation for any purpose in a highway.

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(2) Place, change or renew an encroachment.

(3) Place or display in, under, or over any highway, any kind of billboard or advertising sign or device. Any such billboard, sign, or device placed or displayed contrary to the provisions of this Section is a public nuisance, and the Department may immediately remove it without notice or liability as authorized by 5 G.C.A. Section 53107 and by Section 1610 of this Article.

(4) Plant, remove, cut, cut down, injure, or destroy any tree, shrub, plant, or flower growing within any highway.

(5) Engage in a Highway Commercial Use involving the commercial operation of any trucks or other vehicles meeting the HS20 designation as defined by the American Association of State Highway & Transportation Officials (AASHTO), with a maximum allowable weight of 76,800 pounds and/or maximum single axle weights of 20,000 pounds.

(c) Any person who does any of the acts specified in this Section without the authority of a valid permit is guilty of a petty misdemeanor.

(d) In addition to criminal penalties, any person who does any of the acts specified in this Section without the authority of a valid permit shall be required to pay a monetary fine of up to Ten Thousand Dollars (\$10,000.00) for each violation; together with the expenses of removal of the encroachment; and together with the sum of One Hundred Dollars (\$100.00) for each day such encroachment remains after the expiration of five (5) business days from the service of the notice demanding removal of the encroachment.

(e) Administratively Exempt Permits. By Department policy, annual encroachment permits and permit fees may be waived by the Department for governmental entities only. These permits are referred to as *administratively exempt*. Administratively exempt permits shall be renewed annually and are subject to all of the same terms and conditions as other encroachment permits, including revocation

SOURCE: Subsection (a) from 21 G.C.A. § 62112(d); Subsections (b)(1)~(e) from 5 G.C.A. § 53102.

§ 1603. Encroachment Permit Application. (a) Applicants for a Highway Encroachment Permit shall submit to the Department of Public Works the following documents:

- (1) An application for a permit in the form provided,
- (2) Four (4) copies of the plans for the proposed work or encroachment; and
- (3) Payment of a non-refundable application fee in the amount \$500.00.

(b) All permits are revocable upon five (5) business days notice by the Department.

(c) All work authorized by the permit shall be carried out in accordance with the approved plans, specifications and agreements submitted with the permit application and is subject to the approval of the Department. Additionally, all changes and/or deviations from the approved plans and/or locations(s) shall be subject to the re-approval of the Department. At all times, the Permittee shall bear any and all cost and expenses related thereto.

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(d) The location, design, and specifications of an approved encroachment may not be changed without the prior approval of the Department.

§ 1604. Permit Terms. (a) All work related to an encroachment for which a permit is issued must be commenced within six (6) months of the date that the permit is issued, otherwise the permit shall be voided and cancelled by the Department.

(b) Any permit issued under the provisions of this Article may provide that the Permittee will pay the entire cost and expense of restoring the highway in as good condition as it was prior to the issuance of the permit. The permit may also provide such other conditions pertaining to the location and the manner in which the work is to be done as the Department finds necessary for the protection of the highways, including but not limited to, the requirement that weight scales or a Weigh-in-Motion (WIM) system be installed for the purpose of verifying the weight of any vehicle traversing or otherwise using the highway.

(c) If installation of permanent static weight scales or other Weigh-in-Motion (WIM) system is required by the Department as a condition for issuance of an encroachment permit, the Permittee shall be required to deliver and report its weight records on a quarterly basis to the Department and to further provide on an annual basis to the Department a certification of scale calibration. Failure to comply with this subsection shall be grounds for revocation of the encroachment permit and for its non-renewal.

(d) All permits shall provide that they are revocable upon five (5) business days notice by the Department.

(e) The Permittee shall maintain the encroachment in accordance with the requirements and conditions of the Department. All encroachment permits are subject to any site-specific conditions that may apply.

(f) The Permittee is responsible for the construction, marking and maintenance of any detours required, and for maintaining safety measures for the protection of the public during the construction of any works in respect of the encroachment.

(g) During construction of the encroachment, the Permittee shall ensure that the operation of the highway is not interfered with and that the right of way remains free of debris, earth or other material.

(h) Traffic shall be maintained with minimum disruption in accordance with Traffic Control Plan submitted to, and approved by, the Department.

(i) No lanes shall be closed, nor shall stoppage or interference with traffic be permitted or allowed, between the hours of 7:00 a.m. to 9:00 a.m. and 4:00 p.m. to 6:00 p.m. without prior Department approval. No lanes or shoulder closings shall be permitted on weekends without Department approval. Any additional restrictions that are stated in the approved permit shall also be applicable.

(j) The Permittee shall protect all survey markers and monuments in the vicinity of the work and shall replace at its cost all markers and monuments if damaged.

(k) The Permittee shall not cut, trim or interfere with any trees or shrubs on the right of way without the prior written approval of the Department.

(l) No permit shall be issued for any actual or proposed encroachment that exceeds a height of thirty (30) feet.

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(m) The Permittee shall indemnify and hold the Department harmless for all damages and liabilities caused as a result of the encroachment or of any related works undertaken pursuant to the permit.

(n) No rights derived from any Highway Encroachment Permit shall be assigned, sold, leased, subleased, encumbered or hypothecated without the consent and approval of the Department, and any attempted alienation of any interest in a Permit without such prior consent and approval shall be void.

SOURCE: 5 G.C.A. § 53103.

§ 1605. Protection of Public Right of Way. (a) No person or entity shall in any way retain special property rights that would allow him to charge fees for passage or otherwise, that would allow him to prohibit, and therefore, discriminate against, any member of the public from using a Public Right of Way.

(b) No person or entity shall in any way retain special property rights that would allow him to grade, change water courses upon, or modify the topography and roadway elevation of the Public Right of Way without the prior written authorization from the Department of Public Works.

(c) No person or entity shall in any way retain special property rights that would allow him to use any portion of the Public Right of Way to meet setback or other zoning requirements.

(d) In subdivisions approved since 1975 where the subdivider has not opened, improved, or established a public access road, any landowner whose property is served by the Public Right of Way may, with the express written authorization of the Department of Public Works, take necessary and reasonable measures to make the Public Right of Way passable for ingress and egress to his property. The subdivider shall in no way retain special property rights that would allow him to obstruct the lawful development of this Public Right of Way.

(e) In subdivisions where the subdivider or the government has not maintained a Public Right of Way, any landowner whose property is served by that right of way may make the necessary and reasonable measures to maintain that portion of the easement that immediately abuts his property. Reasonable maintenance is herein defined as cutting brush, mowing vegetation, filling potholes, and removing rocks and other obstructions to passage; it does not include grading or otherwise changing the topography or elevation of the roadway.

SOURCE: 21 G.C.A. § 62112(e) ~ (i).

§ 1606. Cost of Work Supervision. The Department may, but is not required to, supervise any work done under any permit issued under the provisions of this Article, in which event, the Permittee shall pay the reasonable cost of such supervision to the Department.

SOURCE: 5 G.C.A. § 53104.

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§ 1607. Bond May Be Required. Before granting a permit under any provision of this Article, the Department may require the applicant to file with the Department a satisfactory bond, payable to the government of Guam in such amount and term as the Department deems sufficient, conditioned on the proper compliance by the Permittee with the provisions of this Article. In the event of forfeiture of the Bond, the proceeds shall go to the affected agency.

SOURCE: 5 G.C.A. § 53105.

§ 1608. Expiration of Permit; Removal of Encroachment at End of Term.

(a) A highway encroachment permit issued under this Article is valid for a term of no more than one (1) year for a specific use. The Department may renew the permit for additional subsequent terms of no more than one (1) year each. The permit shall be issued on a form prescribed by the Department.

(b) A permit may be cancelled at any time by the Department for breach of the regulations or conditions of the permit or of this Article or for such other reasons as the Department in its sole discretion deems proper.

(c) If a permit expires, is voided or cancelled, or is not renewed, all encroachments constructed, maintained or operated under the permit shall be removed by the Permittee at no cost or expense to the Department, and the highway shall be restored or left in as good a condition as it was before the encroachments were installed or constructed.

(d) If at the end of six (6) months after expiration or termination of a permit the encroaching works have not been removed, they shall without further notice or action become the property of the Department as damage for trespass.

§ 1609. Notice Demanding Removal. (a) Except as otherwise provided in § 1611 [Removal by Department] of this Article, notice shall be given to the owner, occupant, or person in possession of the encroachment, or to any other person causing or suffering the encroachment to exist, by serving upon any such person a notice containing a demand for the immediate removal of such encroachment from within such highway. Any such notice shall describe the encroachment complained of with reasonable certainty as to its character and location.

(b) Upon the giving of a notice demanding removal as set forth in this Section, the Permittee shall within five (5) days remove the encroachment at no cost or expense to the Department, and the highway shall be restored or left in as good a condition as it was before the encroachment was installed or constructed. In his or her discretion, the Director of the Department may approve a longer period of time for removing the encroachment; provided however, that in no case shall the time permitted for removal exceed more than six (6) months from the giving of a notice demanding removal.

(c) Any notices required by this Article may be given by: (i) personal delivery; or (ii) mailing a copy of the notice via regular mail, postage prepaid with proof of mailing to the person's last known mailing address. When service of a notice is done by mail, service is complete upon mailing and proof thereof, and it is not required that the

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addressee ultimately picked up or received the notice; or (iii) publicly posting a copy of the notice simultaneously at the place of encroachment and in the office of the Mayor of the village where the encroachment is located.

SOURCE: Subsection (a) and (b) from 5 G.C.A. § 53106.

§ 1610. Summary Removal by Department. (a) The Department may, without notice or liability, immediately remove from any highway any encroachment that:

- (1) Is not removed prior to the expiration of five business days from and after the service of notice.
- (2) Is not removed upon the expiration or termination of a valid Highway Encroachment Permit
- (3) Obstructs or prevents the use of the highway by the public;
- (4) Consists of refuse;
- (5) Is an advertising sign of any description;
- (6) Is one for which no authorized Highway Encroachment Permit has been issued; or
- (7) Is one deemed by the Department to be a public nuisance.

(b) The owner of the encroachment shall be liable for all costs and expenses of such removal; and if a notice demanding removal was given, then in addition thereto, a fine of One Hundred Dollars (\$100.00) shall be assessed for each day the encroachment remained after the date scheduled for removal.

(c) All encroachments removed by the Department shall become the property of the Department.

SOURCE: 5 G.C.A. § 53107.

§ 1611. Removal by Department. (a) The Department may, without notice or liability, remove from any highway any encroachment upon the failure of the owner to comply with the notice demanding removal as provided for in this Chapter.

(b) The owner shall be liable for all costs and expenses of such removal, together with the sum of One Hundred Dollars (\$100.00) for each day the encroachment unlawfully remained after the date scheduled for removal.

(c) All encroachments removed by the Department shall become the property of the Department.

SOURCE: 5 G.C.A. §§ 53108.

§ 1612. Renewal of Highway Encroachment Permit. (a) The Department may renew a Highway Encroachment permit for additional subsequent terms of no more than one (1) year each. Upon the expiration of a highway encroachment permit, and if a further one-year term is required, an application for renewal of the permit shall be made to the Department before the expiration date of the permit, otherwise a new permit application must be submitted in full, together with payment of the non-refundable application fee in the amount of Five Hundred Dollars \$500.00.