COMMITTEE ON ECONOMIC DEVELOPMENT, AND AGRICULTURE

BILL NO. 32-0136

Thirty-Second Legislature of the Virgin Islands

July 26, 2017

An Act amending title 29 Virgin Islands Code, chapter 23, the Hotel Development Act, clarifying existing provisions and by adding sections 1312 through 1316

PROPOSED BY: Senator Kurt A. Vialet

Be it enacted by the Legislature of the Virgin Islands:

SECTION 1. Title 29 Virgin Islands Code, chapter 23 is amended in the following instances:

(a) Section 1302 is amended as follows:

(1) Subsection (c) is amended by inserting "other" after "and" where it appears in the second instance;

(2) Subsection (d) is amended by striking "assist" and by inserting "for the purpose of assisting" after "declared";

(3) Subsection (e) is amended by striking "To" where it appears at the beginning of the subsection and inserting "In order to promote"; by inserting a ","

after “Virgin Islands”; by striking “Assistance”; and by inserting “financing” after “planning”; and

(4) Subsection (g) is amended by inserting “otherwise” after “not”.

(b) Section 1303 is amended in the following instances:

(1) By striking subsection (e) in its entirety and adding a new subsection (e) that reads:

“(e) “Developer means any entity or person that seeks to undertake a Project pursuant to this chapter”;

(2) Subsection (f) is amended by inserting “notes, bonds or other evidence of indebtedness”; after “the” where it first appears; by striking “debt”; by inserting “or by the Notes Issuer” after “Developer”; by inserting “for the benefit of the Developer, with respect to an” after “the” where it appears in the third instance; by striking “Contingent Lease Guarantee”; and by inserting “with respect” after “issued”;

(3) Subsection (h) is amended by inserting “project” after “development” and at the end of the subsection by inserting “that may include all ancillary facilities servicing the hotel development, including without limitation, solar and other energy generation equipment; related marina facilities, including docks and wharves; residential housing; community centers; infrastructure and other facilities.”;

(4) Subsection (i) is amended by inserting “created for each respective Project” after “Fund.”; and

(5) Three new subsections are added to be inserted in the appropriate alphabetical order:

"(__) "Government" means the Government of the Virgin Islands."

(__) "Notes Issuer" means the PFA or another issuer authorized to issue Hotel Development Notes under this chapter including a Developer's option, a multi-jurisdictional issuer of notes or bonds, or both."

(___) "PFA" means the Virgin Islands Public Financing Authority established pursuant to title 29 Virgin Islands Code, chapter 29."

(c) Section 1304 is amended as follows:

(1) Subsection (a) is amended by striking "development" where it appears after "Economic" and inserting "Development"; and

(2) Subsection (b) is amended by striking "Development" where it first appears and inserting "development and construction"; by inserting "and resort" after "hotel" where it first appears; by inserting "financial assistance and other" after "provide"; by striking "the" where it appears after "for" in the first instance and inserting "such"; and by inserting ", which may include" after "construction".

(d) Section 1305, subsection (b) is amended as follows:

(1) paragraph (1) is amended by inserting at the end of the paragraph "through the PFA";

(2) by re-designating paragraphs (4) and (5) as paragraph (6) and (7), respectively, and by adding new paragraphs (4) and (5) that read as follows:

"(4) To promote due diligence to determine a Project's eligibility for financial assistance to accomplish the purpose of this chapter;

(5) To hold public hearing on applications considered for approval;"

(3) Paragraph (6) is re-designated as paragraph (9) and is amended by striking "and to"; by inserting "and perform any acts or things" after "instruments"; by inserting ", convenient, or desirable" after "necessary"; by striking "a Contingent Lease Guarantee" and inserting " the entering into of agreements or contracts to provide for the payment of principal of and interest on any obligations issued, and to provide necessary reserves in connection with these obligations; and"; and

(4) by adding new paragraphs (8) and (10) that read:

"(8) To provide administrative and financial assistance on such terms and upon such conditions as the Authority may determine for the preparation of feasibility studies relating to an eligible project;

(10) To promulgate regulations the Authority considers necessary to achieve the objectives of this chapter."

(e) Section 1306, subsection (b) in paragraph (3) is amended by at the end of the subsection "prepared no earlier than six months before the date the application is submitted;" and by re-designating the paragraphs accordingly and adding a new paragraph (1) that reads:

"(1) Description of the proposed land with the appropriate zoning to construct the Project;".

(f) Section 1307 is amended as follows:

(1) Subsection (a) is amended by inserting "proposed" after "certification of the";

(2) Subsection (a), paragraph (2) is amended by inserting "specifically" after "Government"; by inserting "revenue" after "occupancy tax"; and by inserting

"revenues generated from such Projects" after "casino tax"; and by striking "and" at the end of the paragraph; and

(3) By adding paragraphs (4) and (5) that read:

"(4) Whether an allocation, dedication or contribution of the hotel room occupancy tax incremental revenues and casino tax incremental revenues will be sufficient to support payment of the debt obligation and whether the Project's total anticipated benefit to the Government, including public benefits as well as financial benefits, exceeds the total anticipated costs to the Government; and

(5) The Authority may establish other criteria by regulations.";

(4) Subsection (b) is amended by inserting a "," after "If" where it appears at the beginning of the subsection; by striking "project" where it first appears and by inserting "Project"; by striking "for approval by the Governor"; by striking "execute" and inserting "finalize"; by striking "between the Government of the Virgin Islands and the developer"; by inserting "forth" and "setting"; by inserting "respective" before "obligations"; and by striking "shall establish by regulation" and inserting "and the Developer agree upon.";

(5) Subsection (c) is amended by adding at the end of the subsection "and ratified by the Legislature.";

(6) Subsection (d) is amended by inserting "set forth in subsection (a)" after "criteria" where it appears in the first instance; by striking "developer" and inserting "Developer"; by inserting "required" before "criteria" where it appears in the second instance; and by striking "the development sponsor" and inserting "a Developer";

(7) Subsection (e) is amended by inserting “Upon approving a Project” at the beginning of the subsection; by striking “shall” and inserting “may”; by inserting “for certification of a proposed Project” after “application”; and by adding the following sentence at the end of the subsection: “The costs may be paid from the proceeds of bonds, issuer notes or other evidences of indebtedness issued with respect to a Project under conditions prescribed in the regulations promulgated by the Authority.”; and

(8) By adding a subsection (f) that reads:

“(f) The regulations governing the agreement specified in section 1307(b) may provide that the Designated Casino Tax on Gross Revenue and Designated Hotel Room Occupancy Tax payable into the Project’s Hotel Development Trust Fund and securing Hotel Development Notes may be paid directly to the trustee or to the trustee’s collecting agent for the Hotel Development Notes for deposit into the funds and accounts held by the trustee or trustee’s collection agent for the benefit of the noteholders.”.

(g) Section 1308 is amended as follows:

(1) Subsection (a) is amended in the second sentence by inserting “occupancy tax revenues” after “hotel” where it first appears; by striking “tax” where it appears after “casino” and by inserting “tax revenues”; by striking “project” where it appears after “approved” and by inserting “Project”; and by striking “the Authority”; and by striking “hotel” where it appears after approved and by inserting “Project”;

(2) Subsection (a) is amended in the third sentence by striking “room” and inserting “occupancy”;

(3) Subsection (b) is amended by striking “title 33 Virgin Islands Code, chapter 3, section 54” and inserting “33 V.I.C. § 54”; by striking “32, Chapter 21, sections 514-515” and inserting “32 V.I.C. §§ 514-515”; by striking “project” where it appears after “approved” and inserting “Project”; by striking “title 32, Chapter 21, Sec. 514-515” and by inserting “32 V.I.C. §§ 514-515”; by striking “as an option to the developer and”; by inserting “outstanding Hotel Development Notes with respect to a Project have been” after “until the”; by striking “Developer’s debt is”; by striking the “,” after “35%” and inserting a “.”; and by striking “title 32, chapter 21, section 515” and inserting “32 V.I.C. § 515”;

(4) Subsection (b), paragraph (1) is amended by striking “directed” and inserting “applied”; by striking “loans owe by the developer” and inserting “Hotel Development Note with respect to a Project”; and by striking “hotel” where it appears after “management of the” and inserting “Project”;

(5) Subsection (b), paragraph (2) is amended by striking “subsection” and inserting “paragraph” and adding at the end of the paragraph “, which opportunity may not exceed 60 days after the date of the notice.”

(6) Subsection (b), paragraph (5) is amended by striking “be” where it appears after “shall” in the first sentence;

(7) Subsection (c) is amended at the end of the subsection by adding the following “other than to the payment of a Hotel Development Note or expenses relating to the administration of that Project’s Trust Fund.”;

(8) Subsection (d) is amended by inserting “, the PFA” after “Virgin Islands”;

(9) Subsection (e) is amended by inserting “or the PFA, as applicable, authorizing a” after “the Authority”; by striking “of the” where it appears before “Project”; by inserting “PFA, or” after “Governor, the”; by striking “Authority” where it appears in the second instance and by inserting “Notes Issuer”; by inserting “ or directly to the trustee of the Hotel Development Notes for deposit into the funds and accounts held by the trustee for the benefit of the holders” after “Trust Fund” where it first appears; and by inserting “, the Notes Issuer of the trustee” after “Authority” where it appears last in the subsection;

(10) Subsection (f) is amended by striking “of the Developer” and by inserting “of the PFA, as applicable” after “Authority”; and

(11) Subsection (g) is amended by striking “of the Virgin Islands” and inserting “of the PFA”; by inserting “the Government, the PFA or the Developer, as applicable” after “Authority” where it appears in the second instance; and by striking “bond” where it appears at the end of the last sentence and by inserting “Hotel Development Notes.”.

(h) Subsections 1309, 1310, and 1311 are stricken in their entirety.

SECTION 2. Title 29 Virgin Islands Code, chapter 23 is amended by adding sections 1312, 1313, 1314, 1315, and 1316 that read as follows:

§ 1312. Hotel Development Notes authorization.

(a) The Notes Issuer may issue Hotel Development Notes to finance total Project costs of eligible Projects approved pursuant to this chapter, including, without limitation, costs of issuance, debt service and other reserves, and related ancillary costs and expenses. Hotel Development Notes may be issued to refund other Hotel Development Notes issued pursuant to this chapter. Hotel Development Notes may not be issued in an amount exceeding the total costs of implementing the hotel development financing plan for which they were issued.

(b) The Notes Issuer may execute such financing documents as may be necessary or appropriate for the issuance, security, and administration of Hotel Development Notes, investment of proceeds and moneys in the accounts provided for in, or pursuant to, this chapter, and the application of the proceeds of the Hotel Development Notes and the moneys and investments in such accounts, and for the purposes set forth in section 1304, including financing documents with developers.

(c) (1) To secure the full and timely payment of Hotel Development Notes issued under this chapter in accordance with their respective terms, all such Hotel Development Notes must be secured by a statutory lien on all Designated Hotel Room Tax and Designated Casino Taxes on Gross Revenue that shall have been pledged as security therefor. The lien arises solely by force of this chapter specifically upon the issuance of any Hotel Development Notes issued after the effective date of this chapter and automatically attaches without further action or authorization by the Government or the PFA. The lien is valid and binding from the time the Hotel Development Notes are received by or for the account of the Government, and the lien immediately attaches to the Hotel Development Notes and becomes effective, binding and enforceable against the Government or the PFA, as applicable, their respective successors, transferees, or creditors, and all others asserting rights therein, irrespective of whether those parties have notice of the lien and without the need for any physical delivery, recordation, filing, or further act.

(2) The Government shall covenant and agree for the benefit of the holders of the Hotel Development Notes outstanding from time to time that for so long as any Hotel Development Notes remain unpaid, the Government shall defend, preserve and protect

such statutory lien against all claims and demands of third parties, and not revoke, terminate or amend such statutory lien in any way that materially adversely affects the rights of any holder of Hotel Development Notes.

§ 1313. Hotel Development Notes security

(a) A series of Hotel Development Notes may be secured by a trust agreement or trust indenture between the Notes Issuer and a trustee having trust powers, or by a secured loan agreement or other instrument giving power to the trustee by means of which the Notes Issuer may do the following:

(1) Make and enter into any and all agreements and covenant with the trustee or the holders of the Hotel Development Notes that the Notes Issuer may determine to be necessary or desirable, including, without limitation, covenants and agreement as to any of the following:

(A) the application, investment, deposit, use and disposition of the proceeds of Hotel Development Notes and the other monies, securities, and property;

(B) the assignment by the Notes Issuer of its rights in any agreement;

(C) the terms and conditions upon which additional Hotel Development Notes may be issued by the Notes Issuer; provided that the term of any Hotel Development Notes may not exceed 30 years from the date of issuance;

(D) providing for the appointment of a trustee to act on behalf of noteholders; and

(E) vesting in a trustee, for the benefit of the holders of Hotel Development Notes, or in the noteholders directly, such rights and remedies as the Notes Issuer determines.

(2) Pledge, mortgage or assign monies, agreements, property or other assets of the PFA or the Government, either presently in hand or to be received in the future, or both.

(3) Provide for bond issuance and letters of credit, or otherwise enhance the credit of and security for the payment of its Hotel Development Notes; and

(4) Provide for any other matters of like or different character that in any way affects the security for or payment of the Hotel Development Notes.

(b)(1) The Government pledges to contract and agree with the holders of any Hotel Development Notes issued pursuant to this chapter that, subject to the provisions of the financing documents, the Government may not limit or alter the basis upon which available revenues are received, allocated, applied and pledged pursuant to this chapter; may not impair the contractual obligations of the Notes Issuer to fulfill the terms of any agreement made with the holders of the Hotel Development Notes, may not in any way impair the rights or remedies of the holders, and may not in any way alter the exemptions from taxation provided for in this chapter, until the Hotel Development Notes and the interest on the Hotel Development Notes, with interest on any unpaid installment of interest and all costs and expenses in connection with any suit, action or proceeding by or on behalf of the holders, are fully met and discharged.

(2) The Notes Issuer may include this pledge and agreement of the Government as part of the contract with the holders of any of its notes. This chapter constitutes a

contract between the Government and the holders of the Hotel Development Notes authorized by this chapter.

(3) To the extent that any acts or resolutions of the PFA may be in conflict with this chapter, this chapter is controlling.

(b) Any pledge made by the Notes Issuer with respect to its Hotel Development Notes is valid and binding from the time the pledge is made. The money or property so pledged and thereafter received is immediately subject to the lien of the pledge without physical delivery or further act, and the lien of the pledge is valid and binding as against all parties having any claim of any kind in tort, contract or otherwise against the Notes Issuer irrespective of whether the parties have notice. Neither the resolution, trust agreement, nor any other instrument by which a pledge is created is required to be recorded or filed under the provisions of the Uniform Commercial Code to be valid, binding, and effective against the parties.

§ 1314. Default.

If there is a default in the payment of the principal of or interest on any Hotel Development Notes of a series after the principal or interest becomes due and payable, whether at maturity or upon call for redemption, or if the Notes Issuer or the Government fails or refuses to carry out and perform the terms of any agreement with the holders of any of the Hotel Development Notes, then the holders of the Hotel Development Notes, or the trustee appointed to act on behalf of the holders, may, subject to the provisions of the financing documents, do the following:

(1) By action, writ, or other proceeding enforce all rights of the holders of the Hotel Development Notes, including the right to require the Notes Issuer to carry out and

perform the terms of any agreement with the holders of the Hotel Development Notes or its duties under this chapter;

(2) By action, petition to enjoin any acts or things that may be unlawful or in violation of the rights of the holders of the Hotel Development Notes; and

(3) Declare all Hotel Development Notes due and payable, whether or not in advance of maturity and, if all the defaults be made good, annul the declaration and its consequences.

§ 1315. Limitation of liability.

(a) Neither the Directors of the Notes Issuer nor any persons executing Hotel Development Notes issued pursuant to this chapter are liable personally on the Hotel Development Notes by reason of the issuance of the Hotel Development Notes.

(b) Notwithstanding any other provision of this chapter, Hotel Development Notes issued pursuant to this chapter are not general obligations of Notes Issuer or the Government and are not in any way a debt or liability of the Government within the meaning of any debt or other limit prescribed by law. Neither the full faith and credit nor the taxing power of the Government, other than the revenues authorized under this chapter may be pledged to secure the payment of any Hotel Development Notes issued pursuant to this chapter.

§ 1316. Project Financing.

If a Developer is financing a Project that could be financed with the proceeds of Hotel Development Notes under this chapter and the proceeds of Tax Incremental Financing Bonds (TIF Bonds) issued under the provisions of the Tax Incremental Financing Act, title 29 Virgin Islands Code, chapter 22, the Notes Issuer may, as the issuer of Hotel Development Notes under this chapter, additionally secure its Hotel Development

Notes with the tax increment revenues that are authorized to be pledged to the payment of TIF Bonds thereunder as if the Notes Issuer was an authorized issuer of TIF Bonds under the Tax Incremental Financing Act. Conversely, the PFA may additionally secure its TIF Bonds with the revenues that are declared to be dedicated pursuant to this chapter to the payment of debt service on Hotel Development Notes as if the PFA was the Notes Issuer hereunder. If the Notes Issuer is issuing Hotel Development Notes secured in part by tax increment revenues, the applicable provisions of the Tax Increment Financing Act must be satisfied by the Project Developer.

BILL SUMMARY

Section 1 amends various section of chapter 23 to make clarifications to existing provisions and strikes subsections 1309, 1310 and 1311.

Section adds sections 1312, 1313, 1314, 1315 and 1316. Section 1312 provides the authorization to issue Hotel Authorization Notes to eligible Projects under the Hotel Development Act and provide that the Notes are secured by a statutory lien on all Designated Hotel Room Tax and Designated Casino Taxes on Gross Revenue.

Section 1313 provides for the security of a series of Hotel Development Notes through a trust agreement or trust indenture, or a secured loan agreement or other instrument between the Note Issuer and a trustee and sets forth what the Notes Issuer may do under these circumstances. This sections also sets forth what the Government of the Virgin Islands is required to pledge to do vis-à-vis the Note Issuer.

Section 1314 sets forth the rights of the Government and the Note Issuer if there is a default in the payment of the principal of interest on any of the Hotel Development Notes.

Section 1315 sets forth the Note Issuer and persons executing Hotel Development Notes are not personally liable on the Notes by reason that they issued them. It also provides that the Notes are not the general obligation of the Note Issuer or the Government and that not a debt or liability of the Government and that neither the full faith and credit of the Government nor its taxing power are pledged to secure the payment of any Hotel Development Notes.

Section 1316 describes the interplay between the TIF Bond proceeds and the Hotel Development Notes proceeds for the financing of projects vis-à-vis the tax increment revenues.

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