S. HRG. 109–291

REPEAL ACT OF MAY 26, 1936, PERTAINING TO THE VIRGIN ISLANDS; AMEND COMPACT OF FREE ASSOCIATION AMENDMENTS ACT; AND CONVEY SUBMERGED LAND TO COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

HEARING

BEFORE THE

COMMITTEE ON ENERGY AND NATURAL RESOURCES UNITED STATES SENATE

ONE HUNDRED NINTH CONGRESS

FIRST SESSION

ON

S. 1829

TO REPEAL CERTAIN SECTIONS OF THE ACT OF MAY 26, 1936, PERTAINING TO THE VIRGIN ISLANDS

S. 1830

TO AMEND THE COMPACT OF FREE ASSOCIATION AMENDMENTS ACT OF 2003; AND FOR OTHER PURPOSES

S. 1831

TO CONVEY CERTAIN SUBMERGED LAND TO THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS, AND FOR OTHER PURPOSES

OCTOBER 25, 2005

Printed for the use of the
Committee on Energy and Natural Resources

U.S. GOVERNMENT PRINTING OFFICE

26–254 PDF WASHINGTON : 2006

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2250 Mail: Stop SSOP, Washington, DC 20402–0001

COMMITTEE ON ENERGY AND NATURAL RESOURCES

PETE V. DOMENICI, New Mexico, *Chairman*

LARRY E. CRAIG, Idaho
CRAIG THOMAS, Wyoming
LAMAR ALEXANDER, Tennessee
LISA MURKOWSKI, Alaska
RICHARD M. BURR, North Carolina,
MEL MARTINEZ, Florida
JAMES M. TALENT, Missouri
CONRAD BURNS, Montana
GEORGE ALLEN, Virginia
GORDON SMITH, Oregon
JIM BUNNING, Kentucky

JEFF BINGAMAN, New Mexico
DANIEL K. AKAKA, Hawaii
BYRON L. DORGAN, North Dakota
RON WYDEN, Oregon
TIM JOHNSON, South Dakota
MARY L. LANDRIEU, Louisiana
DIANNE FEINSTEIN, California
MARIA CANTWELL, Washington
JON S. CORZINE, New Jersey
KEN SALAZAR, Colorado

ALEX FLINT, *Staff Director*
JUDITH K. PENSABENE, *Chief Counsel*
BOB SIMON, *Democratic Staff Director*
SAM FOWLER, *Democratic Chief Counsel*
JOSH JOHNSON, *Professional Staff Member*
AL STAYMAN, *Democratic Professional Staff Member*

CONTENTS

STATEMENTS

APPENDIXES

APPENDIX I

APPENDIX II

REPEAL ACT OF MAY 26, 1936, PERTAINING TO THE VIRGIN ISLANDS; AMEND COMPACT OF FREE ASSOCIATION AMENDMENTS ACT; AND CONVEY SUBMERGED LAND TO COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

TUESDAY, OCTOBER 25, 2005

U.S. SENATE,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, DC.

The committee met, pursuant to notice, at 10 a.m., in room SD–366, Dirksen Senate Office Building, Hon. Lisa Murkowski presiding.

OPENING STATEMENT OF HON. LISA MURKOWSKI, U.S. SENATOR FROM ALASKA

Senator MURKOWSKI. Good morning and welcome to the Energy Committee this morning.

The purpose of the hearing today is to receive testimony on S. 1829 pertaining to the Virgin Islands; S. 1830, to amend the Compact of Free Association Amendments Act of 2003; and S. 1831, which pertains to the Commonwealth of the Northern Mariana Islands.

Just very briefly this morning, I will describe the various legislation we have in front of us. S. 1829 would repeal sections of the U.S. Code to provide the Government of the U.S. Virgin Islands the ability to fully regulate real property tax matters within the territory.

S. 1830 would make several changes to the Compact of Free Association Amendments Act of 2003. Since the passage of this law, the administration has transmitted language to Congress that would provide authority for the Republic of the Marshall Islands and the Federated States of Micronesia to obtain disaster assistance.

Then finally, S. 1831, to provide the CNMI with the same ownership and jurisdiction over offshore submerged lands as has been provided to other United States territories and to provide a less formal mechanism for the Governor of CNMI to raise issues with the Federal Government.

This morning we are honored to have with us the Honorable Donna Christensen, the Delegate to Congress from the U.S. Virgin Islands. Good morning and welcome to you. We also have the Lieu-

tenant Governor of the U.S. Virgin Islands, the Honorable Vargrave Richards. Good morning and welcome. And we also have Nikolao Pula, who is the Director of the Office of Insular Affairs for the United States Department of the Interior, and welcome to you.

Additionally we have some written statements that have been submitted from the governments of the freely associated states of the RMI, the Republic of Palau, and the FSM. In addition, the Governor and the Resident Representative of the CNMI have submitted their written testimony.

Before we proceed with the hearing, I want to mention that we have received a request from the Resident Representative of the CNMI regarding legislation that is moving through the House of Representatives which would provide the CNMI a non-voting delegate to the House of Representatives. The committee looks forward to working with the Resident Representative of the CNMI and the House of Representatives as this legislation proceeds.

I do welcome all of you this morning. I will just make a note. We are scheduled to have a vote coming up at 10:30. I anticipate that this will be a pretty expedited hearing, and we should probably make that vote without a problem, but just to alert you all to that.

With that, then let us begin with you, the Honorable Donna Christensen. Welcome.

[The prepared statement of Senator Craig follows:]

PREPARED STATEMENT OF HON. LARRY E. CRAIG, U.S. SENATOR FROM IDAHO

Mr. Chairman, thank you for holding this important hearing today regarding numerous issues facing U.S. territories and commonwealths.

One issue that I would like addressed, at this time, is the need to help strengthen and diversify the economies of the Commonwealth of the Northern Mariana Island's. Recently, the CNMI has faced growing competition from China's garment and apparel industry. Further, the CNMI's economy has been negatively impacted by fewer tourists from Japan in recent years as a result of Japan's falling currency. To help combat these outside influences, Congress must begin to address the economic realities of the CNMI.

Over the last few months my staff and I have met with numerous officials from the CNMI to discuss these issues. I must say, I am very impressed with Governor Babauta's willingness to address these issues facing his Commonwealth. Governor Babauta understands what steps need to be taken to stabilize the economy and establish positive growth for CNMI. I believe his leadership will prove extremely valuable as the United States works with the CNMI to find long-term solutions for their economy.

As a first step, I would like to introduce for the record numerous documents on this subject from the Governor, members of their government, and the Chamber of Commerce, on the economic status of the CNMI. Additionally, I would like to submit for the record legislation that I, along with Senator Akaka, will be introducing to address and mitigate the economic impacts on the CNMI. It is my hope that this Committee, along with the Finance Committee, can and will take a hard look at the CNMI and address these issues.

Thank you Mr. Chairman.

STATEMENT OF HON. DONNA CHRISTENSEN, DELEGATE TO CONGRESS, U.S. VIRGIN ISLANDS

Mrs. CHRISTENSEN. Thank you, Madam Chairman, and good morning. I want to thank you for the opportunity to make this statement in support of S. 1829, companion legislation to one I introduced in the House, to repeal the 1936 law which governs the levying of property taxes in the Virgin Islands. Passage of this leg-

islation is necessary to allow the Virgin Islands to fashion a local property tax law that takes into account the circumstances and realities of our community.

I also want to especially thank Chairman Domenici and Ranking Member Bingaman for their willingness to respond to my request to introduce S. 1829 and to you, Madam Chair, for working with them to so quickly schedule it for a hearing.

Madam Chairman and members, this bill became necessary when 5 years ago some of my constituents filed a lawsuit in Federal court alleging that the Virgin Islands government was violating Federal law in the manner in which they were assessing the value of commercial properties in the territory. The court then ruled that the 1936 Federal statute was not repealed by the 1954 Organic Act, as we had all believed, and thus invalidated the current Virgin Islands property tax law.

Madam Chair, the Virgin Islands is the only jurisdiction in the country whose local property taxes are based on Federal law. This anomaly in our system of government is unnecessary today because the Virgin Islands, although still a territory of the United States, has been exercising all the rights and responsibilities of government in a similar manner as the 50 States, at least since Congress passed our revised organic act in 1954 and we, of course, began electing our own Governors in 1970.

In invalidating our local property tax laws, the Federal courts have removed the ability of the Virgin Islands government to provide insulation for Virgin Islands homeowners to protect them against the consequences of rapidly rising property values on their tax bills.

Moreover, the provisions that were struck down were similar to those used in other jurisdictions throughout this country. The local property tax laws, which were struck down, provided a 10 percent cap on the increase in assessments for residential real estate in any assessment period, as well as certain exemptions from taxation for homesteads, veterans, and farmland, and exemptions offered as part of our economic incentive program.

Madam Chair, the 10 percent cap limiting any increase in residential assessments is modeled after similar statutes in the United States and is essential to protect homeowners from soaring property values. Without a cap or similar provisions, if an individual or family owns a modest dwelling that is surrounded by million dollar homes, the assessed value and thus the property taxes will increase significantly.

This will have serious consequences for long-time property holders. We have limited land mass in the Virgin Islands which makes real property a commodity that is in short supply.

Because the current trend in real estate is for prices to continue to climb exponentially, basing property taxes on actual prices will create a large number of instant paper millionaires who will never be able to see this new wealth unless the property is mortgaged or sold.

This situation presents a very serious one for many of my constituents, most acutely on the island of St. John because their property tax bills are already moving way beyond their reach.

Many of the areas on St. John have seen wealthy individuals purchasing properties and making improvements which have had the effect of immediately and drastically increasing the value of their properties, as well as the value of the properties surrounding them.

I must caution, however, that the entire Virgin Islands would be impacted should the 1936 law continue to prevail.

In summary, it is important for the economic security, as well as the social stability, of the territory for the 1936 statute to be repealed.

Madam Chair, I ask unanimous consent to submit the testimony for the record of Senator Craig Barshinger; former Senator Almando Liburd; Mr. Myron Allick, a local businessman; and Ms. Sharon Coldren, president of the Coral Bay Community Council.

I want to thank you once again for bringing this important bill to the committee in such an expeditious fashion. I look forward to the speedy passage and to returning to testify on an equally important piece of legislation which has already passed the House twice, one which would create a chief financial office for the U.S. Virgin Islands. Thank you, Madam Chair.

Senator MURKOWSKI. Thank you, Delegate Christensen, and the request that you had made, as far as the written testimony being included as part of the record, will be made part of the record.

Mrs. CHRISTENSEN. Thank you, Madam Chair.

Senator MURKOWSKI. Thanks for your testimony.

Lieutenant Governor Richards, welcome.

STATEMENT OF VARGRAVE A. RICHARDS, LIEUTENANT GOVERNOR, U.S. VIRGIN ISLANDS

Mr. RICHARDS. Good morning, Madam Chair and distinguished members of the committee. At this time, I would like to recognize my distinguished Delegate to Congress who introduced this legislation, which is critical to the people of the Virgin Islands.

My name is Vargrave Richards, and I am the Lieutenant Governor of the U.S. Virgin Islands. On behalf of Governor Turnbull and the people of the U.S. Virgin Islands, I am here before you to testify in support of S. 1829.

Under Virgin Islands law, the Office of the Tax Assessor falls under the Office of the Lieutenant Governor. The tax assessor is charged with generating the real property tax bills for the Territory of the U.S. Virgin Islands.

I am here to respectfully request that you adopt S. 1829, which repeals sections 1401 through 1401(e) of title 48 of the U.S. Code, which limit the authority of the Virgin Islands to assess and collect real property taxes in the territory.

I strongly support the bill for three reasons.

One, a recent court ruling held that the 1936 statute prohibits the territory from setting its own real property tax policy.

Two, the 69-year-old statute, which was designed to assist the Virgin Islands, now hinders it from performing a basic governmental function and has a debilitating effect.

And three, this is a purely local issue with no Federal impact.

The reason I am here before you is a recent court ruling which has essentially revived a long forgotten Federal statute governing the assessment of real property taxes in the territory.

On June 28, 2004, the U.S. Court of Appeals for the Third Circuit issued an opinion affirming a decision of the U.S. District Court of the Virgin Islands in *Berne Corp.* v. *Government of the Virgin Islands*. The court held that the 1936 Statute is still controlling in the Virgin Islands and that it governs the basis for assessment for real property taxes in the territory, preempting subsequent local laws in this area. Based on the 1936 Statute, the court ordered that all property subject to taxation be taxed on the basis of actual value and at the same rate. Under the ruling, to be valid, an exemption must grant a 100 percent exemption from taxation, cover the full tax year of the exemption period, and apply to all subject property.

The effect of the ruling is far-reaching. It limits the Virgin Islands in the performance of the basic government function of setting real property tax policy.

In order to protect homeowners in the territory from losing their land due to the inability to pay property tax increases resulting from a dramatic rise in property values due to the outside investment, local law provides that no residential tax bills can increase more than 10 percent over the previous valuation. This crucial provision, however, was struck down by the courts as inconsistent with the 1936 Statute.

The problem of rising land values is particularly acute on the island of St. John, two-thirds of which is national park. Recent development has generated increased property values and, therefore, higher property taxes. Many Virgin Islanders fear losing land which has been in their family for generations because of the inability to pay increased property taxes. Indeed, at a recent town meeting on St. John, I heard firsthand from residents who passionately expressed their concern that the recent court decision would lead to soaring taxes and force them out of their respective homes. Since the days of emancipation, in our islands land has been a precious commodity which has traditionally passed from generation to generation.

Unless S. 1829 is adopted, the Virgin Islands will not have the ability to reinstitute the 10 percent cap or to employ other appropriate tax policy measures to address the legitimate concerns of these Virgin Islanders desirous of preserving their land for their children.

Based on the ruling, the 1936 Statute may also preclude our local government from establishing partial tax exemptions for veterans, the elderly, or farmers, and from using tax policy to encourage development through the creation of the Enterprise Zones. While State and local governments are free to set different tax rates for different uses of property, such as residential, agricultural, commercial, income-producing, or charitable, the 1936 law prevents our local government from doing the same. To my knowledge, no State, no county, city, or territory has such restrictive provisions imposed upon it by the Congress.

In short, the 1936 Statute needs to be repealed in order to put us on par with other jurisdictions, such as Montgomery County or New York City, and to enable us to set our own local tax policy.

The second reason. The 1936 Statute was adopted by Congress to reform the real property tax system in the Virgin Islands, which at the time was based upon the use to which property was put as opposed to its value. Cultivated or developed land was taxed at a higher rate. It was felt that this system was unfair to those who cultivated their land and the policy discouraged cultivation and also favored a few large owners.

A third reason. The adoption of S. 1829 and the consequent repeal of the 1936 Statute will have absolutely no economic effect on the Federal Government. Like State and local property taxes, Virgin Islands real property taxes are imposed by the territory and are payable to the territory. This is a local matter. It is not a Federal question.

In 1936, the Virgin Islands were closely administered by the Federal Government. Since then there has been a steady progression toward local autonomy in an effort to move from colonialism toward self-governance. In 1954, Congress passed the Revised Organic Act which established a framework for Virgin Islands self-government, and in 1968, Congress passed the Elective Governor Act which authorized the popular election of the Virgin Islands Governor and eliminated the power of the President to veto local legislation.

The provisions of the 1936 Statute that might have been viewed as necessary by Washington in the colonial era now bind the hands of the Virgin Islands government and prevent it from enacting socially and economically beneficial legislation. While it is the Government's position that the 1936 Statute was implicitly repealed by the Revised Organic Act of 1954, the court ruling provided otherwise, making an express congressional repeal necessary to achieve the goal of self-government for the territory.

I would like to thank the Honorable Congresswoman Donna Christensen for sponsoring this legislation.

Senator, I respectfully request you adopt S. 1829 and repeal the old and outdated 1936 Federal Statute. I thank you for your time and attention to a matter of great importance to the people of the Virgin Islands.

Madam Chair, your father, I understand, has been very influential in the territory for many, many years. So we want to convey our thanks and gratitude.

[The prepared statement of Mr. Richards follows:]

PREPARED STATEMENT OF VARGRAVE A. RICHARDS, LIEUTENANT GOVERNOR, U.S. VIRGIN ISLANDS

Good morning, Mr. Chairman and members of the Committee. My name is Vargrave Richards, and I am the Lieutenant Governor of the United States Virgin Islands.

Under Virgin Islands law, the Office of the Tax Assessor falls under the Office of the Lieutenant Governor. The Tax Assessor is charged with generating the real property tax bills for the Territory of the United States Virgin Islands. One of the bills before this Committee, S. 1829, addresses the real property tax of the Virgin Islands.

I am here to respectfully request that you adopt Bill S. 1829 which repeals sections 1401 through 1401(e) of Title 48 of the United States Code, which I will refer to as the "1936 Statute". I strongly support the Bill for three reasons: One, a recent court ruling held that the 1936 Statute prohibits the Territory from setting its own

real property tax policy; Two, the 69 year old statute, which was designed to assist the Virgin Islands, now hinders it from performing a basic governmental function; and Three, this is a purely local issue with no federal impact.

The reason I am here before you is a recent court ruling which has essentially revived a long forgotten federal statute governing the assessment of real property taxes in the Territory.

On June 28, 2004, the United States Court of Appeals for the Third Circuit issued an opinion affirming a decision of the United States District Court of the Virgin Islands in *Berne Corp.* v. *Government of the Virgin Islands*, 2004 WL 1443889 (3d Cir. Jun. 28, 2004).

The courts held that the 1936 Statute is still controlling in the Virgin Islands, and that it governs the basis for assessment for real property taxes in the Territory, preempting subsequent local laws in this area. Based on the 1936 Statute, the court ordered that all property subject to taxation be taxed on the basis of actual value and at the same rate. Under the ruling, to be valid, an exemption must grant a 100% percent exemption from taxation, cover the full tax year of the exemption period, and apply to all of the subject property.

The effect of the ruling is far reaching. It limits the Virgin Islands in performance of the basic government function of setting real property tax policy. Based on the ruling, a federal law precludes our local government from establishing partial tax exemptions for veterans, the elderly or farmers, and from using tax policy to encourage development through the creation of enterprise zones.

To my knowledge, no State or Territory has such restrictive provisions imposed upon it by Congress.

For example, under a local law enacted to encourage agriculture, farmland was 95% exempt from property taxation. Under the new court ruling, this exemption is no longer valid because it is not a 100% exemption.

Similarly, the general homestead exemption, and the specific homestead exemptions for veterans and the elderly, as well as Enterprise Zone tax exemptions, would only be valid if they were to provide a full exemption from taxation. Based on the court ruling, the Guaranteed Housing Rehabilitation Loan exemption is also invalid.

Another critical provision of Virgin Islands law is at stake as well. In order to protect homeowners in the Territory from losing their land due to inability to pay property tax increases resulting from a dramatic rise in property values due to outside investment, local law provides that no residential tax bill can increase more than 10% over the previous valuation. This crucial provision was also struck down by the courts.

The problem of rising land values is particularly acute on the Island of St. John, two thirds of which is National Park. Recent development has generated increased property values and therefore higher property taxes. Many Virgin Islanders fear losing land which has been in their family for generations because of the inability to pay increased property taxes. Since the days of emancipation, in our islands, land has been a precious commodity which has traditionally passed from generation to generation.

Unless Bill S. 1829 is adopted, the Virgin Islands will not have the ability to reinstitute the 10% cap, or to employ other appropriate tax policy measures to address the legitimate concerns of these Virgin Islanders desirous of preserving their land for their children.

Unless Bill S. 1829 is adopted, the Virgin Islands will not be able to set different tax rates for different uses of property. While state and local governments are free to set different tax rates for differing uses of property, such as residential, agricultural, commercial, income producing or charitable, the 1936 Statute prohibits our local government from doing the same.

In short, the 1936 Statute needs to be repealed in order to put us on par with other jurisdictions and enable us to set our own local tax policy.

The second reason the Bill should be adopted is that the 1936 Statute is an anachronism whose historical purpose is no longer served.

The Statute was adopted by Congress on May 26, 1936 to reform the real property tax system in the Virgin Islands which at the time was based upon the use to which property was put as opposed to its value. Cultivated or developed land was taxed at a higher rate. It was felt that this system was unfair to those who cultivated their land and the policy discouraged cultivation and also favored a few large land owners.

Today, the 1936 Statute as interpreted by the courts no longer assists the people of the Virgin Islands. To the contrary, it hampers our ability to make sensible tax policy.

A third reason to support the Bill is that this is a local issue with no impact on the federal treasury. The adoption of S. 1829 and the consequent repeal of the 1936

Statute will have absolutely no economic effect on the federal government. Like state and local property taxes, Virgin Islands real property taxes are imposed by the Territory and are payable to the Territory. This is a local matter. It is not a federal tax question.

In 1936, the Virgin Islands were closely administered by the federal Government. There has been a steady progression toward local autonomy in an effort to move from colonialism toward self governance. In 1954, Congress passed the Revised Organic Act which established a framework for Virgin Islands self-government. In 1970, Virgin Islanders elected their own Governor for the first time.

The old 1936 tax Statute severely impairs the ability of the Government of the Virgin Islands to set real property tax policy. The Virgin Islands legislature should be able to grant partial real estate tax exemptions to encourage farming, economic development, and the creation of homesteads, and to provide tax relief for veterans, the elderly and the disabled.

The provisions of the old 1936 Statute that might have been viewed as necessary by Washington in 1936, now bind the hands of the Virgin Islands Government and prevent it from enacting socially and economically beneficial legislation. While it is the Government's position that the 1936 Statute was repealed by the Revised Organic Act of 1954, the court ruling provided otherwise, making an express Congressional repeal necessary to achieve the goal of self-government for the Territory.

I would like to thank the Honorable Congresswoman Donna M. Christensen for sponsoring the legislation.

Senators, I respectfully request that you adopt Bill S. 1829 and repeal the old and outdated 1936 federal Statute. I thank you for your time and attention to a matter of great importance to the people of the Virgin Islands.

Senator MURKOWSKI. Thank you, Lieutenant Governor. I appreciate that.

Mr. Pula, your testimony, please. Good morning.

STATEMENT OF NIKOLAO I. PULA, ACTING DEPUTY ASSISTANT SECRETARY FOR INSULAR AFFAIRS, DEPARTMENT OF THE INTERIOR

Mr. PULA. Thank you, Madam Chairman. I am pleased to be here before you today to discuss S. 1829 and S. 1831. I am Nikolao Pula, Acting Deputy Assistant Secretary of the Interior for Insular Affairs.

I respectfully request that my full written remarks be submitted for the record while I summarize my statement.

Senator MURKOWSKI. Your full remarks will be included.

Mr. PULA. Thank you.

S. 1829 would repeal sections 1 through 6 of the 1936 Organic Act of the Virgin Islands, which deal with property taxation. In 2004, the Third Circuit Court of Appeals held that these provisions were still in effect. This decision invalidated local Virgin Islands statutes that give exemptions to residents such as veterans and seniors.

For decades, the Department of the Interior has sponsored and backed measures that increase self-government for the territories. S. 1829 would return control of the property tax to the government of the Virgin Islands and property taxes would be levied as they were prior to the Third Circuit's decision. The administration supports the enactment of S. 1829.

S. 1831 deals with two subjects: submerged lands and the settlement of claims pursuant to the CNMI Covenant. Do you want to wait on this, or do you want me to continue?

Senator MURKOWSKI. Go ahead. The vote has not yet started.

Mr. PULA. All right.

Section 1 of S. 1831 would give the Commonwealth of the Northern Mariana Islands authority over its submerged lands.

It has been the position of the Federal Government that United States submerged lands around the Northern Mariana Islands did not transfer to the CNMI. This position was validated in the Ninth Circuit Court of Appeals. One consequence of this decision is that CNMI law enforcement personnel lacked jurisdiction in the territorial waters surrounding the islands of CNMI without a grant from the Federal Government.

Currently the CNMI is the only U.S. territory that does not have title to the submerged lands. It is appropriate that CNMI be given the same authority as her sister territories.

The administration, therefore, supports enactment of section 1 of S. 1831, provided that language is added regarding consistent interpretation.

Section 2 of S. 1831 would permit the Secretary of the Interior to settle claims of the CNMI arising pursuant to the CNMI Covenant. The authority would be activated by a request by the Governor of the CNMI.

The administration does not support the enactment of section 2 of S. 1831 because it does not believe that the creation of an additional formal mechanism with its attendant costs, as described in the bill, is necessary.

Although we were not specifically invited to speak with regard to the compact-related amendments in S. 1830, with your indulgence I would like to raise one issue that is not considered in the bill.

The Compact of Free Association Amendments Act of 2003 contemplated the creation of separate trust funds for the peoples of the Republic of the Marshall Islands and the Federated States of Micronesia. To aid in building corpus, both compacts provide that their respective trust funds shall not be subject to Federal or State taxes.

Another provision requires that the trust funds be incorporated in the District of Columbia. Because the District of Columbia is neither a State nor the Federal Government, the intended tax-free status of the trust fund has been called into question.

The administration, therefore, requests that the following new section be added to S. 1830, an amendment for the tax-free status in the District. "Clarification of Tax-Free Status of Trust Funds. In the U.S.-RMI Compact, the U.S.-FSM Compact, and their respective trust funds subsidiary agreements, for the purposes of taxation by the United States or its subsidiary jurisdictions, the word 'state' means 'state, territory, or the District of Columbia.'"

Such an amendment would ensure that full effect will be given to the intended tax-free status of the trust funds.

I thank you for allowing me the opportunity to testify today.

[The prepared statement of Mr. Pula follows:]

PREPARED STATEMENT OF NIKOLAO I. PULA, ACTING DEPUTY ASSISTANT SECRETARY OF THE INTERIOR FOR INSULAR AFFAIRS, U.S. VIRGIN ISLANDS

Mr. Chairman and Members of the Committee on Energy and Natural Resources, I am pleased to appear before you today to discuss S. 1829 and S. 1831. I am Nikolao Pula, Acting Deputy Assistant Secretary of the Interior for Insular Affairs.

S. 1829

S. 1829 would repeal sections 1 through 6 of the 1936 Organic Act of the Virgin Islands of the United States, which deal with property taxation in the territory. In 2004, the Third Circuit Court of Appeals held that the property tax provisions in the 1936 Organic Act, requiring market valuation, were still in effect despite enactment of the Revised Organic Act of 1954. This decision has had the effect of invalidating local Virgin Islands' statutes that give property tax exemptions to residents such as veterans and seniors.

In a rapidly escalating real estate market, people on limited incomes, including many veterans and seniors, can be forced from their homes due to an inability to pay the increased levies. Adverse social consequences can follow.

For decades, the Department of the Interior has sponsored or backed measures that increase self-government for the territories. S. 1829 advances Virgin Islands citizens' self-government, consistent with Departmental policy. Additionally, it is my understanding that there is no Federal regulation of property taxation in any other state or territory under the American flag.

S. 1829 would return control of the property tax to the Government of the Virgin Islands, and property taxes would be levied as they were prior to the Third Circuit's decision. The Administration supports enactment of S. 1829.

S. 1831

S. 1831 deals with two subjects: submerged lands and the settlement of claims arising pursuant to the *Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America.*

Submerged Lands

Section 1 of S. 1831 would give the Commonwealth of the Northern Mariana Islands (CNMI) authority over its submerged lands from mean high tide seaward to three geographical miles distant from its coast lines.

It has been the position of the Federal Government that United States submerged lands around the Northern Mariana Islands did not transfer to the CNMI when the Covenant came into force. This position was validated in Ninth Circuit Court of Appeals opinion in the case of the *Commonwealth of the Northern Mariana Islands* v. *the United States of America.* One consequence of this decision is that CNMI law enforcement personnel lack jurisdiction in the territorial waters surrounding the islands of the CNMI without a grant from the Federal Government.

At present, the CNMI is the only United States territory that does not have title to the submerged lands in that portion of the United States territorial sea that is three miles distant from the coastlines of the CNMI's islands. It is appropriate that the CNMI be given the same authority as her sister territories.

It should be noted that the language of section 1 is similar, but not identical, to the language of the 1974 territorial submerged lands act applicable to Guam, the Virgin Islands and American Samoa. The differences appear to be attributable to the fact that the CNMI provisions would be a later enactment. We assume that the intent of the bill is to give the CNMI the same benefits in its submerged lands as its sister territories enjoy in their submerged lands. If this is the case, it would be helpful, for those who will later interpret the statute, to include language in S. 1831 stating that, as a general rule, the submerged lands statute is intended to be applied in a consistent manner to each of the four territories, unless, of course, there is a specific and express exception for one of the territories.

The Administration, therefore, supports enactment of section 1 of S. 1831, provided that language is added regarding consistent interpretation.

Covenant Authority

Section 2 of S. 1831 would permit the Secretary of the Interior to settle claims of the CNMI arising pursuant to the CNMI Covenant. This authority would be activated by a request by the Governor of the CNMI.

On a number of occasions over the past quarter of a century, the Federal Government and the CNMI have sought accommodation on a variety issues and disputes through the formal process of appointing representatives provided for in section 902 of the Covenant. In addition to this formal process, and on a separate track, the CNMI has sought to have the Department of the Interior help resolve issues with other Federal agencies.

The Administration does not support the enactment of section 2 of S. 1831 because it does not believe that the creation of an additional formal mechanism with its attendant costs, as described in the bill, is necessary.

Although we were not specifically invited to speak with regard to the compact-related amendments in S. 1830, with your indulgence, I would like to raise one issue that is not considered in the bill.

The Compact of Free Association Amendments Act of 2003, contemplated the creation of separate trust funds for the peoples Republic of the Marshall Islands and the Federated States of Micronesia. It is anticipated that after the year 2023, the trust proceeds will be the source of substantial funds that will help sustain their respective governments. To aid in building corpus, both Compacts provide that their respective trust funds shall not be subject to Federal or state taxes. Another provision requires that the trust funds to be incorporated in the District of Columbia. Because the District of Columbia is neither a state nor the Federal government, the intended tax free status of the trust fund has been called into question.

The Administration, therefore, requests that the following new section be added to S. 1830:

> Sec.—. *CLARIFICATION OF TAX-FREE STATUS OF TRUST FUNDS.* In the U.S.—RMI Compact, the U.S.-FSM Compact, and their respective trust fund subsidiary agreements, for the purposes of taxation by the United States or its subsidiary jurisdictions, the word "state" means "state, territory, or the District of Columbia".

Such an amendment would insure that full effect will be given to the intended tax free status of the trust funds.

Senator MURKOWSKI. Thank you, Mr. Pula. The committee will look forward to working with you and your office on the suggestions that you have raised this morning.

Mr. PULA. Thank you.

Senator MURKOWSKI. This is directed to you, Delegate Christensen. The committee has reviewed the views of a Mr. David Berne, the individual who brought the case which upheld the 1936 Statute that S. 1829 would repeal. We have included the letter from David Berne in the record here.

Now, Mr. Berne proposes that 1829 be amended to grant the U.S. Virgin Islands the authority to establish property tax exemptions and caps, but that the principle of using the actual value in determining underlying property value tax assessments be maintained.

What is your reaction to the proposal that Mr. Berne has put forth?

Mrs. CHRISTENSEN. Thank you for that question, Madam Chair.

Regardless of what one may feel about how property ought to be taxed in the Virgin Islands, there is no other jurisdiction in the United States where the Federal Government makes that determination. So it is my position that that is a matter for the legislature of the Virgin Islands to determine how the property tax would be levied, but that there is not a role for the Federal Government, as it does not exist in any State or any jurisdiction in this country. I feel it would be extraordinary for the Federal Government to determine in any way how property taxes would be applied in the Virgin Islands.

Senator MURKOWSKI. Lieutenant Governor, did you care to add anything to that?

Mr. RICHARDS. Yes. I will simply echo what the Delegate said. This is a matter of local law. Our legislature can handle and impose their respective policies, and I do not think that the Federal Government would have any say in this matter. This can be addressed through our local legislation.

Senator MURKOWSKI. Thank you for that.

Mr. Pula, please relay to the Secretary our appreciation for her convening this initial meeting to discuss with the Marshalls their issues as they relate to the nuclear testing program. I guess this morning I would ask for your assurance that you will follow up and pursue the individual issues with the Marshalls, report back to the committee, as you develop either the solutions or a range of options. We appreciate the forward motion that we have made and would look forward to updates in the future and know that there is being some progress made as it relates to the Marshall Islands.

Mr. PULA. Thank you, Madam Chairman. I will relay and convey your remarks to the Secretary.

As a follow-up to your request, the Deputy Assistant Secretary of Insular Affairs had a conference call just last Thursday with officials in the State Department and HHS and Energy to follow up on some of these issues regarding the Marshall Islands. We will continue to work as an administration and report to the committee those things that we pursue.

Senator MURKOWSKI. Great. We certainly appreciate that.

We have been joined by Senator Akaka. Senator, would you care to make any remarks or comments? We had some good testimony on the legislation before us and we are just wrapping it up, but we would love to have your comments.

STATEMENT OF HON. DANIEL AKAKA, U.S. SENATOR FROM HAWAII

Senator AKAKA. Thank you very much, Madam Chairman. Thank you for this hearing, and I want to add my welcome to our panelists here.

I understand there are some bills that we are dealing with here. I would like to mention just two of the three that we are considering. That is the one to amend the Compact of Free Association for RMI and FSM, and the other is with the CNMI. We are looking forward, of course, to moving those. So I look forward to hearing your responses here.

[The prepared statement of Senator Akaka follows:]

PREPARED STATEMENT OF HON. DANIEL K. AKAKA, U.S. SENATOR FROM HAWAII

I'd like to thank Chairman Domenici for scheduling this morning's hearing on these three bills regarding the U.S.-affiliated islands.

The first bill, S. 1829, was requested by the Delegate and Governor of the U.S. Virgin Islands and would repeal a 1936 federal law regarding property tax assessments in the USVI. I welcome Delegate Christensen and Lieutenant Governor Richards here today and look forward to their testimony.

The second bill, S. 1830, would effectively amend the Compact of Free Association Amendments Act of 2003 by approving the government-to-government agreements reached between the U.S. and the Republic of the Marshall Islands (RMI), and between the U.S. and the Federated States of Micronesia (FSM). These agreements were negotiated and transmitted to Congress by the State Department, and would alter the way future disaster assistance will be administered. My understanding is that there is not intended to be any reduction in the level of U.S. assistance. Instead, these agreements would shift the administration of that assistance from the Federal Emergency Management Administration (FEMA) to the Office of Foreign Disaster Assistance (OFDA) in the State Department.

This second bill also contains other changes requested to the Compacts by the Government of the FSM to extend the Legal Services program to FSM migrants living in the United States, and to clarify that FSM students attending college in Palau shall continue to be eligible for college scholarship programs for up to two more years while they complete their ongoing programs of study.

I understand that the FSM Ambassador has submitted testimony for the record with further details on these requests.

I also understand that the Ambassador from the Republic of Palau, Hersey Kyota, has submitted testimony for the record with requests for other amendments, and that he is available to answer any questions that may arise. Welcome Ambassador.

With respect to the Compact, I would like to add that I hope Chairman Domenici will agree to schedule an oversight hearing on Compact implementation this winter. The Compacts are now in the third year of implementation and there are concerns regarding planning and reporting on the use of Compact funds. In fact, this Committee is sending a staff delegation to Micronesia next month to meet with local officials to learn more about the steps that are being taken to promote effective use of U.S. assistance.

I look forward to working with FSM and RMI officials next year in support of our Compact partnerships.

Finally, the third bill, S. 1831, addresses two issues in the Commonwealth of the Northern Mariana Islands (CNMI). It would grant the CNMI three-mile jurisdiction over its offshore submerged lands—the same jurisdiction as provided to the other territories. The bill would also authorize the Secretary of the Interior to resolve, in cooperation with other Federal agencies, any issues that may arise between the U.S. and the CNMI. This language is meant to underscore the Committee's desire to have the Secretary take the initiative in resolving disputes before resorting to the formal consultation process set forth in the law.

I look forward to hearing from our witnesses, and working with my colleagues in considering these bills.

Senator AKAKA. May I proceed with the questions?

Senator MURKOWSKI. Yes.

Senator AKAKA. I would like to ask Nick Pula—good to see you here.

Mr. PULA. Good to see you too, Senator.

Senator AKAKA. I understand that the administration has no objection to the committee favorably reporting these three bills, with two changes, the deletion of section 2 of S. 1831 regarding the ability of the Secretary of the Interior to resolve disputes with CNMI, with an addition of a new section to S. 1830, to clarify the tax-free status of the compact trusts. Now, is that correct, as far as you know?

Mr. PULA. Yes, Senator. Section 2 of S. 1831 calls for the Secretary of the Interior to resolve conflicts with the CNMI. There are mechanisms now that the Secretary is already using. As you know, the Covenant also has section 902, which handles any discrepancy or any issues that the CNMI would like to discuss with the U.S. Government. And the President's representative on section 902 can handle that.

Also, generally speaking, the Secretary of the Interior, in dealing with the insular areas, does advocate and take up issues or conflicts with other agencies by trying to work out within the administration whatever differences there are. So we felt that it was unnecessary to have this particular provision.

Senator AKAKA. In S. 1831, you stated that the administration does not support the enactment of section 2 of S. 1831 because it does not believe that the creation of an additional formal mechanism with its attendant costs, as described in the bill, is necessary. And that is a quote from you.

However, the intent of section 2 is to encourage the Secretary to use her existing authority and appropriations to informally resolve disputes before resulting to the more formal and costly consultation procedures established under section 902 of the Covenant between the United States and CNMI. Could you please explain how this

informal approach would be more costly than the current formal consultation procedures?

Mr. PULA. At this moment, as I mentioned earlier, the Secretary does use her influence informally to discuss issues that are brought to her with the other sister agencies, at times including the OMB.

Regarding cost, that was a reference to the second part of that bill that has to deal with any appropriations. There are none attached to it, but just in case there are.

Senator AKAKA. The Ambassador of Palau has submitted testimony requesting further amendments to S. 1830 that would: one, extend availability of U.S. education programs under the compact with Palau from 2007 to 2009; two, to extend the authorization for television stations in Palau to continue to transmit videotaped television programming from the United States; and three, to allow the citizens of Palau to apply for merchant marine documentation and serve on U.S. flag vessels.

I do not know whether you have a position on these requests at this time, but I would appreciate your, let me say, initial reaction and that you will respond in detail for the record with the administration's analysis and positions.

Mr. PULA. Thank you, Senator. We were not asked to testify on this particular provision, as you mentioned. I personally would like to take this back and have a discussion with other sister agencies that have jurisdiction over this, including the State Department, and whatever other agencies that would be required to have a discussion on this. We would be happy to follow up on that.

Senator AKAKA. Finally, I understand that the State Department is considering negotiations with the Republic of Palau in order to update certain provisions of the Palau compact so that they will conform with provisions in the FSM and RMI compacts. I believe this committee is interested in having Palau agree to the more recent provisions regarding immigration, adoption, and labor recruiting.

Would you please consult with your colleagues at the State Department and let the committee know whether and when they are committed to undertake such negotiations? We would like to hear that, and you can inform the committee about that.

Mr. PULA. Senator, I will definitely contact our contacts with the State Department and follow up as you request. Yes.

Senator AKAKA. Well, thank you very much and thank you very much for your responses.

Thank you very much, Madam Chairman, for this opportunity to ask these questions.

Senator MURKOWSKI. Thank you, Senator Akaka.

Well, I told you we were going to have a vote at 10:30. It has bumped to 10:45. So it gave us just the time that we needed to accomplish this morning's business. I want to thank you for your willingness to appear here today and present your testimony. I appreciate that.

With that, we are adjourned.

Mr. RICHARDS. Madam Chair, I just wanted to recognize the tax assessor, Mr. Roy Martin, who has joined me on this trip.

Senator MURKOWSKI. And who is that? Welcome. Thank you for being here and thank you for what you do.

With that, we are adjourned.
[Whereupon, at 10:40 a.m., the hearing was adjourned.]

APPENDIXES

APPENDIX I

Responses to Additional Questions

DEPARTMENT OF THE INTERIOR,
OFFICE OF CONGRESSIONAL AND LEGISLATIVE AFFAIRS,
Washington, DC, December 6, 2005.

Hon. PETE V. DOMENICI,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: Enclosed are responses prepared by the Office of Insular Affairs to questions submitted following the October 25, 2005, hearing regarding, "the Compact of Free Association Amendments Act of 2005."

Thank you for the opportunity to provide this material to the Committee.

Sincerely,

JANE M. LYDER,
Legislative Counsel.

[Enclosure.]

QUESTIONS FROM SENATOR AKAKA

Question 1. The Ambassador of Palau has submitted testimony requesting further amendments to S. 1830 that would: extend the availability of U.S. education programs under the Compact with Palau from 2007 to 2009; extend the authorization for television stations in Palau to continue to transmit videotaped television programming from the U.S.; and allow citizens of Palau to apply for merchant marine documentation and serve on U.S. flagged vessels. Please provide the Administration's position on the inclusion of these proposals in S. 1830.

Answer. The United States and Palau conducted their latest bilateral consultations on May 26, 2005, at the Department of State. Discussed, among other things, were the education programs and videotaped television programming noted in the question. The United States is studying the former. Although not a part of the May 2005 consultations, the Government of Palau's desire for Palauan citizens to qualify for merchant marine documentation and to serve on U.S. vessels is an issue that the Office of Insular Affairs is striving to advance with the appropriate Federal agencies.

The Executive Branch is not prepared at this time to endorse inclusion in S. 1830 of any of these provisions. It is appropriate for agreement to be reached first by the representatives of each government before approval is given by the United States Congress.

Question 2. I understand that the State Department and the Republic of Palau are considering negotiations to update certain provisions of the Palau Compact so that they will conform to provisions in the new FSM and RMI Compacts. The Committee is interested in establishing consistency between the Palau Compact and the more recent provisions in the FSM and RMI Compacts on immigration, adoption, and labor recruiting and we assume that the Administration is also interested in this objective. At the same time, Palau is seeking changes in program assistance such as a extension of certain telecommunications program eligibility. I note that any negotiations should be limited in scope to program assistance and should not include discussion of any extension of U.S. financial assistance beyond the current term of financial assistance. Would you please ask your colleagues at the State De-

partment and let the Committee know when they are committed to undertake such negotiations?

Answer. Section 432 of the Compact of Free Association with Palau provides for a formal "review" of the terms of the Compact at prescribed intervals; it does not call for "negotiations." The Administration will review with Palau the terms of the Compact as required in Compact section 432 (October 1, 2009, 2024, and 2034). Representatives of our two countries, however, may meet at any time to discuss issues of interest to either party. The United States, at present, is not committed to undertake any such discussions of issues except when new economic consultations are scheduled or as a follow-up to our May 26, 2005, economic consultations.

Question 3. Following the Committee's recent hearing on the Marshall Islands nuclear compensation petition, the Secretary of the Interior held a meeting for Administration officials to hear in more detail from the Marshall Islands. I thank the Secretary for her initiative and wonder if you can tell us where this process currently stands? Are further meetings planned?

Answer. On October 20th, Deputy Assistant Secretary David Cohen organized a follow-up inter-agency conference call with the State Department's Office of the Assistant Legal Adviser for East Asia and the Pacific, two HHS offices and two Energy offices (Germantown and Honolulu). The principal result of that conference call was an agreement by HHS Region IX to prepare a comprehensive inventory of HHS programs unutilized or under-utilized by the Marshall Islands. In addition, a senior member of the staff of the Office of Insular Affairs has met with the Marshall Islands First Secretary to brief the First Secretary on the conference call.

APPENDIX II

Additional Material Submitted for the Record

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,
OFFICE OF THE ATTORNEY GENERAL,
Saipan, MP, June 6, 2005.

Hon. PETE V. DOMENICI,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

Hon. JEFF BINGAMAN,
Ranking Member, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

GENTLEMEN: One of the continuing issues between the Commonwealth of the Northern Marianas and the United States has been jurisdiction over the submerged lands beyond the mean high water mark. In previous enactments, the Congress has ceded to all States and virtually all territories at least three miles of jurisdiction. As you know, this matter is currently the subject of litigation between the CNMI and the United States. However, for environmental and other purposes it is increasingly vital that some measure of control be vested in the CNMI.

With that in mind, we would request the enactment of amendments to the Territorial Submerged Lands Act which establish a three mile territorial limit for the CNMI—the minimum afforded all other states and territories. Importantly, however, this legislation should not prejudice the legal claims or position of the CNMI in the ongoing litigation to establish a greater limit. Such an approach has been taken in other instances, including for Guam. This will afford the CNMI the certainty it needs for coastal protection in the near term, while allowing it to fully prosecute its claims far a greater limit through the judicial process.

Thank you for your consideration of this request and please let me know if I can provide any further information.

With best regards,

PAMELA BROWN,
Attorney General.

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,
Saipan, MP, June 6, 2005.

Hon. PETE V. DOMENICI,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

Hon. JEFF BINGAMAN,
Ranking Member, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

CHAIRMAN DOMENICI AND RANKING MEMBER BINGAMAN: Thank you for this opportunity to comment of S. 1831. As the Governor of the Commonwealth of the Northern Mariana Islands, I appreciate your introduction of this bill pursuant to my request. Your support of and assistance in, resolving the issues addressed by this legislation will enhance the lives and prosperity of residents in the Commonwealth.

Section 1 of the bill amends the Submerged Lands Act to provide a three mile territorial limit for the CNMI—the minimum afforded all other states and territories. As such, S. 1831 clearly provides the Commonwealth with jurisdiction over, and ownership of, these territorial waters.

When the United States District Court for the Northern Mariana Islands issued its opinion that the Commonwealth's territorial limit, it generated a great deal of

uncertainty. The decision, read literally, held the Commonwealth did not have any ownership interests or regulatory powers beyond the ordinary low-water mark. At worst, that meant that the Commonwealth cannot enforce any of its laws in the waters surrounding the Commonwealth. Some relevant laws include fishing laws, environmental laws, tax laws, immigration laws, and criminal laws.

For example, the bans on gill nets and fishing in sanctuaries such as Bird Island and Managaha could not be enforced, anti-dumping and pollution controls to protect our coral reefs could not be enforced, and the Commonwealth could not collect taxes on income from activities within the territorial waters. it was not even clear that if someone committed a crime, even murder, in the waters, IMPS would have enforcement powers over them. Furthermore, smuggling and anti-trafficking activities could not be stopped by local immigration agents until they reached land.

S. 1831 puts to rest any questions regarding the Commonwealth's ability to enforce its laws within its territorial limits.

Further, S. 1831 is consistent with international law as well as ownership and revenue schemes currently in place in the United States. It recognizes the United States' interest in jurisdiction for national defense and security, while encouraging the Commonwealth's economic independence and decreasing its federal dependence. Our economy and welfare are heavily dependent on marine resources. On the other hand, we understand that the Commonwealth has limited enforcement resources and that there is a need for federal funding, expertise, and other resources to develop and exploit the submerged lands for the people of the Commonwealth. We also do not contest the authority of the Federal government to regulate and control submerged lands and the overlaying waters for the purposes of commerce, navigation, national defense, and international affairs, as permitted by the Covenant and applicable law.

The Commonwealth needs economic development and the submerged lands have most of the Commonwealth's resources. This development will not occur until the cloud of title is finally resolved. While S. 1831's grant of the three mile territorial limit may not be satisfactory to some residents of the Commonwealth, it is vitally important for all.

The Commonwealth also appreciates introduction of section 2 in the bill. That provision simply authorizes the Secretary of the Interior to resolve any issue arising under the Covenant when raised by the CNMI. The Secretary would involve any other federal agencies as relevant and the section authorizes the appropriation of funds as necessary as well as allowing the Secretary to use any other funds appropriated for the provision at issue. That would be useful if the discussion were over requirements for the obligation of funds made available from the $27.7 million under section 702, for example.

The reason for section 2 is that at the moment the Commonwealth has only two formal mechanisms to raise issues with the federal government. We can proceed in court, as we have done to establish jurisdiction over submerged lands, or we can initiate the 902 process under the Covenant which requires the President to appoint a negotiator. The 902 process, however, is not always responsive enough to address issues of concern to the Commonwealth such as the submerged land matter. Further, the proposed section 2 does not eliminate the 902 discussions.

While many issues, such as the one recently raised by the Resident Representative under the American Jobs Creation Act of 2004 that you are aware of involve agencies other than the Department of the Interior, it seems to us that the first approach by the Commonwealth should be to the Secretary of the interior who can request assistance from the other agency. A major reason for that, aside from the general responsibilities of the Secretary for insular affairs, is that both the Commonwealth and your Committee will likely look to the resources of the Department for relief if the discussions prove unsuccessful. Having the Department involved from the outset may serve not only to advance resolution, but may also serve as an early warning to your Committee of a significant problem.

On behalf of the people of the Commonwealth of the Northern Mariana Islands, I offer my sincere appreciation for the support of the support of the Energy Committee. I stand ready to provide answers to whatever questions you may have on S. 1831.

JUAN N. BABAUTA,
Governor.

Cruz Bay, VI, October 21, 2005.

Hon. DONNA CHRISTIAN-CHRISTENSEN,
U.S. Virgin Islands Delegate to Congress, U.S. House of Representatives, Washington, DC.

Re: H.R. 59—109th Congress, To repeal certain sections of the Act of May 26, 1936, pertaining to the Virgin Islands

DEAR DELEGATE CHRISTIAN-CHRISTENSEN: I write to express my deep and sincere support for H.R. 59, a measure you sponsored in the 109th Congress of the United States, now assigned to the House: Committee on Resources. This legislation seeks to remove congressionally mandated language that significantly impacts the Virgin Islands property tax system. The provisions sought to be removed date back to 1936, the transitionary period following purchase of the Virgin Islands from Denmark. We have operated under congressional guide and directive for seventy (70) years without further amendment, even though the issue of property tax is traditionally controlled at the state level.

In light of a host of problems that require unique address—taking into consideration island topography and U.S. National Park ownership of Large tracts of land on St. John, it is imperative that the issue of property tax assessment be ceded to territorial determination, in all respects. Having resided on both St. Croix and St. John, I communicate: with an understanding of both island districts. The active real estate market on St. John and the limitation imposed by National Park ownership of most land on the Island is displacing families who have lived on island for generations and now cannot keep pace with the red hot acceleration in their property values. Our people work hard taming island-level wages and cannot compete with the wealthy who are moving in. The territory must have opportunity to properly address this situation so that all parties benefit and live together peacefully

I welcome an opportunity to personally express my support of H.R. 59 and trust that your colleagues will understand and likewise support you on this issue that is so important to the people of all four Virgin Islands.

Sincerely,

MYRON A. ALLICK.

CORAL BAY COMMUNITY COUNCIL, INC.,
Coral Bay, St. John, U.S. Virgin Islands, October 24, 2005.

Hon. PETE V. DOMENICI,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

Re: October 25th Hearing on S. 1829

DEAR SENATOR DOMENICI: The Coral Bay Community Council is a 200-member organization whose mission is to provide an effective means for Coral Bay residents to participate in planning the future of Coral Bay development. The current property tax law situation threatens long time property owners and old island families. Your help is needed.

Please support passage of S. 1829 to repeal the anachronistic 1936 federal law that requires full market value property taxation in the Virgin Islands and prohibits use of exemptions for homeowners, tax equity, land conservation or other purposes. The Virgin Islands needs to have the same options states and local governments have to make fair property tax policy.

Thank you.

Sincerely,

SHARON L. COLDREN,
President.

St. John, Virgin Islands, October 24, 2005.

Hon. DONNA M. CHRISTENSEN,
Delegate to Congress, U.S. House of Representatives, Washington, DC.

DEAR DELEGATE CHRISTENSEN: I am writing to bring to your attention a matter of utmost urgency to the people of the Virgin Islands inasmuch it will determine whether many Virgin Islanders will be able to keep their homes and also, whether the Virgin Islands will be able to maintain significant areas of green space for future generations to enjoy. Recent decisions by federal courts have overturned sections of Virgin Islands law that provided significant insulation for Virgin Islands

homeowners to protect them against the consequences of rapidly rising property values on their tax bills. The Virgin Islands Government has been ordered to change its system of real property assessment to come into compliance with 48 U.S.C. 1401(a) which mandates that all real property in the Virgin Islands must be assessed based on actual value and that the rate of taxation on real property in the Virgin Islands must be uniform without regard to the use of the real property in question. This decision, if allowed to stand without a change in federal law, will have significant negative consequences for Virgin Islands homeowners in particular and for sustainable development and land use for the Virgin Islands in general.

After examination of the issues involved, it becomes dear that the Legislature does not have the power to address this matter through legislation inasmuch as the determining law in this matter is federal law relating to the Virgin Islands. It is important to note that the provisions that were struck down are not uniquely used in the Virgin Islands but are similar to provisions that are widely used in jurisdictions throughout the United States. For example, V.I. Code T. 33, 92402 provides that the Tax Assessor shall not increase the valuation of any residential property by more than 10% unless there has been substantial improvement to the property since the last valuation. This provision is not art unusual one, as there are 19 states in the Union that have assessment limits, and some of those states apply these limits only to residential property. As this analysis will demonstrate later, the striking down of cap combined in Section 2402, combined with the requirement that assessment must be based on "actual value", will be ruinous to many Virgin Islands homeowners. As this analysis will demonstrate in greater detail, many homeowners will face a property tax bill that will be three times higher than it would be under the present system of taxation.

Federal law regarding property taxes in the V.I. are not only injurious to individual owners who will most certainly face drastic increases in their property tax bill, but they also severely hamper the ability of the government to use property taxes as a tool to influence land use and land conservation. Although a number of states provide lower assessments for land that is determined to be agricultural land or open space, the Virgin Islands is prevented from doing so by the provisions of 48 U.S.C. 1401(a). Thus, as we see, the case of *Berne Corp.* v. *Government of the Virgin Islands* has consequences that reach far beyond some commercial property owners being over-assessed. The issues at stake, in fact, are the continued viability of local homeowners and the preservation of the few precious areas of green space that remain in the territory.

In order to prevent these disastrous consequences, it is vital that 48 U.S.C. 1401(a), whose original purpose has long been out-lived, be repealed immediately.

BACKGROUND

In the year 2000, the District Court of the Virgin Islands decided a case in which the Berne Corporation, later joined by other plaintiffs, sued the Tax Assessor with the complaint that their commercial properties were being taxed based on inflated assessments of value rather than on the actual value as required by federal law relating to the Virgin Islands.[1] Judge Thomas Moore found in favor of the plaintiffs and ordered the Virgin Islands government to revise its system of property tax assessment to conform with federal law.[2] Additionally, Moore struck down a provision of Virgin Islands law that has served to protect residential property owners from the effects that skyrocketing real estate values would otherwise have on their property taxes. This decision and the resulting revision of the V.I. property tax code, if done under present federal law, will have far reaching negative consequences for many local property owners in particular and for the Virgin Islands in general.

Property taxation based on actual value as opposed to replacement value.

Currently the assessed value of real property for taxation purposes is heavily based on replacement value as opposed to the market value of the property. Assessing property based on actual, or cash value, will make the assessed value of any given property much more sensitive to the value of the properties surrounding it. Thus if an individual or a family owns a modest dwelling that is surrounded by million dollar homes, the assessed value and thus the property taxes due, will increase significantly. This will have serious consequences for long-time property holders,

[1] *Berne Corporation* v. *Government of the Virgin Islands*, 120 F. Supp. 2d 528.

[2] 48 U.S.C. § 401(a) states that "For the calendar year 1936 and all succeeding years all taxes on real property in the Virgin islands shall be computed on the basis of the actual value of such property and the rate in each municipality of such islands shall be the same for all real property subject to taxation in such municipality whether or not such property is in cultivation and regardless of the use to which such property is put."

particularly on the island of St. John. In the Virgin Islands, where the limited land mass makes real property a commodity in short supply, the prevailing trend in real estate prices has been upwards. With the exception of periods such as that following the Fountain Valley incident in 1972 and the Hurricanes Hug and Marilyn, in 1989 and 1995 respectively, Virgin Islands homeowners have seen a consistent increase in the market value of their property. This results, for many, in a situation where they have increased wealth on paper, but the wealth cannot be realized unless the property is mortgaged or sold and moreover, a situation in which they cannot afford to keep this "wealth" that they have because their property tax bills are moving beyond their reach. This is particularly the case in St. John and in many areas of St. Thomas and St. Croix where wealthy individuals have purchased properties and made improvements at prices that have immediately and drastically increased the property values of the properties surrounding them. Assessing properties on the basis of their market value will only exacerbate this situation.

Elimination of the 10% cap on increased valuation.

In 1988, the Legislature, in response the outcry of property owners whose taxes were skyrocketing due to the increasing values of surrounding properties, enacted legislation placing a cap on assessment increases on residential property for tax purposes. This 10% cap provided vital insulation against the effects of rapidly rising property values.

Judge Moore's ruling has drastically changed the situation by striking down the ten percent cap on. valuation increases. As a result, residential property owners whose taxes have been held down for the last 16 years are likely to face a sudden increase of staggering proportions. The following example will demonstrate. In this instance we use an assumed residential property on St. John which has a modest house but which commands a breath-taking view and moreover, is surrounded by properties that have been bought and sold for figures exceeding a million dollars during the past decade and a half. As such, the property's market value has risen from just $150,000 in 1987 to $900,000 by the year 2006. Any discussion with homeowners on St. John will confirm that this is not an anomalous example. The calculations of taxes owed under the current assessment system for the years between 1987 and 2011 are based on a revaluation every two years between 1987 and 2001, and a revaluation every five years thereafter, subsequent to the passage of Act No. 6415 which changed the revaluation period from two years to five years. The property taxes charged equal 1.25% of an amount equal to 660% of the property's value. For purposes of simplicity, homestead exemptions, veterans exemptions and the like have not been included in the calculations.

COMPARISON OF REAL PROPERTY TAXES BETWEEN THE CURRENT ASSESSMENT METHOD AND AN ACTUAL VALUE-BASED METHOD WITHOUT THE ASSESSMENT LIMIT

Year	Property Value ($)	Tax Value ($)	60% of tax value ($)	Tax Rate (%)	Tax owed ($)
1987	150,000.00	150,000.00	90,000.00	1.25	1,125.00
1989	180,000.00	165,000.00	99,000.00	1.25	1,237.50
1991	195,000.00	181,500.00	108,900.00	1.25	1,361.25
1993	240,000.00	199,650.00	119,790.00	1.25	1,497.38
1995	275,000.00	219,615.00	131,769.00	1.25	1,647.11
1997	330,000.00	241,576.50	144,945.90	1.25	1,811.82
1999	500,000.00	265,734.15	159,440.49	1.25	1,993.01
2001	650,000.00	292,307.57	175,384.54	1.25	2,192.31
2008	900,000.00	321,538.32	192,922.99	1.25	2,411.54
2011	1,094,987.61	353,692.15	212,215.29	1.25	2,652.69
W/O Cap					
2006	900,000.00	900,000.00	540,000.00	1.25	6,750.00
2011	1,094,987.61	1,094,967.51	656,992.57	1.25	8,212.41

As you can see, removing the ten percent cap would result in a $4,300 increase in our homeowner's tax bill, and it will force him to pay an additional $21,692.30 over the next five years. The bill will rise to $8,212.41 dollars when the property is next assessed in 2011 even if the property's value only increases at the rate of 4% a year. If property values increase at the rate of 10% per year, his property tax bill in 2011 would be almost $11,000, compared to the amount of $2,652.69 that would be due in 2011 if the cap remained in place.

The effect of Judge Moore's ruling on the preservation of green space

Federal law, as interpreted in the *Berne Corp.* v. *Government of the V.I.* decision, will have long-term negative effects on the preservation of green space in the Virgin Islands by placing pressure on land owners to develop or sell their properties in order to be able to pay the property taxes on their land. In addition to providing some measure of relief and insulation for long-time homeowners, the 10% cap on assessment increases also encouraged the preservation of green spate by holding taxes down on properties that had not had substantial improvements since the previous valuation. The removal of the cap, combined with the requirement that properties be assessed on the basis of actual value, will substantially raise the property taxes of large parcels of undeveloped land and will force their owners to either bear the increased burden our of their pockets or to cause the property to be commercially developed in order to generate the revenues necessary to pay the additional taxes and keep the property. In many cases, owners of large undeveloped properties will be forced to sell or lease their lands rather than face attachment by the government for non-payment of property taxes.

Besides the loss of aesthetic value and recreational opportunities that the loss of green space will bring about, there will also be long-term environmental consequences. The loss of green space will inevitably' cause greater soil erosion and runoff, thus causing further damage to the marine environment. Furthermore, the loss of green areas will also negatively affect rainfall, thus contributing to increased aridity and decreased agricultural activity.

The Importance of changing federal law regarding taxation of V.I. real property

At the crux of the matter is the nature of federal governing the administration of real property taxes in the Virgin Islands. It is important to note that the federal law to which Moore referred in striking down the ten percent cap and requiring assessment based on actual value is not federal law that applies nationwide but is specific to the Virgin Islands. In fact, according to the National Conference of State Legislatures, over 38 states have some time of property tax limit, and 19 of them have assessment limits similar to the 10% cap that was struck down in *Berne* v. *Gov't.* Furthermore, constitutional principles have clearly established that the federal government shall not involve itself with the various states' administration of property taxes. Why then, has this special dispensation been made for the Virgin Islands? A bit of historical background is in order.

Up until 1936, the property taxation system, which was based on Danish colonial law, taxed property at a certain amount per acre based on the land's use, and uncultivated land was taxed at a very law rate thus, in the words of the bill's advocates, "providing an incentive to keep land—even very valuable land, unproductive." In 1936 Congress passed legislation requiring that from the tax year 1936 forward, all property was to be assessed for taxation purposes on the basis of actual value, and that a uniform rate of taxation would be applied to all real property regardless of use.[3] The legislation was intended to stimulate the development of unused parcels of land. In passing this legislation, however, Congress tied the hands of the government and prevented it from adopting policies geared towards homeowner relief and land preservation that many jurisdictions around the country have adopted. It is noted that in addition to the 19 states that have assessment limits similar to that struck down by Moore, many others, including Virginia, Oregon, Nevada, Florida, Texas, Maine, Washington, Wisconsin and Michigan, have lower assessments for agricultural land and open space.

Federal statutes governing property taxation in the V.I., are not only restrictive, but they are now outdated and have outlived their purpose. Far from the situation of 1936, the Virgin Islands now suffers not only from excessive population density, but from over-development and mal-development of land resources. At this point, the preservation of our remaining green and open spaces is vital not only to maintaining the aesthetic beauty of the islands and thus, our economic viability, but also to preventing further damage to our natural habitats and the marine ecosystem. It is also a vital component in maintaining the overall quality of life. Local policymakers are and will be unable to set tax policy to intelligently influence land use and development without a change in federal law.

I urge you therefore, as our Delegate to Congress, to give this matter your most urgent attention and to seek to have this provision repealed before the end of this Congress. We cannot afford to have this matter linger until V.I. homeowners receive tax bills they cannot pay, but must act swiftly and proactively in defense of our peo-

[3] Although this would never have been imposed on a state, Congress was able to do so under Article 4, Section 3 of the United States Constitution, which grants Congress the power to make any needful laws and regulations for the governance of U.S. territories.

ple's interests. Thus, I anxiously await your response and I look forward to your assistance and cooperation in this matter.

Sincerely,

ALMANDO "ROCKY" LIBURD,
Former Senator-at-Large & St. John Native.

STATEMENT OF HON. PEDRO A. TENORIO, RESIDENT REPRESENTATIVE TO THE UNITED STATES, COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS ON S. 1831

Hafa Adai, Chairman Domenici, Ranking member Bingaman, members of the Committee, I am Pedro A. Tenorio, Resident Representative to the United States for the Commonwealth of the Northern Mariana Islands. Thank you for holding this historic hearing on Senate bill 1831, a bill to convey certain submerged land to the Commonwealth of the Northern Mariana Islands. I am privileged to submit written testimony in support of this important legislation.

Almost thirty years ago, this Congress enacted Public Law 94-241—The Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America. One of the basic objectives of the Covenant was the economic development of the Commonwealth. Consistent with this objective, the Covenant provided several economic incentives to the CNMI such as Article VII, United States Financial Assistance, where the Government of the United States agreed to "assist the Government of the Northern Mariana Islands in its efforts to achieve a progressively higher standard of living for its people as part of the American economic community and to develop the economic resources needed to meet the financial responsibilities of local self-government."

For the past quarter century, the people of the CNMI enjoyed the privilege of ownership and administration of its submerged land and the waters surrounding the islands of the Commonwealth and successfully implemented regulatory and management responsibility of its marine resources to the benefit of its citizens.

However, two years ago, the U.S. District Court for the Northern Mariana Islands rendered judgment against the Commonwealth to the effect that all submerged land around the CNMI belongs to the United States. Earlier this year, the Ninth Circuit Court of Appeals affirmed the District Court's decision upholding the sovereignty of the United States over the submerged land of the Commonwealth. The CNMI is currently appealing this ruling to the U.S. Supreme Court.

Under an agreement between the CNMI and the federal government entered into following the District Court decision, the CNMI has continued to administer the federal rules and regulations relating to CNMI submerged land. This agreement can be sustained as long as the litigation is ongoing. Without this agreement, or, in the event that the Supreme Court rules contrary to the CNMI's claims, the District Court's order could have serious adverse consequences. In essence, according to the Court, the current ownership rights and regulatory authority of the Commonwealth extends only to the area between the high and low water marks, an area of approximately two feet of sand. A quarter century of effort to protect the marine resources, including the fragile coral reefs surrounding most of the islands in the CNMI would be in peril. It is essential that CNMI and Federal environmental and marine protection laws be enforced for the protection of these resources. Simultaneously it is vital to economic development that the CNMI enjoy the same rights to submerged land that other coastal States and Territories have.

The intent of Section 1 of S. 1831 is to convey certain submerged land to the Commonwealth of the Northern Mariana Islands of the existing rights, title and interest of the United States in lands permanently or periodically covered by tidal waters up to but not above the line of mean high tide and seaward to a line three geographical miles distant from the coastline of the CNMI. Such a conveyance will be keeping in spirit with previous enactments of Congress ceding to most coastal States and the territories three miles of jurisdiction. I fully support this provision, and see this as a logical first step. To increase the economic potential of submerged land resources in the CNMI, where land based natural resources are almost non-existent, and in keeping with precedents set by Congress for larger grants, I would anticipate a subsequent request from the CNMI in the years to come for a grant similar or equal to that of Puerto Rico's grant of approximately 10 geographic miles.

The objective of Section 2 of S. 1831 is to authorize the Secretary of the Interior, on the request of the Governor of the CNMI, to settle any claim of the Commonwealth arising pursuant to any provision of the Covenant. An issue that would be appropriately addressed by this section, is the outstanding issue of tax cover-over as addressed in section 703(b) of the Covenant. Over a year ago, Mr. Chairman, you and Senator Bingaman requested from the Secretary of the Interior a progress re-

port in determining the cover-over amount due the CNMI. You also indicated that Section 703(b) of the Covenant clearly provides for the cover-over to the CNMI of income taxes and taxes on articles produced in the Northern Mariana Islands, as well as "the proceeds of any other taxes which may be levied..." In addition, you pointed out that the CNMI government has provided Congress with its estimate of tax proceeds from some categories subject to cover-over. The estimates focused on income and estate taxes—two categories that are clearly covered by section 703(b).

Furthermore, during the last Congress, the Senate approved a package of Energy Committee bills which included a resolution of the cover-over issue for the CNMI. The resolution clarified that the cover-over of federal collections to the treasuries of certain territories (CNMI, Puerto Rico, Guam, and the Virgin Islands) encompasses all taxes and fees, including the proceeds on estates and gifts. It further directs the Department of the Interior to negotiate with CNMI to reach a settlement on the past due amounts and condition such settlement on CNMI submitting a plan to spend these cover-over amounts on infrastructure needed for education and water purposes. With your ongoing support, I pledge to work with the committee to find a suitable mechanism to address this issue to the satisfaction of all parties.

Thank you.

STATEMENT OF HON. HERSEY KYOTA, AMBASSADOR OF THE REPUBLIC OF PALAU TO THE U.S., ON S. 1830

Good morning, Mr. Chairman and distinguished Members of the Senate Energy and Natural Resources Committee. It is indeed an honor and privilege for me to appear and testify before your Committee.

Mr. Chairman, before I continue, I would like to take this opportunity to thank you and your colleagues for inviting me to this important hearing this morning. On behalf of President Remengesau and the people of Palau, I would also like to convey our special appreciation and gratitude to you Mr. Chairman and members of this Committee for your continued support and assistance to the Government and people of Palau.

Mr. Chairman, per your request, I will limit my testimony to S. 1830, which is an Act to amend the Compact of Free Association Amendments Act of 2003, and for other purposes. There are two amendments in 5.1830 that pertain to Palau and they are found in Sections 4 and 5.

In section 5, the availability of legal services would be extended to citizens of Palau residing in the United States, including its territories and possessions. This amendment provides the same eligibility and treatment to the citizens of the three Freely Associated States, namely, the Republic of Palau, Federated States Micronesia and Republic of Marshall Islands. We support and welcome this amendment.

At a glance, Section 4 seems to offer extension of education grants to Palau, but further review indicates that the amendment extends eligibility of the citizens of the Federated States of Micronesia and the Republic of the Marshall Islands who are attending institutions of higher learning in the FSM, RMI, United States and its territories and the Republic of Palau until 2023. The eligibility for citizens of Palau for federal education programs, which include the Head Start Program and elementary, secondary and post secondary education will expire or discontinue in 2007. This is unacceptable Mr. Chairman.

Under the Compact of Free Association between the United States and the Republic of Palau, entered into force on October 1, 1994, the government of the United States has a pre-existing obligation, and that obligation is to fund education programs, and other programs for that matter, to Palau for the duration of our Compact's financial provisions, which is fifteen years. That Compact ends in 2009, not 2007. Your amendment therefore falls two full years short of the fifteen-year duration of the Compact between our two nations. I appear before you today to reiterate our request to Congress to extend educational grants to the government and people of Palau until 2009.

Mr. Chairman, we are not asking for new programs. We are simply asking that Congress extends these existing educational programs to Palau, as was bilaterally agreed by our two countries, for the duration of our Compact. After all, the same programs were provided to the FSM and the RMI during the complete duration of their first compacts, and were further extended to 2023 in their new compacts. We are merely asking for a fair and equitable treatment.

Mr. Chairman, there are two other requests that I wish to bring to your attention. I have addressed these requests in my letter of June 27, 2005 to you and Senator Bingaman. Allow me, Mr. Chairman, to reiterate them for the record and request the Committee to consider these items as amendments to S. 1830.

The first request has to do with 17 U.S.C. 111(e)(2), a U.S. Copyright Statute relating to the transmission of videotape programming. Prior to its independence in 1994, Palau, as a Trust Territory of the Pacific Islands, was permitted to transmit videotape programming through its cable system, along with Alaska, Hawaii, Guam and the Northern Mariana Islands. This privilege, for Palau and the other two Freely Associated States, is no longer permitted under Title 17 U.S.C. 111(e)(2). I believe that this was merely an oversight that occurred when the Freely Associated States changed status from Trust Territories to Freely Associated States. In fact, the failure of the Statute to include Freely Associated States just came to light when the company providing such services was sold and the issue was discovered by the new owner.

Transmittal of videotape programming can only be resumed if Congress amends this copyright statute. Mr. Chairman, both the United States and Palau benefit from the extension of such programming by further strengthening our cultural ties. Moreover, the U.S., in some instances, spends millions of dollars to expose or introduce its culture and way of life in other parts of the world. We are asking your government to permit us to expose and introduce the American culture and way of life in our country, free of charge, through videotape programming. You and members of this Committee can change the lives of so many people in Palau, FSM and RMI by correcting this oversight. I therefore appeal to you today to amend Title 17 and put videotape programming back into the living rooms of the people of all of the Freely Associated States.

The second request relates to the eligibility of our citizens to apply for merchant mariner's licenses for seamen or crew on U.S. flagged ships and cruise liners. This issue is governed under 46 CFR part 12. At the present, citizens of the three Freely Associated States are not eligible to apply for merchant mariner's documents, unless they are permanent legal residents or intended permanent legal residents of the U.S. or its territories and possessions. Given our status as Freely Associated States, with close and special relationships with the U.S., where our citizens are permitted to work, study and reside in the U.S., including its territories and possessions, without visa requirements, our citizens should be eligible to apply for and be granted merchant mariner's licenses and associated documents.

Moreover, under our respective compacts, citizens of the Freely Associated States are eligible to serve, and many of our sons and daughters are actively serving, in the U.S. Armed Forces, including the U.S. Coast Guards. Given these facts, I respectfully request this Committee to include in S. 1830 an amendment to rectify this oversight, and to lawfully permit our citizens to apply for and obtain merchant mariner's licenses in order for them to work in U.S. flagged ships and cruise liners.

Like the above issue regarding videotape programming, I believe that the failure to permit the issuance of merchant mariner's licenses and documents is a mere by-products of our status change from that of a Trust Territory to a Freely Associated State. In other words, the necessary transitional amendment merely slipped through the cracks.

Statutes relating to both of these issues should have been amended to reflect our new political status with the United States. For example, the phrase "Trust Territory of the Pacific Islands" in Title 17 U.S.C. 111(e)(2) should have changed or amended to "Freely Associated States". I have personally come across a number of U.S. statutes that define Palau as "insular area" or "out laying area". Of course, those statutes were enacted before Palau became a Freely Associated State under the Compact of Free Association.

While I recognize that it is unnecessary to change every law on the books to reflect the current status of Palau, the FSM and the RMI, it is worth noting that privileges, rights and freedoms that were authorized under these statutes, which were not expressly forbidden in our respective Compacts of Free Association or recent acts of Congress, should continue in full force and effect.

It is very contradictory for our citizens to be allowed to join the U.S. Armed Forces, fight side by side with American comrades, sail on U.S. Navy and U.S. Coast Guard battleships, and even attend the U.S. Coast Guard Academy, and not be able to obtain merchant mariner's licenses from the U.S. Coast Guard. It is also very contradictory for the U.S. Government to represent Palau before the International Telecommunications Union (ITU) as mandated by the Compact and not permit Palau to transmit videotape programming through its cable system.

And more importantly, Mr. Chairman, good faith requires that educational grants agreed to in bilateral negotiations between our two countries extend through the duration of the resulting Compact of Free Association that guides our current relationship with one another. These grants must be extended through 2009 for the continuing health and educational welfare of our children. These grants are, and were,

a critical component of the financial provisions of the Palau Compact, which end in 2009, not 2007.

Mr. Chairman and distinguished members of this Committee, these proposed amendments, which I have outlined, are non-controversial, straightforward, simple, necessary and urgent. I therefore respectfully request, on behalf of President Remengesau, the government and the people of Palau, your full support and assistance in incorporating these proposed amendments into S. 1830.

Mr. Chairman, if I may, I would like to acknowledge the support and assistance of your staff. You have a group of hard working and dedicated personnel in the company of Josh Johnson, Steve Waskiewicz and Al Stayman, whom I worked closely with in addressing some of the issues concerning Palau.

Thank you very much.

STATEMENT OF HON. BALMY DEBRUM, AMBASSADOR, EMBASSY OF THE REPUBLIC OF THE MARSHALL ISLANDS, ON S. 1830

Mr. Chairman, Distinguished Members, Ladies and Gentlemen: The Government of the Republic of the Marshall Islands (RMI) is pleased to provide its testimony in respect to S. 1830, a bill to amend the Compact of Free Association Amendments Act of 2003.

This legislation, as noted by Chairman Domenici and Ranking Member Senator Bingaman in the Congressional Record of October 6, 2005, deals with one of the several issues that were left unresolved in 2003 as a result of the deadline on the term of the original Compact assistance when Congress enacted the Compact of Free Association, as amended.

The main issue that this legislation addresses concerns replacement of the existing agreement under the Federal Programs and Services Agreement concerning United States Disaster Preparedness and Response Services and Related Programs with the Agreement between the RMI and United States Governments signed on June 30, 2004, as specified in Section 105(f)(1)(A)(iii) of the Compact of Free Association Amendments Act of 2003.

I cannot adequately underscore the importance of U.S. disaster assistance to the RMI. As a nation of low-lying coral atolls, the RMI is especially susceptible to unusually high tides, wave action, and tropical storms and typhoons that are endemic to our part of the world. Adequate disaster assistance should be viewed by both the RMI and U.S. governments not only in humanitarian terms, but also as an insurance policy against catastrophic damage to essential infrastructure and Compact investments.

The new disaster assistance agreement will create a new structure for dealing with future natural disasters in the RMI. First, the new agreement provides that the United States Agency for International Development (USAID) will be responsible for initial disaster response and coordinating U.S. disaster assistance efforts in the RMI. Second, the agreement allows for the implementation of Section 211(e) of the Compact, as amended, the Disaster Assistance Emergency Fund. Third, and most important, the new agreement provides for the continuation of the availability of FEMA resources under the Robert T. Stafford Disaster Relief and Emergency Assistance Act in cases where other resources are not adequate to deal with the damages caused by a disaster.

The RMI supports the new agreement and looks forward to working with appropriate U.S. Government officials in its implementation.

S. 1830 also clarifies that that the services of the Legal Services Corporation will continue to be available to RMI citizens residing in the United States. Although the RMI has understood that this was always the case, we appreciate clarifying the issue.

The proposed legislation also contains a series of technical amendments consisting of clerical corrections, conforming changes, and updating U.S. statutory references in the Compact, as amended, and the Compact of Free Association Amendments Act of 2003. The RMI concurs with these technical amendments.

As I noted in the beginning of my testimony, S. 1830 basically deals with one of several issues that were not addressed when Congress enacted the Compact, as amended, in 2003. I would, therefore like to take this opportunity to raise a few other issues of concern to the RMI and request that these issues be addressed in the pending legislation.

The first issue I would like to raise concerns the Supplemental Education Grant provided in Section 105(f)(1)(B)(iii) of the Compact of Free Association Amendments Act of 2003. These funds are provided to replace funding from certain federal programs that had previously been available to the RMI and represent an essential

part of the RMI's emphasis on education and improving the educational outcomes of its citizens under the Compact, as amended.

Presently this funding is dependent on annual appropriations of Congress, as it was not appropriated for the twenty-year term of the economic assistance provisions of the Compact, as amended. To date, there has been a series of problems with making this funding available to the RMI that has caused significant hardship to the RMI Ministry of Education and to the national government, which has been compelled to use its own limited general revenues to fund some of these programs. Nonetheless, these programs are now moving forward and will be integrated with the RMI's education system. For example, funding which had previously gone to the Head Start Program is now being used to establish a nationwide kindergarten program in the RMI.

There remains the risk, however, that these funds may not be appropriated in the future, which could have devastating consequences to the RMI's education system. Since both the U.S. and RMI governments have agreed to make education a priority under the Compact, as amended, it is important that this funding be stable and predictable in the future. We believe that this legislation provides an appropriate vehicle to remedy this glitch in the Compact by ensuring that the Supplemental Education Grants have the same certainty as other Compact assistance.

Mr. Chairman, we would request that your Committee work with the Appropriations Committee and the Administration to make the current discretionary appropriations mandatory as is the case with other annual funding under the Compact, as amended, including the Compact Impact funding provided to Guam, the CNMI, and Hawaii.

Mr. Chairman, my government and the people of the Republic are grateful for the leadership of this committee in conducting a hearing earlier this year on the legacy of the U.S. nuclear testing program in the Marshall Islands. We also appreciate the assistance and support that you and other members of the Committee have demonstrated in beginning a follow-on dialogue—in conjunction with the relevant federal agencies—on several issues related to the testing program that pose enduring problems for us. Some of these issues may be able to be resolved administratively, some will require new authorizations and appropriations, and some may simply require additional clarifying legislation. We are ready to work through each of these issues with your committee and the relevant agencies, and would encourage your continued leadership in moving this process forward as expeditiously as possible.

An example of one issue that might be solved through clarifying legislation is the Energy Employees Occupational Illness Compensation Program Act that was enacted to cover workers at various sites included the Pacific Test Site. While the intention, we understand, was to include the residents of the Trust Territory who represented the majority of the workers, a narrow reading of the statute has excluded them because they were citizens of the Trust Territory—not the United States—although the United States was the Administering Authority.

Similarly, we understand that there are some who have expressed concerns that the transfer of functions from the old Defense Nuclear Agency to the Department of Energy may need some clarification. The RMI government would also like to ask this Committee whether clarifying assignment for the monitoring of the integrity of the Runit dome on Enewetak Atoll could be considered a technical matter. Although a formal transfer of responsibility for monitoring the dome never took place when DNA ceased to exist, we believe that existing language gives DOE the discretion to monitor the dome and provide assurances to the community resettled adjacent to the dome that their health is not adversely affected by their proximity to the storage site. Nonetheless, we believe clarifying language would be useful.

All of these issues were deferred at the request of the United States negotiators when the Compact was being renegotiated. Consequently, although some are, in our judgment, purely technical, they are not encompassed by this legislation and will otherwise need subsequent review and action by your Committee.

Once again Mr. Chairman, I would like to take this opportunity to thank you on behalf of the government and people of the RMI for all of the assistance, understanding, and support that you and other members have provided to the RMI over the years. The RMI looks forward to working with you, other committee members, and committee staff on addressing these and other issues that were left unresolved with the passage of the Compact of Free Association Amendments Act of 2003.

Thank you very much.

STATEMENT OF HON. CRAIG W. BARSHINGER, SENATOR AT LARGE, 26TH LEGISLATURE, UNITED STATES VIRGIN ISLANDS

Mr. Chairman, the United States Virgin Islands economy has grown since 1936, and even begun to prosper. Now the 1936 law which was appropriate in 1936 is poised to cause grievous hardship to residents of the U.S. Virgin Islands. The burden would fall particularly to lifelong residents of the Virgin Islands, who are our culture bearers, and who are often retired and live on a modest, fixed income.

Your affirmative support of S.1829, offered by the Honorable Delegate to Congress Donna M. Christensen of the United States Virgin Islands, will allow the Virgin Islands the freedom to do what any State in the Union can do: to choose a method of taxation that raises the money necessary for public services; which distributes the burden of the taxation fairly and justly; and which preserves the cultural and social fabric.

A recent ruling in District Court by Judge Thomas. K. Moore found that under the 1936 law, all exemptions, be they agricultural, homestead, or any other special use, is not permitted. All real property must be taxed at the same rate. Period.

By your support of S. 1829 you will repeal the crippling, anachronistic 1936 law and restore to the Virgin Islands the ability to choose a system of taxation that takes all factors into account.

That is all you need do to solve this grave problem.

The need for the Delegate's bill is not abstract. If the Virgin Islands is forced to operate under the shadow of the 1936 law, native Virgin Islanders will be forced from their homes. This would occur in the follow scenario: A Virgin Islander has been living a simple home for decades on land that has become very valuable due to skyrocketing land prices, particularly on the island of St. John.

The Virgin Islander has been able to afford her $600 annual tax bill, with the help of the $250 homestead exemption. The $2 Million house built next door five years ago has not been factored in, to date. As a result of Judge Moore's ruling, next year her tax bill will jump to $5,000. Living on social security alone, the Virgin Islander will be forced to leave the home she has lived in for decades.

Clearly, this would be a tragedy that must not be allowed.

In another perspective, Agriculture in the Virgin Islands, particularly the island of St. Croix, will whither and die in the shadow of the 1936 law. Agriculture exemptions will be gone, and it farmers will simply loose their land, unable to withstand the astronomical tax increase.

Clearly, this is another tragedy that must not be allowed.

You can avoid these and dozens of other tragic blows to the Virgin Islands. Vote to repeal the 1936 law.

There is an emergency path for survival, if we remain under the 1936 law: I have a bill that would abolish the real property tax altogether, and replace that revenue stream with an Improvement tax. In essence, land would no longer be taxed. Improvements would be taxed. This provides protection from the devastating effects of someone building a $2 million home adjacent to a $100,000 home; as well it provides protection for agricultural land. This is an emergency measure. Our options for survival are severely limited.

I ask for your affirmative vote. My office has begun formulating a plan that will give to the U.S. Virgin Islands a uniform method for taxing real property that takes economic, legal, social, and cultural factors into account. We continue to consult with our constituents to arrive at a solution everyone can live with, and thrive with. From California to Florida, states have dealt with the crises similar to what the United States Virgin Islands faces today. We will draw from these successes, and formulate a Virgin Islands solution. On behalf of the People of the United States Virgin Islands, I thank you for your affirmative vote on bill S. 1829.

Thank you.

STATEMENT OF THE GOVERNMENT OF THE U.S. VIRGIN ISLANDS, ON S. 1829

The Government of the Virgin Islands ("Government") hereby states its support of S. 1829, a bill introduced by Chairman Pete Domenici and Ranking Minority Member Jeff Bingaman of the Committee on Energy and Natural Resources to repeal a deadweight provision of law enacted by Congress in 1936 in furtherance of a legislative objective long since relegated to the dust bins of a bygone colonial era.

S. 1829 would repeal a 1936 statute, codified in Sections 1401 through 1401(e) of Title 48, which limits the authority of the Virgin Islands legislature to assess and collect real property taxes in the Territory. These limitations were originally enacted to address tax policies of the Danish-era municipal councils which favored land speculation by large landowners and discouraged investment in productive uses of land,

thus depriving the local government of needed revenues. The need for such federal limitations, however, was superseded by the enactment by Congress of the Revised Organic Act of the Virgin Islands of 1954, as amended ("Revised Organic Act"), which abolished the municipal councils and created a comprehensive system of local government with sufficient legislative powers to resolve local property tax issues without federal intervention. Indeed, the courts have held that the Revised Organic Act repealed by implication all prior federal statutes limiting local self-governance inconsistent with the powers conferred by the 1954 Act. Until a recent federal court decision, the Government believed that the 1936 statute had been effectively repealed.

Pursuant to its duly delegated legislative authority under the Revised Organic Act, the Legislature of the Virgin Islands has, over the years since 1954, enacted a comprehensive scheme of property tax laws, including provisions modeled on state and local laws in the United States which are designed in part to encourage economic development and to protect residential homeowners from spiraling property taxes caused by surging property values. The U.S. Court of Appeals for the Third Circuit last year upheld a series of orders by the District Court of the Virgin Islands—based in large measure on the 1936 statute which requires uniform taxation without regard to classification or use of property—which impedes the power of the Government to establish its own property tax policies and undermines its authority to legislate in an area traditionally reserved for state and local governments. If not now repealed by Congress, the 1936 statute will hinder the exercise of the Government's power, as conferred by the Revised Organic Act, to assess, administer and collect real property taxes in the Virgin Islands. Indeed, by precluding classification of property by use and requiring a uniform rate of tax between residential and commercial property, the 1936 statute puts at risk long-standing Government policies designed to develop the economy, promote social welfare, and protect homeownership in the Virgin Islands.

Accordingly, the Government respectfully submits that the 1936 statute has long outlived its original purpose and now interferes with the Government's ability to perform a basic governmental function. Because the assessment and collection of property taxes is fundamentally a local government issue with no federal impact, and because no other State, Territory or Commonwealth is subject to such federal restrictions, the 1936 status must be repealed as a dysfunctional reminder of a bygone colonial era.

I. BACKGROUND

A. Congress Initially Provided Limited Autonomy to the Virgin Islands Municipal Councils

Upon the acquisition of the Virgin Islands by purchase from Denmark in 1917, the U.S. Government administered the Territory through a succession of Governors appointed first by the Secretary of the Navy and, after 1931, by the Secretary of the Interior.[1] The United States also continued in force the role of the Danish-era Municipal Councils for the Municipality of St. Thomas-St. John and the Municipality of St. Croix. The Municipal Councils had, from Danish times, limited authority to legislate on matters of local government, including the taxation of real property.

In providing for the governance of the Islands, Congress by statute "continued the force and effect of all local laws imposing taxes, so far as compatible with the change in sovereignty, until Congress provided otherwise." (Act of March 3, 1917, 39 Stat. 1132). Pursuant to this Congressional statute, the Danish laws providing for the assessment of real property taxes in the Municipality of St. Thomas and St. John remained in force until 1922, when they were repealed. *See Ricardo* v. *Ambrose,* 211 F.2d 212, 215 (3d Cir. 1954). In the Municipality of St. Croix, however, the Danish property tax laws remained in effect until 1936. *See id*. at 216.

By 1936, it became clear that the real property tax laws in the two municipalities were insufficient to generate adequate revenue for the Territory, and were thus "unsatisfactory." *Id.* at 216. The tax system implemented in 1922 by the Municipal Council for St. Thomas and St. John included "separate classifications of cultivated land, pasture land and bush land." *Id.* Uncultivated land was taxed at the lowest rate, thus "penaliz[ing] the cultivation of land and tend[ing] to keep it idle and in the hands of a few landowners." *Id.* The 1917 Danish tax laws governing St. Croix were "equally unsatisfactory." *Id.* Because "[r]ecommendations by the [appointed]

[1] In 1931, the President of the United States transferred jurisdiction of the Virgin Islands from the Department of the Navy to the Department of the Interior. *See* Exec. Order No. 5566, *available in* 2 Proclamations and Executive Orders: Herbert Hoover 792-93 (1974).

Governor to the Colonial Councils to enact improved tax laws brought no action," *id.*, the Governor of the Virgin Islands and the United States Department of Interior petitioned Congress to enact legislation designed to encourage the productive use of land and to generate additional revenue for the local government. *Ricardo* v. *Ambrose*, 110 F. Supp. 716, 718 (D.V.I. 1953), *aff'd*, 211 F.2d 212 (3d Cir. 1954). *See also* S. Rep. No. 74-1973, at 1-6 (1936).

In response to that request, Congress reluctantly intervened and imposed on the Virgin Islands a uniform system of property tax valuation to be used throughout the Virgin Islands. (Act of May 26, 1936, ch. 450, 49 Stat. 1372, codified at 48 U.S.C. §§ 1401-1401(e).) In doing so, Congress stated that "[i]t is the policy of Congress to equalize and more equitably to distribute existing taxes on real property in the Virgin Islands of the United States and to reduce the burden of taxation now imposed on land in productive use in such islands." 48 U.S.C. § 1401. In particular, Section 2 of the Act of May 26, 1936, codified at 48 U.S.C. § 1401(a) (the "1936 Real Property Tax Limitation"), required all taxes on real property in the Virgin Islands to be computed on the basis of "actual value" and at the same rate, regardless of the classification of the land or the use to which it was put:

> For the calendar year 1936 and for all succeeding years all taxes on real property in the Virgin Islands shall be computed on the basis of the actual value of such property and the rate in each municipality of such islands shall be the same for all real property subject to taxation in such municipality whether or not such property is in cultivation and regardless of the use to which such property is put.

48 U.S.C. § 1401(a) (emphasis added).[2] As further explained in the legislative history, the motivating purpose of this provision was to provide the Virgin Islands with more tax revenue. See S. Rep. No. 74-1973, at 2, 4, 6 (1936).

Barely one month after it passed the 1936 Real Property Tax Limitation, Congress enacted the Organic Act of June 22, 1936 ("1936 Organic Act") to "provid[e] a complete government—including a Legislative Assembly" for the Virgin Islands. *Granville-Smith* v. *Granville-Smith*, 349 U.S. 1, 7 (1955). After almost two decades, however, it became clear that the government empowered by the 1936 Organic Act was "unnecessarily cumbersome and inefficient," and required further restructuring to enable the Virgin Islands to govern themselves. *Virgo Corp.* v. *Paiewonsky*, 384 F.2d 569, 576 (3d Cir. 1967). Such inefficiency was not surprising since the 1936 Organic Act was "based in no small part on the old Danish colonial system in the islands, which was evolved before the days of modern communication." *Id.* (quoting S. Rep. No. 83-1271, at 1, 2 (1954), *reprinted* in 1954 U.S.C.C.A.N. 2585, 2585-86.).

---

[2] The relevant provisions of the Act of May 26, 1936, as codified in Title 48, are set forth below:

Section 1401. Equalization of taxes on real property; declaration of policy: It is the policy of Congress to equalize and more equitably to distribute existing taxes on real property in the Virgin Islands of the United States and to reduce the burden of taxation now imposed on land in productive use in such islands.

Section 1401(a). Valuation of real property for assessment; uniformity of rates: For the calendar year 1936 and for all succeeding years all taxes on real property in the Virgin Islands shall be computed on the basis of the actual value of such property and the rate in each municipality of such islands shall be the same for all real property subject to taxation in such municipality whether or not such property is in cultivation and regardless of the use to which such property is put.

Section 1401(b). Rate of tax in absence of local laws; regulations by President for assessment and collection pending adoption of local laws: Until local tax laws conforming to the requirements of sections 1401 to 1401(e) of this title are in effect in a municipality the tax on real property in such municipality for any calendar year shall be at the rate of 1.25 per centum of the assessed value. If the legislative authority of a municipality failed to enact laws for the levy, assessment, collection, or enforcement of any tax imposed under authority of said sections, within three months of May 26, 1936, the President shall prescribe regulations for the levy, assessment, collection, and enforcement of such tax, which shall be in effect until the legislative authority of such municipality shall make regulations for such purposes.

Section 1401(c). Depository: All taxes so levied and collected shall be deposited in the municipal treasury of the municipality in which such taxes are collected.

Section 1401(d). Omitted

Section 1401(e). Exemptions from taxation; authority of municipalities to alter, amend, or repeal existing laws: Nothing in sections 1401 to 1401(e) of this title shall be construed as altering, amending, or repealing exemptions from taxation, existing on May 26, 1936, of property used for educational, charitable, or religious purposes. Subject to the provisions of said sections, the legislative authority of the respective municipalities is empowered to alter, amend, or repeal, subject to the approval of the Governor, any law imposing taxes on real and personal property on May 26, 1936.

B. Congress Delegated Increased Authority to the Virgin Islands Legislature in the Revised Organic Act of 1954, Which Effectively Repealed the 1936 Organic Act, including the 1936 Real Property Tax Limitation

Congress enacted the Revised Organic Act of 1954 to address the deficiencies of the 1936 Organic Act. *See* 68 Stat. 497, 48 U.S.C. §§ 1541-1645. "The Revised Organic Act of 1954 declared the Virgin Islands to be an unincorporated territory, and completely reorganized its government, abolishing the two existing municipalities with their separate municipal councils and joint legislative assembly, and creating a single territorial government with a single legislature." *Virgo Corp.* v. *Paiewonsky,* 384 F.2d 569, 576 (3d Cir. 1967). The Revised Organic Act thus provided "a greater degree of autonomy, economic as well as political, to the people of the Virgin Islands," *Virgo Corp.*, 384 F.2d at 576 (citation omitted), including "the power to pass legislation having 'local application,' *Granville-Smith*, 349 U.S. at 9. To effect this broad grant of autonomy, the Revised Organic Act specifically abrogated all "laws of the United States applicable to the Virgin Islands on July 22, 1954" that were inconsistent with the Act and its amendments. 48 U.S.C. § 1574(c).

The Third Circuit (which has jurisdiction to hear appeals from the District Court of the Virgin Islands) construed § 1574(c) to repeal virtually the entire Organic Act of 1936:

> It is, of course, clear that those provisions of the Act of 1936 which were inconsistent with provisions of the Revised Organic Act were repealed by implication by the latter Act. *It is equally true, we believe, that those provisions of the old Act which dealt with and limited the powers of organs of the former municipalities, such as the municipal councils, fell with the abolition of the organs of government to which they related.*

Virgo Corp., 384 F.2d at 577 (emphasis added). The Court of Appeals explained that adherence to outdated laws from 1936 would unduly "shackle" the new Legislature with laws that pertained to, and restricted, the abolished municipal councils:

> There is no reason to believe that the Congress, which was intent on providing a greater degree of autonomy to the people of the territory through a newly created territorial legislature, intended to shackle that legislature with restrictions which had been placed in 1936 upon the municipal councils as the direct successors of the old Danish colonial councils but which the Congress had omitted from the revised Act.

Id.

The Revised Organic Act thus not only addressed the problems inherent in the 1936 Organic Act, it also repealed the statutory scheme providing federal oversight of local real property matters, including the Real Property Tax Limitation in § 1401(a). Section 1401(a)—enacted by Congress one month *before* the repealed Organic Act of 1936—similarly stems from a bygone era when Congress' guidance was deemed necessary to remedy what was perceived to be a deficient colonial legislative system.

The legislative history of the Revised Organic Act further emphasizes that Congress essentially "started from scratch" in creating this "new organic act" or "basic contract" for the citizens of the Virgin Islands:

> *The purpose of S. 3378 is to provide a new organic act, or basic charter of civil government, for the people of the Virgin Islands of the United States.* The present act dates from 1936 and is based in no small part on the old Danish colonial system in the islands, which was evolved before the days of modern communication. Substantial changes, political and economical, have taken place in the Virgin Islands in the 18 years since the first somewhat makeshift organic legislation was put together, and *under modern conditions the 1936 law is proving unnecessarily cumbersome and inefficient as well as expensive for the mainland taxpayers.*
>
> *S. 3378 would eliminate much of this wasteful duplication in governments and governmental services, thus affording the islands more efficient and more truly representative government. At the same time, it would give a greater degree of autonomy, economic as well as political, to the people of the Virgin Islands.*

Id. at 576 (emphases added) (quoting S. Rep. No. 83-1271, at 1, 2 (1954), *reprinted in* 1954 U.S.C.C.A.N. 2585, 2586). In crafting an entirely new "contract" for the citizens of the Virgin Islands, Congress plainly intended that the legislative power of the local government over purely local matters, such as the taxation of real property, not be constrained by federal limitations intended for a different era. The 1936 Real Property Limitation in § 1401(a), like other inconsistent provisions of the 1936

Organic Act, was effectively abrogated by the Revised Organic Act and eventually replaced by locally enacted property tax laws. *See* 33 V.I.C. § 2402 *et seq*.[3]

C. Subsequent Amendments to the Revised Organic Act Provided the Virgin Islands with Greater Autonomy and Self-Government, Further Diminishing the Need for Federal Limitation on the Legislative Powers of the Government

The Revised Organic Act has been amended by Congress on several occasions, each time with the purpose of further expanding the autonomy of the Virgin Islands in a manner that is clearly inconsistent with the 1936 Real Property Tax Limitation and the 1936 Organic Act. In 1958, Congress, reacting to the ruling of the Supreme Court in *Granville-Smith* that narrowly construed the Virgin Islands' legislative authority under the 1954 mandate, expanded the Virgin Islands' legislative charter to include "all rightful subjects of legislation not inconsistent with this chapter or the laws of the United States made applicable to the Virgin Islands." Virgin Islands Revised Organic Act-Amendments, Pub. L. No. 85-851 § 2, 72 Stat. 1094 (1958) (codified at 48 U.S.C. § 1574(a)). This amendment "broaden[ed] the legislative power of the Virgin Islands to cover 'the ordinary area of sovereign legislative power' limited *only* by the provisions of the Revised Organic Act and the laws of the United States made applicable to the Virgin Islands." *Virgo Corp.*, 384 F.2d at 579 (quoting S. Rep. No. 85-2267, 85th at 2 (1958), *reprinted in* 1958 U.S.C.C.A.N. 4334, 4335) (emphasis added).[4]

With this amendment, Congress expressly delegated areas of "sovereign legislative power" that traditionally fall beyond the scope of federal law, including issues of real property assessment and taxation, to the Legislature of the Virgin Islands. *Cf. Nat'l Private Truck Council, Inc.* v. *Okla. Tax Comm'n*, 515 U.S. 582, 586 (1995) ("We have long recognized that principles of federalism and comity generally counsel that courts should adopt a hands-off approach with respect to state tax administration."); *Fair Assessment in Real Estate Ass'n, Inc.* v. *McNary*, 454 U.S. 100, 116 (1981) (holding that principles of comity bar taxpayers from challenging "the validity of state tax systems in federal courts"). Thus, there is no basis to conclude that Congress intended to preserve the 1936 Real Property Tax Limitation in § 1401(a)—a real property assessment law intended to remedy specific problems with land productivity and tax revenues associated with the Danish era municipal councils that had long since been resolved—at the same time it intended to broaden the Legislature's power to cover "the ordinary area of sovereign legislative power." Rather, the 1958 amendment rendered clear Congress' intent to remove the "shackle[s]" imposed during the colonial era and similar outdated federal statutes that restricted or otherwise limited local self-government.

Since 1958, Congress has continued to expand and refine the authority of the Virgin Islands Government to legislate its own affairs. Notably, in 1968, Congress passed the Elective Governor Act, Pub. L. No. 90-496, 82 Stat. 837 (1968), which authorized the popular election of the Virgin Islands governor, and eliminated the authority of the President to veto local legislation. In addition, Congress in 1984 "set in motion a restructuring of the Virgin Islands judicial system," *Callwood* v. *Enos*, 230 F.3d 627, 631 (3d Cir. 2000), by statutorily limiting the jurisdiction of the Virgin Islands District Court to "general original jurisdiction in all causes in the Virgin Islands *the jurisdiction over which is not then vested by local law in the local courts of the Virgin Islands*." 48 U.S.C. § 1612(b) (emphasis added).[5] By this statute, Congress delegated to the Legislature of the Virgin Islands "the power to vest jurisdiction over local actions exclusively in the local courts." *Callwood*, 230 F.3d at 631 (emphasis added); *see also Brow* v. *Farrelly*, 994 F.2d 1027, 1035 (3d Cir. 1993) (confirming that Congress' "ultimate intention was to divest the Virgin Islands District

---

[3] In Revised Organic Act of 1954 § 8(e), Congress directed the Secretary of the Department of the Interior to arrange for the preparation of the Virgin Islands Code to constitute "a consolidation, codification and revision of the local ordinances in force in the Virgin Islands." 68 Stat. 500, *repealed by* Act of Oct. 19, 1982, Pub. L. No. 97-357, Title III, § 305, 96 Stat. 1709. Subtitle 2 of Title 33 of this Virgin Islands Code prepared by the Code Advisory Committee created by Secretary of the Department of Interior in 1955, submitted by the Federally-appointed Governor, and enacted by the VI Legislature on May 16, 1957, superseded the Act of May 26, 1936, and created the purely local property tax system presently set forth in Title 33 of the Virgin Islands Code.

[4] The Third Circuit in *Virgo Corporation* further explained that the phrase "laws of the United States made applicable to the Virgin Islands" in § 1574(a) merely refers to "those federal statutes applicable to the United States generally which, either by their own terms or by other legislation, are also made applicable to the Virgin Islands." 384 F.2d at 579. This phrase, therefore, cannot be read as preserving § 1401(a).

[5] 48 U.S.C. § 1612(a) "affirmatively bestows on the District Court of the Virgin Islands the entire jurisdiction of a District Court of the United States." *Walker* v. *Gov't of the V.I.*, 230 F.3d 82, 86 (3d Cir. 2000).

Court of jurisdiction over local causes of action") (citation omitted). Pursuant to this authority, the Legislature enacted 4 V.I. Code Ann. § 76(a), which, as of October 1, 1991, required "all civil actions that are based on local law and that do not satisfy diversity jurisdiction requirements [to be] brought in the Territorial Court of the Virgin Islands, with a few exceptions" not relevant here. *Callwood*, 230 F.3d at 631. In 1994, the Legislature also vested the Territorial Court with exclusive jurisdiction over all local crimes that do not relate to federal crimes. *Id.*; *see also* 48 U.S.C. § 1612(c); 4 V.I. Code Ann. § 76(b).

The current federal statutory scheme for self-governance in the Virgin Islands has thus evolved significantly over the years and is a far cry from its nascent state in 1936—when Congress was asked to intervene in the local affairs of the Virgin Islands because the Territory was perceived, at that time, to be incapable of proper self-governance:

> The Territory of the Virgin Islands is a body politic. While not sovereign, in the true sense of that term, *the Revised Organic Act has conferred upon it attributes of autonomy similar to those of a sovereign government or a state.*

Gov't of the V.I. v. *Bryan*, 818 F.2d 1069, 1072 (3d Cir. 1987) (emphasis added) (citation omitted); *see also Water Isle Hotel and Beach Club, Ltd.* v. *Kon Tiki St. Thomas, Inc.*, 795 F.2d 325, 327 (3d Cir. 1986) ("Congress has steadily increased the scope of self-government granted to the Virgin Islands."); *Harris* v. *Boreham*, 233 F.2d 110, 113 (3d Cir. 1956) (holding that "aim of Congress" was to delegate "full power of local self-determination"). There is absolutely no reason to believe that throughout the process of granting the Virgin Islands increasing autonomy—including the establishment of a Territorial judicial system with exclusive jurisdiction over local issues—that Congress simultaneously intended to limit the legislative authority of the Virgin Islands by extending the shelf-life of an anachronistic statute intended to address the detritus of the Danish colonial system.[6]

II. THE BERNE DECISION AND THE NEED FOR LEGISLATIVE REDRESS

In enacting the 1936 Real Property Tax Limitation, Congress also required the two Municipal Councils to enact local laws in conformance with the federal statute. Congress further provided that, if the Municipal Councils failed to enact such provisions within three months of the date of enactment of the 1936 Real Property Tax Limitation, the President of the United States shall issue interim regulations governing the property tax system in the Virgin Islands. When the Municipality of St. Thomas-St. John did not follow the action of the Municipality of St. Croix, President Roosevelt prescribed regulations for the levy, assessment, collection and enforcement of real property taxes in the Municipality of St. Thomas and St. John. These regulations remained in force until 1955, when the First Legislature of the Virgin Islands, organized under the authority of the Revised Organic Act, re-enacted the regulations and made them applicable throughout the Virgin Islands.

Since that time, the Legislature of the Virgin Islands has enacted, and periodically amended, a comprehensive system for the assessment and collection of real property taxes in the Territory. *See* 33 V.I.C. § 2202 *et. seq*. In doing so, the Legislature has acted, in a manner similar to the legislative enactments of other state and local governments in the United States, to protect homeowners from spiraling property tax assessments by imposing a ceiling on the increase in the assessment of residential real property in any assessment period.[7] That ceiling has now been held by

---

[6] The Third Circuit explained that, with limited exceptions not applicable here, Congress intended that all pre-Revised Organic Act of 1954 statutes be repealed:

> *We think . . . that in conferring upon the people of the Virgin Islands a new and up-to-date charter of government the Congress could not have intended at the same time to impose upon them the well-nigh impossible task of sorting out those provisions of the old Act which were so inconsistent with the new Act as to be repealed by it from those provisions of the old Act which were to remain in force because they were not sufficiently inconsistent with the new law*. The very fact that the Act of 1954 is described in its title as 'An Act to revise the Organic Act of the Virgin Islands of the United States' and in its first section as the 'Revised Organic Act of the Virgin Islands' indicates that it was intended to supersede and take the place of the Organic Act of 1936 and not merely to amend or repeal portions of it.

Virgo Corp., 384 F.2d at 577 (emphases added) (footnotes omitted).

[7] 33 V.I.C. § 2202(a) provides in relevant point:

> (a) The tax assessor shall at least once every five (5) years, upon actual view, value and assess all noncommercial property subject to taxation in the Virgin Islands. Provided, however that the tax assessor shall not increase the valuation and assessment of noncommercial

Continued

the U.S. District Court for the Virgin Islands to violate the judicially revived 1936 Real Property Tax Limitation. *Berne Corp.* v. *Gov't of the Virgin Islands*, 262 F. Supp. 540 (D. V.I. 2003), aff'd 2004 WL 1443889 (3d Cir. June 28, 2004). The effect of the decision unfairly limits the Virgin Islands—alone among other State, Territorial and local governments—in its ability to protect homeowners from rapidly rising property values. This problem is particularly acute on St. John, where recent development has resulted in significant increases in property values. Without the ability to cap the increase in assessments or to utilize similar tax policies commonly used by other jurisdictions, the 1936 Real Property Tax Limitation revived by the Berne decision may price land and homeownership beyond the reach of many Virgin Islanders.

In addition, the Legislature has acted in other ways to encourage economic development and agricultural production in the Territory. In the exercise of its duly conferred legislative authority, the Government has created enterprise zones with partial tax exemptions, as well as a 95 percent exemption for farmland designed to encourage agricultural production and greater self-sufficiency in the Territory. The Government has also created certain homestead exemptions, including special exemptions for the elderly and veterans. By breathing new life into the 1936 Real Property Tax Limitation, the *Berne* decision also calls into question the lawfulness of these legislative enactments involving purely local policy choices.

Indeed, many jurisdictions in the United States assess and tax real property differentially based on the classification of real property, generally with the purpose of encouraging economic development, or easing the burden on homeownership. *See e.g.*, Exhibit A, letter from Huff Wilkes describing New York City real property assessment system. Such exercise of legislative authority in the furtherance of a legitimate and articulated public policy goal in the Virgin Islands, however, is now barred by the decision of the District Court. Interestingly, in affirming the decision of the District Court, the Third Circuit Court of Appeals did not expressly rule on the issue of whether the 1936 Real Property Tax Limitation had been repealed by the Revised Organic Act.

The Congress must now clarify, through express action, that the anomalous 1936 Real Property Tax Limitation was repealed by the Revised Organic Act, and allow the Legislature of the Virgin Islands to continue to legislate for the public good on all rightful matters of local self-government. The taxation of real property is a purely local, *not* a federal issue. Neither is it a local issue that requires arbitrary federal restrictions applicable to no other State or Territory or Commonwealth.

The Government submits that the District Court improperly intruded on duly conferred local authority when it instructed the Government to restructure its real property taxation system based on an anomalous statute intended for a different era. The Government asks only that it be accorded the same powers and respect accorded to all other States, Territories and Commonwealths. Accordingly, the Government respectfully requests that Congress expressly repeal the 1936 Real Property Tax Limitation in § 1401(a) and favorably report S. 1829.

○

---

property more than 10% over the previous valuation and assessment except in the following cases:

(i) Where there has been an improvement to the subject real property subsequent to the previous valuation and assessment. Provided, however, that there shall be no increase over the 1987 assessed valuation except where there have been improvements which exceed $50,000.

(ii) Where there has been an improvement to the improvement, which occurred subsequent to the previous valuation and assessment. Provided, however, that there shall be no increase over the 1987 assessed valuation except where there have been improvements which exceed $50,000.

(iii) Where the subject real property has been sold subsequent to the previous valuation and assessment.