

I MINA' TRENTAI KUATRU NA LIHESLATURAN GUAHAN
2018 () Regular Session

BILL NO. _____

Introduced by: _____

**AN ACT TO AMEND § 70103(k), § 70104(a), § 70107(c) AND TO
ADD SUB SECTIONS 70108, 70109, 70110, 70111, 70112 & 70113 OF
CHAPTER 70, TITLE 5, GUAM CODE ANNOTATE, RELATIVE
TO INVASIVE SPECIES**

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings and Intent.

I Liheslatura finds that island ecosystems are particularly vulnerable to the destructive power of invasive pests. The unimpeded spread of invasive species is one of the greatest threats to Guam's economy, natural environment, and the health and lifestyle of its people. Invasive pests can cause millions of dollars in crop losses, the extinction of native species, the destruction of native forests, and the spread of diseases.

There is increasing traffic of cargo being transported into Guam ~~without~~ with a high priority ~~for to improve inspection services of to prevent the incursion of~~ invasive species. It is most notable that there is also a lack of aquatic monitoring, or rapid response measures, to handle incidences of invasive species discovered ~~at in our ports of entry and inland waterways and coastal marinas and harbors.~~ Thus, the growing potential threat increases each year that ~~enforcement and monitoring, control and eradication efforts are~~ is not mandated and, most importantly, carried out. This Act aims to prevent and combat terrestrial, marine and freshwater invasive species that have been introduced into Guam and caused widespread havoc on our island and aquatic ecosystems.

Currently, officers of the Guam Customs and Quarantine Agency provide the "First Line of Defense" for the island by enforcing local and federal laws and regulations. They are also responsible for protecting our borders, ~~securing ports of entry and facilitating trade, commerce and travel. These are many obligations for one (1) department to enforce, and are certainly of utmost priority.~~ However, it is the intent of I Liheslatura to put a higher priority on ~~inspection the prevention, and the surveillance,~~ control and eradication of invasive species by creating a Biosecurity Division under the Guam Department of Agriculture for the protection of our natural resources from biological invasion and threats, and the protection of our geographical area from ~~invasion by unwanted organisms~~ invasive species.

I Liheslatura further finds that nationally, invasive species councils have mobilized efforts to combat invasive species through funding sources generated by fees at all ports of entry, penalties for violations, eradication funding and government-assisted grants.

Furthermore, this Act will place the value of our precious resources as a top priority in

order to combat harmful invasive species that have the potential to devastate the environment, agriculture, and livelihood of our people.

Section 2. § 70103(k), § 70104(a), § 70107(c), Chapter 70, Title 5 Guam Code Annotated,

is hereby *amended* to read:

CHAPTER 70 GUAM INVASIVE SPECIES COUNCIL

SOURCE: Added by P.L. 31-043:2 (Apr. 18, 2011).

2015 NOTE: P.L. 26-076:33 (Mar. 12, 2002) repealed this chapter formerly entitled “Department of Commerce.” Section 31(c) of P.L. 26-076 stated: (c) Abolition of Department of Commerce. The Guam Economic Development and Commerce Authority (“Authority”) succeeds to, and is vested with, all the powers, duties, responsibilities and jurisdiction of the former Department of Commerce (“DOC”). See 12 GCA Chapter 50 - Guam Economic Development Authority.

§ 70101.	Short Title.
§ 70102.	Guam Invasive Species Council, Established.
§ 70103.	Duties of Council.
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§ 70105.	Government of Guam Agency Duties.
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§ 70111.	<u>Reorganization and Jurisdiction.</u>
§ 70112.	<u>Penalty.</u>
§ 70113.	<u>Severability.</u>

§ 70101. Short Title.

This Chapter *shall* be known as the *Guam Invasive Species Council Act of 2011*.

§ 70102. Guam Invasive Species Council, Established.

The Guam Invasive Species Council (GISC) *shall* be established for the specific purposes of:

1. Protecting Guam from alien species that threaten our economy, culture, ecosystem and human health;
2. Providing policy direction, coordination, and planning among government of Guam departments and federal agencies to prevent the further introduction of invasive species; and

3. Monitoring, control and eradication of invasive species throughout the island
of Guam.

The Council *shall* convene within thirty days of enactment and *shall* elect its
Chairperson and Vice Chairperson.

§ 70103. Duties of Council.

The Council *shall*:

- (a) create a mission statement on invasive species for Guam;
- (b) develop a Guam Invasive Species Management Plan (GISMP);
- (c) act as the lead entity for Guam to include local regional, national and
international invasive species efforts;
- (d) provide annual reports on the progress made in achieving the objectives of
the GISMP to *I Maga'lahaen Guåhan* and *I Liheslaturan Guåhan*;
- (e) coordinate and promote Guam's position with respect to federal issues
concerning invasive species in Guam;
- (f) identify and record all invasive species present in Guam;
- (g) identify all needed resources for the purpose of working on invasive species
prevention, suppression and eradication;
- (h) advise *I Maga'lahaen Guåhan* and *I Liheslaturan Guåhan* on budgetary
and other issues concerning invasive species;
- (i) review the structure of fines and penalties to ensure maximum deterrence
for invasive species-related crimes;
- (j) make appropriate recommendations for legislation to improve the
management of invasive species programs and policies;
- (k) the Council, in coordination with *I Maga'lahaen Guåhan*, *shall* review
the Interagency Biosecurity Task Force Work Plan adopted in 2009
on February 19, 2016 (see Appendix A B), and in accordance with
the framework and recommendation detailed in the 2009 2016 Work
Plan, the Council *shall* formulate an updated version of such a plan,
to include replacing the mentions of the USDA APHIS PPQ, with the
"Guam Invasive Species Council" or the "Invasive Species
Coordinator", as appropriate. Such plan *shall* be submitted to *I*
Liheslaturan Guahan in accordance with the ~~Administration~~
Administrative Adjudication Law process *no later than*
ninety (90) calendar days from the date of enactment of this Act,
and *shall* be subject to legislative approval; and

- (l) perform all functions necessary to effectuate the mission of the
Council.

§ 70104. Composition of Council.

- ~~(a) The Council *shall* be composed of the organizational heads, or their designees, from the Guam Department of Agriculture (GDOA), the Customs and Quarantine Agency (CQA), the A.B. Won Pat International Airport Authority, Guam; the Jose D. Leon Guerrero Port Authority of Guam; the University of Guam; the Department of Parks and Recreation; the Mayors Council of Guam; and the Northern and Southern Soil and Water Conservation Districts; and to include as non-voting members, representatives from the Bureau of Statistics & Plans, Homeland Security and the U.S. Department of Agriculture.~~
- (a) The Council *shall* be composed of the organizational heads, or their designees, from the:
- ☐ Guam Department of Agriculture (GDOA),
 - ☐ the Customs and Quarantine Agency (CQA),
 - ☐ the A.B. Won Pat International Airport Authority, Guam;
 - ☐ the Jose D. Leon Guerrero Port Authority of Guam;
 - ☐ the University of Guam;
 - ☐ the Mayors Council of Guam; and
 - ☐ the Northern Guam Soil and Water Conservation District;
 - ☐ the Southern Guam Soil and Water Conservation District;
 - ☐ the Bureau of Statistics and Plans
 - ☐ and to include as non-voting members, representatives from the Department of Parks and Recreation; Homeland Security and the U.S. Department of Agriculture.
- (b) The Council may invite additional public and private sector members to serve on sub-committees with significant responsibilities concerning invasive species, and may prescribe special procedures for their participation.

§ 70105. Government of Guam Agency Duties.

- (a) Each government of Guam agency whose actions may affect the status of invasive species *shall*, to the extent practicable and

permitted by law: (1) identify such actions; (2) subject to the availability of appropriations, and within the Administration's budget limits, use relevant programs and authorities to: (A) prevent the introduction of invasive species; (B) detect and respond rapidly to mitigate the population of such species in a cost-effective and environmentally sound manner; (C) monitor invasive species populations accurately and reliably; (D) provide for restoration of native species and habitat conditions in ecosystems that have been affected; (E) conduct research on invasive species and develop technologies to prevent introduction and provide for environmentally sound control of invasive species; and (F) promote public education on invasive species and the means to address them; and (3) *not* authorize, fund, or carry out actions that it believes are likely to cause or promote the introduction or spread of invasive species in Guam, the United States, or elsewhere, *unless*, pursuant to guidelines that it has prescribed and that have been approved by the Council, the agency has determined and made public its determination that the benefits of such actions clearly outweigh the potential harm caused by invasive species; and that all feasible and prudent measures to minimize risk of harm will be taken in conjunction with the actions.

- (b) Government of Guam agencies *shall* pursue the duties set forth in this Section in consultation with the Guam Invasive Species Council, consistent with the Guam Invasive Species Management Plan and in cooperation with stakeholders, as appropriate. The agencies *shall* report on their participation as detailed in § 70107(c) of this Chapter.

§ 70106. Conduct of Meetings.

The Council *shall* meet *no less than* once quarterly to discuss and assess progress, and to recommend changes to the invasive species programs based on the results of current risk assessments, performance standards, and other relevant data. A simple majority of voting members of the Council *shall* constitute a quorum to do business; and any action taken by the Council *shall* be by a simple majority of the voting members. The Open Government Law *shall* apply to meetings of this Council.

§ 70107. Guam Invasive Species Management Plan (GISMP).

- (a) The Council *shall* prepare and issue the Guam Invasive Species Management Plan, which *shall* detail and recommend performance- oriented goals and objectives and

specific measures of success for government of Guam agency efforts concerning invasive species. The Plan *shall* recommend specific objectives and measures for carrying out each of the government of Guam agency duties established in § 70105 of this Chapter, and *shall* set forth steps to be taken by the Council to carry out duties assigned to it under § 70103. The Plan *shall* be developed through a public process and in consultation with government of Guam agencies and stakeholders, and is subject to Legislative approval.

(b) The Plan *shall* include a review of rapid response protocols, existing and prospective approaches and authorities for preventing the introduction and spread of invasive species in Guam, including those for identifying pathways by which invasive species are introduced and for minimizing the risk of introduction via those pathways, and *shall* identify research needs and recommend measures to minimize the risk that introductions will occur. Such recommended measures *shall* provide for a science-based process to evaluate risks associated with introduction and spread of invasive species and coordinate a systematic risk-based process to interdict, identify, and monitor pathways that may be involved in the introduction of invasive species.

(c) The Council *shall* update the Plan biennially in accordance with the Administrative Adjudication Law and *shall* concurrently evaluate and report on the success in achieving the goals and objectives set forth. The Plan *shall* identify the personnel, other resources, and additional levels of cooperation needed to achieve the Plan's identified goals and objectives, and the Council *shall* provide each edition of the Plan, and each report on it, to the ~~Bureau of Budget and Management Research (BBMR)~~ I Maga'lahaen Guåhan and I Liheslatura. Additionally, progress reports *shall* be submitted annually to the Office of the ~~Governor~~ I Maga'lahaen Guåhan and I Liheslatura. Within eighteen (18) months after measures have been recommended by the Council in any edition of the Plan, each government of Guam agency whose action is required to implement such measures *shall* either take the action recommended or *shall* provide the Council with an explanation as to why the action is *not* feasible. The Council *shall* assess the effectiveness of this Plan *no less than* once every three (3) years after the Plan is issued, and *shall* report to the ~~BBMR~~ I Maga'lahaen Guåhan and I Liheslatura on whether the Plan should be revised. The Council shall prepare and issue the Guam Invasive Species Management Plan, which shall detail and

recommend performance-oriented goals and objectives and specific measures of success for the Government of Guam Agency efforts concerning invasive species. The Plan shall recommend specific objectives and measures for carrying out each of the Government of Guam Agency duties established in § 70105 of this Chapter, and shall set forth steps to be taken by the Council to carry out duties assigned to it under § 70103. The Plan shall be developed through a public process and in consultation with government of Guam agencies and stakeholders, and is subject to Legislative approval.

§70108. Reporting.

1. All transportation carriers operating conveyance(s), vessels or aircraft, whether marine, land, or air into Guam, shall provide any and all required import documentation, an electronic cargo manifest and commodity harmonizing code consistent with the parameters prescribed and determine by the Guam Customs and Quarantine Agency through statute and regulation pursuant to 5 GCA Chapter 73 § 73110 & §73111. Customs personnel reviewing manifests shall be provided said manifest by the transportation carrier(s) at least 4 hours prior to arrival into Guam. Upon submission of import data and electronic manifest(s) to Customs, Customs shall disseminate needed information to the following government entities (Guam Department of Agriculture; Jose D. Leon Guerrero Port Authority of Guam; and A.B. Won Pat International Airport Authority of Guam) to allow for the efficient and accurate billing, invoicing and collection of the Guam Invasive Species Funds Fee (GISIF) by the Guam Department of Agriculture pursuant to PL 31-43 and for the appropriate data needs of the Guam Invasive Species Management Plan pursuant to PL 31-43 §70103 (b), § 70105 and § 70107 and any required data reporting needed by GISC members.
2. If import data and documentation requirements for Customs clearance are not met upon arrival, the master of the vessel, aircraft pilot or person in charge of conveyance will be in violation of this chapter and subject to penalties.

§70109. Guam Invasive Species Inspection Fund, Created.

1. The Guam Invasive Species Council is authorized to establish a fee, pursuant to the Administrative Adjudication Law, for the inspection, quarantine, and eradication of invasive species contained in any freight, including, but not limited to, marine commercial container shipment, air freight, or any other means of transporting freight, foreign or domestic, that is brought into Guam. The fee shall be paid by the person responsible for paying the freight charges to the transportation company, who shall collect

the fee and forward the payment to the Department of Agriculture, at the port of disembarkation; provided that the transportation company *shall* be liable for any fee that is not paid by the person responsible for paying the freight charges to the transportation company. All fees collected *shall* be deposited in the Guam Invasive Species Fund via the Guam Department of Agriculture, Biosecurity Division at the PAG Entry office.

(a) There is hereby created, separate and apart from other funds of the government of Guam, a fund to be known as the "Guam Invasive Species Fund" (hereinafter "the Fund"), which *shall* not be commingled with the General Fund.

(b) All payments *shall* be made payable to "The Guam Invasive Species Fund" and monies shall be kept in a separate bank account established by the Director of the Department of Agriculture. All expenditures of the Fund *shall* be made exclusively by appropriation of I Liheslaturan Guåhan. Notwithstanding any other provision of law, any funds appropriated to the Department of Agriculture pursuant to this Chapter *shall* be administered by the Director of the Department of Agriculture. The Director of the Department of Agriculture *shall* be the Certifying Officer of such fund, however, two (2) signatures *shall* be required: One (1) must be the Director of the Department of Agriculture and an official member of the GISC. The Fund *shall* not be used as a pledge of security or as collateral for government loans. The Director of the Department of Agriculture *shall* make a quarterly report to the GISC who *shall* provide then provide a ratified copy to I Maga'lāhen Guåhan and I Liheslaturan Guåhan of the condition of, and activity within, the Fund.

(c) The fees collected *shall* be expended to:

- (1) recruit and hire a Guam Invasive Species Coordinator;
- (2) establish and provide staffing for a Biosecurity Division within the Department of Agriculture to provide inspection, quarantine and eradication of invasive species contained in any freight brought to Guam;
- (3) suppress and eradicate invasive species present in Guam; and
- (4) develop the Guam Invasive Species Management Plan and its updates.

The Guam Invasive Species Coordinator *shall* also serve as the Council Secretary to carry out the necessary communications and coordination directed by the Council. The Guam Invasive Species Coordinator *shall* also serve as the transitional and temporary Chief for the BioSecurity Division, Department of Agriculture until such time that the BioSecurity Division, Department of Agriculture has been fully staffed and operational.

§70110. Biosecurity Division, Authorized.

1. A Biosecurity Division is hereby created within the Department of to provide for the inspection, quarantine, and eradication of invasive species contained in any freight, including, but not limited to, marine commercial container shipments in efforts to address invasive species coming to, and already present in, Guam. The Biosecurity Division will take the lead role for the government of Guam in efforts towards prevention, control, monitoring, rapid response, eradication, enforcement and education of invasive species on Guam. The Director of the Department of Agriculture shall prepare a budget plan, including projected personnel needs and other items, and submit it as part of the Fiscal Year 2012 budget request for the Department of Agriculture.

§70111. Reorganization and Jurisdiction.

- (1) The Guam Customs and Quarantine Agency shall submit to I Liheslaturan Guåhan for approval any proposal to reorganize the Agency to further address Agriculture security and enforcement consistent with this Act, in accordance with the Administrative Adjudication Law.
- (2) The Guam Customs and Quarantine Agency shall continue to have jurisdiction over border inspections and quarantine, however, in compliance with the February 2016 work plan as updated (see appendix B), authorized personnel from the Biosecurity Division of the Guam Department of Agriculture shall assist with the border inspections and quarantine efforts alongside the Customs and Quarantine Agency as outlined and prescribed in the February 2016 work plan.
 - (a) The Biosecurity Division of the Department of Agriculture shall work towards the eradication of invasive species contained in any freight, including, but not limited to, marine commercial container shipments in efforts to address invasive species coming into Guam.

§ 70112. Penalty.

- (1) Any person violating this Chapter of this Article is guilty of a felony punishable by imprisonment of not more than five (5) years, or by a fine of not less than Five Hundred Dollars (\$500), nor more than Five Thousand Dollars (\$5,000), or by both, per violation.
- (2) Any person violating, whether intentional or non-intentional, of this Chapter or any rule adopted thereunder shall be subject to:
 - (a) seizure and forfeiture of any equipment use in furtherance of this violation; and
 - (b) an administrative fine of at least Twenty-five Thousand Dollars (\$25,000) per violation; provided, that the violator may be

assessed administrative fees and costs and attorney's fees and
costs.

§70113. Severability.

(1) If any provisions of this Act or the application thereof to any person or
circumstance is held invalid, such validity *shall* not affect other provisions or
applications of the Act which can be given effect without the invalid provision
or application, and to this end the provisions of this Act are severable.