

February 23, 2015

**STATEMENT TO THE COMMITTEE ON ECONOMIC
DEVELOPMENT, AGRICULTURE AND PLANNING ON BILL
NO. 31-0009**

**The Honorable Senator Janette Millin-Young
Members of the Committee**
Legislature of the Virgin Islands
St. Thomas, U.S. Virgin Islands 00804

Good Day Madame Chairwoman, Committee Members, other Senators present and fellow testifiers. My name is David A. Bornn.

I am here as a practicing business attorney representing myself with an interest in enhancing the economic development of the Territory. I do not represent any Government agency or party actively pursuing any of the benefits proposed under this Bill.

Bill No. 31-0009 is essentially identical to previously presented and passed Bill No. 30-0417, on which I worked with Atty. Erika Kellerhals. The streamlined, simplified Bill came out of multiple conversations with parties looking to either: a) film or produce movies, TV series, music videos, or photo shoots for ads; OR b) establish production operations in the Territory. My experience was driven out of approaching colleagues representing movie and entertainment industry clients about the possible use of our EDC Program for such productions. Their universal response was that these production companies could not use the EDC Program the way such production companies operated...but wanted to know what structured incentives program were available to them for filming in the Territory. They specifically referenced that the entertainment and film industry has become accustomed to a certain model for such incentives and we should look at those. We reached out to multiple individuals in the film industry who gave us insights and additional sources of information for crafting a Bill with the support of Sen. Graham.

My comments on this new Bill mirror the comments I previously made on Bill No. 30-0417. This Bill presents a complete revision to the existing STARS Act by repealing it

and substituting revised provisions targeted solely at production of one-time or short-term qualified productions in the Territory in a format to which the industry has become accustomed.

The existing informal “subsidies” program through the Department of Tourism is ad hoc, and not sufficiently structured to attract major productions. What this Bill tries to achieve is the use and establishment of an incentive program that is common to the industry.

In reviewing this Bill, we need to ask the following questions:

- How can we attract and accommodate the film and media industry so our share of such productions, particularly major productions, continues to grow and is not passed by because we do not have an incentive program structure they are used to and offered by other venues?
- How do film productions work to enhance our economy with economic incentives?

The STARS Act, as revised, is intended to keep the revised program simple and attractive to all potential beneficiaries. The Bill also removes the duplication of provisions with the Economic Development Commission (EDC) Benefits program; and focuses its elements on the attraction of film, audio, television, music and other media productions to the US Virgin Islands by off-island artists and production companies...to be serviced by local businesses. The definitional section [Sec. 747a] creates a large variety of applicable media to which the new Bill would encompass...including yet-to-be developed media.

While the incentives of the STARS Bill are aimed at non-resident production companies, Sec. 747a(m) and Sec. 747d make it clear that Resident Production Companies (including music and audio recording) qualify for the benefits and incentives provided in Sec. 747e (including cash rebates, hotel room tax waiver, and tax credits). In fact, Sec. 747e(a)(7) specifically states: “Resident Production Companies are eligible for tax incentives and rebates provided for in section (a) up to a maximum of \$350,000 per annum, per project, if they meet all requirements of this subchapter;” and Sec. 747e(a)(8) specifically provides: “Nothing in this subchapter prohibits a resident production company from applying for benefits under any other Economic Development Authority tax incentive program.” Local production studios for video, film, music, and audio presentations and recordings already qualify and have qualified for many years under the existing provisions of the EDC Tax Incentives Benefits Programs for both regular benefits and small business benefits [VIC Tit. 29 Secs. 703 and 708(as amended)]...depending on the level of investment and number of employees engaged. Further, local production companies owned by native or long-term residents of the

Territory qualify for Government Development Bank financing for such production facilities.

The Department of Tourism and the Economic Development Authority (EDA) must work together for the program to be successful in attracting the production industry to the Territory. Such partnering is not without precedent as the EDA is currently partnering with the Division of Banking and Insurance in the promotion, marketing and regulation of Captive Insurance Companies. Existing staff from both agencies can undertake the program without creating a new Government agency or the necessity of finding funds for new positions.

One of the joyful elements of this revision is that the program established is self-funded. The sourcing of the Rebates program is the Tourism Revolving Fund into which the Beneficiaries pay their Hotel Room Tax. This avoids having to look for funds to pay the rebates when due. The Bill is protective of the intents, purposes and tourism-related uses of the Tourism Resolving Fund...a premise that was strongly espoused by the Commissioner of Tourism. The rebates for local spend (expenditures for local service providers) is a particularly compelling feature of the Bill as they are not paid until evidence of the local expenditures is presented. This is a unique feature of incentives in the industry.

The Tax Credit Program is based on the local employment taxes that the production company pays into the VI Treasury. The Tax Credit Program and the bartering of the credits is common in the industry and what they look for. This is similar to the sale or bartering of credits in the EPA Smoke Stack Industry program that has existed for many years.

There is a small structural revision that needs to be considered. the following small points that should be corrected:

- Sec. 747d....should have major subsections separated as (a)...In order to qualify; (b)...DLCA licensing provisions; (c)...regulations for review; (d)...Production must begin within 180 days; and (e)....Application Fee to be paid.

I welcome your questions on the provisions and application of Bill No. 31-0009.

Respectfully yours,

s/David A. Bornn

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