

GOVERNOR ALBERT BRYAN, JR.
U.S. VIRGIN ISLANDS

**Written Testimony of Governor Albert Bryan, Jr.
of the United States Virgin Islands Before the
Senate Committee on Energy and Natural
Resources**

Good morning Chairwoman Murkowski, Ranking Member Manchin, and members of the Committee:

Thank you for the opportunity to appear before you today to discuss the state of the United States Virgin Islands and our Territory's priorities for 2019.

On behalf of the people of the U.S. Virgin Islands, I wish to thank you and your colleagues in Congress for your concern and support in our recovery from the unprecedented damage, estimated in excess of \$10 billion, caused by two back-to-back Category 5 hurricanes—Hurricanes Irma and Maria—in September 2017. It is ever important to remember that our recovery is not only physical but economic and social as well. With our federal partners, we have made great strides in dealing with the immediate impacts of the hurricanes. And we are on the path to longer-term recovery, but that recovery will take several years. Your continued support and assistance is critically needed for us to recover from the hurricanes and rebuild our Territory to be stronger and more resilient in the face of constant economic challenges and increasing occurrence of natural disasters.

Even before the hurricanes, the Virgin Islands and the other Territories faced unique challenges not encountered on the U.S. mainland. Many of these challenges are the result of factors beyond the control of the federal government, such as geographic distance and isolation, lack of natural resources, and general small island limitations on scale and their related impact on economic development options. But some challenges we face are exacerbated by—and, in some cases, the direct result of—federal policies, which are within the power of Congress to change. I will focus my comments today on the more pressing issues we face and how Congress can and should act to address them.

Healthcare

Federal healthcare policy is a prime example of an area where Congress can and should act as soon as possible. Healthcare funding in the Virgin Islands was under great stress even before the two hurricanes. We are grateful for the temporary disaster-related waiver of the local match (and additional allotments, all of which we will expend) in the Bipartisan Budget Act of 2018, which have allowed our Medicaid program to continue to operate during these trying times. However, unless Congress acts before September 30, 2019, two events will cause potentially catastrophic damage to our Medicaid program.

First, the temporary Medicaid relief is scheduled to end as of September 30, 2019. The Territory's severe disaster-related revenue losses are projected to extend well beyond that date—for at least another two years. Consequently, the Virgin Islands simply cannot afford to meet local match requirements for Medicaid (generally 45%) after September 30, 2019. We urge Congress to extend the disaster-related Medicaid relief in the Bipartisan Budget Act—the local match waiver and the additional Medicaid allotment of 100% federal funding—by one year and thereby allow the USVI's Medicaid program to continue to operate through the end of FY 2020. I would also like to bring to your attention that our citizens have only one hospital that they can access for healthcare on each island.

In addition, all of the Territories face the “fiscal cliff” on September 30th, when their Affordable Care Act Medicaid allotments expire. (The requested additional disaster-related allotment for the Virgin Islands would delay the “fiscal cliff” for only one year.) Until Congress eliminates the Medicaid cap for the Territories, or at least provides additional allotments (and allows a Territory to access its remaining ACA allotment, if any), the results will be severe. Up to 30,000 U.S. citizens in the U.S. Virgin Islands—30% of the Territory's population—could lose access to healthcare coverage under Medicaid. And because there is no viable private healthcare insurance market in the Territory, those citizens will add to the already precarious fiscal situations of our hospitals and potentially cause our public healthcare system to collapse. We urge Congress to act to prevent this potential calamity well before September 30, 2019.

Further, the Medicaid match rate needs to be addressed. The arbitrarily low federal matching rate (“FMAP”) of 55%—and the corresponding arbitrarily high local matching requirement of 45%—for the Territories has imposed severe and unsustainable financial demands on the Territories. In contrast, the Territories would qualify for an FMAP of 83% if they were treated equally with the States. The bipartisan Congressional Task Force on Puerto Rico recommended more

equitable treatment for the Territories under Medicaid. We urge the Committee to follow the Task Force’s recommendations and support a state-like FMAP for the Territories.

Disaster Funding Cost-Share

The Insular Areas Act, 48 U.S.C. § 1469a, provides FEMA and all other federal agencies the discretion to waive for Insular Areas, including the U.S. Virgin Islands, any and all local match otherwise required by law for federal funding programs. The policy reasons for the waiver are obvious. While the Insular Areas are in great need of federal funding, they do not have the resources available to come up with the local match in order to access those funds.

FEMA staff confirmed that the Insular Areas Act applies to FEMA disaster funding, and there is ample precedent for FEMA to waive the local match under the Insular Areas Act. Indeed, in recognition of the severity of Hurricanes Irma and Maria, FEMA has already invoked the Insular Areas Act to waive the 25% non-federal matching requirement for the Hazard Mitigation Grant Program in the Territory, for which we are grateful. However, FEMA has prematurely ended the 100% federal funding for Public Assistance Categories A and B projects, even though the Territory had a reasonable expectation—because FEMA had issued Mission Assignments to the U.S. Army Corps of Engineers to undertake this work—that many of the projects would have been completed by the 100% federal share deadline. Indeed, as of today, Mission Assignments for Temporary Medical Clinics and Debris Removal are more than a year behind schedule, and some—such as the St. Thomas medical clinic and the removal of damaged trees dangerously leaning over public rights-of-way—still have not even started. We have administratively appealed FEMA’s decision, and are hopeful that these issues can be resolved in a cooperative manner.

Further, FEMA has been reluctant to agree to waive the local match for the Territory for FEMA Public Assistance Categories C through G (“permanent work”) projects, such as the permanent repair or reconstruction of key facilities like roads, bridges, buildings and equipment, and utilities. The policy reasons for invoking the Insular Areas Act waiver are at least as compelling for these projects. It would be extremely difficult if not impossible for the Virgin Islands to provide local matching funds for Public Assistance Categories C through G. As a result of the hurricanes, our financial resources and ability to borrow have been exhausted. Indeed, we have relied on FEMA Community Disaster Loans in order to maintain our basic governmental functions.

Therefore, we respectfully request that Congress direct FEMA to exercise its discretion under the Insular Areas Act and waive the local share for grants awarded to the USVI under the Public Assistance program for Hurricanes Irma and Maria. Rest assured, we understand the federal government's concern about states and territories not having "skin in the game" without a local cash contribution, but we have the lives of 110,000 Americans who do not have an option to evacuate in the face of natural disasters. We must rebuild quickly, and can ill afford not to be fully prepared as another hurricane season looms. We have nowhere else to run. The U.S. Virgin Islands is prepared to maximize use of Section 428 of the Stafford Act for large Public Assistance projects and implement other measures that would create cost savings for the taxpayer equivalent to a local match.

Building Back to Industry Standards

Section 20601 of the Bipartisan Budget Act authorizes FEMA to provide assistance to restore many Hurricane Irma and Maria-damaged facilities and systems in the Virgin Islands to an industry standard without regard to pre-disaster condition. FEMA has issued formal guidance interpreting that provision that appears generally consistent with the statute.

In support of recovery efforts, the Virgin Islands has engaged with nationally recognized industry experts and local stakeholders to devise reasonable industry standards appropriate to conditions in the Virgin Islands as directed by law. The Territory intends to continue to fully cooperate with FEMA in ensuring that Section 20601 is implemented to the maximum extent permitted by law, but we may need support in clarifying Congressional intent for FEMA.

Territorial administration of the permanent housing construction program

I congratulate Congress for passing the Disaster Recovery Reform Act, which was part of the FAA Reauthorization Act of 2018. An important disaster recovery reform provision in that law is Section 1211, which allows a State or Territory the option of administering its own permanent housing construction program for owner-occupied primary residences pursuant to Section 408 of the Stafford Act. Because it will take some time for FEMA to promulgate regulations to formally implement Section 1211, the Act authorizes FEMA to enter into pilot programs with States and Territories in the interim. The Virgin Islands Government has applied for FEMA approval of such a pilot program. Once approved, we will be able to undertake these repair and reconstruction projects

more expeditiously and at a far lower cost than would otherwise be possible. We are hopeful that FEMA will approve our pilot program as soon as possible.

Improvements to FEMA reimbursement mechanism

The U.S. Virgin Islands is extremely grateful that FEMA has already obligated more than \$3 billion of disaster assistance directly to our citizens and their families and for a wide range of response, recovery, and mitigation projects. There are a couple of simple steps that FEMA could take that would not cost anything, and yet would significantly expedite our recovery.

First, the FEMA Public Assistance program is a reimbursable program requiring the Territory to submit paid contractor invoices prior to being able to request reimbursement of federal funds. As the pace of recovery quickens in 2019 and many individual invoices totaling many millions of dollars are being received each month, the Territory's severe cash flow problems make it extremely difficult to advance the cash to pay our contractors, leading to long delays in starting work and widespread contractor dissatisfaction that will drive up the cost of recovery if not resolved. We request assistance, either administrative or legislative, that will enable FEMA to advance funding for our major recovery projects. We are confident that we have the financial systems and accounting mechanisms in place to track and reconcile these funds in accordance with federal requirements.

Second, every project from every disaster in the nation with a cost of one million dollars or more must go into a FEMA headquarters queue, known as the OLA (Office of Legislative Affairs) queue, for a review process that takes many months to complete. This review process is after the USVI-based FEMA staff have devised, reviewed, and approved the project scope and costs collaboratively with Territorial staff. We fully understand and appreciate the need for due diligence; however, with so many major disasters nationwide and so many projects costing over a million dollars, the FEMA OLA queue team seems unable to keep pace and complete its reviews in a timely fashion. For example, we have been waiting for a \$296 million Project Worksheet to clear OLA for more than five months for our STEP Housing Recovery Program, causing long delays in paying contractors. Contractors who have completed repairs on thousands of homes over the past half-year still cannot be paid pending the OLA review. To resolve this pressing problem, we request Congressional assistance in encouraging or requiring FEMA to streamline its project approval processes (perhaps by increasing the

threshold amount for OLA review, or by devoting additional resources to the review process) to better serve the project beneficiaries.

We would greatly appreciate any assistance in resolving these issues. The money is there, FEMA is in agreement that the work is eligible and the costs are reasonable, but we still are unable to access the funds expeditiously which is unnecessarily hampering recovery.

Territorial Highway Program

In the final years of the “Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users” (“SAFETEA-LU”) and extensions thereof, Congress allocated \$50 million annually to the four small Territories under the Territorial Highway Program (in addition to amounts equivalent to the funding for High Priority Projects in the Territories). In July 2012, the Moving Ahead for Progress in the 21st Century Act (“MAP-21”) maintained highway funding levels for all states, as well as the District of Columbia and Puerto Rico, but inexplicably cut the Territorial Highway Program funding by 20% (to \$40 million). Singling out the four small Territories for funding cuts was unfair, discriminatory, and ignored the substantial pressing transportation funding needs of the Territories. The subsequent bill (FAST Act) did not restore the funding cut in MAP-21; it provided only a small increase over the reduced MAP-21 allocation for the small Territories.

We urge Congress to correct this inequity in the next infrastructure bill, by increasing funding levels for the Territorial Highway Program, including restoring the SAFETEA-LU funding levels and providing post-SAFETEA-LU increases similar to those provided to states and the District of Columbia.

Economic Development

Federal tax policy plays a crucial role in creating the investment climate to create jobs, generate sustainable economic growth, and improve the Territory’s long-term fiscal health. In any tax legislation, Congress should consider the unique status and circumstances of U.S. Territories.

For example, under the Internal Revenue Code, the Virgin Islands is considered a foreign jurisdiction and not part of the United States, even though Virgin Islanders are U.S. citizens and Virgin Islands businesses are U.S. businesses. In addition, the Virgin Islands’ income tax system is based on a “mirror system” of taxation, in which the Internal Revenue Code is used as the Territory’s tax code (“Mirror Code”). As a consequence, any change to the U.S.

Internal Revenue Code automatically impacts the Mirror Code Territories. Consequently, great care should be taken by Congress in enacting tax legislation, in order to avoid unintentional and harmful effects on the Mirror Code Territories.

Further, specific federal tax provisions have unnecessarily harmed the Territories and impeded their economic development efforts. The U.S. Territories, as part of the United States, should always be treated more favorably than foreign jurisdictions under federal tax law, but that is not always the case. As a result of unduly harsh provisions in the JOBS Act of 2004, the Territories are treated worse than foreign jurisdictions. In particular, the (effectively connected) income sourcing rules imposed by the JOBS Act have unfairly restricted our Economic Development Commission program and inhibited our ability to attract new employers and grow our economy.

The Virgin Islands Government has been working with the U.S. Department of the Treasury and Congress to revise the overly restrictive JOBS Act rules by making modest corrective changes to the JOBS Act. I urge your support for inclusion of these changes in legislation.

Further, the Tax Cuts and Jobs Act of 2017 inadvertently disadvantaged U.S. investments in the Virgin Islands with respect to new taxes imposed by that Act. We request the Committee's support for a technical amendment to provide parity for such investments in our Territory.

Energy

A major impediment to our economic development and quality of life for our citizens is the high cost of electricity in our Territory. We urge Congress to take two actions that would help lower the cost of electricity while at the same time improving our grid resiliency. First, Congress should support our efforts to secure USDA or other federal assistance to allow our Water and Power Authority to convert from burning fuel oil to alternative fuels for generation of electricity. Second, Congress should direct HUD to allocate to the Virgin Islands a fair share of the \$2 billion in CDBG-DR funding for electrical systems damaged as a result of Hurricane Maria.

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We have an opportunity to liberate the Virgin Islands once and for all from fiscal distress through the collective impact of this recovery. The recovery opportunities that have been presented will make us resilient economically and physically. As we recently celebrated our 100th anniversary of being an American

Territory, you can ensure that we are prepared for the next 100 years. Strengthening our infrastructure and ability to eliminate poverty, provide healthcare, and give us a fighting chance to compete and do more for ourselves is of our highest priority. All we ask is your gracious assistance.

Thank you for considering this testimony and for your support of your fellow Americans in the U.S. Virgin Islands.