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TESTIMONY ON BILL 31-0014
Committee on Government Services, Consumer and Veterans Affairs
November 18, 2015

Good afternoon Senator Harrigan, Chairman of the Committee on Government Services, Consumer and Veterans Affairs, other members of the Committee, other senators present, members of the Legislative staff, ladies and gentlemen present and in the viewing and listening audience. I am Steven van Beverhoudt, the Virgin Islands Inspector General. I am here today to comment on Bill 31-0014 – An Act amending Title 33 Virgin Islands Code, adding Chapter 120 to re-establish the Office of the Virgin Islands Inspector General (OVIIG) as a separate and independent agency of the Government.

This Bill was heavily debated during this committee's meeting of April 15, 2015. As I did at that meeting, I fully support the Bill and ask your support in taking another step in the right direction of Government accountability. There are two minor recommended amendments to the current version, which I will discuss shortly.

This body in September of this year approved, and Governor Mapp signed into law a Fiscal Year 2016 lump sum budget of \$2 million for the OVIIG. However, by correspondence dated October 26, 2015, the Budget Director notified

me that there was going to be a 3% cut in the Fiscal Year 2016 allotment. This cut amounts to \$60,000, which is miniscule when compared to the overall Government budget, but is very significant to our operations. Sixty thousand dollars represents an auditor's position. This cut comes as we are going through the interview process in both districts of potential candidates seeking employment with our agency.

This, ladies and gentlemen is an example of exactly why the OVIIG needs to be independent from the control of the Executive Branch. The Legislature, when Act 6333 was passed, intended that the OVIIG be independent in appearance and in actuality from the controls of the Executive Branch. Title 3, Section 1202(a) of the Virgin Islands Code states; "The V. I. Inspector General shall prepare and submit to the Legislature an annual budget that includes staffing levels for the Office of the V. I. Inspector General. **The budget, once appropriated by the Legislature, shall be allotted in its entirety at the commencement of the fiscal year.**" (emphasis added) Confusion was created by a 2002 Attorney General Letter of Advice, which basically stated that because the OVIIG's enabling legislation is included under Title 3 (Executive Branch) of the Code, the agency is controlled by the directives of the Executive Branch, thus Bill 31-0014.

The opposing testimony at the April 15, 2015, hearing centered on the percentage of the Government's budget method originally proposed in 31-0014 to

the funding of the OVIIG. In discussions after the hearing and in my subsequent meetings with almost each Senator of the 31st Legislature, I indicated that I would not object to leaving the funding language as it currently exists in Title 3, Section 1202(a), provided that the independence of the OVIIG is maintained. The current revisions to 31-0014 address the majority of the concerns voiced to me at our meetings. It is my understanding that by moving the OVIIG enabling legislation from Title 3 to Title 33 the issues of the 2002 Attorney General's Letter of Advice will be resolved.

Attached to this testimony is a copy of a guest editorial that I distributed shortly after the April 15th hearing. It explains in detail the reasons why the Virgin Islands need a truly independent OVIIG. I request that it be made a part of the official record of my testimony here today.

As I indicated, there are two minor recommended amendments as follows:

- Page 5, line 17 after "... recipient of funds from the Virgin Islands..." insert "Government".
- Page 8, line 24 after "...once appropriated by the Legislature, must be allotted..." insert "in its entirety".

In summary, I again must bring to your attention the structures of the public auditors of Guam and the Commonwealth of the Northern Marianas Islands

(CNMI). Guam's public auditor is authorized by Guam's Organic Act, elected by the citizens of Guam, and is independent in all aspects. The public auditor of the CNMI is appointed by their Governor and is also independent as stated in their Constitution. Neither public auditor is required to report to a board.

Assuming that the structure, as contained in Bill 31-0014, resolves the lack of independence in appearance and in fact of the current statute, I maintain my full support of Bill 31-0014 with the suggested amendments previously mentioned.

I thank you for the opportunity to be here today, and I am available to answer your questions.



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**WHY WE NEED A TRULY INDEPENDENT OFFICE OF THE VIRGIN ISLANDS INSPECTOR
GENERAL**

On Wednesday, April 15, 2015 Senator Clifford Graham's Bill 31-0014, an Act amending Title 33 of the Virgin Islands Code, by adding Chapter 119 to re-establish the Office of the Virgin Islands Inspector General (OVIIG) as a semiautonomous agency of the Virgin Islands Government (Government), was discussed at the meeting of the Committee on Government Services, Consumer and Veterans Affairs. There were two testifiers, myself, Steven van Beverhoudt, Virgin Islands Inspector General (supporting the bill) and Nellon Bowry, Budget Director Designee (opposing the bill). The debate was heated at times, and the proposal was eventually held in Committee pending proposed amendments.

I would like to explain the merits of this proposed bill, clarifying any misunderstanding of its intent and why its approval would go a long way in providing accountability and effective fiscal management for the Government.

Having served as the V. I. Inspector General since 1989, under 5 different administrations, I have seen potential and real challenges to the independence of the OVIIG. I have had an administration attempt to transfer one half of my staff to another agency; I have had an attempt made to cancel ongoing or planned audits; I have had an attempt made to place an unqualified individual into a management position; I have been forced to meet the mandatory continued professional education requirements for the staff by scheduling training in the Virgin Islands only through the USDA Graduate School's auditor training program to the point that all of the relevant courses have been used; and I have been forced to request that the V. I. Department of Justice fund the expenses for a OVIIG investigator to travel to the mainland to escort a prisoner back to the Virgin Islands. Those are a few examples of major interferences with and attempts to compromise our independence. Everyone knows that the appearance of diminished independence can be as harmful as the real lack of independence. I must say that, to date the current administration has been supportive of the OVIIG and our ability to independently carry out our mandate. But what issues or challenges might the next administration bring?

Opponents claim that the system works, that the challenges were resolved, but I question, what if, in any one of the challenges, the particular administration did not reverse its original decision?

With the departure of the Department of the Interior's Office of Inspector General in the fall of 2013, the OVIIG is the **only permanent** local or Federal government audit entity remaining in the Virgin Islands. Federal OIG's will now only audit and perform oversight functions of Federal funds for their respective Federal agencies, and on-sight visits will be very limited.

Before I discuss the specifics of Bill 31-0014, let me give you a little background on the evolution of the OVIIG.

In the early 1980's the Federal Inspectors General reviewed financial management and local audit oversight within the Virgin Islands and recommended that the then Audit Division of the Department of Finance become an independent entity. This was partially accomplished in 1982 with the creation of the Virgin Islands Bureau of Audit and Control (Audit Bureau). The late Senator Ruby M. Rouse was the driving force behind the legislation.

The Audit Bureau although now independent from the Department of Finance, was still under the direct control of the Executive Branch of the Government, with only audit authority and no clear definition as to the extent

of its authority to audit any entity of the Government.

In 1999, with the help of former Senators Violet Anne Golden and the late Gregory Bennerson, Act 6333 was passed, over the Governor's veto, basically abolishing the Audit Bureau and creating the independent OVIIG. The new act gave the local audit office the authority to not only audit the Government, but to also investigate potential instances of fraud, waste and abuse within the Government. It also more clearly defined the authority of the OVIIG, prohibiting interference with any ongoing or planned audit or investigation.

Although great strides were made in protecting the independence of the OVIIG, areas that potentially compromise this independence remain. These areas are (i) the location of the OVIIG within the Government's structure, (ii) the manner in which the OVIIG's budget is funded, and (iii) the reporting of violations of law.

Title 3 Chapter 40 Section 1203(e) of the Virgin Islands Code (Code) requires the OVIIG to comply with standards established by the Government Accountability Office of the United States (GAO) and the American Institute of Certified Public Accountants (AICPA).

The *Government Auditing Standards* issued by GAO discusses the issue of independence in their first General Standard. It states; "*In all matters relating to the audit work, the audit organization and the individual auditor, whether government or public, must be independent.*" It further states that; "*The ability of audit organizations in government entities to perform work and report the results objectively can be affected by placement within government and the structure of the government entity being audited.*"

Bill 31-0014 basically takes Title 3, Chapter 40 of the Code and moves it to Title 33. It further addresses the issue of budget funding, control, and the investigation and reporting of violations of local and Federal laws.

Location within the Government's Structure

The Territory of Guam and the Commonwealth of the Northern Mariana Islands (CNMI) are the two Pacific territories that most closely resemble the Virgin Islands in population, government structure, and advancement as it relates to local audit and investigative activities.

Guam's Organic Act authorizes the Guam Government to create a Public Auditor's Office independent of the three branches of their government. The Public Auditor of the CNMI is established by their Constitution as an independent agency of the Commonwealth Government. In the 50 states, most Public Auditor's Offices (most of which are known as the Auditor General's Office) are either a part of the Legislative Branch or are independent offices with the head an elected position.

Under the current structure, the OVIIG's enabling legislation places it under Title 3 of the Code, the Executive Branch. A 2002 Letter of Advice issued by then Attorney General Iver Stridiron basically stated that the OVIIG, although "... an independent agency...is situated structurally within the executive branch..." and is "... subject to the usual statutory obligations of all executive government agencies."

Bill 31-0014 removes the OVIIG from Title 3 and places it under Title 33 Subtitle 3 (Finance) of the Code under a new Chapter 119. This should give the OVIIG the level of administrative and fiscal independence as the other semiautonomous entities like the Water and Power Authority and the Port Authority.

Opponents to this section of the bill claim that: it sets up a super agency beholden to no one; the OVIIG will have police powers and even semi-prosecutorial powers; it will create a fourth branch of Government; no other semiautonomous agency has unfettered independence; and, all semi-autonomous agencies report to a board.

In response to these assertions, I maintain that OVIIG would not become a super agency. It will be answerable to the Legislature by the annual budget process and as requested by the Legislature whenever and as

often as they desire to have a legislative hearing or meeting. The Legislature has the ability to establish a line item budget.

Current law already gives the OVIIG law enforcement powers and subpoena powers as is done by almost all Federal OIG and other state OIG offices. The law does not now nor does Bill 31-0014 give the OVIIG any type of prosecutorial powers, those powers rest with the V. I. Attorney General and the United States Attorney.

The OVIIG would not be the fourth branch of Government it would be a semiautonomous entity that reports its findings to the three branches of the Government as appropriate and to the Legislature at least annually on how funds are spent. The OVIIG is not like any other department or agency of the Executive Branch and should not be compared to one. It should be the independent “watch-dog” of the three branches of the Government and the instrumentalities, reporting fraud, waste and abuse to each as required.

The Public Auditors of Guam and the CNMI are independent entities outside of the three branches of the Guam and CNMI governments as set out in their Organic Act and Constitution respectively. This is where the V. I. should be leaning toward.

The legislative body would act as the “board” for the OVIIG, as it would report to this body at least on an annual basis or as often as requested by the Legislature. In addition, there is a mechanism to remove the V. I. Inspector General for neglect of duty or malfeasance in office.

There are about 19 autonomous and semiautonomous entities in the Virgin Islands, all of which are independent from the control of the Office of Management and Budget (OMB); even those that receive local funding from the central Government. As an example, when the 8% salary cut was put into effect, these entities were not automatically affected. The proposed Bill gives the OVIIG that fiscal independence that was intended by the Legislature in 1999 by Act 6333, but is now questioned by the 2002 Attorney General Letter of Advice.

It is my opinion that ultimately the Legislature should petition the United States Congress to amend the Virgin Islands Organic Act to create an independent OVIIG similar to Guam.

The Budget Issue

In Guam, 1 G.C.A. § 1911 (Repealed), established the Public Auditor’s Office budget at .25% of the budget for the Government of Guam. In correspondence with the current Public Auditor, it was indicated that the provision was repealed because the Lieutenant Governor did not want any agency with a set aside budget. They do have more flexibility than OVIIG however, in that their budget is submitted directly to their Legislature and not through the executive budget office. Unlike the OVIIG whose budget request must conform to the budget ceiling restrictions established and controlled by the OMB, again contrary to the intent of Act 6333. I must note that the restrictive nature of the fiscal constraints has negatively impacted our ability to conduct several audits and investigations due to limited staff.

For the CNMI, their constitution guarantees a budget of \$500,000, and requires the Secretary of Finance to withhold 1% of all appropriations to fund the Public Auditor’s Office. The funds are deposited into a special account established specifically for the Public Auditor.

Is it a coincidence that in Fiscal Year 2015 when this legislation was making its way through the 30th Legislature, for the first time in 25 years of budget presentations, the previous administration decided to budget the OVIIG as an independent agency? This was the first time that the budget was allotted in its entirety in accordance with Act 6333.

Recently, OMB submitted a 2016 Budget ceiling of \$1.6 million, a 20% cut of \$400,000 from the \$2 million 2015 Budget. An appeal was made to Governor Mapp and fortunately, he agreed with the need to maintain our full funding. What would the consequences be if Governor Mapp did not agree to not cut the OVIIG Budget?

Bill 31-0014 in subsection 3506 establishes the annual budget at "...one-half of one percent of the overall Budget of the Government, but not less than \$3,000,000." It further provides that any unused funds be returned to the General Fund for the Legislature to appropriate.

Again opponents claim that: Bill 31-0014 establishes a budget that cannot be reduced, while, appropriations are set by an explicit act of the Legislature subject to the fiscal discipline; and, the proposed OVIIG budget is not based on needs.

In reality, the law as it stands now requires that the OVIIG's funds be allotted in the entirety at the beginning of the fiscal year. OMB cannot reduce the appropriation once signed into law. The Legislature from the 1999 Act 6333 intended for the OVIIG to be fully funded, and if cuts are needed, they are to be taken from other departments and agencies.

Although the minimum appropriation will be based on a percentage, it still will be appropriated by an explicit act of the Legislature. The minimum budget was established to protect the independence and ability of the OVIIG to have available the necessary funds to meet its responsibilities without the threat of having funds reduced. Because of the small budget, over the years consistent budget cuts have prevented the OVIIG from hiring the necessary staff to meet its mandate. The CNMI has a minimum budget and requires a budget of 1% of all appropriations. In addition, their funds are to be deposited into a separate account established strictly for their own use.

The Bill provides that if the OVIIG does not need all of the available funds in its annual budget proposal, the funds would be available for the Legislature to appropriate as desired.

Reporting of Violations of the Law

Currently, Title 3 Section 1203(f), (g) and (h) require the V. I. Inspector General to report suspected violations of law to the Attorney General. The proposed legislation adds the United States Attorney after Attorney General wherever it appears in the language. This would give the V. I. Inspector General the ability to report matters to the United States Attorney when possible violations of Federal law are uncovered.

There was no opposition to this section of the proposed legislation.

In conclusion, I fully support Bill 31-0014, assuming it does what it intends to do. It can finally give the OVIIG the ability and resources to better meet the enormous mandate, responsibilities, and many requests for audit. It can also help us provide Government entities with the assistance, through audits and inspections, to operate effectively and efficiently.

None of the concepts in this bill are new. Our fellow territories in the Pacific saw the need for an independent and adequately funded Public Auditor. With the constant cry of corruption, misuse and abuse of Government funds, a strong and independent audit presence is imperative. The "ball rests in the court" of the Virgin Islands Legislature. It is the "Time to Build".

(Steven van Beverhoudt is currently serving as the Virgin Islands Inspector General, a position that he has held for more than 26 years.)


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