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113TH CONGRESS, 1st Session | HOUSE OF REPRESENTATIVES | REPORT 113–110

TO CREATE THE OFFICE OF CHIEF FINANCIAL OFFICER OF THE GOVERNMENT OF THE VIRGIN ISLANDS, AND FOR OTHER PURPOSES

JUNE 17, 2013.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HASTINGS of Washington, from the Committee on Natural Resources, submitted the following

REPORT

[To accompany H.R. 85]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 85) to create the Office of Chief Financial Officer of the Government of the Virgin Islands, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of H.R. 85 is to create the Office of Chief Financial Officer of the Government of the Virgin Islands.

BACKGROUND AND NEED FOR LEGISLATION

The U.S. Virgin Islands (USVI) is an organized, unincorporated territory of the U.S. It is an unincorporated territory because Congress has selected only certain provisions of the U.S. Constitution to apply to the territory. The USVI is an organized territory due to federal legislation—an Organic Act. The first USVI Organic Act was enacted in 1936 and a revised Organic Act was approved in 1954. The Organic Act is analogous to a state constitution and is intended to serve as a basic charter of government for the territory until the USVI adopts its own constitution. The Organic Act made comprehensive and complete provisions for the legislative, executive and judicial branches of government, including imposing limitations upon them. Only Congress can make changes to the Organic Act, whereas, if the USVI adopts its own constitution, changes could be made locally without Congressional action. To date, the USVI has held five constitutional conventions, the latest in 2004. However, none of the efforts have resulted in the adoption of a constitution.

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The Organic Act did not authorize or establish a chief financial officer for the USVI government. It does require the Governor to present, at the opening of each regular legislature session, a message on the state of the USVI and a budget of estimated revenues and expenditures. The Governor is also required to establish and maintain accounting and internal control systems to allow for the full disclosure of financial actions and provide for the accountability and accounting of all funds, property and other government assets. The USVI created an Office of Management and Budget to perform these functions.

The Assistant Secretary for Insular Affairs of the Department of the Interior testified in the 112th Congress that territories are facing deficit situations which arise due to disputes between the executive and legislative branches over revenue projections. This "estimation discrepancy" leads to revenue management issues, resulting in the accumulation of harmful debt over a period of years and the charges on such debt interferes with the territory's ability to solve current fiscal issues.

According to a 108th Congress Natural Resources Committee report (H. Rept. 108–645), several years of hurricane damage, the decline of tourism, and the replication of services more easily provided in the mainland had led to economic instability in the USVI. H.R. 3589 was introduced in the 108th Congress to establish a Chief Financial Officer (CFO) to control spending in the territory to lessen the annual budget deficits that were growing the territory's overall debt. H.R. 3589 passed the House of Representatives by voice vote. Bills in the 109th and 110th Congresses (H.R. 62 and H.R. 2107, respectively) which were similar to H.R. 3589 also passed the House of Representatives by voice vote and without objection.

As the issue evolved over the years, and due to concerns raised by the Department of the Interior, USVI Governors (Governor Turnball and Governor de Jongh) and local officials, language that was seen as giving the CFO excessive power was removed. In the 112th Congress, the House of Representative passed the modified version of the bill, H.R. 3706, by voice vote. While the USVI Governor still opposed the bill, the Department of the Interior stated, "In the view of the Department of the Interior, the duties contained in H.R. 3706 would constitute only de minimus interference with self-government in the Virgin Islands, while addressing other issues of mistrust between the executive and legislature and possibly the public. Thus, the Department of the Interior has no objection to the enactment of H.R. 3706."

With regard to USVI revenues and expenditures, Governor de Jongh provided in his testimony during the 112th Congress that, "expenditures have declined from a total of $960 million in FY 2008 to an estimated $832.5 million in FY 2012. Meanwhile, during the same period, revenues declined from $928.7 million in FY 2008 to $801.7 million in FY 2012." According to the 2009 Annual Audit, the latest audit the Department of the Interior has for the USVI, federal funding sent to the USVI totaled $247 million, which in that year included American Recovery and Reinvestment Act funding (compared to the 2008 audit with a federal grant figure totaling $167 million). The USVI also receives annual funding from the Office of Insular Affairs at the Department of the Interior that is not

included in the annual audits. In 2012, the USVI received $6.6 million in grant funding and a rum tax remittance of $256 million.

The USVI is no different than the other U.S. territories with regard to challenges it faces in developing its economy, and increasing its revenues. Economic constraints including geographic isolation, limited land resources, small population, limited pool of expertise, and locations subject to severe storms (hurricanes and typhoons) can make it difficult to attract or keep businesses. The Department of the Interior's Office of Insular Affairs, through its annual appropriations and coordination with other federal agencies, works to empower the territories to overcome these constraints and develop opportunities for business development and revenue growth. The Natural Resources Committee annually oversees these efforts and the progress of each territory.

H.R. 85 was introduced by Delegate Donna Christensen on January 3, 2013. The bill text is the same as H.R. 3706, introduced in the 112th Congress. The bill would require the Governor of the Virgin Islands to appoint a CFO, with advice and consent from the USVI legislature, picked from a list created by a USVI Chief Financial Officer Search Commission. If the legislature does not confirm the Governor's choice within 90 days, the Governor can appoint an acting CFO. If a CFO has not been appointed within 180 days, the Commission, by majority vote, is required to select an acting CFO. If the acting CFO then serves 180 days without further action, the acting CFO becomes the CFO. The acting CFO could be removed for cause, or if the legislature confirms a CFO through advice and consent.

The duties of the CFO would be: to develop and report on the financial status of the USVI government; to prepare and certify each year spending limits for the annual budget, including estimates of all revenues brought in by the territory, without regard to sources, and whether or not the budget is balanced; and to revise and update standards for financial management, including inventory and contracting for the USVI government and each agency. To do this, USVI department heads are required to provide all documents and information requested by the CFO.

The CFO would be appointed for a 5-year term and would be paid at a rate determined by the Governor, but not less than the highest rate of pay for a cabinet officer or any CFO serving in a government or semi-autonomous agency. The bill would require a referendum to be held closest to the 4th year of the 5th year term, to allow the voters to determine if the CFO position should be permanent.

The USVI Chief Financial Officer Search Commission would be comprised of eight members appointed no later than 30 days after enactment of this Act. Its charge would be to recommend candidates for nomination for USVI CFO. The Commission members are required to have business, government or financial expertise. One individual would be appointed by each of the following: the governor; the president of the legislature; St. John St. Thomas Chamber of Commerce; St. Croix Chamber of Commerce; President of the USVI University; Central Labor Council of the USVI; St. John at-large Member; and the President of AARP Virgin Islands. The Chairperson of the Commission would be the Chief Justice of the USVI Supreme Court or his designee. Current government em-

ployees would be prohibited from being appointed, except in the case of the Central Labor Council appointment. The Commission would be required to meet 15 days after all the members are appointed and report its recommendations no later than 60 days after its first meeting. The Commission would terminate upon the nomination and confirmation of the CFO.

COMMITTEE ACTION

H.R. 85 was introduced on January 3, 2013, by Delegate Donna Christensen (D–VI). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Fisheries, Wildlife, Oceans, and Insular Affairs. On April 24, 2013, the Full Natural Resources Committee met to consider the bill. The Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs was discharged by unanimous consent. No amendments were offered, and the bill was then adopted and ordered favorably reported to the House of Representatives by unanimous consent.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(2)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

H.R. 85—A bill to create the Office of Chief Financial Officer of the Government of the Virgin Islands, and for other purposes

CBO estimates that enacting H.R. 85 would have no significant effect on the federal budget. H.R. 85 would require the Governor of the Virgin Islands to appoint, with the advice and consent of the legislature of the Virgin Islands, a Chief Financial Officer (CFO) who would serve for a five-year period. The legislation also would require the territory to hold a referendum during a scheduled election on making the CFO position a permanent part of the Virgin Islands executive branch. Finally, H.R. 85 would establish a commission to recommend candidates for the CFO position. Enacting H.R. 85 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

Requirements on the Governor of the Virgin Islands and the Board of Elections of the Virgin Islands are intergovernmental mandates as defined in the Unfunded Mandates Reform Act

(UMRA). Based on information from representatives of the Virgin Islands, CBO estimates that the costs would be small and well below the annual threshold established in UMRA ($75 million in 2013, adjusted annually for inflation). The legislation contains no private-sector mandates as defined in UMRA.

The CBO staff contacts for this estimate are Matthew Pickford (for federal costs) and Melissa Merrell (for the impact on state and local governments). The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

2. Section 308(a) of Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures. CBO estimates that enacting H.R. 85 would have no significant effect on the federal budget.

3. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to create the Office of Chief Financial Officer of the Government of the Virgin Islands.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

COMPLIANCE WITH PUBLIC LAW 104–4

This bill contains no unfunded mandates.

COMPLIANCE WITH H. RES. 5

Directed Rule Making. The Chairman does not believe that this bill directs any executive branch official to conduct any specific rule-making proceedings.

Duplication of Existing Programs. This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program. Such program was not included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139 or identified in the most recent Catalog of Federal Domestic Assistance published pursuant to the Federal Program Information Act (Public Law 95–220, as amended by Public Law 98–169) as relating to other programs.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW

If enacted, this bill would make no changes in existing law.

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