THE UNITED STATES VIRGIN ISLANDS

OFFICE OF THE GOVERNOR
GOVERNMENT HOUSE

Charlotte Amalie, V.I. 00802
340-774-0001

March 27, 2015

VIA MESSENGER AND EMAIL

The Honorable Neville James
Senate President
Thirty First Legislature of the Virgin Islands
Capitol Building
St. Thomas, VI 00802

Re: Governor's Action on Bills numbered 31-0009, 31-0016, 31-0021, 31-0062-1, 31-0063, 31-0064, 31-0065, and acknowledgement of Resolution No. 1817 (Bill No. 31-0066).

Dear Mr. President:

I write to advise you that, pursuant to Section 9(d) of the Revised Organic Act of the Virgin Islands of 1954 as amended, I have today acted on Bills numbered 31-0009, 31-0016, 31-0021, 31-0062-1, 31-0063, 31-0064 and 31-0065.

I have approved Bill No. 31-0064 granting a zoning use variance from the R-3 (Residential – Medium density) zoning requirements for Parcels No. Consolidated A1-A, A3B1 and A1-B Estate Lovenlund, No. 2 Great Northside Quarter, St. Thomas, Virgin Islands to allow the continued use of a bar and restaurant. I have also approved Bill No. 31-0065 granting a zoning use variance from the R-1 (Residential – Low Density) zoning requirements for Parcel No. 9M-1 Estate Nazareth, No. 1 Red Hook Quarter, St. Thomas, Virgin Islands to allow the operation of a six-room bed and breakfast. Please note that a correction is needed to the first drawing referred to in Bill No. 31-0064. The correction should read OLG Drawing number D9-8914-T014, and I am asking the Senate to make a technical correction to the Act.

I have approved Bill No. 31-0016, which amends Title 3 Virgin Islands Code, chapter 25, § 633(b) relating to submission of the agreement to purchase health insurance, requiring a copy to be sent to the Legislature of the Virgin Islands and requiring notice to the Legislature of the Virgin Islands of the Governor's disapproval of such agreement. The substance of the bill seeks to ensure that the Legislature of the Virgin Islands be afforded as much time as possible to review proposed health insurance agreements before the body is asked to vote on their ratification. The bill mandates that the Government Employees' Health Insurance Board ("Board") submit proposed agreements to the Governor and the Legislature of the Virgin Islands simultaneously not less than one hundred twenty (120) days before the expiration of an existing health insurance contract. For the purposes of the public record, I restate that this bill does not authorize nor does it seek to usurp the separation of powers doctrine by granting the Legislature of the Virgin Islands access to inject itself into any negotiations of a health insurance agreement.

I have approved Bill No. 31-0021 to provide the Government of the Virgin Islands with the sum of one million dollars ($1,000,000.00) towards costs and legal fees to pursue legal remedies against Hess Oil V.I. Corp., HOVENSA, LLC, Petroleos de Venezuela, PDVSA, VI, Inc., and all related entities. The Senate's unanimous support for this appropriation signals that the leadership of the Territory is in accord with protecting the interest of and pursuing all claims owed to the people of the Virgin Islands. My Administration will pursue every legal avenue and do all within our authority to bring this matter to an equitable resolution. I thank each member of the body for their resolve.

With reluctance, I am approving Bill No. 31-0009, which adds a new subchapter IV in an effort to renew interest in the Virgin Islands as a premier location for off-island production companies to produce: motion pictures; documentaries; television programs and digital media; webcasts; commercials; music videos and advertising; and, any other new media formats. This ratification will serve as a catalyst to enhance the growth of Virgin Islands small businesses related to and servicing these industries. I approve this bill notwithstanding the many technical and drafting errors contained therein after reviewing the history of this proposal. It is apparent that several Senators and Legislatures took great time to craft this bill, held hearings to receive comments from the public and other stakeholders, which resulted in certain amendments thereafter. To veto the bill, would not advance the ball and may signal to investors that we are not prepared to move forward in this area.

I believe that the programs contained in the STARS Act and in Bill No. 31-0009 could be an economic boom to the Territory, and a benefit to our business community and residents who invest and work in the entertainment industry. However, the Act and Bill No. 31-0009 cannot be implemented as drafted. In the spirit of cooperation and to make the intent of the Act and Bill a reality, I strongly urge the Legislature to amend Bill No. 31-0009 in the following ways so that the Government of the Virgin Islands and the people of the Virgin Islands are protected and the true intended purpose of the law is realized.

1. The bill refers to tax credits and tax rebates applicable to a participant's tax liabilities. This is flawed language as such a definition would include payroll taxes, which a tax credit against FICA, unemployment, workmen's compensation and such other taxes is not legal nor permissible. The Senate must address this flaw so that an investor is clear that such obligations are not subject to tax credits and cannot legally be included in determining a participant's award of incentives under the STARS Act program.

2. The bill also adds a new subchapter IV which offers additional tax credits and tax

rebates for the film industry on top of what is already in place. Is it the Senate's intent to double down on tax credits and tax rebates? Could the government find itself in a position of having to provide a 100% subsidy of the cost of producing a filming event, television program or music video?

3. The bill creates an additional office within the Virgin Islands Economic Development Authority ("VIEDA") where the STARS Act already creates one, and further, the two created offices have primarily identical functions. While I do not believe that a separate and distinct office within (VIEDA) is warranted, at the very least, please remove this duplication from the statutes.

4. As I read the bill relative to caps on incentives, it appears that a cap would only apply to "Resident Production Companies" and not to "Non-Resident Production Companies". I strongly urge you to apply the cap to all "Production Companies". I know that the Legislature would not seek to dis-incentivize Resident Production Companies and I view the construction of the language as an error. Let me emphasize that I agree with you that we must implement a cap on incentive awards, but that the caps should be applied equally to both Resident and Non-Resident Production Companies.

5. This bill as constructed also creates a conflict in the applicability of the hotel waiver tax. In the current STARS Act, such waivers only apply to Non-Resident Production Companies, while in the bill before me such hotel tax waivers apply to both Resident and Non-Resident Production Companies. This could create significant legal issues and spur unnecessary litigation challenging what is applicable and what the value of each incentive awarded under this section should be.

Despite these concerns, and in light of the aforementioned, I am with great reluctance approving the measure so the territory can proceed with the STARS program. But I cannot implement or promote this program and the community cannot receive the intended benefits without further amendments from the Legislature. My legal team and members of my cabinet are ready to work with you to make final and necessary adjustments to the law. Please let me know how you wish to proceed.

With regard to Bill No. 31-0062(1), I have approved the following sections:

Section 3 amending title 19 section 240(i) of the Virgin Islands Code as it pertains to defining uncompensated care; Section 4 amending title 19 section 244 subsection (o) of the Virgin Islands Code giving the Virgin Islands Hospitals and Health Facilities Corporation the power to create for-profit subsidiaries; Section 5 amending title 33 of the Virgin Islands' Code section 286 allowing the territory's hospitals to send delinquent bills to collection agencies after ninety (90) days; Section 6 amending title 33 of the Virgin Islands' Code section 42 subsection (e) exempting the territory's hospitals purchases of medical supplies and equipment from excise taxes;

Section 8 appropriating $7,000,000.00 to the Governor Juan F. Luis Hospital to fund the implementation of the System Improvement Agreement with the Centers for Medicare and Medicaid Services. Section 9 mandating that a separate account be maintained to segregate the funds appropriated in section 8; Section 10 appropriating $3,425,957.00 to the Roy Lester Schneider Regional Medical Center; Section 11 appropriating funding from the Disaster Recovery Contingency Fund to VITEMA for repayment to FEMA for disallowed costs; Section 12 allowing an immediate payment of $150,000.00 to be sent to FEMA through wire transfer; Section 13 amending section 1 of Act No. 7697; Section 14 amending Section 2 line item M1228-SPR of Act 7699; and Section 15 appropriating $5,000.00 as a grant from the General Fund to American Legion Post 131.

Please note that approving Sections 8 and 10 will push the current fiscal year operating deficit of the General Fund to $144,000,000. I met with the Governing Boards, Chief Executive Officers and Executive Staff of our hospitals and have advised them that the central government cannot continue to subsidize their inefficiencies and poor management practices. While we acknowledge and we are working to address the issues of uncompensated care in the territory, the hospitals must rebrand themselves, adopt new strategies and reposition themselves in this era of rapid change and technology in the medical field.

I have vetoed section 2 of Bill No. 31-0062(1) described as part of the Hospitals and Medical Center Rescue Act. I believe that this is simply, bad public policy and quite frankly, illegal. Singling out certain medical specialists (codified employees) for removal from the definition of a public employee, as defined by title 24 Virgin Islands' Code, chapter 14, section 362 subsection (g), to pay them higher salaries than similarly situated employees will have a discriminatory effect on those physicians (employees) not listed. Should we adopt this policy to recruit off island police officers or teachers?

On its face, the selection for exclusion of those particular specialists appear as a well-intended act to recruit the specialties. However, this is not necessary. These specialties can be retained via professional service agreements. The existing collective bargaining agreement between the Association of Hospital Employed Physicians and the government contain a provision that allows the hospitals to hire physicians outside the union pay scale for up to a year in the event that the hospitals are unable to find physicians to work at the union pay scale. In addition, removing these specialties from the definition of public employees to pay them at a higher rate does little to limit the higher paid physician to work for the hospitals only or restrict them from a private practice. In short, we would remove them from the collective bargaining unit, we would pay a higher salary, we would grant retirement and medical insurance benefits, we would greatly subsidize the physician's malpractice insurance premiums and after a few months, the recruited physician could open a private practice and draw revenues away from the very institution that recruited them. My point is that the language in section 2 of Bill No. 31 – 0062(1) does little to address a wider ranging concern; the inefficiencies of some of the costly practices of our hospitals.

I have also vetoed Section 7 of Bill No. 31-0062(1) because I see the amendment as being redundant. The law as it is currently constructed allows the Board of Medical examiners "to authorize certain physicians" to practice telemedicine in the Virgin Islands, 3 V.I.C. §45d. To specifically list radiologists when they are not excluded seems unnecessary and may appear to grant radiologists some extra edge over other physicians.

I have vetoed Bill No. 31-0063, which seeks to amend Title 2, Virgin Islands Code, § 30 to change the fiscal year governing the Legislature to commence on January 1st and end on December 31st of each year, while the executive and judicial branches would remain on an October 1st to September 30th fiscal year. This legislation is not only inconsistent with the fiscal processes contemplated in the Revised Organic Act and the Virgin Islands Code, but is also contrary to general standards for governmental budgeting and external financial reporting. If enacted into law, Bill No. 31-0063 would wreak havoc on the Government of the Virgin Islands' fiscal planning, implementation and reporting by creating two separate budgeting processes – one for the legislative branch and another for the executive and judicial branches.

The Revised Organic Act of 1954 (ROA) contemplates a single budgeting process for the entire territory, as developed through the projection of revenues territory-wide for a defined 12-month period (i.e. the fiscal year), program planning and expenditures based on projected revenues. *See* REV. ORG. ACT OF 1954, §§ 9 -11, 18. Section 9 of the Revised Organic Act further specifically mandates that this budget process serve as "the basis of the appropriation bills for the ensuing fiscal year" and, further, sets the 12-month fiscal year period as the standard for determining authorization for spending and appropriations. *Id.* at §§ 9 (c), (e); *see also* 2 V.I.C. § 24 (a)-(c), §25 (outlining the required budget process). While the Revised Organic Act reserved in the Legislature the authority to set a different fiscal year *date* than that specified in the law, notably absent is any suggestion that Congress contemplated the creation of multiple or parallel fiscal years affecting the different branches of government. *See id.* at § 9 (c). This intent is further evident in Section 11 of the ROA, which mandates that the Governor prepare and publish a comprehensive annual report that conforms to general governmental accounting standards, to be sent to the Congress and the Department of Interior "within 120 days after the close of the fiscal year," and that such reporting conform to the standards of the National Council on Governmental Accounting relating to the structure and physical characteristics of the government. REV. ORG. ACT OF 1954, § 11. The intent to employ a unified fiscal policy and planning process for the Government of the Virgin Islands as a body, based on a single fiscal year period as outlined in the ROA, is further evident throughout the Virgin Islands Code. *See, e.g.,* 2 V.I.C. § 19 *et. seq.* (establishing a system of comprehensive, government-wide fiscal planning by the Governor and for adopting legislation to implement such financial plans); 2 V.I.C. §§ 252 (2), (5), 253 (defining "budget" as that of the entire Government of the Virgin Islands for a fiscal year).

Contrary to these provisions and accepted governmental accounting standards, Bill 31-0063, if enacted, would require that the government adopt separate and parallel fiscal management systems for the Legislative branch and the Executive and Judicial branches of government. While the stated purpose of Bill No. 31-0063, to avoid disruptions and premature spending of fiscal year allotments before a new body is seated may well be merited, the legislation has serious unintended consequences and adverse impacts on the territory as a whole that the Legislature ought to consider.

In that regard, this legislation would essentially carve out the Legislature from the central government as a separate reporting entity, impacting the Territory on several levels. At the front end of the fiscal year, it would require the adoption of a separate annual budgeting process, with its own calendar and deadlines, further straining limited central government staff and resources. Then at the back end of the fiscal year, it would require separate financial statements on a calendar year basis, with the additional costs and manpower that this new process would entail. Additionally, the legislation would render the Legislature a distinct "employer", which would require a separate federal employer identification number (EIN), with its own financial, accounting and reporting systems, thereby further complicating human resource and payroll-related processes.

Moreover, the legislation would require this government to create a new system of projecting revenues and collections that takes into consideration the differing fiscal years for the legislative branch and the two other branches of government. Such projections and subsequent expenditures would have to be reconciled over two separate periods, notwithstanding the reliance of the entire Government on the same revenue pool. In sum, these dual systems compel development of parallel systems of projections, budgeting and appropriations, at great cost in resources and manpower, and serve only to increase the already challenging task of determining the Territory's actual and projected resources for each branch of the central government. These combined changes would denigrate the integrity of the Government's Financial Management System and the ability of the Government of the Virgin Islands to engage in comprehensive fiscal planning and produce accurate and readily auditable financial reports.

The importance of a reliable financial management system and timely financial reporting cannot be overstated. In fact, these are two important barometers of a sound governmental structure that are essential to our ability to execute our duties effectively and efficiently, as well as to provide the timely information upon which external stakeholders rely. So important is this concept that it is addressed in our governing charter. *See, e.g.,* REV. ORG. ACT OF 1954, § 18 (d) (outlining the requirement of a reliable governmental accounting system as the basis for federal funding requests).

While I am sympathetic to the factors that led to the drafting and passage of Bill 31-0063, I cannot ignore the very real danger of addressing one harm while creating a greater harm: the destruction of our system of government and our budgetary process. For these reasons, I am forced to veto this legislation and respectfully ask each member of the Legislature to carefully and thoughtfully consider the serious unintended consequences of proceeding in this manner. I ask that we discuss this matter in more detail in our next meeting.

Finally, I acknowledge Resolution No. 1817 (Bill No. 31-0066) amending Resolution No. 1816 reassigning certain members of the Standing Committee on Culture, Historic Preservation, Youth and Recreation and the Committee on Housing, Public Works, and Waste Management.

I thank each of you for your continued work on behalf of the people of the Virgin Islands. I want you to know that I remain open to working with each Senator on the issues and concerns raised above.

Sincerely,

Kenneth E. Mapp
Governor

Enclosures