

09/30/13-SPECIAL ORDERED TO THE FLOOR

**BILL NO. 30-0249**

**Thirtieth Legislature of the Virgin Islands**

September 30, 2013

A Resolution to make recommendations to the Governor as to measures that will assist in the renegotiation of the HOVENSA agreement

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**PROPOSED BY:** Senators Shawn-Michael Malone, Donald G. Cole, Judi Buckley, Clifford F. Graham, Myron D. Jackson, Alicia “Chucky” Hansen, Clarence Payne, III, Sammuell Sanes, and Craig W. Barshinger

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1           **WHEREAS**, the proposed Fourth Amendment Agreement between Government of the  
2 Virgin Islands and HOVENSA (“Fourth Amendment Agreement”) had to be ratified by the  
3 Legislature of the Virgin Islands no later than August 15, 2013; and  
4           **WHEREAS**, on August 7, 2013, the Legislature of the Virgin Islands voted against  
5 ratification of the proposed Fourth Amendment Agreement; and  
6           **WHEREAS**, the Administration, led by Governor John P. deJongh, Jr. and Lieutenant  
7 Governor Gregory Francis, should take all necessary steps to obtain exclusive control of the  
8 nearly \$5,000,000 including accrued interest in Supplemental Environmental Project (“SEP”)  
9 funds now held in the third party escrow account, including (i) obtaining the consent of the U.S.  
10 Department of Justice and Environmental Protection Agency, and (ii) filing the motion with the  
11 District Court seeking modification of the Consent Decree to obtain such control; and

1           **WHEREAS**, HOVENSA should have no objection to the Government taking over  
2 exclusive control of the nearly \$5,000,000 including accrued interest in Supplemental  
3 Environmental Project (“SEP”) funds now held in the third party escrow account; and

4           **WHEREAS**, HOVENSA should agree to being relieved from any future involvement  
5 with respect to the SEP funds and should confirm this position at such time as is requested by the  
6 Government in the appropriate legal proceedings; and

7           **WHEREAS**, after the sales process, if the refinery has not been sold within one year,  
8 HOVENSA should give the Government access to the channel and dock facilities while it  
9 operates a storage terminal business; and

10           **WHEREAS**, in the negotiation of any new concession agreement with any new owner or  
11 operator of the refinery, the Government should require that the current exclusivity held by  
12 HOVENSA in the channel and dock facilities that service the refinery will be eliminated, and  
13 that others servicing the island of St. Croix should be given access to said channel and docks to  
14 the maximum extent possible consistent with the efficient, safe and profitable operation of the  
15 new owners; and

16           **WHEREAS**, upon sale of the refinery, no new owner should be permitted to allow  
17 HOVENSA to continue operating a storage terminal business on the refinery site absent the  
18 specific consent of the Government to permit such operations to continue; and

19           **WHEREAS**, HOVENSA should pay \$14,000,000 as a payment in lieu of property taxes  
20 to the Government of the Virgin Islands annually; and

21           **WHEREAS**, it is the position of the Legislature that the temporary adjustment in  
22 property tax payments effectuated by Section 3(b) of the Fourth Amendment Agreement is only  
23 a deferral of the unpaid amount until the refinery is sold, or ceases to operate an oil storage  
24 terminal, or until August 15, 2019, whichever first occurs; and upon the occurrence of the

1 foregoing, HOVENSA should make a lump sum payment to the Government of such amount as  
2 is necessary for the Government to recoup the value of all such deferred payments; and

3 **WHEREAS**, the Government should recoup the value of all deferred payments to  
4 include both the principal amount of the foregone payments and interest on that amount  
5 calculated at the statutory rate set forth in Title 11, Section 951(a) of the Virgin Islands Code;  
6 and

7 **WHEREAS**, the Refinery should be marketed and sold for uses other than oil refining;  
8 and

9 **WHEREAS**, HOVENSA should have no objection to opening the sales process to  
10 buyers considering alternatives uses; and

11 **WHEREAS**, it is the position of the Legislature that the decision on whether to allow  
12 uses other than refining is a decision to be made by the Government, not HOVENSA, and such  
13 decision should be subject to the approval of the Legislature in a new concession agreement with  
14 a new owner or operator of what is known now as the refinery site; and

15 **WHEREAS**, HOVENSA should continue to make fuels available to the Government and  
16 the public at the fuel loading rack for so long as HOVENSA is operating an oil storage facility at  
17 the site; and

18 **WHEREAS**, it is the sentiment of the Thirtieth Legislature that the \$500,000 offered by  
19 HOVENSA for scholarship purposes should be increased to \$1,000,000; and

20 **WHEREAS**, the Fourth Amendment Agreement, when drafted, should not cause a loss  
21 of legal rights by the parties if the refinery does not sell; Now, Therefore,

22 ***Be it resolved by the Legislature of the Virgin Islands:***

23 **SECTION 1.** It is the consensus of the Legislature of the Virgin Islands that negotiations  
24 with HOVENSA should be re-examined and that the changes suggested herein, if adopted and

1 incorporated in a Fourth Amendment Agreement, should resolve the issues raised in previous  
2 negotiations.

3 **SECTION 2.** The Legislature of the Virgin Islands, on behalf of the people of the Virgin  
4 Islands, respectfully urges the Governor to adopt its recommendations as delineated herein and  
5 incorporate same in a new Fourth Amendment Agreement with HOVENSA.

6 **SECTION 3.** The Executive Director of the Legislature shall transmit a copy of this  
7 Resolution to the Honorable John P. deJongh, Jr., Governor of the Virgin Islands.

8 **SUMMARY**

9 This Resolution urges the Governor to follow the recommendations included herein to re-  
10 examine negotiations with HOVENSA and effectuate a Fourth Amendment Agreement.

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14 **BR13-1083 /September 30, 2013/LHM/Revised by MMH**

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