

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

JULY 17, 2012.—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

R E P O R T

[To accompany H.R. 3706]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 3706) 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 with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. CHIEF FINANCIAL OFFICER OF THE VIRGIN ISLANDS.

(a) APPOINTMENT OF CHIEF FINANCIAL OFFICER.—

(1) IN GENERAL.—The Governor of the Virgin Islands shall appoint a Chief Financial Officer, with the advice and consent of the Legislature of the Virgin Islands, from the names on the list required under section 2(d). If the Governor has nominated a person for Chief Financial Officer but the Legislature of the Virgin Islands has not confirmed a nominee within 90 days after receiving the list pursuant to section 2(d), the Governor shall appoint from such list a Chief Financial Officer on an acting basis until the Legislature consents to a Chief Financial Officer.

(2) ACTING CHIEF FINANCIAL OFFICER.—If a Chief Financial Officer has not been appointed under paragraph (1) within 180 days after the date of the enactment of this Act, the Virgin Islands Chief Financial Officer Search Commission, by majority vote, shall appoint from the names on the list submitted under section 2(d), an Acting Chief Financial Officer to serve in that capacity until a Chief Financial Officer is appointed under the first sentence of paragraph (1). In either case, if the Acting Chief Financial Officer serves in an acting capacity for 180 consecutive days, without further action the Acting Chief Financial Officer shall become the Chief Financial Officer.

(b) DUTIES OF CHIEF FINANCIAL OFFICER.—The duties of the Chief Financial Officer shall include the following:

(1) Develop and report on the financial status of the Government of the Virgin Islands not later than 6 months after appointment and quarterly thereafter. Such reports shall be available to the public.

(2) Each year prepare and certify spending limits of the annual budget, including annual estimates of all revenues of the territory without regard to sources, and whether or not the annual budget is balanced.

(3) Revise and update standards for financial management, including inventory and contracting, for the Government of the Virgin Islands in general and for each agency in conjunction with the agency head.

(c) DOCUMENTS PROVIDED.—The heads of each department of the Government of the Virgin Islands, in particular the head of the Department of Finance of the Virgin Islands and the head of the Internal Revenue Bureau of the Virgin Islands shall provide all documents and information under the jurisdiction of that head that the Chief Financial Officer considers required to carry out his or her functions to the Chief Financial Officer.

(d) CONDITIONS RELATED TO CHIEF FINANCIAL OFFICER.—

(1) TERM.—The Chief Financial Officer shall be appointed for a term of 5 years.

(2) REMOVAL.—The Chief Financial Officer shall not be removed except for cause. An Acting Chief Financial Officer may be removed for cause or by a Chief Financial Officer appointed with the advice and consent of the Legislature of the Virgin Islands.

(3) REPLACEMENT.—If the Chief Financial Officer is unable to continue acting in that capacity due to removal, illness, death, or otherwise, another Chief Financial Officer shall be selected in accordance with subsection (a).

(4) SALARY.—The Chief Financial Officer shall be paid at a salary to be determined by the Governor of the Virgin Islands, except such rate may not be less than the highest rate of pay for a cabinet officer of the Government of the Virgin Islands or a Chief Financial Officer serving in any government or semi-autonomous agency.

(e) REFERENDUM.—As part of the closest regularly scheduled, islands-wide election in the Virgin Islands to the expiration of the fourth year of the five-year term of the Chief Financial Officer, the Board of Elections of the Virgin Islands shall hold a referendum to seek the approval of the people of the Virgin Islands regarding whether the position of Chief Financial Officer of the Government of the Virgin Islands shall be made a permanent part of the executive branch of the Government of the Virgin Islands. The referendum shall be binding and conducted according to the laws of the Virgin Islands, except that the results shall be determined by a majority of the ballots cast.

SEC. 2. ESTABLISHMENT OF COMMISSION.

(a) ESTABLISHMENT.—There is established a commission to be known as the “Virgin Islands Chief Financial Officer Search Commission”.

(b) DUTY OF COMMISSION.—The Commission shall recommend to the Governor not less than 3 candidates for nomination as Chief Financial Officer of the Virgin Islands. Each candidate must have demonstrated ability in general management of, knowledge of, and extensive practical experience at the highest levels of financial management in governmental or business entities and must have experience in the development, implementation, and operation of financial management systems.

(c) MEMBERSHIP.—

(1) NUMBER AND APPOINTMENT.—The Commission shall be composed of 8 members appointed not later than 30 days after the date of the enactment of this Act. Persons appointed as members must have recognized business, government, or financial expertise and experience and shall be appointed as follows:

(A) 1 individual appointed by the Governor of the Virgin Islands.

(B) 1 individual appointed by the President of the Legislature of the Virgin Islands.

(C) 1 individual, who is an employee of the Government of the Virgin Islands, appointed by the Central Labor Council of the Virgin Islands.

(D) 1 individual appointed by the Chamber of Commerce of St. Thomas-St. John.

(E) 1 individual appointed by the Chamber of Commerce of St. Croix.

(F) 1 individual appointed by the President of the University of the Virgin Islands.

(G) 1 individual, who is a resident of St. John, appointed by the At-Large Member of the Legislature of the Virgin Islands.

(H) 1 individual appointed by the President of AARP Virgin Islands.

(2) TERMS.—

(A) IN GENERAL.—Each member shall be appointed for the life of the Commission.

(B) VACANCIES.—A vacancy in the Commission shall be filled in the manner in which the original appointment was made. Any member appointed to fill a vacancy shall be appointed for the remainder of that term.

(3) BASIC PAY.—Members shall serve without pay.

(4) QUORUM.—Five members of the Commission shall constitute a quorum.

(5) CHAIRPERSON.—The Chairperson of the Commission shall be the Chief Justice of the Supreme Court of the United States Virgin Islands or the designee of the Chief Justice. The Chairperson shall serve as an ex officio member of the Commission and shall vote only in the case of a tie.

(6) MEETINGS.—The Commission shall meet at the call of the Chairperson. The Commission shall meet for the first time not later than 15 days after all members have been appointed under this subsection.

(7) GOVERNMENT EMPLOYMENT.—Members may not be current government employees, except for the member appointed under paragraph (1)(C).

(d) REPORT; RECOMMENDATIONS.—The Commission shall transmit a report to the Governor, the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate not later than 60 days after its first meeting. The report shall name the Commission's recommendations for candidates for nomination as Chief Financial Officer of the Virgin Islands.

(e) TERMINATION.—The Commission shall terminate upon the nomination and confirmation of the Chief Financial Officer.

SEC. 3. DEFINITIONS.

For the purposes of this Act, the following definitions apply:

(1) CHIEF FINANCIAL OFFICER.—In sections 1 and 2, the term “Chief Financial Officer” means a Chief Financial Officer or Acting Chief Financial Officer, as the case may be, appointed under section 1(a).

(2) COMMISSION.—The term “Commission” means the Virgin Islands Chief Financial Officer Search Commission established pursuant to section 2.

(3) GOVERNOR.—The term “Governor” means the Governor of the Virgin Islands.

(4) REMOVAL FOR CAUSE.—The term “removal for cause” means removal based upon misconduct, failure to meet job requirements, or any grounds that a reasonable person would find grounds for discharge.

PURPOSE OF THE BILL

The purpose of H.R. 3706, as ordered reported, 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 the USVI government, including imposing limitations. 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 held in 2004. However, none of these efforts have resulted in the adoption of a constitution.

The Organic Act did not authorize or establish a chief financial officer for the Virgin Island Government. It does require the Gov-

ernor to present, at the opening of each regular legislature session, a message on the state of the Virgin Islands 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 USVI has outstanding debts totaling over \$1.2 billion. The Assistant Secretary for Insular Affairs of the U.S. Department of the Interior testified at a Subcommittee hearing that this type of deficit situation arises 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. The charges on such debt interferes with the territory’s ability to solve current fiscal issues.

H.R. 3706 would require the Governor of the Virgin Islands to appoint a Chief Financial Officer (CFO), with advice and consent of 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 CFO could be removed for cause, or if the legislature confirms an individual through advice and consent.

The duties of the CFO would be: to develop and report on the financial status of the USVI government; to certify each year spending limits for the annual budget and whether the budget is balanced; and to revise and update standards for financial management, including inventory and contracting for the USVI government and its agencies. 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 five 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 fourth year of the fifth year term, to allow the voters to determine if the CFO position should be permanent.

The USVI Chief Financial Officer Search Commission would be made up 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 the American Association of Retired Persons Virgin Islands. The Chairperson of the Commission would be the Chief Justice of the USVI Supreme Court

or his designee. Current government employees could not be 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 on the confirmation of the CFO.

During Full Committee consideration of the bill, the Committee adopted an amendment offered by Congressman John Fleming (R-LA) to clarify that the CFO would be required to prepare and certify annual budget spending limits and include estimates of all revenues brought in by the USVI, without regard to source.

COMMITTEE ACTION

H.R. 3706 was introduced on December 16, 2011, 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 May 17, 2012, the Subcommittee held a hearing on the bill. On June 7, 2012, the Full Resources Committee met to consider the bill. The Subcommittee on Fisheries, Wildlife, Oceans, and Insular Affairs was discharged by unanimous consent. Congressman John Fleming (R-LA) offered amendment designated .028 to the bill; the amendment was adopted by unanimous consent. The bill, as amended, 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. 3706—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. 3706 would have no significant effect on the federal budget. H.R. 3706 would require the Governor of the Virgin Islands to appoint a Chief Financial Officer (CFO) to serve for a five-year period, with the advice and consent of the legislature of the Virgin Islands. The legislation also would require the territory to hold a referendum on adding the CFO posi-

tion as a permanent part of the Virgin Islands executive branch during a scheduled election. Finally, H.R. 3706 would establish a Virgin Islands Chief Financial Officer Search Commission to recommend candidates for the CFO position.

H.R. 3706 contains intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA). It would require the governor of the Virgin Islands to appoint a Chief Financial Officer (CFO) who would be responsible for reporting on the financial status of the government, preparing and certifying spending limits, and revising standards for financial management. In addition, the bill would require the Board of Elections of the Virgin Islands to hold a referendum on whether the CFO would be a permanent position. 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 (\$73 million in 2012, 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 Peter H. Fontaine, 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. 3706 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, as ordered reported, 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.

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.