

FLOOR

BILL NO. 31-0332

Thirty-first Legislature of the Virgin Islands

March 23, 2016

An Act granting an exclusive franchise to Transportation Services of St. John, Inc. and Varlack Ventures, Inc. to operate all public marine transportation between the Urma Victor Fredericks Marine Terminal, Red Hook, St. Thomas and the Loredon Boynes Dock, Cruz Bay, St. John and between downtown Charlotte Amalie and Cruz Bay

PROPOSED BY: Senators Almando “Rocky” Liburd, Clifford F. Graham
and Jean A. Forde

Be it enacted by the Legislature of the Virgin Islands:

WHEREAS, it is in the public interest that an exclusive franchise for the operation of all public marine passenger transportation between Urma Victor Fredericks Marine Terminal, Red Hook, St. Thomas and Loredon Boynes Dock, St. John and between downtown Charlotte Amalie, St. Thomas and Loredon Boynes Dock, Cruz Bay, St. John be granted; and

WHEREAS, Act No. 3906, enacted November 18, 1976 and amended by Act No. 5168 approved on June 11, 1986, and further amended by Act No. 5999, adopted in 1994, granted and expanded the exclusive franchise given to Transportation Services of St. John and Varlack Ventures,

Inc. to operate all public marine transportation between Red Hook, Charlotte Amalie, and Cruz Bay;
and

WHEREAS, Transportation Services of St. John and Varlack Ventures, Inc. have provided
marine transportation services for more than 30 years between Red Hook, Charlotte Amalie and Cruz
Bay; and

WHEREAS, the residents of St. John and St. Thomas depend upon these services for carriage
between their homes and jobs; and,

WHEREAS, the residents of St. John also rely upon these essential services to ferry groceries
and merchandise from St. Thomas to St. John and for others life necessities, including travelling to St.
Thomas for medical care and other necessary services; and

WHEREAS, public ferry system is a mode of safe and reliable transportation between St.
Thomas and St. John that benefits visitors to the Virgin Islands and the tourism sector of the Virgin
Islands economy; and

WHEREAS, for Transportation Services of St. John and Varlack Ventures, Inc. to sustain the
present level of services and be protected from unfair and debilitating competition, which could
undermine the normal transportation services and stable economics of public marine transportation
between the islands, the Government of the Virgin Islands and Transportation Services of St. John and
Varlack Ventures, Inc. enter into a franchise agreement; Now, Therefore,

Be it enacted by the Legislature of the Virgin Islands:

SECTION 1. Transportation Services of St. John, Inc. and Varlack Ventures, Inc., (“the
Franchisees”) are granted joint, exclusive rights and franchise to operate the public marine passenger
transportation service between Urma Victor Fredericks Marine Terminal, Red Hook, St. Thomas and
Loredon Boynes Dock, St. John and between downtown Charlotte Amalie, St. Thomas and Loredon

Boynes Dock, Cruz Bay, St. John, which exclusive franchise is for the terms and conditions herein specified.

SECTION 2. The Franchisees, as a condition to the continued effectiveness of a joint, exclusive franchise, agree to maintain and operate the presently existing scheduled passenger ferryboat transportation system between Red Hook, St. Thomas and Cruz Bay, St. John and between downtown Charlotte Amalie and Cruz Bay, St. John, including provision for the commuter fares and transportation of school children, and to otherwise to sustain an effective system of public marine passenger transportation between these locations for the duration of this franchise.

SECTION 3. The franchise is exclusive and for a period of twenty years, beginning on May 31, 2016, with two five-year option periods. This franchise may not be construed to prohibit, abridge or restrict:

- (a) Private transportation of individuals where no fee is charged;
- (b) Transportation of individuals for a fee of not more than ten passengers per voyage between Red Hook, St. Thomas and Cruz Bay, St. John, other than publicly owned facilities commonly referred to as water taxis;
- (c) Federally documented or Virgin Islands licensed vessels engaged in charter operations as evidenced by a charter agreements; and
- (d) Transportation of freight by dully licensed vessels.

SECTION 4. If the Franchisees are not in default of any of the terms and conditions of this franchise at the expiration of the initial term, the Franchisees have the option to renew this franchise for two five-year periods, provided that the Public Services Commission (“Commission” or “PSC”) conducts an evaluation of the services provided and recommends the renewal of the franchise to the Governor and the Legislature of the Virgin Islands 30 days before the expiration of the initial term.

1 **SECTION 5.** The Franchisees may subcontract or assign this franchise to other qualified
2 agents, so long the Franchisees are in compliance with the terms of the franchise and the rules and
3 regulations currently applicable to the franchise. No transfer or assignment of this franchise or of any
4 interest therein is effective without the prior written approval of the Governor and the Legislature. If
5 one of the joint Franchisees ceases doing business or otherwise defaults on its obligations under the
6 terms of the franchise, the franchise shall continue with the sole remaining Franchisee. Additionally,
7 this franchise does not prohibit a Franchisee from transferring stock to a Franchisee's family member
8 either by assignment or bequest, so long as the Franchisee continues to fulfill the terms of the franchise.

9 **SECTION 6.** To be valid, the Franchisee must accept this franchise in writing and file the
10 acceptance with filed with the Commission within 30 days from the effective date of this Act.

11 **SECTION 7.** (a) The Virgin Islands Port Authority, or a subsequently established authority
12 as designated, has jurisdiction of the administration of this franchise as it relates of the use of publicly
13 owned facilities, fees for such use, and the rules governing the use by passenger and freight services.

14 (b) The Commission, or subsequently established authority as designated, has jurisdiction
15 of the administration of this franchise as it relates to the adherence of the terms herein, including
16 passenger schedules, passenger and commuter fees, fees for school children, deviation from the
17 franchise terms, and for the maintenance of the vessels and other equipment, except insofar as these
18 terms are fixed by the terms of a lease of a vessel between the Government of the Virgin Islands and
19 the Franchisees or as determined by Coast Guard regulations or law.

20 (c) In any matter involving a lease of a vessel by the Government of the Virgin Islands to
21 a Franchisee, the Virgin Islands Department of Public Works or the Department of Property and
22 Procurement determine the terms of the lease terms and its enforcement.

1 **SECTION 8.** Notwithstanding any provision of law, the schedules, fees, and rules and
2 regulations adopted under previous PSC orders remain in effect unless amended. Amended orders are
3 an integral part of this franchise.

4 **SECTION 9.** (a) The Franchisees are public utilities and, in addition to the specific terms of
5 this franchise, are subject to the provisions of title 30 Virgin Islands Code, chapter 1 and any additional
6 the rules and regulations promulgated by the PSC.

7 (b) Notwithstanding title 30 Virgin Islands Code section 23 (b) and any other provision of
8 law, in setting the rate of return for the Franchisees, the PSC is guided by the following:

9 “The Commission must provide a rate of return of not less than 8% nor more than 10% on the current
10 fair value of applied assets prudently acquired for and devoted to the public use, unless the Commission
11 makes a special finding that a different return is imperative, so as to be fair to the consumer interest
12 and to be fair to be investor interest by providing a return commensurate with returns in other
13 enterprises having corresponding risks, and which will assure confidence in the financial integrity of
14 the enterprise, so as to maintain its credit and to attract capital.”

15 **SECTION 10.** The terms, conditions, fares, fees, schedules, and rules governing this franchise
16 are public records and must be displayed aboard each vessel and at each terminal.

17 **SECTION 11.** No scheduled voyage shall be cancelled for lack of a minimum number of
18 passengers, if any person desires passage on such voyage.

19 **SECTION 12.** The Government of the Virgin Islands expressly reserves the right to
20 commence judicial action for default against the Franchisees, its successors or assignees for failure to
21 perform the conditions and obligations, including nonuse, misuse or abandonment of the franchise.
22 An action for default must be brought before the Public Services Commission by the Attorney General
23 of the Virgin Islands, on behalf of the Government of the Virgin Islands. If the Commission finds that
24 the Franchisees have materially breached the conditions and obligations imposed under this franchise,

the Commission may enter an order finding that the Franchisee has materially breach the terms of the franchise and terminate the franchise.

BILL SUMMARY

This bill grants Transportation Services of St. John and Varlack Ventures, Inc. an exclusive franchise to operate a water transportation ferry service between St. Thomas and St. John under similar conditions previously granted by Acts No. 3906 and 5168.

The franchise is for a term of twenty years, with two five-year renewal options. The Public Services Commission has the authority to set ferry rates and the Franchisees' profit margin, within certain parameters.

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