

COMMITTEE ON ECONOMIC DEVELOPMENT
AND AGRICULTUE

04/04/2018-SPECIAL ORDERED

BILL NO. 32-0175

Thirty-Second Legislature of the Virgin Islands

March 7, 2018

An Act amending Title 29 V.I.C. Chapter 12 to strengthen the Economic Development Commission

PROPOSED BY: Senator Kurt A. Vialet

1 ***Be it enacted by the Legislature of the Virgin Islands:***

2 **SECTION 1.** Title 29 Virgin Islands Code, chapter 12, section 704 is amended as
3 follows:

- 4 (a) Subsection (c) by striking the phrase “as soon as practicable”;
- 5 (b) Subsection (e) by striking “section 706” and inserting “section 705”;
- 6 (c) Subsection (g) at the end of the subsection by adding a sentence that reads
7 as follows: “The Commission may also establish and publish public through appropriate
8 communication channels a calendar of regular meetings for each calendar year”; and
- 9 (d) Subsection (i) is added and reads as follows:

“(i) This chapter does not prohibit the Commission from holding an open or closed meeting during which members of the Commission attend by telephone or video conference call or other means permitting their participation remotely if:

(1) The meeting conforms with the notice requirements applicable to other meetings.

(2) The notice of the meeting specifies the location of the meeting or the location where meetings of the Commission are usually held.

(3) Each part of the meeting that is required to be open to the public is audible to the public at the location specified in the notice of the meeting.”

SECTION 2. Title 29 Virgin Islands Code, chapter 12, section 705 is amended as follows:

(a) (1) the introductory clause is amended by striking “have the following powers and duties; and

(2) Subsection (a) is amended by:

(A) striking “hold public hearings thereon as provided in section 717 of this chapter”;

(B) striking in item (1), “subject to the Governor’s approval”; and

(C) striking in item (2) “which denial shall not be subject to the review of the Governor” and inserting “subject to reconsideration in accordance with section 717.”

(b) Subsection (b) is amended in the third sentence, after “subchapter” by inserting “or upon notification by the Director, in writing, of any other violation of this subchapter or of the beneficiary’s certificate”.

(c) Subsection (f) is amended in the following instances:

1 (1) The phrase, “after notice and hearing” is inserted at the beginning of
2 the subsection before the word, “Prepare”; and

3 (2) A sentence is added at the end of the subsection to read as follows:

4 “Any rule or regulation promulgated contrary to this subsection is void and
5 unenforceable, including any rule or regulation set forth in any resolution or other
6 administrative statement issued by the Commission.”

7 **SECTION 3.** Title 29 Virgin Islands Code, chapter 12, section 708a is amended
8 by designating the two numbered paragraphs as subsections (a) and (b) and adding
9 subsection (c) to read as follows:

10 “(c) An applicant or a beneficiary is not required to submit copies of tax returns or
11 other financial information from those of its shareholders, members, partners, or other
12 owners with respect to any period that the shareholder, member, partner, or other owner is
13 not a bona fide resident of the Virgin Islands, except:

14 (1) with respect to the shareholders, members, partners, or other owners
15 of an applicant who intend to relocate to the Virgin Islands and claim tax benefits
16 within the first two years after benefits become effective; or

17 (2) with respect to shareholders, members, partners, or other owners
18 who own more than fifty percent of the voting shares or membership interests of
19 the applicant or beneficiary. The Commission may require a beneficiary to submit
20 copies of tax returns or other financial information from those of its shareholders,
21 members, partners, or other owners who subsequently become bona fide residents
22 of the Virgin Islands or who acquire their ownership interest in a beneficiary after
23 its benefits have commenced.”

24 **SECTION 4.** Title 29, chapter 12, section 713a Virgin Islands Code is amended in
25 subsection (b), paragraph (5) in the first sentence by inserting “existing” benefits,

1 “Beneficiaries” and in the second sentence by striking “recommended” and inserting
2 “approved” and by striking the phrase, “and approved by the Governor”.

3 **SECTION 5.** Title 29, chapter 12, section 713b Virgin Islands Code is amended in
4 subsection (a) paragraph 4 by striking all existing language and inserting new language
5 that reads as follows: “An applicant may elect a commencement date in the calendar (or
6 fiscal if other than calendar) year that it commences activities in the Virgin Islands.
7 Provided that an application for the appropriate business license has been filed with the
8 Division of Licensing and Consumer Affairs during such year, then tax benefits may apply
9 to the entire year or a shorter period as elected by the applicant and shall not be limited to
10 the period after which the application is deemed complete by the Commissioner or after
11 the license is issued.”

12 **SECTION 6.** Title 29, chapter 12, section 713e Virgin Islands Code is amended in
13 subsection (d) by striking “and the Governor”, and in subsection (e) by striking the phrase
14 “subject to the approval of the Governor”.

15 **SECTION 7.** Title 29 Virgin Islands Code, chapter 12, section 715, subsection (a)
16 is amended by striking all the language in paragraph (3) and inserting new language that
17 reads as follows: “If a completed extension or renewal application is not approved or
18 denied by a date that is six months from the date of the applicant’s submission of the
19 application to the Commission, and not the date that the application is deemed complete
20 by the Commission, then the Commission shall issue an extension or renewal certificate to
21 the applicant subject to the condition that the Commission may, upon completion of its
22 compliance review of the prior benefit period only, impose any compliance fines for
23 violations occurring within three years prior to the issuance of the renewal certificate.”

1 **SECTION 8.** Title 29 Virgin Islands Code, chapter 12, section 717, is amended by
2 striking the first sentence of subsection (b) by and inserting new language that reads as
3 follows:

4 “With respect to a new application for benefits, the Commission shall communicate
5 a finding that the benefits should be denied by transmission of the Commission’s report to
6 the applicant, which constitutes official notice of the denial of benefits.”

7 **SECTION 9.** Title 29 Virgin Islands Code, chapter 12, section 723 is amended as
8 follows:

9 (a) Subsection (a) is amended by striking all the language after “section”; and

10 (b) Subsection (c) is re-designated as subsection (d), and a new subsection (c)
11 is inserted that reads as follows: “(c) The Commission shall complete an annual compliance
12 review of each Beneficiary upon payment of its annual compliance fee. If the Commission
13 fails to complete the annual compliance review, it shall be limited to assessing fines for
14 violations that occurred commencing with the calendar year ending three years prior to the
15 completion of the compliance review and ending with the last day of the compliance review
16 period.”

17 **SECTION 10.** Title 29 Virgin Islands Code, chapter 12, section 706 is repealed.

18 **SECTION 11.** Title 29 Virgin Islands Code, chapter 12, section 724 is amended
19 by striking the phrase, “or the Governor” and by striking both occurrences of “District”
20 and inserting “Superior”.

21 **SECTION 12.** Title 29 Virgin Islands Code, chapter 12, section 1102 is amended
22 as follows:

23 (a) Subsection (d) by striking all language after “appoint” and inserting new
24 language that reads as follows: “a Chief Executive Officer of the Authority (CEO), who
25 shall oversee the operations of the Economic Development Authority and shall receive

1 such salary as may be approved by the Commission. The CEO shall be authorized to attend
2 all meetings of the Board but shall not be entitles to vote. The Chief Executive Officer
3 shall select an Assistant Chief Executive Officer of the Economic Development
4 Commission, who shall perform such services as directed by the Chief Executive Officer
5 and shall receive such salary, subject to the approval of the board.

6 (b) Subsection (f) by striking “by the Governor, or” and “subject to the
7 approval of the Governor.”

8 **SECTION 13.** To be effective and enforceable any rule or regulation, announced,
9 published or promulgated before the effective date of this act and not approved by the
10 Governor, filed, published, and submitted to the Legislature in accordance with Title 3,
11 Chapter 35 of the Code is of no effect and unenforceable, unless, the rule or regulation, is
12 approved by the Governor, filed, published, and submitted to the Legislature in accordance
13 with Title 3, Chapter 35 of the Code no later than 120 days after the effective of this act.
14 For purposes of this section, the term rule, or by the Commission regulation” includes any
15 resolution or other administrative statement issued, promulgated or announced by the
16 Economic Development Commission intended to create substantive requirements, grant
17 rights, or impose obligations on regulated parties in the implementation of Title 29, chapter
18 12, Subchapter I of the Code.

19 **SECTION 14. Applicability.**

20 (a) Sections 2, 4, 5, 6, 7 and 8 of this act, and section 7 of Bill No. 32-0018
21 apply to all applications for tax benefits under Title 29, Chapter 12, Virgin Islands Code
22 with regard to which the Commission determined that tax benefits should be granted and
23 shall govern for any applications submitted to the Commission.

24 (b) Any applications that had been submitted to the Governor with the
25 Commission’s report, public hearing transcript, findings and other relevant data supporting

1 its determination of approval pursuant to former title 29, section 717(c) of title 29, of the
2 Virgin Islands Code, but which the Governor had not, as of December 21, 2017, informed
3 the Commission of his approval or disapproval of the issuance of an economic development
4 certificate, are deemed to have been approved as of December 21, 2017 and the
5 Commission shall issue an economic development certificate to each applicant no later
6 than seven days, excluding Sundays and holidays, after receipt of a written request from
7 the applicant or its authorized representative.

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BILL SUMMARY

10 This bill amends title 29, chapter 12 Virgin Islands Code and seeks to strengthen
11 the Economic Development Commission. Section 1 amends Section 704 to allow the EDC
12 to hold meetings telephonically or through video conferencing.

13 Section 2 also amends section 705 by allowing the Commission the authority to
14 approve or deny EDC applications removing the Governor from the approval process.

15 Section 3 requires that the Commission does not request tax or other financial
16 information from nonresident partners, members, or shareholders unless they wish to
17 relocate within two years of approval or are owners of more than a fifty percent share in
18 ownership.

19 Section 4 gives the Commission the authority to approve extension certificates for
20 existing beneficiaries that remain in compliance with the requirements of their certificate
21 and removes the need for the Governor's approval.

22 Section 5 allows the applicant to elect a commencement date for their activity in
23 the Virgin Islands allowing tax benefits to apply to the entire year or a shorter period as
24 elected by the applicant.

1 Section 6 gives the Commission sole authority to issue certificates of tax exemption
2 and the power to issue rules and regulations without seeking the Governor's approval.

3 Section 7 allows the Commission to issue conditional, renewal or extension
4 certificates if action is not taken in the six-month period after the submission of an
5 application to the Commission.

6 Section 8 allows the Commission to deny benefits with respect to new applications
7 via transmission of the Commission's report to the applicant.

8 Section 9 requires the Commission to complete an annual compliance review of all
9 beneficiaries.

10 Section 10 repeals section 706 in its entirety taking away the Governor's authority
11 to hire the Assistant Chief Executive Officer of the Economic Development Commission.

12 Section 11 removes the Governor from possibly being a litigant in a judicial review
13 action, and the Superior Court replaces the District Court for judicial review of an
14 unfavorable decision by the Commission.

15 Section 12 removes the Governor's authority to approve the Chief Executive
16 Officer of the Economic Development Authority. It further removes his right to terminate
17 the Chief Executive Officer for cause. Finally, section 12 gives the Chief Executive Officer
18 of the EDA the authority to hire an Assistant Chief Executive Officer of the Economic
19 Development Commission subject to the Board's approval.

20 Section 13 nullifies any rule or regulation, announced, published or promulgated
21 before the effective date of this act not in accordance with Title 3, Chapter 35 of the Code,
22 unless, approved by the Governor, filed, published, and submitted to the Legislature in
23 accordance with Title 3, Chapter 35 of the Code no later than 120 days after the effective
24 of this act.

1 Section 14 stipulates that sections 2, 4, 5,6,7, and 8, and section 7 of Bill No. 32-
2 0018 will be applicable to all applications before that Commission which have been
3 referred for approval. All applications submitted to the Governor which have not been
4 acted upon will be deemed approved as of December 21, 2017.

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6 **BR17-0365/March 29, 2017/**

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8 **REVIEWER’S NOTE**

9 **Section 4 of the bill amends section 723(a) which divests the governor of the**
10 **power to approve a schedule of fines the section authorizes the Commission to**
11 **promulgate. Section 723(a) should be further amended to identify the actions or**
12 **inactions of a beneficiary which constitute a violation, and establish statutory fines**
13 **for such violations.**