31st Legislature of the Virgin Islands

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Testimony on Bill No. 16-1262 (formerly Bill No. 31-0292)

Senate President and Senate Members of this committee, Good Morning. My name is Greg Ferguson and with me today is Renee Andre, we are both attorneys that work with and represent EDC Program beneficiaries, and we are grateful to be testifying today on behalf of the St. Thomas-St. John Chamber of Commerce ("Chamber") regarding Bill No. 16-1261 (formerly Bill No. 31-0292), an act amending title 29 of the Virgin Islands Code, chapter 12, section 710 which seeks to amend the rules for determining status of a USVI resident for purposes of employment by beneficiaries of the Economic Development Program. As the workplace in the USVI changes, the expertise, education and certifications required for high level service jobs has increased. Given the relative small size of the USVI workforce it is almost impossible to develop all the specific skill sets and experience in the near term for many of these jobs. The current residency requirements allow EDC companies to hire Virgin Islanders as well as non-residents with the skills and expertise needed. New residents contribute to the economy and more importantly the collective talent of the USVI workforce. This gives the USVI the ability to attract even more companies that need talent as well as tax incentives.

The 2008-2010 recession devastated the territorial professional pool, as many local professionals moved to the mainland to seek opportunities. This is a phenomenon that is evidenced by the 2010 census which shows we have "negative immigration" and this was two years before the closure of Hovensa. This challenge must be addressed by utilizing all the tools at our disposal to bring jobs and GVI income tax revenue back to the Territory.

There can be no doubt that the EDC Program is a vital tool for our Territory in its efforts to expand, modernize and diversify the economy of the U.S. Virgin Islands. In the last five years alone, jobs in financial services, high-tech manufacturing, secondary automobile markets, distressed asset management, real estate development and energy have all been created in the Territory by EDC companies. The EDC Program is the driving force that beckons entrepreneurs from across the country to bring their businesses, their families, their skills, their knowledge, their millions of

dollars in tax revenue or their jobs to the USVI. The staff at the Economic Development Authority, the practitioners in EDC law and the Chamber all work tirelessly year after year to promote, develop and keep these businesses in the Territory, in addition to enticing new business to come.

Bill No. 31-0292 actively works ***against*** all of our efforts to utilize this Program for the benefit of the people and economy of the USVI. At a time when the USVI is losing businesses and residents rapidly, we need to collectively promote a business friendly atmosphere and attract people to come live and work in the USVI. This Bill could well push potential investors to invest in Puerto Rico's economy where there are less significant requirements, or even worse, keep businesses from coming at all, or even to investigate the Program. We believe the passage of this legislation will be severely detrimental to the USVI economy for the following reasons:

First, this Bill creates more harm than good for the local USVI employee because it severely limits opportunities for USVI residents to find diverse, high-paying employment by removing an important means to provide training in new skills to local USVI employees. Special-skilled employees have been relocated to the Territory by EDC Beneficiaries because the companies could not find persons in the Territory who had the skill sets they needed to relocate or start new business in the USVI. Employees relocate not only to transition the business to the Territory but also to train and teach new skill sets to USVI resident employees and in many cases student interns from UVI and local high schools. By limiting the ability of companies – particularly the high profit designated services businesses under the EDC Program - to bring in employees with specialized skill sets which are integral to their businesses or move entire business operations to the USVI, not only do we remove the incentive for them to come do business in the Territory – but we remove an important means to provide essential training to Virgin Islanders to help them learn new skills and advance professionally. One of the core goals of the EDC Program is to train local employees in new skills and in jobs of the "new economy". Unfortunately, the USVI economy does not have employment opportunities in these "new economy" jobs because it has no companies that work in these fields. Therefore, a local USVI employee has only one option – to leave the USVI for the mainland United States to find employment with a company that is engaging in the "new economy". This Bill destroys the EDC's ability to engage in one of its core functions – the training

of local employees in new skills to keep USVI residents employed in good-paying jobs at home in the Territory.

Second, this Bill thwarts nearly a decade of struggle, across three administrations, to engage the U.S. Department of Treasury to expand the scope of the types of income that can be eligible for benefits under the EDC Program and therefore expand the types of businesses that can relocate to the USVI and benefit from the Program. Last month, a delegation of U.S. Virgin Islands business persons, EDC staff members and Government officials went to Washington, D.C. to actively petition members of U.S. Congress to amend certain provisions of the Internal Revenue Code to broaden the types of income that can be benefitted so that we have sound legal footing for focusing on attracting captive insurers, technology development businesses and licensing companies, among other types of companies. This extraordinary opportunity will reap huge rewards in employee skill development and revenue generation, but only if these businesses are able to bring in highly skilled employees to impart their knowledge and skills to new local hires.

The drafters of the EDC legislation understood that to have economic development, there would be a need in certain instances to hire non-resident employees, and so the law currently provides for 20% of a beneficiary's employees to be non-resident. The law further requires a training program or contribution of $2,500 to the Territorial Scholarship Fund in instances where non-residents must be hired due to an unavailability of local talent. Perhaps the proper course of action would be to utilize, enforce, or shore up the existing tools available under the law rather than passing a Bill that would further stifle economic growth in the Territory.

Third, this Bill creates additional confusion in an already technical and confusing set of rules regarding residency. Currently, it takes 90 days before a person is a deemed a resident of the USVI for purposes of eligibility for voting. Conversely a person must be present in the Territory for 183 days in a calendar year in order to be deemed physically present in the Territory for purposes of where to file a tax return. This legislation would effectively create another confusing residency rule. Under the Bill, an employee would be considered a non-resident throughout the entire term of EDC benefits for the initial Beneficiary entity, but would be considered a resident if the employee was employed by another Beneficiary entity after one year. The Bill also raises

uncertainty with how it would be applied. We believe a more logical and fair rule would be to change the residency requirement for EDC to match the residency requirement under the Internal Revenue Code – 183 days in a given calendar year.

Fourth, the Bill significantly underplays the importance of revenue generation that EDC companies bring to the Territory's coffers and the effect that this Bill would have on revenue generation. The Bill's extremely restrictive policy on residency of employees ignores that even employees who are not residents on the first day of their jobs pay personal income tax on their salaries to the Virgin Islands, and frequently purchase homes and thus pay property taxes. This is in addition to all the money new EDC residents spend in the local economy buying food, cars, household items, donating to charity and educating their children. Additionally, this Bill would create a chilling effect on bringing new EDCs into our economy and thus the principals' income tax revenues. It is important to realize that principals of EDC companies only receive a 90% credit on tax due on ***benefited income.*** All other income tax obligations, including W-2 wages, of the principals who are bona fide residents are paid to the Territory at full, unbenefited rates. We are all familiar with the impact very restrictive legislation had on the Virgin Islands coffers. The restrictive residency rules of the JOBS Act of 2004 resulted in a mass exodus of USVI residents who had up to that point paid significant taxes on unbenefited income to the Territory on an annual basis. Their income tax obligations alone in the years since 2004 would have amounted to hundreds of millions of dollars, even after tax incentives. This Bill further punishes the local economy by driving out businesses and wealthy individuals. Our focus needs to be on revenue generation in the Territory, whether it is with tax incentivized businesses or not.

Finally, this Bill is highly discriminatory against United States citizens who wish to move here and find employment. It would essentially discourage these new residents from working for EDC companies in the USVI because that would destroy their ability to become residents. Such a perverse legal conundrum is clearly inappropriate and most likely unconstitutional.

In closing, I would like to highlight the fact that people who move to the Virgin Islands pay their taxes here, send their kids to local schools, buy locally, buy or rent homes, and there is no sound justification for not counting those persons as residents once a year has passed. By excluding this

class of persons from being counted as USVI residents, we are doing a disservice to our local workforce.

On a broader scale, it is important to note that constant changes to the EDC law, particularly ones that place a burden on compliance for EDC companies, collectively hinder the development of the Program. There are constant changes being made or attempted: in 2014 a substantive overhaul was made to the EDC Program, which is practically being ignored for new entities applying to the Program, and just recently a proposed change – which would require EDC companies to give their employees paid leave to give blood was vetoed. This is not a pattern that we see in other incentive programs. Today, if you look at the EDC website, there are 61 beneficiaries on the EDC list, many of which are near the end of their certificates. If you looked back ten years ago, the number of beneficiaries was around 110 beneficiaries.

We must ask ourselves what these constant changes that limit and place additional burdens on beneficiaries rather than expand the scope of the EDC program would mean for the number of beneficiaries in existence ten years from now.

I thank you for the opportunity to provide this testimony before the Legislature on Bill No. 31-0292 and I am happy to answer any questions.