



THE UNITED STATES VIRGIN ISLANDS

OFFICE OF THE GOVERNOR  
GOVERNMENT HOUSE

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

March 22, 2016

**Via Messenger**

Hon. Neville James  
Senate President  
31<sup>st</sup> Legislature of the Virgin Islands  
Legislature of the Virgin Islands  
Capitol Building  
St. Thomas, VI 00802

*Re: Governor's Recommended Bill authorizing the issuance of bonds or other indebtedness of the Government of the Virgin Islands and the Virgin Islands Public Finance Authority to provide funds to finance the costs required in connection with the operation, maintenance and reduction of solid waste at the Anguilla Landfill and Bovoni Landfill.*

Dear Mr. President:

Enclosed is a bill I am submitting to the 31<sup>st</sup> Legislature of the Virgin Islands which provides for authorization of the issuance of bonds, notes or other evidences of indebtedness of the Government of the Virgin Islands (the "Government") and the Virgin Islands Public Finance Authority (the "Authority") to provide funds to finance certain costs required under the Anguilla Consent Decree and the Bovoni Consent Decree, (the "2016 Landfill Project"). The aggregate principal amount the Government is seeking is up to \$30,000,000 (the "Series 2016 Bonds"), which will include the cost of any necessary reserves relating to, and the costs of issuance of, the Series 2016 Bond. The proposed bill also seeks authority for the Government and the Authority to execute certain agreements and pledge, as applicable, either the Matching Fund Revenues, and issue limited special obligation notes to secure repayment of all or a portion of the Series 2016 Bonds, or the Gross Receipt Taxes Revenues and issue general obligation notes, to secure repayment of the Series 2016 Bonds and for other related purposes.

The bill is hereby transmitted for legislative review and action. This bill responds to certain financial and bonding requirements as set forth in the Anguilla Consent Decree and the Bovoni Consent Decree to correct and implement groundwater corrective actions, gas collection and control systems, comply with Resource Conservation and Recovery Act and complete the

*Letter to Senate President James Submitting Proposed Legislation for Bond Authorization for 2016 Landfill  
Projects*

*March 22, 2016*

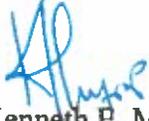
*Page 2*

process of diversion of our solid waste, operation, and maintenance while mitigating conditions in the landfills to ensure compliance and the public health and safety.

Through this bill, the Authority intends to issue one or more Matching Fund Revenue Bonds and loan the proceeds to the Government to support the landfill projects. This bill is part of a solid waste management strategy to streamline waste production and waste diversion in the Territory.

Accordingly, I respectfully request that the Legislature take immediate action on this critical bill and give it favorable consideration so that the Territory can move forward in addressing the Anguilla Consent Decree and the Bovoni Consent Decree provisions relating to operation, management and diversion of our solid waste.

Sincerely,



Kenneth E. Mapp  
Governor

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*Enclosure*

1 **BILL NO. 31- \_\_\_\_\_**

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3 **THIRTY-FIRST LEGISLATURE OF THE VIRGIN ISLANDS**  
4 **OF THE UNITED STATES OF AMERICA**

5  
6 **REGULAR SESSION**

7  
8 **2016**

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11 An Act authorizing (I) the issuance of bonds, notes or other evidences of indebtedness of the  
12 Government of the Virgin Islands (the "Government") and the Virgin Islands Public Finance  
13 Authority (the "Authority") to provide funds to finance (i) the costs required in connection with  
14 the operation, maintenance and reduction of solid waste at the Anguilla Landfill and Bovoni  
15 Landfill, including, but not limited to, such costs mandated under the Anguilla Consent Decree  
16 and the Bovoni Consent Decree for Fiscal Years 2014 and 2015 (the "2016 Landfills Project"),  
17 in an aggregate principal amount of up to \$30,000,000 (the "Series 2016 Matching Fund  
18 Revenue Bonds"), and (ii) the cost of any necessary reserves relating to, and the costs of issuance  
19 of, the Series 2016 Matching Fund Revenue Bonds; and (II) the Government and the Authority  
20 to execute certain agreements and pledge the Matching Fund Revenues, and issue limited special  
21 obligation notes to secure repayment of all or a portion of the Series 2016 Matching Fund  
22 Revenue Bonds, and for other related purposes.

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25 **PROPOSED BY THE GOVERNOR**

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29 **WHEREAS**, the Government and Virgin Islands Waste Management Authority  
30 ("WMA") entered into a Consent Decree with the United States Environmental Protection  
31 Agency ("EPA") and the United States Department of Justice ("DOJ") concerning the closure of  
32 the Bovoni Landfill on or about March 14, 2012 (as the same may be amended or supplemented,  
33 the "Bovoni Consent Decree"); and

34 **WHEREAS**, the Government and the WMA entered into a Consent Decree with the EPA  
35 and DOJ concerning the closure of the Anguilla Landfill on or about January 11, 2013 (as the  
36 same may be amended or supplemented, the "Anguilla Consent Decree", and together with the  
37 Bovoni Consent Decree, the "Consent Decrees"); and

38 **WHEREAS**, pursuant to the Consent Decrees, WMA is required to correct and  
39 implement groundwater corrective actions, gas collection and control systems, comply with the  
40 terms of the Resource Conservation and Recovery Act and complete the mandated  
41 closure of both the Bovoni Landfill and Anguilla Landfill in accordance with the terms of the  
42 respective Consent Decrees; and

1           WHEREAS, at the time the Consent Decrees were entered into, the projected aggregate  
2 closure costs to fully comply with the requirements outlined in the Consent Decrees was  
3 \$67,000,000, with \$28,340,000 required to comply with the mandates of the Consent Decrees for  
4 a period of two Fiscal Years (Fiscal Years 2014 and 2015); and

5           WHEREAS, since entering into the Consents Decrees in 2012 and early 2013,  
6 respectively, the audited landfill closure costs have increased from \$67,000,000 to \$86,189,679  
7 due to landfill closure project delays, waste overfilling, and landfill fire mitigation and  
8 remediation costs at the Anguilla and Bovoni Landfills, as appropriate; and

9           WHEREAS, since entering into the Consent Decrees, WMA has expended \$8,937,510  
10 of its Fiscal Year 2013, Fiscal Year 2014 and Fiscal Year 2015 General Fund revenues to finance  
11 portions of such landfill closure costs; and

12           WHEREAS, the Government, WMA, EPA and DOJ have continued to negotiate the  
13 terms of both Consent Decrees in order to reach a long-term solution for a compliant Bovoni  
14 Landfill and Anguilla Landfill and acknowledge the challenges facing the Territory in  
15 connection with such solutions and the critical need for the Territory to maintain, operate and  
16 mitigate conditions at the Landfills to ensure the public health and safety; and

17           WHEREAS, additional sources of funding for critical maintenance and operating costs  
18 of the Anguilla Landfill and the Bovoni Landfill are necessary; and

19           ~~WHEREAS, the Authority has entered into an Indenture of Trust, dated as of May-1,~~  
20 ~~1998, as amended and supplemented (collectively, the "Matching Fund Revenue Indenture"),~~  
21 ~~authorized under the Virgin Islands Revised Organic Act, as amended, 48 U.S.C.A §1574 et seq.~~  
22 ~~(West 1987) (the "Revised Organic Act"), Title 29, Chapter 15, of the Virgin Islands Code (the~~  
23 ~~"PFA Act", and together with the Revised Organic Act, the "Act"), pursuant to which the~~  
24 ~~Authority previously has issued certain of its bonds (the "Matching Fund Revenue Bonds"); and~~

25           WHEREAS, in order to finance all or a portion of the costs required to maintain, operate  
26 and to continue to mitigate conditions at the Bovoni Landfill and the Anguilla Landfill, and to  
27 comply with the Consent Decrees, the Authority intends to issue one or more series of Matching  
28 Fund Revenue Bonds and loan the proceeds thereof to the Government, pursuant to one or more  
29 loan agreements (collectively, the "Series 2016 Matching Fund Revenue Loan Agreements"),  
30 against delivery by the Government of one or more loan notes (collectively, the "Series 2016  
31 Matching Fund Revenue Loan Notes");

32 *Now, Therefore, Be It Enacted By The Legislature Of The Virgin Islands:*

33           **SECTION 1. Authorization to Borrow to Finance the Series 2016 Landfills Project.**

34           **(A) Authorization to Borrow on a Limited Obligation.** The Authority is authorized  
35 to issue the Series 2016 Matching Fund Revenue Bonds (defined herein) to provide funds to  
36 (i) finance all or a portion of the costs of the Series 2016 Landfills Project in an aggregate  
37 principal amount not to exceed \$30,000,000 (together with the principal amount of bonds

1 necessary to finance fees, charges, carrying costs and reserves), (ii) fund any necessary reserves,  
2 (iii) pay the costs of issuance of the Series 2016 Matching Fund Revenue Bonds and Series 2016  
3 Matching Fund Revenue Loan Notes (defined herein), (iv) pay capitalized interest, if any, on the  
4 Series 2016 Matching Fund Revenue Bonds, and (v) pay the costs of any liquidity facility or  
5 bond insurance relating to the Series 2016 Matching Fund Revenue Bonds. Such Series 2016  
6 Matching Fund Revenue Bonds shall be secured, as applicable, by the Matching Fund Revenues  
7 (the "Series 2016 Matching Fund Revenue Bonds"). As evidence of its obligation to repay the  
8 Series 2016 Matching Fund Revenue Bonds, the Government is hereby authorized to issue as its  
9 Series 2016 Matching Fund Revenue Loan Notes and execute the Series 2016 Matching Fund  
10 Revenue Loan Agreements.

11 **(B)(1) Authorization to Pledge Matching Fund Revenues to Secure Series 2016**  
12 **Matching Fund Revenue Bonds.** The Government is hereby authorized to issue the Series 2016  
13 Matching Fund Revenue Bonds and to pledge certain federal excise tax revenues (hereinafter  
14 referred to as "Matching Fund Revenues") to be received by the Government free and clear of  
15 any liens or security interests (except as provided below) pursuant to Title 29, Section 42 of the  
16 Virgin Islands Code, as security for repayment of the Series 2016 Matching Fund Revenue Loan  
17 Notes. The Special Escrow Agreement, dated as of May 1, 1998, as supplemented and amended,  
18 entered into by and between the Government, the Authority and The Bank of New York Trust  
19 Company, N.A., as successor Special Escrow Agent (the "Special Escrow Agent"), (collectively,  
20 the "Special Escrow Agreement"), providing for the deposit and administration of funds for the  
21 benefit of the holders of the outstanding Matching Fund Revenue Bonds, the Series 2016  
22 Matching Fund Revenue Bonds, and any Additional Bonds authorized under the Matching Fund  
23 Revenue Bond Indenture ("Matching Fund Revenue Additional Bonds"), shall be maintained for  
24 so long as any of the Series 2016 Matching Fund Revenue Bonds or any additional loans made  
25 with the proceeds of Matching Fund Revenue Additional Bonds issued under a duly authorized  
26 supplement to the Matching Fund Revenue Indenture are outstanding.

27 In connection with the issuance of the Series 2016 Matching Fund Revenue Bonds, and in  
28 furtherance of the pledge of the Matching Fund Revenues authorized herein, the Government and  
29 the Authority are hereby authorized to execute one or more agreements or other instruments,  
30 pursuant to which (i) all Matching Fund Revenues shall continue to be delivered directly from the  
31 United States Department of the Treasury to the Special Escrow Agent for deposit to the Special  
32 Escrow Fund, known as the "Special Escrow Account", which account shall be maintained in the  
33 custody of the Special Escrow Agent and shall be held separate from any other funds and  
34 accounts of the Government or such banking institution, (ii) the Government shall pledge and  
35 assign to the Authority, which shall in turn assign to the Trustee, on behalf of the holders of the  
36 outstanding Matching Fund Revenue Bonds, the Series 2016 Matching Fund Revenue Bonds, and  
37 any Matching Fund Revenue Additional Bonds, a lien on and a security interest, in all such  
38 amounts deposited into the Matching Fund Revenue Special Escrow Account, (iii) such Special  
39 Escrow Agent shall remit, or cause to be remitted, from amounts on deposit in the Matching Fund  
40 Revenue Special Escrow Account, (x) *first*, to the Trustee, such amounts as are necessary under  
41 the Matching Fund Revenue Indenture and all supplemental indentures thereto or the respective  
42 loan agreement, to satisfy the Government's payment obligations then due, (y) *second*, (a) to the  
43 Diageo Special Escrow Agent for delivery to the trustee, each appointed in accordance with the  
44 provisions of the Agreement, dated June 17, 2008, by and between the Government and Diageo

1 USVI LLC (the “Diageo Agreement”), to the extent available Matching Fund Revenues allocable  
2 to the project described in the Diageo Agreement are then available, the allocable portion of such  
3 Matching Fund Revenues to satisfy (A) the Government’s payment obligations then due under the  
4 indenture of trust and loan agreement entered into and (B) the Government’s payment obligations  
5 under the Diageo Agreement, (b) to the Cruzan Special Escrow Agent for delivery to the trustee,  
6 each appointed in accordance with the provisions of the Agreement, dated October 6, 2009, by  
7 and between the Government and Cruzan VIRIL, Ltd. (the “Cruzan Agreement”), to the extent  
8 available Matching Fund Revenues allocable to the project described in the Cruzan Agreement  
9 are then available, the allocable portion of such Matching Fund Revenues to satisfy (A) the  
10 Government’s payment obligations then due under the indenture of trust and loan agreement entered  
11 into and (B) the Government’s payment obligations under the Cruzan Agreement, and (z) *third*, to  
12 the Government for use by the Government for any lawful purpose, and (iv) the Government shall  
13 covenant that, in the event the United States government discontinues providing Matching Fund  
14 Revenues to the Government and substitutes another source of revenues in lieu thereof, the  
15 Government shall use its best efforts to add or substitute such source of revenues (the “Substitute  
16 Revenues”) to pledge as security for the repayment for the Series 2016 Matching Fund Revenue  
17 Loan Notes, which Substitute Revenues will be deposited into the Matching Fund Revenues Special  
18 Escrow Account, be subject to the security interest granted therein and be remitted therefrom in the  
19 same manner as authorized in clauses (i), (ii) and (iii) above. Notwithstanding any other law, rule or  
20 regulation to the contrary, upon deposit of the Matching Fund Revenues into the Matching Fund  
21 Revenue Special Escrow Account, such amounts so deposited shall not be subject to any prior lien  
22 or attachment by any creditor of the Government or by any other person or entity other than the lien  
23 and security interests authorized by this paragraph (1).

24 (2) **Non-Impairment Covenant.** In furtherance of the pledge of the Matching Fund  
25 Revenues authorized by this Act, the Government is hereby authorized and directed to covenant and  
26 agree for the benefit of the holders of the outstanding Matching Fund Revenue Bonds, Series 2016  
27 Matching Fund Revenue Bonds and any Matching Fund Revenue Additional Bonds that, for so long  
28 as any related loan notes issued by the Government remain unpaid, the Government shall continue  
29 to (i) take all steps necessary to ensure the receipt and continued collection of Matching Fund  
30 Revenues and the deposit of Matching Fund Revenues into the Special Escrow Account, (ii) to the  
31 extent permitted by law, defend, preserve and protect such pledge, lien and security interest and all  
32 rights of the holders of such loan notes against all claims and demands of third parties, (iii) not  
33 revoke, terminate or amend such pledge, lien and security interest in any way that materially  
34 adversely affects the rights of any holder of such loan notes or bondholders, (iv) not take any action  
35 that would, directly or indirectly, result in the repeal, rescission or termination of Section 1574a of  
36 the Revised Organic Act (or any successor provision) or a reduction in collections of Matching  
37 Fund Revenues or a restriction or reduction in application of the Matching Fund Revenues in  
38 general, if such action would materially adversely affect the rights of any holder of such loan  
39 notes or bondholders, or (v) not take any action or fail to take any action which will limit, restrict  
40 or in any way impair in general the collection, transfer, deposit to, or disbursement of Matching  
41 Fund Revenues from the Special Escrow Account, or allow, permit or suffer to exist any prior  
42 lien, attachment or pledge (other than any lien and pledge authorized herein) of Matching Fund  
43 Revenues deposited into or required to be deposited into the Special Escrow Account.

1           (3) **Authorization to Assign Series 2016 Matching Fund Revenue Loan Notes**  
2 **and Series 2016 Matching Fund Revenue Loan Agreements.** In connection with the issuance  
3 by the Authority of the Series 2016 Matching Fund Revenue Bonds, the Authority is hereby  
4 authorized to assign to the Trustee, for the benefit of the holders of the Series 2016 Matching  
5 Fund Revenue Bonds, the Authority's rights and interest in, to and under the Series 2016  
6 Matching Fund Revenue Loan Notes and the Series 2016 Matching Fund Revenue Loan  
7 Agreements or other instruments authorized herein, subject to and in accordance with the terms  
8 of the Matching Fund Revenue Indenture and the Series 2016 Matching Fund Revenue Loan  
9 Agreements.

10           (4) **Authorization to Execute All Necessary Agreements.** The Government, acting  
11 by the Governor or Commissioner of Finance, and the Authority, acting by the Governor as  
12 Chairman (or such other member(s) designated in the resolution of the Authority), are each  
13 hereby authorized to (i) execute and deliver all documents and agreements necessary or  
14 advisable in connection with the issuance of the Series 2016 Matching Fund Revenue Bonds  
15 authorized herein, (ii) loan the proceeds of the Authority's Series 2016 Matching Fund Revenue  
16 Bonds to the Government as contemplated herein, and (iii) pay all expenses associated with the  
17 issuance of the Series 2016 Matching Fund Revenue Bonds authorized herein, including, without  
18 limitation, any costs or expenses required to be paid by or in relation to the Series 2016 Matching  
19 Fund Revenue Loan Agreement authorized herein, including any liquidity facility or bond  
20 insurance policy relating to the Series 2016 Matching Fund Revenue Bonds.

21           (C) **Authorization to Execute All Necessary Agreements.** The Government, acting  
22 by the Governor or Commissioner of Finance, and the Authority, acting by the Governor as  
23 Chairman, or such other member or members designated in the resolution of the Authority, each  
24 may

25           (1) execute and deliver all documents and agreements necessary or advisable in  
26 connection with the issuance of the Series 2016 Matching Fund Revenue Bonds authorized  
27 herein,

28           (2) loan the proceeds of the Authority's bonds to the Government as contemplated  
29 herein, and

30           (3) pay all expenses associated with the issuance of the bonds, notes, and other  
31 evidence of indebtedness authorized in this act, including, without limitation, any costs or  
32 expenses required to be paid by or in relation to the Series 2016 Matching Fund Revenue Loan  
33 Agreements authorized herein, including any liquidity facility or bond insurance policy relating  
34 to the Series 2016 Matching Fund Revenue Bonds.

35           **SECTION 2. Series 2016 Landfills Project.** Proceeds of the Series 2016 Matching  
36 Fund Revenue Bonds shall be applied to finance all or a portion of the costs of the 2016 Landfills  
37 Project, together with the funding of any necessary reserves and payment of the costs of issuance  
38 of the Series 2016 Matching Fund Revenue Bonds, as described below:

