

**TESTIMONY OF
NELLON L. BOWRY
TO THE
COMMITTEE ON GOVERNMENT SERVICES, CONSUMER AND
VETERANS' AFFAIRS
31ST LEGISLATURE OF THE VIRGIN ISLANDS
ON BILL NO. 31-0014 (AS AMENDED)
NOVEMBER 18, 2015**

Good Day Chairman Justin Harrigan, Sr. and other members of the Committee on Government Services, Consumer and Veterans' Affairs of the 31st Legislature of the Virgin Islands, other Senators who are present and all others viewing and listening. I am Nellon L. Bowry, Director of the Office of Management and Budget (OMB) and I am here to provide Testimony on Bill No. 31-0014 as amended, "an Act amending Title 33 Virgin Islands Code, adding Chapter 120 to re-establish the Office of the Virgin Islands Inspector General as a semi-autonomous agency of the government."

As you are aware, on April 15, 2015, I testified on Bill No. 31-0014 in its original form. At that time I expressed two major concerns: (1) that the Office of the inspector General seems to be immune from check and balance---beholden to no one; and (2) that the proposed formula-based funding mechanism was arbitrary, was not needs based and did take into account for the fiscal circumstances of the Government of the Virgin Islands.

It is well established and accepted that independence and objectivity are fundamental to an effective Office of the Inspector General function. The

challenge has been to fashion a statutory framework that fosters and protects this independence, yet fits within the broader context of public sector governance, which is characterized by three, and only three, co-equal branches of government that check and balance each other. In this specific regard, enabling legislation has focused on three areas: oversight of the Office of the Inspector General; protection of the Inspector General, and funding of its operations.

Oversight

On the premise that the primary purpose of the Office of the Inspector General is to promote accountability and prevent fraudulent use of governmental funds by government departments and agencies, some jurisdictions have chosen to locate the Office of the Inspector General in the legislative branch of government, with reporting to an audit committee of the legislature. The Office of the Inspector General's annual budget is reviewed and approved by the audit committee. Bill No. 31-0014, in both the original and amended versions, locates the Office of the Inspector General Office in the Executive Branch of the Government of the Virgin Islands, then goes to great lengths to insulate the office from the Executive Branch oversight. Except for the initial nomination, the Governor who is the head of the Executive Branch, does not exercise any supervisory control over the Inspector General. As proposed by Bill No. 31-0014, the Virgin Islands Office of the Inspector General has no clearly defined oversight.

Protecting the Inspector General

Protection of the head of the agency has generally been provided in the form set terms of office; strict guidelines with specific set of circumstances governing

termination and protection of compensation. Bill No. 31-0014 seems to provide adequate protection for the person appointed to the office, in that: the appointment is by nomination of the Governor with advice and consent of the Legislature; the term is for seven years and incumbent may only be removed for neglect of duty or malfeasance, and, his/her salary is set by statute, which may not be reduced during the term of the incumbent.

Funding

Recognizing that independence and objectivity can be manipulated by control of fiscal resources, statutory schemes have sought to protect against arbitrary reduction to funding. Bill No. 31-0014, as amended, sensibly addresses that concern. Rather than establishing a budget by formula, as was the case in the original version, it requires the Inspector General to submit and justify an annual budget request to the Governor and the Legislature. Once a budget is appropriated it must be allotted in its entirety. Additionally, the Inspector General is allowed to establish its own compensation, wage and salary scales in accordance with industry standards.

In its amended form, Bill No. 31-0014 addresses one of my two concerns. The revised section dealing with the annual budget strikes a sensible balance between the need to protect the Inspector General from improper influence via its funding, while retaining a rational basis for budgeting. However, it remains my observation and concern that the Office of the Inspector general is not unambiguously located in any of the three branches of our government.

I have attached letter, from me to Senator Clifford Graham, which some options for your consideration.

END OF STATEMENT

Attachment



GOVERNMENT OF
THE UNITED STATES VIRGIN ISLANDS



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April 27, 2015

Senator Clifford Graham, Chairman
Committee on Finance
31st Legislature of the V.I.
Capitol Building
Charlotte Amalie
St. Thomas, USVI 00802

Re: Bill No. 31-0014

Dear Senator Graham:

As per our discussion on Wednesday, April 15th, I am submitting my thoughts on options regarding funding and oversight of the Virgin Islands Office of the Inspector General (VI-OIG). To be clear, my position is that as long as the VI-OIG remains under the Executive Branch, then its budget should reflect its needs and the fiscal circumstances of the Government. This means that VI-OIG should submit its budget request through OMB and be subject to fiscal discipline, including expenditure control authorized by Title 2 V.I.C. Section 26. I do not have strong feelings about moving it under the Legislative Branch.

Should you choose to place the entity under the Legislature of the Virgin Islands, its budget request would be a part of the overall Legislature's budget and subject to the same approval process of the Legislature's budget.

With respect to the issue of general supervision, there were several discussions stating that VI-OIG currently reports to the Legislature because it sends reports to the Legislature. There is a distinction between reporting requirements and oversight. My original testimony on the matter was about command hierarchy and not reporting requirements as set forth in both the Virgin Islands Code and proposed bill. Listed below are some options on how the command hierarchy may be structured, while maintaining VI-OIG's independence.

A. If the Inspector General Office is structured as a Semi-autonomous agency

*Create an Ethics Board that oversees agency

*Board has general oversight of the agency; however, Inspector General handles and decides all of agency operations

*Board comprised of 5 members; usually VI statutory law provides some members of the board be de facto cabinet members; however, to maintain the independency and objectivity of the Inspector General Office it is recommended board members be elected (or comprised of a retired or former judge, retired or former attorney general, two CPA(s) (one from each island district) and an auditor.

*Broaden the statutory reporting requirements of the Inspector General Office to include the Ethics Board

B. The Inspector General Office as an Executive Branch can be housed within the V.I. Department of Justice wherein the Attorney General has

- *General supervision over the Inspector General

- *Does not have the authority to prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation or from issuing any subpoena during the course of an audit or investigation

- *The Inspector General is appointed by the Governor with the advice and consent of the Legislature as per the proposed bill

- *Inspector General has full authority and control to manage the daily operations of the division, including hiring and firing of all employees

C. The Inspector General Office as an entity within the V.I. Legislature wherein

- *Inspector General reports directly to the Senate President

- *Senate President has general supervision over the Inspector General

- *Senate President does not have the authority to prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation or from issuing any subpoena during the course of an audit or investigation

- *Inspector General has full authority and control to manage the daily operations of the division, including hiring and firing of all employees

- *There is an open question how the Inspector General would be selected under this structure

D. Inspector General Office as currently outlined in the proposed bill as an independent

- *Inspector General becomes an elected official

- *Create a council of auditors that have reviewing authority over the Inspector General Office to ensure the integrity, efficiency, reporting obligations and other compliance of the Inspector General Office

Please take note that except for my original position I am not recommending or endorsing any of these options. I merely present them for consideration per your request.

Respectfully,


Nellon L. Bowry, Director
Office of Management & Budget

CC: Steven Van Beverhoudt, V.I. Inspector General