Statement
of the
Honorable John P. de Jongh, Jr.
Governor of the U.S. Virgin Islands
in Opposition to H.R. 3706, a Bill to
Create an Office of Chief Financial Officer
for the Government of the U.S. Virgin Islands
May 17, 2012

Mr. Chairman and distinguished Members of the Subcommittee on Fisheries, Wildlife, Oceans, and Insular Affairs, thank you for this opportunity to provide the views of the Government of the U.S. Virgin Islands ("Government") on H.R. 3706, a bill introduced by Delegate Donna Christensen to establish an independent office of Chief Financial Officer ("CFO") for the Government. The Government strongly opposes this deeply flawed bill which purports to address the fiscal imbalances of the Government by creating a new bureaucracy rather than addressing their fundamental causes.

It is no secret that the Government, like many of our sister Territories and like many State and local governments of the United States, has been subject to unprecedented fiscal and budgetary pressures as a result of the Great Recession and slow recovery over the last three and one half years. The Government has undertaken aggressive and painful measures, on both the revenue and expenditures side, to meet its extraordinary budget challenges. The Government's challenges, however, are not expenditures; the challenges are revenues. 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.

These revenue losses are the result of not only the continuing impact of the most serious national recession since the Great Depression, but also the result of (1) overly restrictive Treasury rules that have caused many of the participants in our Economic Development Program to leave the Territory, (2) continuing discriminatory treatment of the Virgin Islands in other critical federal programs (including outright exclusion from participation in many such programs), as well as (3) the projected economic impact of the recent closure of the HOVENSA refinery in St. Croix - the largest private sector employer in the Territory. These revenue losses have direct external causes and are not simply the result of number-shuffling by my Administration.

In order to deflect from this reality, H.R. 3706 proposes what might at first appear to be only cosmetic changes, but which, in reality, are changes that radically alter the structure and principles of our self-government. In particular, when strong leadership is required to overcome our fiscal challenges, the bill would remove the authority to manage essential budget functions from the Office of the Governor, as provided in the Virgin Islands Revised Organic Act, and place that authority instead in the hands of an unelected bureaucrat who, as a practical matter could not be removed from office and who would not be accountable to anyone. And that, apart from its certain ineffectiveness, is perhaps its most objectionable feature.

May I remind the Subcommittee, United States Constitution places the responsibility for the welfare of the Territories directly upon the Congress. And Congress has over time sought to discharge its duty by delegating to the Territories more and more authority to manage their own affairs and exercise more fully the rights of U.S. citizenship conferred by the U.S. Congress. The evolution of self-government in the Virgin Islands over the course of the last half century, however, has not come without struggle or sacrifice. Since 1954, as Congress has delegated greater authority over its affairs under the Territorial Clause of the United States Constitution, the Government of the Virgin Islands has evolved, through the foresight of its elected leaders, into an institution of powers and responsibilities comparable to those of any State in the Union. As a result of the far-sighted policies of the federal government, the progressive policies of the Congress, and the tireless and unending efforts of the Territory's political leaders, responsibility for governance has shifted from the federal government and appointed governors to the elected officials representing the people of the Virgin Islands. As a result, citizens in the United States Virgin Islands today enjoy a level of liberty and prosperity that, notwithstanding our current fiscal challenges, is unrivaled anywhere in the Caribbean.

Unfortunately, H.R. 3706 fails to adhere to the principles, and indeed the highest ideals, of representative self-government; it would instead return us to a bygone era of government by appointed bureaucrats. In a misinformed and misguided effort to reverse the course of history, H.R. 3706 would severely impair the authority of the elected Governor, and place excessive power in the hands of a single unelected person who would remain unaccountable to the people and their elected officials in the Virgin Islands for the entirety of his or her five-year term of office. However well intentioned H.R. 3706 is portrayed by its sponsor, it misses the mark in its diagnosis of the problems faced by the Government and creates a false illusion of fixing them. Its proposed solution would, in reality, only bring conflict and complication, not clarity or real solutions to the problems we face.

I should note, Mr. Chairman, that the principles so central to the philosophy of the majority ---------------- limiting to the greatest extent possible the intrusion of the federal government into the affairs of State and local governments - are violated by this proposal. Indeed, I believe this bill represents the first proposal by a Member of Congress to impose a federally-created office to manage the financial affairs of a State or Territory. The proposal, by definition, restricts the rights of our voters and our elected officials to address our problems and, through its interposition of a new federal office, effectively places such responsibilities back in the hands of the Congress.

Objectionable Purpose

While many of the most objectionable features of a similar proposal previously rejected by the 109th Congress have been removed from H.R. 3706, the essence of the bill - indeed, its fundamental purpose - is to usurp the authority of the elected Governor under local law. Under the terms of the bill, the CFO would be given many of the responsibilities of the Director of the Virgin Islands Office of Management and Budget (VIOMB). Among other duties, he or she would assume extraordinary powers -- normally reserved to elected officials - of reporting on the financial status of the Government, of certifying spending limits of the annual budget, and establishing standards for financial management for the Government and its constituent agencies. There would be no clear demarcation between the lines of authority of the Director of VIOMB and the CFO. The responsibilities of the CFO would, at best, be duplicative of those of the

Director of VIOMB, and thus unnecessary; at worst the office of the CFO would be an invitation for conflict between competing views of the Government and thus budget paralysis.

No Accountability

Notwithstanding the strained effort to soften the powers of the CFO in the current version of the bill, there remains one major distinction between the powers of the Director of the VIOMB under current law and the functions of the CFO under the terms of H.R. 3706 which is fatal to the intended purpose of the bill. Under current law, the Director is accountable to the Governor, and through him, to the people of the Virgin Islands. Under H.R. 3706, the CFO is not accountable to the people of the Virgin Islands. If the proposed CFO, through the exercise of his powers, were to disregard the Governor's policy or budget directives, there would be no practical remedy. Neither the elected Governor nor the electorate would have an effective way to reconcile the priorities of the majority with the CFO's power to set spending limits and thus to allocate scarce resources. The sole power to decide such inherently political choices would rest with an unelected and unaccountable bureaucrat.

Prescription for Dysfunctional Government

Most of the provisions of H. R. 3706 address the process by which the CFO is selected. There are lines and lines of bill language regarding the establishment of the Commission charged with selecting the CFO, the process for appointing an acting CFO, and the term and salary of the CFO. Yet the bill devotes a bare three sentences to the CFO's powers and duties. Notably, and more than ironically, the bill authorizes no staff or budget for the CFO to carry out his or her duties and no power to enforce his or her mandates.

In short, the undemocratic process for selecting the CFO is a formula for dysfunctional government. The bill undermines the prerogatives and authority of the Office of the Governor. More compellingly, the exercise of unchecked powers by an unelected CFO, accountable to no one, could, taken to its extreme, threaten the very existence of the republican form of government in the Territory, which was put into place by the Revised Organic Act, and which Congress and the people of the Virgin Islands have steadfastly sought to perfect over the last half century.

If the CFO were to impose his or her own priorities through the powers conferred by H.R. 3706, the Governor would be left with two unworkable choices: either to defer to, and to substitute, the unelected CFO's judgment, or to attempt to create a budget impasse with the complicity of the Legislature. There would be no practical way, as exists in any democratic form of government, to remove the offending CFO; the terms of H.R. 3706, like its discredited predecessor version in the 109th Congress, would not permit it. If on the other hand, the CFO were to defer to the Governor on all policy and programmatic decisions, there would be no reason for having created the office in the first place. Together, these provisions of H.R. 3706 are a prescription for political conflict and stalemate, rather than progress.

Conclusion

The Government of the Virgin Islands continues to make the tough decisions to bring its budget into balance, increase the efficiency of government and to improve the delivery of essential public services to our people. Our decisions and the resulting consequences are no less painful to us -- and to me personally - than those experienced by other States and municipalities as we all adjust our services levels to match the reduced financial resources available. H.R. 3706, however, goes in the opposite direction. It would reduce the authority of the Governor and the Legislature to make tough budgetary decisions - the elected representatives of the people - and place such authority in the hands of an unelected official accountable to no one.

The Government of the Virgin Islands, like many States and local governments, is faced with serious fiscal challenges caused by the Great Recession. Those challenges have been exacerbated by continuing discriminatory treatment under important federal programs - such as the lack of parity in Medicaid funding, the exclusion of our residents from participation in SSI and our hospitals from receiving disproportionate share payments ---- and have been compounded to the recent shutdown of the HOVENSA oil refinery. But we are not facing fiscal insolvency or collapse as a result of self-government or the structure of our government. There is no fiscal or budgetary reason to support the abrogation of the Governor's authority under this bill or to restrict the authority of our Legislature to set our spending limits. The Government can, must, and shall do what has to be done to overcome the extraordinary challenges we face. H.R. 3706, however, creates a false picture of a problem that does not exist, given the transparency of our budget process, our response to and implementation of Inspector General recommendations, and the ease of access to revenue and expenditure reports, as well as our audited financial statements. This flawed bill then proposes supposed remedies to a false problem that are unnecessary, counterproductive and profoundly unwise.

Rather than focus on the illusion of change, I respectfully urge this Subcommittee to engage the Congress on the real issues that have slowed and hindered our path to progress. I call on this Subcommittee and the sponsor of this legislation to work with the leadership of the House and the relevant House Committees to ameliorate the impact of the 2004 Jobs Act on our Economic Development program, to restore the statute of limitations for our taxpayers, to ensure equal treatment for low-income families in our Medicaid program, and to eliminate discrimination in S.S.I, and other important federal programs.

The Subcommittee on Fisheries, Wildlife, Oceans, and Insular Affairs should begin this important and necessary quest by decisively rejecting H.R. 3706 and the false premises on which it is based.

Thank you, Mr. Chairman and Members of the Subcommittee, for this opportunity to express the views of the Government of the United States Virgin Islands.