

**Virgin Islands
Economic Development Commission**

Hotel Development Program

TITLE TWENTY-NINE Public Planning and Development
Chapter 23. Hotel Development Program

*** Current through Act 7661 of the 2014 Regular and Special Session ***

Chapter 23. Hotel Development Program

**As amended by Act 7661 passed by the Legislature of the Virgin Islands on September 30, 2014
and approved by the Governor on October 13, 2014**

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§ 1301. Short title

This chapter may be cited as the Hotel Development Act.

HISTORY: --Added Oct. 7, 2011, No. 7301, § 1, Sess. L. 2011, p. 183.

§ 1302. Legislative findings

The Legislature finds and declares that:

(a) The tourist, hotel and resort industry constitutes a major element of the Territorial economic structure;

(b) Additional hotel accommodations and tourist facilities and services are essential to the further development of the Territory's tourism industry;

(c) Additional hotel accommodations and tourist facilities have a direct impact on the local economy through construction, wages, and benefits and will grow the economy of the Virgin Islands;

(d) The provision of such additional accommodations and facilities, particularly on the island of St. Croix, is declared to assist in the economic growth, restoration, and revitalization of certain underdeveloped areas;

(e) To promote the tourism industry of the Virgin Islands it is essential to provide, Assistance for the planning, acquisition, construction, improvement, maintenance and operation of new hotels in the Territory;

(f) The development of additional hotel accommodations and facilities is calculated to result in a significant contribution to the general public welfare and prosperity of the Virgin Islands; and

(g) Using future gains in taxes to assist in the development of areas which would not happen solely through private investment in the reasonably foreseeable future has been proven to have a positive economic impact in their areas of operation.

HISTORY: --Added Oct. 7, 2011, No. 7301, § 1, Sess. L. 2011, p. 183.

§ 1303. Definitions

As used in this chapter, the following terms have the meaning set forth in this section:

(a) “Agreement” means the agreement between the Government and a developer which sets forth the terms and conditions for assistance for Project development under this chapter.

(b) “Authority” means the Virgin Islands Economic Development Authority established in section 1101 of this title.

(c) “Designated Casino Tax on Gross Revenue” means the gross revenue tax, pursuant to 32 V.I.C., Chapter 21, Section 514-515, generated from each proposed hotel development project under this chapter.

(d) “Designated Hotel Room Occupancy Tax” means the hotel room taxes, pursuant to 33 V.I.C., Chapter 3, Section 54, generated from each proposed hotel development project under this chapter.

(e) “Government Contingent Lease Guarantee” means an agreement by the Government to pay an obligation to make lease payments which is not currently due but may become due if a company fails to make scheduled lease payments, and which is limited to the delinquent amounts to remain current, and does not apply to the entire investment amount due.

(f) “Hotel Development Notes” means the debt incurred by the Developer for the approved Project, including but not limited to Hotel Revenue Bonds, Conventional Loans, Institutional Financing, Contingent Lease Guarantee or other financing issued to the eligible Project.

(g) “Program” means the Hotel Development Program established in section 1304 of this chapter.

(h) “Project” means a proposed hotel development under this chapter.

(i) "Trust Fund" means the Hotel Development Trust Fund established in section 1308.

HISTORY: -- Added Oct. 7, 2011, No. 7301, § 1, Sess. L. 2011, p. 184; amended Oct. 13, 2014, No. 7661, § 1(a), Sess. L. 2014, p. 288.

§ 1304. Program established, purpose

(a) The Hotel Development Program is established within the Virgin Islands Economic development Authority.

(b) The purpose of the Program is to encourage and promote Development of hotel facilities in the Virgin Islands and to provide incentives for the development and construction of hotels and resorts, including commercial facilities, and other hotel facilities for the accommodation and entertainment of tourists and visitors.

HISTORY: -- Added Oct. 7, 2011, No. 7301, § 1, Sess. L. 2011, p. 184.

§ 1305. Administration and powers

(a) The Authority shall administer a program designed to assist in the development of hotels, resorts and related hotel facilities to increase opportunities in tourism enterprises in the Virgin Islands so as to facilitate and to accelerate opportunity for employment in these enterprises, particularly of unemployed and underemployed residents of the jurisdiction in which the hotel investment is to be made.

(b) The Authority has the following powers in the administration of the Program:

(1) To assist those persons interested in building new tourist hotels and resorts or other related tourist facilities in the Virgin Islands by maintaining and disseminating information regarding financing available through private and public sources;

(2) To grant assistance in the construction of hotels and resorts facilities and related infrastructure by offering certain tax incentives;

(3) To review promptly and in reasonable order all applications and causes affecting the granting, suspension, renewal or revocation thereof for assistance under this chapter;

(4) To require and collect application and administrative fees and charges as the Authority determines to be reasonable in connection with the exercise of any power given to the Authority under this chapter;

(5) To assist developers to apply for and accept advances, loans, grants, contributions, gifts, donations, appropriations of funds and any other form of financial assistance from the Federal Government, or other private source for the purposes of this chapter; and

(6) To enter into any agreements or contracts and to execute any instruments necessary for the purposes of the Program, including a Contingent Lease Guarantee.

HISTORY: -- Added Oct. 7, 2011, No. 7301, § 1, Sess. L. 2011, pp. 184, 185; amended Oct. 13, 2014, No. 7661, § 1(b), Sess. L. 2014, p. 288.

§ 1306. Application and certification of Project; eligibility

(a) A person wishing to develop a hotel shall apply to the Authority on forms prescribed and made available by the Authority.

(b) Before a hotel development project is approved, the applicant must produce a letter of intent from a financial institution and a copy of all documents submitted to the financial institution. The application for certification must contain the following information:

(1) A pro forma projection of the revenues and expenses of the Project;

(2) An assessment of the financial feasibility of the Project;

(3) A schedule of the timing and phasing of the Project; and

(4) Such other information as the Authority may require.

(c) To be eligible for benefits under this chapter, the project must be:

(1) located on the island of St. Croix; or

(2) located on the island of St. Thomas, St. John or Water Island.

(d) The Authority shall establish by regulations comprehensive eligibility requirements for applicants' participation in the Program.

HISTORY: --Added Oct. 7, 2011, No. 7301, § 1, Sess. L. 2011, pp. 185, 186; amended Aug. 13, 2014, No. 7641, § 1, Sess. L. 2014, p. 200.

§ 1307. Approval or denial; agreement; cure of defects; reimbursement of costs

(a) After receipt of the criteria set forth in section 1306, the Authority shall certify or deny certification of the project under such procedures as may be established by regulations. In determining certification of the Project, the Authority shall consider the following criteria:

(1) Whether the project is financially feasible;

(2) Whether the project would likely result in the increase of tax revenues payable to the Government, with regard to hotel room occupancy tax and casino tax to be applied to payment of the project funding; and

(3) Whether the development would not happen solely through private investment in the reasonably foreseeable future.

(b) If upon consideration of the criteria set forth in subsection (a), the Authority decides to certify the project for approval by the Governor, the Authority shall execute an agreement between the Government of the Virgin Islands and the developer setting the obligations of the parties, on such terms and conditions the Authority shall establish by regulations.

(c) The agreement referenced in subsection (b) must be approved by the Governor.

(d) If the project does not comply with the criteria, the Authority shall so notify the developer in writing stating the areas the Project fails to meet the criteria. The Authority shall allow the development sponsor up to 60 days to cure and comply with any defects.

(e) The Authority shall pursuant to regulations require the developer to reimburse the Authority for all or part of the costs of the independent financial assessment conducted in reviewing the application and any other related costs incurred.

HISTORY: --Added Oct. 7, 2011, No. 7301, § 1, Sess. L. 2011, pp. 186, 187.

§ 1308. Hotel Development Trust Funds

(a) The Authority shall establish for each approved project a separate Trust Fund, which for the purposes of this chapter shall also be known as “the Project's Hotel Development Trust Fund” or the “Project's Fund”. Monies allocated to and deposited into the Project's Fund from the hotel and casino taxes generated from the approved project must be made available to the Authority, as revenue to be utilized towards reducing the Hotel Development Notes incurred for the development of the approved hotel. Existing hotel room taxes and casino taxes may not be used to fund the Hotel Development Trust Fund.

(b) The hotel occupancy taxes, pursuant to title 33 Virgin Islands Code, chapter 3, section 54 and the casino revenue tax pursuant to 32, Chapter 21, sections 514-515 generated from the approved project must be deposited into the Project's Hotel Development Trust Fund. For the purposes of this section, notwithstanding the provisions of title 32, Chapter 21, Sec. 514-515, as an option to the developer, and until the Developer's debt is paid, the maximum casino tax rate may be increased to 35%, Once the debt is retired the casino tax shall return to 12% according to the provisions of title 32, chapter 21, section 515.

(1) During the period that any hotel occupancy taxes or casino taxes are directed towards the payment of any loans owed by the developer, not less than 80% of the persons employed in the operation, maintenance, and management of the hotel facilities must be legal residents of the Virgin Islands for not less than 5 years prior to employment, or a graduate of a Virgin Islands high school; provided that upon application for a waiver from the Department of Labor:

(A) The Government, acting through the Department of Labor certifies that legal residents as defined under this chapter, with the necessary ability to perform the services required and in numbers sufficient to meet the needs for personnel for such employment are not available within the Virgin Islands for employment;

(B) The Department of Labor shall proceed to verify the facts stated in the application and unless it is determined that such application is without factual basis, promptly after the filing of such application, authorize the hotel operator to employ a greater percentage of non Virgin Islands residents for such period or periods that such non-availability of personnel exists;

(C) If the Government has not notified the hotel operator in writing within 14 days after the filing of the hotel operator's application that it has determined such application to be without factual basis, stating its reasons for such determination, then the hotel operator's application must be granted, subject only to the right of the Government to proceed to revoke the application as set forth in paragraph (2).

(2) Any authorization by the Government pursuant to subparagraphs (A) or (B) of subsection (1) may not be revoked except upon 30 days' notice to the hotel operator and after opportunity for the hotel operator to appear and be heard and present evidence with respect to the revocation.

(3) Notwithstanding any certification in effect by the Government, the Government shall cooperate with the hotel operator in an effort to make available for employment by the hotel operator and its affiliates a sufficient number of persons with appropriate aptitude, training and experience regardless of their nationality, domicile, residence or place of origin.

(4) In constructing hotel facilities, the hotel operators shall give preference in employment to residents of the Virgin Islands.

(5) Penalties. Any hotel operator found in violation of this subsection, after notice to the hotel operator and after opportunity for the hotel operator to appear and be heard and present evidence with respect to such violation, shall be have their tax subsidy decreased by 10% each month until the defect is cured. The decrease in tax subsidy shall be cumulative and shall be held in the Hotel Development trust fund until said defect is cured. The funds held may be released by the Authority upon notification from the Department of Labor that the hotel operator has complied with this section.

(c) The Authority may not expend, commit to expend or pledge an interest in any of the revenues held in the Project's Hotel Development Trust Fund.

(d) The dedications and contributions of the hotel room tax and casino tax revenues may not impair the existing obligations of the Government of the Virgin Islands or the Authority and may not include tax revenues that would violate the revised Organic Act of the Virgin Islands.

(e) Upon the adoption of the Resolution by the Authority of the Project, following ratification of the Agreement by the Governor, the Director of the Internal Revenue Bureau, as applicable, shall transfer to the Authority for deposit in the Project's Hotel Development Trust Fund, all tax revenues related to such Hotel Development Notes until the certification by the Authority that all development costs to be paid from the Hotel Development Trust Fund including the Hotel Development Notes have been paid in full.

(f) While Hotel Development Notes remain outstanding, the tax rates may not be reduced, if the reduction would impair the ability of the Developer to pay any costs to which the tax revenues have

been pledged or otherwise committed by the Authority, including the timely payments of debt service on the Hotel Development Notes.

(g) Hotel Development Notes of every issue may, by their terms, be payable solely out of the tax revenues pledged to and received in connection with an approved Project and deposited to the project's Hotel Development Trust Fund. The lien created to secure the Hotel Development Notes may not attach to any other assets of the Authority or the Government of the Virgin Islands and are special limited obligations of the Authority payable solely from the pledged tax revenues of the Project. The holders of the Hotel Development Notes have no right to require the imposition of any tax or establishment of any rate of taxation in order to obtain the amounts necessary to pay and retire such bonds.

SECTION 2.

The provisions of this Act expire December 31, 2020; with a two year extension for a maximum of five (5) years, if substantial permitting by an applicant is in process at the end of 2020.

SECTION 3.

(a) Any hotel project that is a beneficiary of the Hotel Development Program shall pay an annual sum to the Government of the Virgin Islands, to be deposited into the Tourism Revolving Fund to be used exclusively by the Department of Tourism for marketing as follows:

- (1) A project with an annual gross revenue of less than \$1,000,000;
- (2) A project with an annual gross revenue more than \$1,000,000 but less than \$5,000,000; and
- (3) A project with an annual gross revenue of \$5,000,000 or more.

(b) \$100,000 shall be reserved for the Board of Education exclusively for scholarships to students whose college major is Hotel Management.

(c) The \$100,000 set aside in paragraph (b) shall be split equally between the Districts of St. Croix and St. Thomas/St. John.

SECTION 4.

[Repealed]

SECTION 5.

(a) All beneficiaries under the Economic Development Authority and Hotel Development Act of 2011 shall contribute the sum of \$2,500 annually for the creation, development, management and maintenance of a database designed to recruit Virgin Islanders living abroad. This database shall be developed and managed by the Department of Labor, in collaboration with the Economic Development Authority.

(b) The database referred to in subsection (a) shall be created by the Department of Labor within ninety (90) days enactment of this Act.

(c) All payments made pursuant to this Section shall be made by January 31st of each year.

HISTORY: --Added Oct. 7, 2011, No. 7301, § 1, Sess. L. 2011, pp. 187-189; amended Aug. 13, 2014, No. 7641, §§ 1-3, Sess. L. 2014.

§ 1309. Government contingent lease guarantees

(a) The Virgin Islands Public Finance Authority (“PFA”) shall assist the Program by issuing Government contingent lease guarantees for appropriate projects, as required to carry out the purpose of this chapter.

(b) Any Government Contingent Lease Guarantee issued by the PFA must be limited solely to annual lease payments not to exceed \$20,000,000 annually in the event of a default, and may not cover the total obligation of the project proponent arising from a call on the guarantee.

(c) The guarantee term may not exceed 25 years.

(d) The Authority in conjunction with the PFA shall evaluate market conditions and relative project risks in granting a guarantee and conduct an annual review of project performance.

(e) The Authority and the PFA in its deliberations of a Government Contingent Lease Guarantee shall collaborate with the Department of Finance and Office of Management and Budget, for budgetary purposes before granting the guarantee.

(f) The PFA shall stipulate, in a contingent guarantee agreement, minimum criteria for triggering guarantee to satisfy default. The criteria must mitigate fiscal risk brought about by an unanticipated call on contingent lease guarantee and include remediation provisions.

(g) The Government contingent lease guarantee is secured by and has the full faith and credit of the Government of the Virgin Islands and is considered an off-balance sheet obligation for accounting purposes.

(h) Any change in the legal framework does not affect the contractual agreements executed under this section.

(i) The PFA shall complete the execution of each agreement for a lease guarantee within 45 days after its receipt of a completed application and all other information requested from the applicant.

HISTORY: -- Added Oct. 13, 2014, No. 7661, § 1(c), Sess. L. 2014, p. 288, 289.

§ 1310. Capitalization of account

Apply only to the St. Croix Program for two years after the effective date of this section, and thereafter apply territory wide. The account may be capitalized by initial cash deposit from proceeds of initial project funding; bank instrument such as Stand by Letter of Credit, General Fund appropriation; or any other arrangement determined necessary, including a fixed annual guarantee fee of no less than 1% of the total obligation of project proponent.

HISTORY: -- Added Oct. 13, 2014, No. 7661, § 1(c), Sess. L. 2014, p. 289.

§ 1311. Expiration of provisions

The provisions under sections 1309 and 1310 expire two years from their effective date unless farther action is taken by the Legislature.

HISTORY: -- Added Oct. 13, 2014, No. 7661, § 1(c), Sess. L. 2014, p. 289.