COMMITTEE OF THE WHOLE/FLOOR

BILL NO. 36-0340

Thirty-Sixth Legislature of the Virgin Islands

July 31, 2026

An act approving the Reinstatement and Amendment to Lease Agreement between Government of the Virgin Islands, acting through the Commissioner of Property and Procurement and, Water Island Development Company, LLC to develop the Water Island Hotel and Marina

PROPOSED BY: Senator Milton E. Potter, by Request of the Governor

WHEREAS, on November 19, 2014, Governor John P. deJongh, Jr. approved the lease agreement between the Government of the Virgin Islands, acting through the Commissioner of Property and Procurement and, Water Island Development Company, LLC which was ratified by the Legislature on December 22, 2014 (Lease Agreement No. BCT-383);

WHEREAS, Water Island Development Company, LLC was leasing Tract B, Lots 24 & 25, Flamingo, Tract C and Catchment Area totaling approximately 68.848 U.S. acres located on Water Island to construct and develop a hotel and marina, including a deep water dock, hotel and other overnight lodging accommodations, a marina, infrastructure improvements necessary to operate the hotel, a full service spa, a social center and other related hotel and marina related facilities detailed in Section 4.02 of Lease Agreement No. BCT-383, “the 2014 lease”;

WHEREAS, Water Island Development Company, LLC is seeking an amendment to incorporate Area V, Area Y, Tract E, Area W, Area X, Area I, Area L, Area N, Area M, Area M-1, Areas K & O, Area P, Tract A, Tract D, Area R, Area S, Area T, Tracts F, and Plot D into the leasehold, and remove Tract C and Catchment Area from the leasehold resulting in approximately 179.31 U.S. acres to develop the Water Island Hotel and Marina, related hotel and marina facilities, residential homes, including condominiums, townhouses and single-family lots, and for no other purpose;

WHEREAS, Water Island Development Company, LLC contemplates the sale of 55 acres of land owned by the Government of the Virgin Islands to develop residences for sale;

WHEREAS, Water Island Development Company, LLC is granted the option to acquire certain portions of land in fee simple by providing at least 15 days written notice to the Government prior to entering into a purchase agreement with a residential purchaser;

WHEREAS, Water Island Development Company, LLC shall pay six percent of the gross purchase price paid for each residential unit and 100% of the stamp taxes to the Government of the Virgin Islands;

WHEREAS, on May 28, 2026, Governor Albert Bryan, Jr. approved the amendment to the reinstated lease agreement between the Government of the Virgin Islands, acting through the Commissioner of Property and Procurement and, Water Island Development Company, LLC with an annual base rent of $120,000 payable in equal monthly installments of $10,000 upon expiration of the construction period; on the 10th anniversary, a base rent of $240,000 payable in equal monthly installments of $20,000; on the 25th anniversary, and every five consecutive years thereafter during the term of the lease, the base rent shall increased to five percent until the end of the lease term;

WHEREAS, title 31 Virgin Islands Code, part II, chapter 21, section 205(c) provides that in addition to the Governor's approval, the Legislature of the Virgin Islands must also approve the Reinstatement and Amendment to Lease Agreement No. BCT-383; Now, Therefore,

Be it enacted by the Legislature of the Virgin Islands:

SECTION 1. Pursuant to title 31 Virgin Islands Code, section 205(c), the Legislature of the Virgin Islands approves the Reinstatement and Amendment to Lease Agreement No. BCT-383 between the Government of the Virgin Islands, acting through the Commissioner of the Department of Property and Procurement, and Water Island Development Company, LLC for Tract B, Lot 24, Lot 25, Area V, Area Y, Tract E, Area W, Area X, Area I, Area L, Area N, Area M, Area M-1, Areas K & O, Area P, Tract A, Tract D, Area R, Area S, Area T, Tracts F, and Plot D, Water Island consisting of an aggregate of 180.21 U.S. acres, more or less, as described in the Amended Exhibit B - Description of Leased Premises for a term of 99 years with a conditional extension of two years to develop the Water Island Hotel and Marina, related hotel and marina facilities, residential homes, and for no other purpose.

BILL SUMMARY

This bill approves the Reinstatement and Amendment to Lease Agreement No. BCT-383 between the Government of the Virgin Islands and Water Island Development Company, LLC for Tract B, Lot 24, Lot 25, Area V, Area Y, Tract E, Area W. Area X, Area I, Area L, Area N, Flamingo, Area M, Area M-1, Area K & O, Area P, Tract A, Tract D, Area R, Area S, Area T, Tract F, and Plot D consisting of an aggregate of 179.31 U.S. acres, more or less, to develop the Water Island Hotel and Marina, related hotel ad marina facilities, residential homes, and for no other purpose whatsoever.

BR26-1154/June 25, 2026/NS/Revised July 27, 2026/NS/Revised July 31, 2026/NS
G36-072

DRAFTER'S NOTE

The Governor's May 19, 2026 letter to Senate President Milton E. Potter transmits a Reinstatement and Amendment to the 2014 Lease Agreement. However, the Commissioner of the Department of Property and Procurement (the "Commissioner') issued a Notice of Termination of the lease to Water Island Development Company, LLC, ("WIDC") for non-performance effective April 11, 2025. Specifically, the lease was terminated because the "WIDC did not obtain the necessary financing and permits within twenty-four (24) months of the effective date of the Lease Agreement. Following the expiration of this twenty-four (24) month period, notwithstanding the Government's extensions and considerations to enable Lessee to comply with the Lease Agreement's terms, Lessee has failed to make progress under the Lease to justify continuation of this Lease Agreement."

Subsequently, on November 20, 2025, the Commissioner issued a letter rescinding the April 11, 2025 termination of the lease. In that letter, the Commissioner confirmed that "the Government does not intend to declare WIDC in breach or default under the Lease while the parties are negotiating the amendment and WIDC continues to comply with the terms of the Lease and the commitments and acknowledgments in this letter." The commitments and acknowledgements requires WIDC to obtain a $3,000,000 Performance Bond within 60 days of WIDC's acceptance of the letter. The WIDC President accepted the letter on November 24, 2025.

Under the Restatement (Second) of Property, in the case of a valid lease termination, the tenant curing the breach is a factor in reinstating the lease agreement. The Supreme Court of the Virgin Islands has recognized that, absent controlling local law, courts may look to the Restatement as persuasive authority. Here, there is no evidence presented in the Governor's transmittal to the Legislature, or in subsequent documentation received by the Office of

Legislative Legal Counsel from the Department of Property and Procurement, that WIDC cured the underlying breach of the lease agreement that triggered the April 11, 2025 termination letter from the Commissioner. The November 20, 2025 letter from the Commissioner rescinding the April 11, 2025 letter presumes that the Commissioner was satisfied enough with WIDC's performance at that time to rescind the lease termination and negotiate an amendment to the lease and also require WIDC to post a $3,000,000 performance bond. Consequently, even though the legislative record should include evidence that WIDC cured its breach of the lease agreement, the reinstatment and amendment to the lease agreement is properly before the Legislature for consideration.

Section 1.4.3 of the reinstatement and amendment to the lease agreement signed by the Governor on May 28, 2026 provided:

"Upon enactment of the Approving Act, and subject to Title 31, Section 205, the Commissioner is authorized and directed, without further act of the Legislature, to execute one or more site leases to add to the Premises up to two (2) St. Thomas Parcels for barging, storage and staging uses and for a heliport/helipad to support the Water Island Hotel and Marina, each for a term to be coterminous with the Term (and this Lease), on economic terms substantially consistent with Section 1.4.1. (including rent based on Department of Property and Procurement appraisal procedures and a five percent (5%) capitalization rate); provided that: (i) each Parcel is identified by metes and bounds; (ii) each such lease is approved as to legal sufficiency and form by the Attorney General of the Territory and bears the Governor's written approval as required by Title 31, Section 205(b); and (iii) all required permits and approvals, including Department of Plannning and Natural Resources/Coastal Zone Management approvals and any earth change permits. No further act of the Legislature shall be required for such site leases executed in compliance with this Section 1.4 and the Approving Act." This secrion was removed in the reinstatement and amendment to the lease agreement signed by the Governor on July 10, 2026. However, similar language in sections 2.3 and 9.2 of the lease agreement still remain.

This language is both unclear and conflicting. First, the Commissioner of Property and Procurement is authorized and directed to execute leases for government property without further act of the Legislature. However, this authorization is subject to title 31 Virgin Islands Code, section 205 (c) which requires legislative approval of leases of government real estate for a term exceeding one year. Importantly, under section 205 (c), the Legislature approves lease agreements that are executed by the Commissioner and the Governor. It is unnecessary to authorize the Commissioner to perform acts that she already possesses the authority to perform.

Second, if it is the intent of sections 2.3 and 9.2. for the Legislature to delegate its authority to approve leases or sell government real estate to the Commissioner, the Office of Legislative Legal Counsel has not found any legal support or precedent for such a delegation.

The Office of Legislative Legal Counsel recommends that the referenced sections either be entirely removed from the amendment to the lease agreement or amended by the parties to the agreement to relect the clear intent of the Legislature.

Further, in section 2.3, the language, "without any further act of the Legislature" pertains to the sale of residences within the prospective leasehold. The properties that are the subject of the reinstatement and amendment to the lease agreement were conveyed to the Government of the Virgin Islands via two Quitclaim Deeds dated December 12, 1996 and March 29, 2005 from the United Staes of America, through the Department of Interior. In section 5.b. of the 1996 deed, the Government of the Virgin Islands has to submit the proceeds of any sale or portion thereof of the properties identified in the deed to the Department of Interior, unless there is a written agreement between the Governor and the Secretary of the Interior in effect prior to the sale. Both deeds also have environmental restrictive convenants and also state that all property conveyed is for public purposes only which would include the operation of a hotel or tourist resort on the property.

Additionally, the following properties listed in Exhibit B of the lease and incorporated by reference are not identified in either of the two deeds provided in the package: Area V-1, Area V-2, Area A and Tract G. The Department of Property and Procurement has agreed to submit an amended exhibit to the reinstated and amended lease agreement removing the referenced parcels.

Section 3.1 of the amendment revises section 2.01 of the 2014 Lease Agreement and states that the initial term of "this lease is for a period of ninety-nine years commencing May 1, 2026 and shall be extended by up to two years following satisfaction of the following conditions precedent: (a) approval by the Governor and the Legislature of the Virgin Islands of this Lease, (b) approval by the United States Department of the Interior of the sale to Lessee or its designee of the 'Residential Land' defined in Section 4.09." However, the original lease has been effective since 2014. Therefore, this provision will add an additional 12 years to the initial term of lease agreement, with a conditional extension for an additional two years, for an aggregate of 113 years, not 101 years as stated in the amendment.