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To: Senate President Novelle Francis  
Members of the 35<sup>th</sup> Legislature (via EMAIL) 3 April 2023

From: David Silverman

Cc: Chief Legal Counsel Yvonne Tharpes, Esq.

Subject: **April 5, 2023 Special Session – Governor’s Bill re Line of Credit**

Dear President Francis and Members of the 35<sup>th</sup> Legislature,

The 35<sup>th</sup> Legislature will be called into Special Session on April 5, 2023, to consider legislation submitted by Governor Albert Bryan Jr. involving the public finances of the US Virgin Islands<sup>1</sup>. Specifically, this legislation requests authority for the Governor to secure a \$150 million line of credit (or “LOC”), at an interest rate not to exceed 9%, for a term of three years. The debts incurred under the LOC would be secured by a statutory lien on Gross Receipts Tax and Income Tax collections in the VI Treasury and may be paid out of the General Fund.

Although this bill, if passed, would have significant impacts on public funds and public debt, it appears that the only testifiers invited by the Legislature to provide information on the proposed bill are representatives of the Executive Branch and its subordinate agencies. There does not appear to be any testimony invited from members of the public or any group who may have facts and opinions in opposition to the Governor’s proposed bill.

In lieu of testimony, I am writing this letter to the members of the 35<sup>th</sup> Legislature to provide information, questions and alternatives relating to the Governors bill, in the hope that the information contained herein will be entered into the Legislative record and discussed in Special Session. All of the data cited in this letter has been obtained from publicly available documents published by the Office of Management of the Budget.

1. As of the March 2023 Revenue Estimating Conference, the forecast FY2023 Net Revenue projection was \$914m (see Attachment 1). According to the OMB Financial Summary dashboard, the total budget appropriations from the General Fund for FY 2023 are \$953,975, 500 (see Attachment 2). It is apparent from the OMB budget and forecast data that there is no surplus revenue forecast in the General Fund.

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<sup>1</sup> In an op-ed written by me and published in the April 3, 2023 edition of the Virgin Islands Daily News, as a result of an editing error the op-ed stated that the letter convening the Special Session was sent by Lt Gov Tregenza Roach. This is incorrect – the letter was signed by Acting Governor Bosede Bruce (Finance Commissioner).

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2. The Governor's bill requests authority to enter into a \$150m line of credit transaction for a term of 3 years, to be secured by a statutory lien on tax receipts the VI Treasury General Fund. However, it is clear from the estimated FY 2023 revenues and the FY 2023 appropriations that there is no unappropriated balance in the General Fund. How can a lien be placed on funds which are already appropriated for the operations of the VI Government?
3. Furthermore, it is unclear whether there actually is a balance in the General Fund of \$150m and whether such a balance can be guaranteed throughout the 3-year term of the LOC. How can the VIG agree to a statutory lien without assurances that adequate cash will be on deposit to cover the amount of the lien?
4. It appears that no supporting documentation was provided to the Legislature or to the public accompanying the Governor's bill request. There does not appear to be any independent financial analysis or discussion of alternative measures. For a matter of this magnitude and with the potential for significant impacts on the finances of the Territory the Legislature should require documentation well in advance of any session in which the bill is considered. Similarly, since this bill proposes to utilize public revenues (Gross Receipts Tax, Interest Collections, Income Tax and Federal Grant Funds), all documentation should be made available to the public for a minimum of two weeks prior to consideration of the legislation in order to perform thoughtful review and analysis.
5. There is no plan of finance attached to, or provided with, the legislation. There is no schedule of how the borrowed funds would be used, or how the borrowed funds would be paid back.
6. The effect of the Governor's bill is to bypass the statutory fiduciary role of the Legislature as the "keeper of the purse strings" of government. The bill proposes to borrow external funds which could then be used for "any purpose for which the Government is authorized to use and expend monies, including but not limited to, current expenses, capital expenditures. and discharge of any obligations of the Government." This statement, as well as other language in the bill indicates that the Legislature will have no role in reviewing or approving how the borrowed funds will be used.
7. The fact that the Governor's bill states that the debt incurred under the LOC "may be paid from the General Fund" by utilizing Interest Collections, Gross Receipts Tax Collections, Income Tax Collections and Federal Grant Funds is particularly troubling. All of these funds are either earmarked (in the case of federal grants) or appropriated (in the case of tax collections) and are not available to repay additional debt incurred under the LOC.

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How will essential government services, including education, health care, public assistance, and emergency services be provided if the funds for those services are diverted to be used under the sole discretion of the Governor?

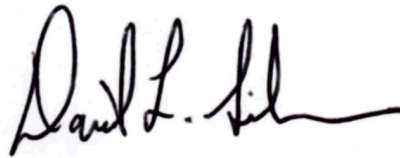
8. Although the maximum indebtedness under the LOC cannot exceed \$150m at any point in time, there is no limit to the total amount which can be borrowed under the LOC. For example, if \$100m were borrowed on day one, and then repaid out of tax receipts in the General Fund, then a second \$100m could be borrowed, and so forth. There is essentially no limit on how much cash could be diverted from the General Fund to pay the debts incurred under the LOC.
9. Why is the term of the LOC precisely equal to the remaining tenure of the current Governor?
10. The maximum interest rate on the LOC – 9% - is almost twice the highest interest rate paid on any of the current debt obligation of the VI Government and PFA. It is close to three times the market rate for 3-5 year municipal debt obligations. If the Governor were to borrow the maximum amount under the LOC and repay after three years, the total interest paid would be approximately \$45 million.
11. A press release from Government House indicates that one of the proposed uses for funds borrowed under the LOC is to pay for a WAPA/VITOL infrastructure buy-out settlement. However, pursuant to 30 V.I.C. § 103 “the debts, obligations, contracts ... and property of the [Virgin Islands Water and Power] Authority shall be deemed to be those of said Authority and not to be those of the Government of the Virgin Islands.” The VIG has no obligation to pay the debts of WAPA and, in fact, it may be contrary to VI law for the government to do so (see 30 §112 “Financial assistance; guarantees and purchases of bonds of Authority; loans and grants” which specifies the ways in which the GVI may assist WAPA, and does not include payment of contract debt.) Additionally, the “financial assistance” permitted under 30 §112(b) applies solely to the water systems of WAPA, and not the electrical power systems.
12. The bill would prohibit any substantial changes to the Gross Receipts Tax for three years, tying the hands of the Legislature to enact any meaningful form of tax reform. The Gross Receipts Tax is a highly regressive tax which exacts disproportionate penalties on smaller businesses. However, under Governor Bryan’s bill there could not be any tax reform of the GRT during the remainder of Bryan’s term.

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13. The bill bypasses the statutory role of the Legislature to review and approve expenditure of public funds. As presently worded, the sole reporting requirement is a quarterly report to the Senate identifying the public funds which were diverted to pay for the debt under the line of credit, and the uses to which the borrowed funds were applied. This is entirely “after-the-fact” reporting.

The Governor’s bill, as currently worded, appears to be a “blank check” for the Administration, allowing the Governor to divert funds from tax collections in the General Fund to be used as he alone sees fit. Although the Governor’s intentions may be well-meant, this bill is contrary to public policy and may, in fact, be contrary to provisions of the Revised Organic Act that confer fiscal authority to the Legislative Branch. It is my strong recommendation that the Legislature defer any action on the Governor’s bill until such time as a complete, independent financial analysis can be conducted and shared with the Virgin Islands public.

Respectfully submitted,

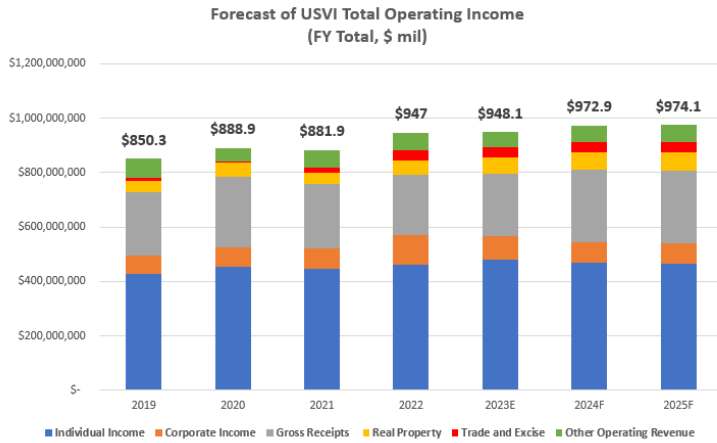
A handwritten signature in black ink, appearing to read "David L. Silverman", with a long horizontal flourish extending to the right.

David Silverman  
Coral Bay, St John

**ATTACHMENT 1: Forecast Revenue for FY 2023**



# USVI Revenue Outlook



- FY2023 YTD Net Revenue Projection: \$914m
- FY2024 Preliminary Net Revenue Projection: \$929m
- Importance of Revenue Conference and the roles we play

**ATTACHMENT 2: Budgeted Appropriations from General Fund**

OBB - Financial Summary - Departments Download generated on 04/01/2023

**TOTAL APPROPRIATED GENERAL FUND (LAPSING) = \$953,975,500**

