

BILL NO. 35-0070

Thirty-Fifth Legislature of the Virgin Islands

April 4, 2023

An Act authorizing the Governor to utilize monies from public funds of the Virgin Islands to create working capital to provide funds for any purpose for which the Government is authorized to use and expend monies, including but not limited to, current expenses, capital expenditures, and discharge of any obligations of the Government for the next three fiscal years, beginning with 2023 and to issue a line of credit in the maximum amount of \$150,000,000 and issue tax anticipation notes to provide funding for authorized governmental operations

PROPOSED BY: Senators Donna A. Frett-Gregory and Milton E. Potter

1 **WHEREAS**, the Coronavirus Disease 2019 (“COVID-19”) has negatively impacted
2 commerce, tourism, and revenue generation in the Virgin Islands; and

3 **WHEREAS**, the Virgin Islands is still slowly recovering from the devastating
4 financial impacts of the two 2017 Category 5 Hurricanes, Irma and Maria, as well as
5 Hurricane Dorian in 2019; and

6 **WHEREAS**, damage to the Territory caused by Hurricanes Irma, Maria, and
7 Dorian totaled a loss upwards of ten billion dollars; and

8 **WHEREAS**, the Territory is currently rebuilding from all three devastating
9 hurricanes while navigating the effects of Covid-19 on the community and the
10 workforce; and

1 **WHEREAS**, there continues to be significant damages to infrastructure, including
2 schools, hospitals, government buildings, businesses, and homes of Virgin Islanders; and

3 **WHEREAS**, the current financial resources of the Government of the Virgin Islands
4 (“Government”) are not sufficient to cover working capital necessary to begin disaster
5 projects and other important financial obligations pending the receipt of federal grant
6 funding; and

7 **WHEREAS**, the Government of the Virgin Islands and the Virgin Islands Water
8 and Power Authority (“WAPA”) have limited access to investment-grade capital
9 markets; and

10 **WHEREAS**, the Government will require financial flexibility to assist WAPA with
11 a buyout of its infrastructure agreement, and meet other existing or pending financial
12 emergencies; and

13 **WHEREAS**, any loan to be made must be taken from public funds and accounts
14 of the Government of the Virgin Islands, but if these public funds and accounts are
15 insufficient, then loans, notes or other evidence of indebtedness may be obtained from
16 banks or other financial institutions or through public or private bond or note offerings;
17 and

18 **WHEREAS**, the Legislature’s grant of this financial flexibility to the Executive
19 Branch is not unprecedented, as similar actions have been taken in prior years; and

20 **WHEREAS**, it is the intent of the Legislature that short-term borrowing under this
21 act be used to address these issues and facilitate recovery projects; Now, Therefore,

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

23 **SECTION 1. Authority to issue revenue anticipation notes**

(a) The Government of the Virgin Islands, acting through the Commissioner of Finance, or the Virgin Islands Public Finance Authority, may engage in a Line of Credit Transaction (“LOC”) in FY 2023, in anticipation of the receipt of interest, taxes, rates, charges, and other local and federal revenues to be received, not inconsistent with section 8 of the Revised Organic Act of 1954 of the Virgin Islands, 48 U.S.C. § 1541-1645, as amended (the “Series 2023 Notes”). The proceeds of the LOC issued pursuant to this section may be applied to provide funds for any purpose for which the Government is authorized to use and expend monies, including but not limited to, current expenses, capital expenditures, and discharge of any obligations of the Government.

(b) The maximum principal amount of the debts outstanding at any given time must not exceed \$150,000,000, plus the associated fees, charges, and carrying costs associated with the issuance of any such debt or required reserves. The interest on this debt must not exceed a maximum interest rate of 9%. The notes must mature no later than the last day of Fiscal Year 2026.

SECTION 2. Authority of the Governor to borrow or pledge monies from public funds

With the exception of the Virgin Islands Insurance Guaranty Fund established pursuant to 33 V.I.C. § 3061, the Governor of the Virgin Islands, acting through the Commissioner of Finance, may utilize or pledge monies from any public fund of the Virgin Islands, in anticipation of collection of taxes and other revenues. Nothing in this section may be construed as authorizing any department or agency of the Government to use funds to hire additional, non-essential or replacement employees or to incur any obligation not authorized by FY 2023 appropriations acts for the operation

of the Government for the fiscal year beginning October 1, 2022 and ending September 30, 2023.

SECTION 3. Payment of the LOC

(a) The LOC Debt may be paid from the General Fund; however, the Debt may not be secured by a pledge of the full faith and credit of the Government of the Virgin Islands. The Debt must be secured by a pledge of and statutory lien on, and may be paid from the following sources, or a combination of:

(1) “Interest Collections”, consisting of Interest earned on all deposits held, to be collected by the Government of the Virgin Islands; and

(2) “Gross Receipts Tax Collections,” consisting of Gross Receipts Taxes, including any penalties and interest charges, paid to the Virgin Islands Bureau of Internal Revenue for deposit into the General Fund of the Government, pursuant to 33 V.I.C. § 43 (the “Gross Receipts Tax”), exclusive of such sums already committed by the Government of the Virgin Islands including:

(A) the first \$250,000 of the tax collected during each fiscal year required to be deposited into the Moderate-Income Housing Fund, pursuant to 33 V.I.C. § 3027(a)(3); and

(B) the amount of such revenues required to be remitted as security for the payment of bonds or notes, issued or to be issued under the Indenture of Trust, dated November 1, 1999, as amended and supplemented from time to time (collectively, the “Gross Receipts Tax Indenture”); and the Tax Increment Revenue Bond Indenture, dated September 1, 2009, of the Virgin Islands Public Finance Authority which are secured by such Gross Receipts Taxes; and

(3) “Income Tax Collections,” consisting of income tax revenues and proceeds paid into the Treasury of the Virgin Islands pursuant to Title 48, chapter 7, section 1397, of the United States Code; and

(4) Federal Grant Funds.

(b) In furtherance of the pledge of, and statutory lien on, the Gross Receipts Tax Collections authorized by this act, the Government shall covenant and agree for the benefit of the lenders or registered owners of the Series 2023 Notes that, for so long as the principal of, or interest accrued on, any Series 2023 Notes remain unpaid, the Government shall continue to:

(1) Take all steps necessary to ensure the receipt and continued collection of Gross Receipts Tax Collections;

(2) To the extent permitted by law, defend, preserve, and protect such pledge and statutory lien and all rights of the lenders or registered owners of the Series 2023 Notes against all claims and demands of third parties;

(3) Not impair, revoke, terminate or amend such pledge and statutory lien in any way that materially adversely affects the rights of any lenders or registered owners of the Series 2023 Notes;

(4) Not take any action that would, directly or indirectly, result in the repeal, rescission or termination of the Gross Receipts Tax or any successor provision of Virgin Islands law, or a reduction in collections of Gross Receipts Tax Collections or a restriction or reduction in application of the Gross Receipts Tax in general, if such action would materially adversely affect the rights of any lenders or registered owners of the Series 2023 Notes; and

(5) Not allow, permit, or suffer to exist any prior lien, attachment, or pledge, other than any liens and pledges authorized in this act, for the benefit of the lenders or registered owners of the Series 2023 Notes, of Gross Receipts Tax Collections.

(c) In furtherance of the pledge of, and statutory lien on, the Income Tax Collections authorized by this act, the Government shall covenant and agree for the benefit of the lenders or registered owners of the Series 2023 Notes that, for so long as the principal of, or interest accrued on, any Series 2023 Notes remain unpaid, the Government shall continue to:

(1) Take all steps necessary to ensure the receipt and continued collection of Income Tax Collections;

(2) To the extent permitted by law, defend, preserve, and protect such pledge and statutory lien and all rights of the lenders or registered owners of the Series 2023 Notes against all claims and demands of third parties;

(3) Not impair, revoke, terminate or amend such pledge and statutory lien in any way that materially adversely affects the rights of any lenders or registered owners of the Series 2023 Notes;

(4) Not take any action that would, directly or indirectly, result in the repeal, rescission or termination of Title 48, chapter 7, section 1397, of the United States Code, or any successor provision of federal law, or a reduction in collections of Income Tax Collections, if such action would materially adversely affect the rights of any lenders or registered owners of the Series 2023 Notes; and

(5) Not allow, permit, or suffer to exist any prior lien, attachment, or pledge, other than any liens and pledges authorized herein for the benefit of the lenders or registered owners of the Series 2023 Notes of Income Tax Collections.

(d) Notwithstanding anything to the contrary herein, the Series 2023 Notes may be paid from the General Fund; but may not be secured by a pledge of the full faith and credit of the Government of the Virgin Islands.

SECTION 4. Commissioner of Finance's detailed accounting of diverted funds and reporting.

Notwithstanding 3 V.I.C. § 177(b), relating to the annual audit of all government operations, upon the enactment of this act and until three years therefrom:

(a) The Commissioner of the Department of Finance shall maintain a detailed accounting of all monies diverted from any source of public funds to assist the Government with its operating costs and all proceeds from the LOC, including a description of the purpose for which the funds were used and the amount of funds used for the delineated purpose.

(b) The Commissioner of the Department of Finance shall submit a copy of the accounting records and detailed reports described herein to the Legislature at the end of every 2nd and 4th quarter, commencing on the fourth quarter of Fiscal Year 2023 and the second and fourth quarter of each fiscal year thereafter, while sums remain outstanding.

SECTION 5. Authority to negotiate, execute all agreements and pay expenses associated with any Series 2023 Notes

The Government of the Virgin Islands, acting through the Commissioner of Finance or the Virgin Islands Public Finance Authority may:

(a) Negotiate the final terms of any borrowing authorized by this act which may be procured pursuant to the terms of a multi-year credit facility;

(b) Execute and deliver all documents and agreements necessary or advisable in connection with any borrowing authorized herein; and

(c) Pay all expenses associated with the issuance of any Series 2023 Notes issued or incurred.

SECTION 6. Statutory lien created to secure payment of Series 2023 Notes.

(a) To secure the full and timely payment of all principal and interest on the LOC authorized under the Series 2023 Notes secured by a lien on the Gross Receipts Tax, in accordance with their respective terms, the lenders and registered-owners of the debts are granted and have a statutory lien on all Gross Receipts Tax Collections, subject to any outstanding Notes which may have a prior lien on such Gross Receipts Tax Collection, which statutory lien may be enforced as provided in any agreement or instrument entered into with the lenders or registered owners of the Series 2023 Notes.

(1) The statutory lien created by this subsection occurs automatically and automatically attaches and is perfected, valid, and binding from issuance of the Series 2023 Notes, without any delivery, notice or further act or agreement of any person.

(2) No instrument needs to be executed or delivered or recorded in any official record or in any government registry or office in order to perfect or continue this statutory lien or to establish or maintain the priority thereof. There shall be no commingling of the pledged Gross Receipts Tax Collections with any property or other revenues of the Government, or any Government entity or any other person that limits, defeats, impairs or interferes with this statutory lien, subject to any outstanding obligations which may have a prior lien on such Gross Receipts Tax Collection. This statutory lien is valid, binding, perfected and enforceable against all persons having claims of any kind in tort, contract or otherwise against the Government or its assets irrespective of whether such persons have notice of this lien. The statutory lien created on Gross Receipts Tax Collections by this subsection is and must be at all

1 times and for all purposes, subject and subordinate to the lien created by section 1(C)
2 of Act No. 7951 (2016).

3 (3) The Government shall covenant and agree for the benefit of the lenders or
4 registered owners of the Series 2023 Notes that for so long as any Series 2023 Notes
5 remain unpaid, in the event the Government discontinues the imposition of the Gross
6 Receipts Tax and substitutes another source of revenues in lieu thereof, the
7 Government shall add or substitute such source of revenues to pledge as security for
8 the payment of principal and interest on the Series 2023 Notes. Any such substitute
9 revenues are subject to the statutory lien created in this subsection and to any
10 agreement, lien or other imposition authorized by section 1(E) of Act 7951 (2016).

11 (b) To secure the full and timely payment of all principal and interest on the Series
12 2023 Notes secured by Income Tax, in accordance with their respective terms, the lenders
13 and registered owners of the Series 2023 Notes are granted and have a statutory lien on all
14 Income Tax Collections, which statutory lien may be enforced as provided in any
15 agreement or instrument entered into with the lenders or registered owners of the Series
16 2023 Notes.

17 (1) The statutory lien created by this subsection occurs automatically and
18 automatically attaches and is perfected, valid, and binding from issuance of the Series
19 2023 Notes, without any further act or agreement of any person.

20 (2) No instrument needs to be executed or delivered or recorded in any
21 official record or in any government registry or office in order to perfect or continue
22 such statutory lien or to establish or maintain the priority thereof. No commingling
23 of the pledged Income Tax Collections with any property or other revenues of the
24 Government, or any Government entity or any other person limits, defeats, impairs

1 or interferes with this statutory lien. This statutory lien is valid, binding, perfected
2 and enforceable against all persons having claims of any kind in tort, contract or
3 otherwise against the Government or its assets irrespective of whether such persons
4 have notice of such lien.

5 (3) The Government shall covenant and agree for the benefit of the lenders or
6 registered owners of the Series 2023 Notes that, for so long as any Series 2023 Notes
7 remain unpaid, in the event the Government discontinues the imposition of the
8 Income Tax and substitutes another source of revenues in lieu thereof, the
9 Government shall add or substitute such source of revenues to pledge as security for
10 the payment of principal and interest on the Series 2023 Notes. Any such substitute
11 revenues are subject to the statutory lien created in this subsection (c).

12 (c) The Government shall covenant and agree for the benefit of the lenders or
13 registered owners of the Series 2023 Notes that, for so long as any Series 2023 Notes
14 remain unpaid, the Government shall:

15 (1) Defend, preserve, and protect the statutory liens created in this Section 6
16 against all claims and demands of third parties, and

17 (2) Not impair, revoke, terminate, repeal, or amend any of such statutory liens
18 in any way that materially adversely affects the rights of any of the lenders or
19 registered owners of the Series 2023 Notes.

20 **SECTION 7. Enforcement**

21 (a) Pursuant to section 2 (b) of the Revised Organic Act of 1954 of the Virgin
22 Islands, as amended, 48 U.S.C. § 1541 (b), an action by any lender or registered owner of
23 the Series 2023 Notes or other party against the Government of the Virgin Islands or Public
24 Finance Authority related to enforcement or interpretation of the 2023 agreements

authorized under this act must be brought in the Territorial courts of the Virgin Islands, including an action:

(1) to collect overdue principal and interest on the Series 2023 Notes;

(2) to enforce the covenants and obligations of the Government set forth in the documents and agreements authorized under section 5; and

(3) to enforce the statutory liens created in section 6.

(b) Any other action not provided for under subsection (a) must be brought in a court of competent jurisdiction in the Virgin Islands.

SECTION 8. Expiration of the Government's authority to borrow and expiration of obligations to, and rights of, its obligations to lenders and registered owners of the Series 2023 Notes

(a) The authority for the Government to enter into agreements under section 1, and the authority for the Governor to borrow monies secured by a pledge of Government funds under section 2, expire on September 30, 2026.

(b) Notwithstanding subsection (a), in the event that a balance remains owed by the Government at the end of the term of the Series 2023 Notes, the Government shall have the option to convert any balance of the Series 2023 Notes plus any accrued and unpaid interest thereon to a term loan.

(c) All obligations of the Government to, and rights of the lenders and registered owners of the Series 2023 Notes expire upon payment in full of the principal of the Series 2023 Notes plus interest accrued thereon under this act.

BILL SUMMARY

The bill authorizes the Governor to utilize public government funds to create working capital to provide funds for any purpose for which the Government is authorized to use

1 and expend monies, including but not limited to, current expenses, capital
2 expenditures, and discharge of any obligations of the Government for the next 3 fiscal
3 years, beginning with 2023 and to issue a revenue anticipation note in the maximum amount
4 of \$150,000,000 to provide funding for authorized governmental operations.

5 **BR23-0485/March 27, 2023/**