

FLOOR

BILL NO. 31-0491

Thirty-first Legislature of the Virgin Islands

December 12, 2016

A Resolution urging the Virgin Islands Delegate to Congress to conduct an inquiry into the disparate treatment of Virgin Islands National Guardsmen

PROPOSED BY: Senators Neville James, Novelle E. Francis,
Justin Harrigan, Sr., Sammuel Sanes and Kurt Vialet

1 **WHEREAS**, the militia is authorized by the code or constitution of each state or
2 territory within the United States. The definition of “militia” in the United States Code 10
3 U.S.C. § 311 (2012) includes both the organized and the unorganized militia.

4 **WHEREAS**, the terms “Army National Guard” (ARNG) and “Air National Guard”
5 (ANG) refer to the federally recognized organized militia of the fifty-four states and
6 territories.

7 **WHEREAS**, the Virgin Islands National Guard is the organized militia of the
8 Virgin Islands, comprised of ARNG and ANG members.

9 **WHEREAS**, every state and territory has an Active Guard and Reserve (AGR)
10 Program consisting of Soldiers and Airmen (collectively members) performing full-time
11 National Guard duty (FTNGD) 32 U.S.C. § 502(f) for 180 days or more for the purpose of
12 organizing, administering, recruiting, instructing, or training the Reserves.

1 **WHEREAS**, AGR members receive federal pay, federal military retirement credit
2 for the performance of duty and are covered under the Federal Torts Claims Act.

3 **WHEREAS**, under current law, all service members are entitled to either
4 government-provided housing or a housing allowance.

5 **WHEREAS**, in accordance with 37 USC § 403, AGR members are entitled to a
6 monthly basic allowance for privately leased/owned housing on the local economy when
7 government quarters are not provided.

8 **WHEREAS**, under 37 USC § 403 (b), the Secretary of Defense prescribes the basic
9 allowance for housing for service members who are on duty inside the United States,
10 referred to as Basic Allowance for Housing (BAH).

11 **WHEREAS**, 37 USC § 403 (c), the Secretary of Defense prescribes the basic
12 allowance for housing for service members who are on duty outside the United States,
13 referred to as Overseas Housing Allowance (OHA).

14 **WHEREAS**, AGR members in the fifty states and the District of Columbia receive
15 BAH.

16 **WHEREAS**, AGR members in the U.S. Virgin Islands, Puerto Rico, and Guam
17 receive OHA.

18 **WHEREAS**, the Secretary of Defense has delegated his authority to prescribe
19 regulations for the administration of BHA and OHA to the Per Diem, Travel and
20 Transportation Allowance Committee (PDTATAC).

21 **WHEREAS**, the PDTATAC publishes the Joint Travel Regulations (JTR) which
22 provides the policies and procedures to determine the amount of BHA and OHA an AGR
23 member may receive.

1 **WHEREAS**, the PDTATAC’s mission is to ensure that uniform regulations are
2 issued for members of the Uniformed Services and DoD civilian employees.

3 **WHEREAS**, a maximum rental allowance is established based on the local rental
4 market data, and varies by geographic duty station, pay grade/rank, and dependency status
5 of the member, whether the AGR member receives BAH or OHA. For 2016, the maximum
6 allowance for a Captain with dependents living in the Washington, D. C. Metro area is
7 \$2700; in Honolulu County, HI \$3,375; in New York City, NY \$4,017; in St. Thomas, V.I.
8 \$2,700; and in St. Croix, VI \$2,500.

9 **WHEREAS**, BAH is a flat-rate allowance paid independently of the AGR
10 member’s actual housing costs. The actual amount the AGR member receives is the full
11 maximum rental allowance for each locality and grade/rank even if the rent is below the
12 maximum rental allowance. AGR members receiving BAH are allowed to keep any
13 additional allowance that they do not use for their rent.

14 **WHEREAS**, OHA is a cost reimbursement based allowance. The amount the AGR
15 member receives is based on how much is actually paid for rent; the AGR member does
16 not receive the full maximum rental allowance if the rent is lower than the maximum
17 allowable rates for the locality and grade.

18 **WHEREAS**, AGR members receiving BAH are free to make housing choices that
19 best suit their needs; members may choose to use all their housing allowance to rent for
20 more expensive housing close to the duty station, or have a longer commute for either a
21 larger or less expensive house in an outlying area. A U.S. renter can live anywhere and
22 with anyone and still collect his full BAH. A U.S. homeowner can inherit, share or rent
23 his multi-family dwelling and still collect his full allowance.

1 **WHEREAS**, the AGR members receiving OHA must submit a claim and provide
2 specific documentation in order to receive a calculated allowance. The V.I. renter's
3 allowance is reduced if he has other persons, not dependents living with him and he must
4 meet certain requirements if he rents from relatives. The V.I. homeowner's allowance will
5 be reduced if he rents square footage of his dwelling to another person and he cannot
6 increase his allowance if he did not obtain a loan to improve his home. The V.I.
7 homeowner collects \$0 if he builds his home out of his own funds, inherits his dwelling or
8 otherwise receives it without purchasing it.

9 **WHEREAS**, in enacting Title 37 USC § 403(c) to provide fair housing allowances
10 to service members, Congress did not intend an inequitable, unfair, or manifestly unjust
11 result where VI AGR members are allocated unequal financial support for housing.

12 **WHEREAS**, legally sanctioned privileges and rights given to U.S. AGR members
13 that are not granted to V.I. AGR members reflects a socioeconomic inequality.

14 **WHEREAS**, the JTR imposes unreasonable and unfair burdens on V.I. AGR
15 members by imposing requirements that are absurd, illogical, and inconsistent with
16 congressional intent.

17 **WHEREAS**, V.I. AGR members, like their U.S. counterparts, are citizen soldiers
18 who reside within their communities and contribute to the local economy through purchase
19 and rental of homes.

20 **WHEREAS**, Virgin Islands National Guard members like the National Guard
21 members of the 50 states and the District of Columbia, have served our nation in Iraq,
22 Afghanistan, Guantanamo Bay, Kosovo, and other parts of the world on federal missions.

23 **WHEREAS**, President Obama Administration in its Statement of Administration
24 Policy dated June 7, 2016 on the National Defense Authorization Act (NDAA), strongly

1 objects to the very housing allowance structure that V.I. AGR members are subjected to
2 under the OHA program, recognizing it as a burdensome and inefficient administrative-
3 authorization process by limiting housing allowance payments to actual expenses.

4 **WHEREAS**, Virgin Islands AGR members should be treated similarly to AGR
5 members residing in the 50 states and the District of Columbia with regard to housing
6 allowances.

7 **WHEREAS**, V.I. AGR members are experiencing unnecessary stress and financial
8 hardship through the implementation and administration of the OHA program under JTR.

9 **WHEREAS**, the policies, procedures, requirements, and practices of the OHA
10 Program discourage V.I. AGR members from applying for the housing allowance
11 entitlement.

12 **WHEREAS**, a Federal agency's ultimate responsibility is to ensure equal treatment
13 in the programs through which it provides financial assistance.

14 **WHEREAS**, the members of the Virgin Islands National Guard who serve on
15 federal active service deserve fair and equal treatment for their commitment, time, and
16 service to the nation similar to that afforded their counterparts in the fifty states and the
17 District of Columbia. **Now, Therefore;**

18 ***Be it resolved by the Legislature of by the Virgin Islands:***

19 **SECTION 1.** The Legislature in support of its constituents, requests the Delegate
20 to Congress to conduct an inquiry into:

21 (a) the process and other aspects of program administration of the BAH and
22 OHA programs to determine the policies and practices that are causing a disparity between
23 V.I. Active Guard and Reserve members and U.S. Active Guard and Reserve members;

(b) the separate treatment in any manner related to receipt of housing allowance;

(c) the different standards or requirements for receipt of housing allowance; restriction in the enjoyment of any advantages, privileges or other benefits provided by the OHA program to V.I. Active Guard and Reserve members;

(d) the use of criteria or methods of administration that would defeat or substantially impair the accomplishment of housing allowance program objectives or would impact more heavily on V.I. Active Guard and Reserve members;

(e) whether the policy or practice of OHA program administration is having a disparate impact on V.I. Active Guard and Reserve members.

SECTION 2. The Legislature further requests that the Delegate advocate for V.I. Active Guard and Reserve members to be considered on duty inside the United States under 37 USC § 403 (b), and that the Secretary of Defense end this inequity.

SECTION 3. The executive director of the Legislature shall send a copy of this resolution to the Honorable Stacy Plaskett, Delegate to Congress.

BILL SUMMARY

This Resolution requests that the Virgin Islands Delegate to Congress make inquiries into the disparate treatment of Virgin Islands National Guardsmen and that the Delegate advocates for the end of the inequitable treatment of Virgin Islands Guardsmen.

BR16-1527/October 21, 2016/LHM/