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## **Statement of Marjorie Rawls Roberts, Esq.**

### **Bill No. 33-0061**

#### **Presented to the Committee on Finance**

#### **Of the 33<sup>rd</sup> Legislature of the U.S. Virgin Islands**

**July 29, 2019**

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Good day, the Honorable Kurt A. Vialet, Chair; The Honorable Marvin A. Blyden, Vice Chair; and other Honorable Members of the Committee on Finance of the 33<sup>rd</sup> Legislature of the U.S. Virgin Islands, other Honorable Members of the 33<sup>rd</sup> Legislature in attendance, employees of the 33<sup>rd</sup> Legislature, and others reviewing the critical legislation before the Committee on Finance being heard today:

My name is Marjorie Rawls Roberts, and I am the sole shareholder of the law firm of Marjorie Rawls Roberts, P.C. We are a firm of six attorneys and eight paralegals and administrative staff and we are focused on investment, corporate, and tax law, including representing many clients before the Economic Development Commission (“EDC”) over the past twenty years. Previously I served as Vice President and General Counsel for Globalvest Management Company, an EDC beneficiary. In addition, I am a board member of the St. Thomas-St. John Chamber of Commerce and am delivering my testimony today on behalf of the Chamber as well as myself. I appreciate this opportunity to provide comments on Bill No. 33-0061 and will comment on each section in turn.

#### **Section 1, Subsection (a) Public Hearings**

First, Section 1, subsection (a) of Bill No. 33-0061 amends Title 29, Section 705(a) to provide in pertinent part that “[b]ased upon the investigation and recommendation of the Director, review all applications for economic development benefits [and] hold public hearings thereon as provided in section 717 of this chapter” (and I believe that the word “and” should be added after benefits before the proposed language). [Underscoring added] The stated purpose of this change is to clarify that the EDC must hold public hearings on applications for economic development

benefits. In my experience the EDC does hold hearings on every application, although under Title 29, Section 713a(a)(5), “[e]xisting beneficiaries that remain in compliance with all the requirements of this chapter and their certificate are eligible for one 10-year extension at 100% of benefits. This extension must be approved by the Commission, but does not require a public hearing.” [Underscoring added] This section would require a conforming amendment if Section 1(a) of Bill No. 33-0061 is enacted although as discussed below it is amended to replace “must” by “may” but the exemption from the public hearing requirement remains. Frankly, I always prefer that applicants that I represent have public hearings even if they fall under Section 713a(a)(5) because I believe that it is extremely beneficial that they meet directly with the members and staff of the EDC and provide at a minimum a detailed description or an update of their business activities and be able to answer questions directly instead of later in a letter. At the same time, I do believe that there are a number of actions that the EDC regularly takes, such as minor changes and limited waivers, that could be done by the staff and/or by the members of the EDC without a public hearing such as a change in the direction of a beneficiary’s charitable contributions or a waiver of the minimum employee numbers as a beneficiary rebuilds after the hurricanes. The EDC commissioners also serve as board members for the Economic Development Authority and thus have many matters on their proverbial plates in addition to the Economic Development Program, such as the government development bank loans, enterprise zone benefits, and the industrial parks management. I note that even when the EDC meets monthly on EDC matters, it sometimes does not cover all the items on its agenda or loses its quorum and sometimes new applicants will thus have to wait several months to find out if they are approved. In my experience, the more efficient the process the more likely applicants are to become beneficiaries and to recommend the U.S. Virgin Islands to their colleagues and other businesses in their respective sectors. Thus, while I support the language in Section 1(a) of Bill No. 33-0061 to the extent that it applies to ten-year extensions of benefits, I urge this Legislature to work with the EDC to determine which matters do not automatically require public hearings and to look for other ways to stream-line the process. Some ideas that come to mind are shorter statutory notice periods, a lower quorum requirement for decision-making that does not involve the approval of new applicants, and the ability to deal with minor issues such as waivers telephonically or as previously stated at the staff level.

**Section 1, Subsection (b)**  
**Benefit Levels**

Second, Section 1, subsection (b) of the Bill would amend Title 29, Section 713a to provide that additional benefit terms must be approved at a beneficiary’s existing level of benefits. I am respectfully requesting that Bill No. 33-0061 be amended to remove Section 1, subsection (b)

and instead to clarify that EDC beneficiaries approved under all portions of Section 713a are entitled to 100 percent of benefits.

One of the critiques of prior EDC law was that it provided for varying (and somewhat arbitrary) benefit levels and benefit terms for beneficiaries. By way of example, prior to the enactment of Act No. 7651 in 2014, beneficiaries on the island of St. Croix could receive benefit terms of ten years, 15 years, 20 years or 30 years, solely dependent upon the geographic location of their offices. Also, under prior EDC law (before the enactment of Act No. 7651), and specifically Section 715(b) as enacted on September 1, 2005 by Act No. 6748, some beneficiaries receiving extended terms were subject to a ten percent “haircut,” or decrease in otherwise available benefits. The legislative history for Act No. 6748 was silent on the reasoning behind the inclusion of the reduction in years and percentage of benefits, and arguably changed the “rules of the game” mid-stream for beneficiaries that had applied for their benefits initially with the expectation of an extension being available at full benefits. However, this change resulted in some – but not all – extension beneficiaries receiving 81 percent of income tax benefits, and 90 percent of gross receipts and other tax benefits.

One goal of Act No. 7651, which was signed into law by then-Governor John P. deJongh, Jr. on October 13, 2014, was to enact comprehensive revisions to the Economic Development Program law, including standardizing and streamlining benefit terms and benefit levels. For the most part, Act No. 7651 satisfied these goals. Currently the entire St. Croix District receives 30 years of benefits, regardless of business location on the island. In addition, currently the law reads that all beneficiaries receive 100 percent of benefits unless the beneficiary requests a lesser percentage. This includes beneficiaries that are recipients of the one-time, ten-year extension of benefits and beneficiaries that receive additional benefit terms based on capital investment. In other words, and in keeping with the intent of Act No. 7651, the current language allows beneficiaries – including those whose benefits were reduced by ten percent under prior law – to achieve parity in benefit terms and benefit levels.

Section 1, subsection (b) of Bill No. 33-0061 represents a return to arbitrary benefit percentages, contrary to the intent of Act No. 7651, and would work against the goal of allowing beneficiaries to be on par with each other. Further, we understand that at most a “handful” of current beneficiaries operate under the 10 percent haircut and going forward it is clear that beneficiaries can get the full benefits so any revenue impact would appear to be negligible. Even more detrimental is that Bill No. 33-0061 will work against the Territory’s stated goal of encouraging and rewarding capital investment as the U.S. Virgin Islands continues its recovery from the 2017 hurricane season and rebuilds stronger and more resilient than before.

Under current law, approved applicants making initial or additional investments (in infrastructure, new construction, or refurbishment) of between \$1 million and \$10 million receive an additional five years of benefits, and approved applicants making investments greater than \$10 million receive an additional ten years of benefits. The intent behind granting capital investment-based extensions is to reward beneficiaries for making substantial investments in the Territory by providing an additional benefit period at 100 percent of benefits. There are current beneficiaries of the EDC Program, particularly in the hotel and tourism industries, that in fact are investing significantly more than \$10 million because they are committed to seeing the Territory rebound from the devastating hurricanes almost two years ago. The economic impact of these contributions to the U.S. Virgin Islands' economy is in the hundreds of millions of dollars, and these are the types of investment that the EDC Program law should be encouraging and rewarding. However, these beneficiaries need to be on par with other similarly situated EDC beneficiaries and should be at the 100 percent benefit level across the board.

Currently Section 713a allows the EDC board to approve a lesser percentage of benefits and/or term of benefits "upon the request of the applicant." Some beneficiaries may request less than full benefit terms and percentages for various reasons. The current language of Bill No. 33-0061 would prevent such beneficiaries from ever receiving full benefit levels, even where such a beneficiary subsequently makes significant investments in its business justifying an increase to 100 percent of benefits or circumstances change so that a beneficiary decides to seek full benefits. The EDC statute should not operate in an inflexible manner by penalizing beneficiaries that initially request lower benefit levels (or effectively preventing such beneficiaries from doing so) but subsequently request 100 percent of available benefits. Nor should the EDC statute in any way penalize legacy EDC beneficiaries that have remained in the Territory after the hurricanes and are committed to rebuilding and continuing operations. Rather, the goal should be ensuring the necessary flexibility to accommodate the needs of beneficiaries as well as the needs of the U.S. Virgin Islands. For these reasons I am requesting that Bill No. 33-0061 be amended to remove Section 1, subsection (b) and instead to clarify that EDC beneficiaries approved under all portions of Section 713a are entitled to 100 percent of benefits.

As referenced above, I am also a little confused by the change in Section 1, Subsection (b)(2), which then indicates that the one-time 10-year extension may – not must – be approved by the EDC, but does not require a public hearing, since Section 1, Subsection (a) seems to require the EDC to always hold public hearings on all applications for economic development benefits. If Section 1, Subsection (a) only applies to new applicants, a public hearing is already required by Title 29, Section 717(a).

**Section 1, Subsection (c)**  
**Benefit Commencement Dates**

Third, Section 1, Subsection (c) provides that section 713b, Subsection (a), paragraph 4 is amended by striking all the language therein and providing as follows:

An applicant may obtain the benefits commencing the first day of the applicant's taxable year for income tax purposes, or commencing one day after the due date for the payment of an installment of estimated income taxes by the applicant. If no payment of an installment of estimated income taxes by the applicant is due, then the date of commencement of the benefits under this section shall be the due date of such a payment, if one had been due from the applicant.

The explanation for this change is that under existing law, an applicant may elect a commencement date in the year that the applicant commenced activities in the Virgin Islands, provided that an application for the appropriate business license has been filed with the Department of Licensing and Consumer Affairs. Bill No. 33-0061 seeks to amend section 713b by changing the benefit commencement date to either the first day of the applicant's taxable year or one day after an installment of estimated income taxes is due from the applicant, and "if no installment of estimate [sic] income taxes is due, then the commencement date will be the due date of such payment if one had been due from the applicant".

Frankly, I do not see a problem with the current language, which indicates that an applicant may elect a commencement date in the calendar (or fiscal if other than calendar) year that it commences activities in the U.S. Virgin Islands and provided that an application for the appropriate business license has been filed with the Division of Licensing and Consumer Affairs during such year, then tax benefits may apply to the entire year or a shorter period as elected by the applicant and shall not be limited to the period after which the application is deemed complete by the Commissioner or after the license is issued.

My experience is that most applicants, if approved and if they commence business, will choose to have their benefits commence when the entity was formed, and I am concerned that the proposed new language will result in businesses being required to pay taxes (or at a minimum file tax returns as a non-beneficiary) if there are gaps between the formation date and the commencement of the applicant's tax year. Presumably the first day of the applicant's taxable year will include the applicant's formation or redomestication date, although I would prefer that that be expressly stated. Also, the proposed language is not clear as to whether the applicant will be required to have applied for a business license in order to take benefits. Finally, the EDC

process can take six to nine months, and it is important that applicants have the flexibility to elect to have their benefits commence as far back as when the entity was formed (assuming it was formed in conjunction with the application for benefits) even if the EDC application is finally approved in a subsequent year.

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I am now glad to respond to any questions or comments that you may have. Again, thank you for giving me the opportunity to address the Finance Committee on Bill No. 33-0061.