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A Bill Senators Say Would Allow Big Contractors to Retroactively Sue the Government For Federal Projects Already Completed is Held in Committee. 'This is Madness.'

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Aptim contractors perform work in the USVI following Hurricanes Irma and Maria.

A bill that sought to make Gross Receipt Taxes charged by the local government for projects funded with federal dollars — including projects currently ongoing and those already completed — refundable by the federal government, was held in Committee on Rules and Judiciary Tuesday night after several senators raised alarming concerns with the measure.

Among the concerns is language in Bill No. 34-0197 through amendment 34-523 that reads, "Section 1 applies to federally funded projects that are ongoing or that have not yet been completed or otherwise closed out on or before the effective date of this act."

This language, lawmakers contended, would essentially allow contractors to litigate with the local government on projects already completed and those currently ongoing, even as the government has said it has no intention to revisit those matters.

Though the bill does not give Gross Receipt Tax reimbursement exclusivity to any contractor, the two major players that stand to benefit from the legislation are APTIM and AECOM — two firms that came to the territory following the 2017 storms and were provided with hundreds of millions of dollars in disaster recover contracts.

Even so, Senator Angel L. Bolques Jr., one of the bill's proponents, continued to maintain that the measure would not benefit any particular company. "Why are we talking about two specific corporations, or having aspersions thereof that are going to be the ones ultimately reaping the benefits of this bill when, in fact, that is not true," he said.

Senator Marvin Blyden, the new sponsor of the bill that was originally authored by Senator Kurt Violet, said the measure would see the territory receiving \$3 million in gross receipt revenues when the federal government reimburses the Gross Receipt Taxes to the contractors. He further stated that the measure would lead to the diminishing of padded billing in construction — the action of inflating the charges made to someone for a product with typically unnecessary or unwanted items or fees.

Outgoing Senator Genevieve Whitaker also supported the measure.

But the opposition was too strong, with several lawmakers decrying the bill as special interest and accusing the proponents of supporting big corporations over the individuals who voted them into office.

Senator Donna Frett-Gregory, who is not a member of the Committee on Rules and Judiciary but participated in the hearing, called on her colleagues to vote their conscience and reject the bill.

"This measure is the result of two major contractors, who came to our shores in the aftermath of Hurricanes Irma and Maria, made millions of dollars as a result of the devastation of our beloved Islands and are belly aching about paying the Virgin Islands Government the 5% in gross receipts tax," she said. "It is that simple, our laws are not flawed, this code has worked in the aftermath of other hurricanes Hugo, Marilyn to name a few but these two contractors who simply did not take the time to learn about our laws and may have underestimated their profit margin and now want to lobby what they believe is misinformed elected leader of this territory to do their bidding and allow them to be further enrich themselves?"

Senator Alma Francis Heyliger was more critical, lashing out at those who supported the measure. "I speak directly to the people of this territory because this piece of legislation is an affront to the residents of the United States Virgin Islands," she said passionately. "I think it is disrespectful, I think it is unfortunate. And the fact that anyone could come in front of this Legislature and ask us to alter laws to ratify a contract, I am very, very disappointed that this is even within this institution.

"We are setting a very dangerous precedent if we ever allow this to be passed; and if any of the eight of you all attempt to do this I'm going to beg the governor to veto this madness..."

"You cannot come into this institution if you have a contractual dispute, and ask the Legislature to change the laws to make a contract right. You can't do it. We are wrong for doing this. I cannot accept these kinds of behaviors.

"And everybody is going to sit here and say, 'oh, it's not going to cost the government any more money...'

"So let's calculate. For the \$60 million that they gave in Gross Receipt Taxes. What happens if the federal government returns it? What happens if [the contractors] get it? What is 5 percent of \$60 million? So for \$3 million you all are going to sell your souls? That's what you all are going to do? So for people that came into this territory that fully knew the law of this land when they landed here and followed that FEMA fund. But because they want to go and alter it, we must come change the law so they could go take us to court.

"Our local government already told us we're done with this madness; we're not attempting to reopen this situation. But what you want to do is change the law and they're now going to use this law to sue us in court. That's what they're going to do and we're going to be helping them. This is madness.

"What happens to the average Joe Blow local person that went to the polls and voted for everyone of us in here. What happens to them? When they have a \$20,000 and \$30,000 contract that they have a dispute with, you think they can come up in here with a lawyer and ask us to change the law? They can't do it. But you are not worried about those that voted for you, you are worried about people that came into this territory, knew the law already, but want us to change it so they could go sue us."

Senators Carla Joseph, who worked in the federal government managing federal dollars for ten years, also came out in opposition of the measure.

Senator Milton Potter, chairman of the Committee on Rules and Judiciary expressed concerns with the bill as well.

Ms. Whitaker, the outgoing senator, attempted to move a motion in furtherance of the bill but senators rejected it — among them Ms. Joseph, Ms. Francis Heyliger, Sen. Novelle Francis, Sen. Franklin Johnson, and Mr. Potter. Senator Kenneth Gittens was absent. Senators Whitaker and Bolques voted in favor of the measure.

Correction: Dec. 14, 2022 at 5:59 p.m.

A previous version of this story incorrectly stated that Sen. Marvin Blyden voted against the bill. Mr. Blyden is not a member of the Committee on Rules and Judiciary. The story has been updated to reflect the correct information.