

VIRGIN ISLANDS CODE, TITLE 29, CHAPTER 12, §701-726

Statutes current through Act 7887 of the 31st Legislature, including all code changes through June 21, 2016

TITLE 29. Public Planning and Development Chapter 12. Economic Development and Incentives Subchapter I. Economic Development Program

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§ 701. Declaration of policy--Purpose--Contractual nature

The basic purposes and objectives of this subchapter are declared to be the promotion of the growth, development and diversification of and diversification of the economy of the Virgin Islands; to benefit the people of the Virgin Islands by discovering and developing to the fullest possible extent the human and economic resources available therein; the establishment and preservation of opportunities of gainful employment for residents of the Virgin Islands; the promotion of capital formation for the economic development of the Virgin Islands; the contribution of beneficiaries to the development of the educational system of the Territory; and the preservation of the environment, beauty and natural resources of the Virgin Islands; all of which purposes and objectives are declared to be in the public interest.

(a) To this end it is the policy and determination of the Government of the Virgin Islands that certain economic development benefits should be made available for development and expansion of such industrial or business activities as are determined, pursuant to this subchapter, to be in the public interest by advancing the growth, development and/or diversification of the economy of the Territory of the Virgin Islands.

(b) It is further the policy and determination of the Government of the Virgin Islands that the Commission established herein shall endeavor to encourage and assist in the creation, development and expansion of locally owned businesses and industries originating in the Virgin Islands.

(c) In order to establish the incentives offered hereunder on a firm, realistic and sure basis, the Government of the Virgin Islands further declares that it considers each certificate granting economic development benefits that may be issued under the provisions of this subchapter as being in the nature of a contract between such government and the beneficiary, and that the government shall not adopt any legislation impairing or limiting the obligation of such contract; provided, however, that this provision shall not affect the operation of section 722 of this subchapter.

(d) It is further the policy of the Government of the Virgin Islands that the Commission established herein shall endeavor to encourage and assist in the development of affordable housing in the Virgin Islands and the expansion of the local construction industry in the Virgin Islands by providing tax incentives for the production of affordable housing.

HISTORY: --Added July 17, 1972, No. 3263, § 1, Sess. L. 1972, p. 196; amended Sept. 23, 1975, No. 3478, § 1, Sess. L. 1975, p. 140; Dec. 8, 1986, No. 5224, § 1(1), Sess. L. 1986, p. 342; Mar. 19, 1990, No. 5523, § 11, Sess. L. 1990, p. 63.

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§ 702. Short title

This subchapter shall be known and may be cited as "The Virgin Islands Economic Development Program".

HISTORY: --Added July 17, 1972, No. 3263, § 1, Sess. L. 1972, p. 197; amended Sept. 23, 1975, No. 3748, § 1, Sess. L. 1975, p. 141.

§ 703. Definitions

As used in this subchapter, unless the context otherwise requires:

(a) "Commission" means the Virgin Islands Economic Development Commission created under this subchapter.

(b) "Director" means the Executive Director of Economic Development appointed pursuant to the provisions of this subchapter.

(c) "Industrial development benefits" or "benefits" means the various tax exemptions and tax subsidies for which beneficiaries may qualify under this subchapter.

(d) "Beneficiary" means any person, member of a partnership, partnership or corporation granted economic development benefits pursuant to the provisions of this subchapter.

(e) "Resident of the Virgin Islands" means

(1) any United States citizen currently domiciled in the Virgin Islands for one (1) year or more;

(2) a person who has attended a school in the Virgin Islands for at least six (6) years or is a high school or University of the Virgin Islands graduate and who is registered to vote in the Virgin Islands; or

(3) the holder of an alien registration receipt card (United States Department of Justice Form No. 1-151) domiciled in the Virgin Islands for one (1) year or more. A person shall demonstrate that he has been a resident for one (1) year or more for the purposes of this chapter using the date of issuance information from a W-2 form, a voter registration card, a permanent resident card, or a Virgin Islands driver's license.

(f) "Small business" means a Virgin Islands business which:

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(1) is engaged in the business of rum production, milk/dairy production, watch and jewelry manufacturing and assembly, product assembly, manufacturing other than jewelry and watch manufacturing and assembly, agriculture/food processing, Mari culture/food processing, marine industry, raw materials processing, hotels/guesthouses, transportation, telecommunications, service businesses, including, investment managers and advisors, research and development, business and management consulting, software development, e-commerce, call centers, high tech businesses, international public relations, international trading and distribution, businesses serving clients located outside the Virgin Islands, regulated utilities, banking, health care facilities, recreation facilities, and such other businesses or industries as the Commission may designate; and

(2) is certified by the Small Business Development Agency (SBDA) as meeting the statutory criteria for being awarded a SBDA loan.

(g) "Designated service business" means a business other than a Knowledge-Based Business or E-Commerce Business, as set forth in section 716(c) unless properly referred to the Commission as set forth therein:

(1) Commercial Distribution and Trading Services;

(2) Public Relations Services including but not limited to publicity, mail order firms;

(3) International Banking and Insurance entities that has been duly licensed under Title 9 and Title 22, Chapter 9, respectively of the VI Code;

(4) Business and Management Consulting Services (including but not limited to strategic accounting, economic, scientific services);

(5) Investment Managers and Advisors;

(6) Call Centers;

(7) Family Offices;

(8) Venture Capital Management and Investment;

(9) Investment Banking and Financial Services;

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(10) Film and Print Industry Activities (including news syndicate, still and motion pictures);

(11) Computer, Data, High Technology, E-Commerce and Call Services Center Businesses;

(12) Development/Engineering of Software, Blueprints, Intellectual Property;

(13) Medical (including Dental, Optical and Ophthalmological) laboratories and specialty medical services; and

(14) Any other businesses serving clients located outside the Virgin Islands deemed appropriate by the Commission.

(h) "Eligible local supplier" means a supplier certified by the Director as meeting the following criteria:

(1) As of the date of certification, the supplier has been licensed to do business in the Virgin Islands for at least one (1) year and has actually conducted business in the Virgin Islands for at least one (1) year.

(2) The supplier physically maintains its principal place of business within the Virgin Islands and maintains an inventory in the Virgin Islands appropriate to the size of its business.

(3) (A) In the case of an individual, the supplier must be a resident of the Virgin Islands.

(B) In the case of a firm or partnership, each member of firm or partnership must be a resident of the Virgin Islands (if such member is an individual) or the member must meet the requirements of paragraph (C) of this subsection (if such member is a corporation).

(C) In the case of a corporation, over 50% of the voting stock must be owned by natural persons who are residents of the Virgin Islands.

(i) For the purposes of this chapter, "corporation" shall include a limited liability company and "partnership" shall include a limited liability partnership if such limited liability company or limited liability partnership otherwise meets all of the requirements for economic development benefits.

HISTORY: --Added July 17, 1972, No. 3263, § 1, Sess. L. 1972, p. 197; amended Sept. 23, 1975, No. 3748, § 1,

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Sess. L. 1975, p. 141; Oct. 27, 1980, No. 4502, § 1(a), Sess. L. 1980, p. 237; Dec. 8, 1986, No. 5224, § 1(2)-(4), Sess. L. 1986, p. 342; Feb. 12, 1998, No. 6204, § 6(a), Sess. L. 1998, p. 99; Oct. 31, 1998, No. 6269, § 49, Sess. L. 1998, p. 468; Feb. 1, 2001, No. 6390, §§ 12, 15, Sess. L. 2000, pp. 408, 409; May 2, 2001, No. 6396, § 1, Sess. L. 2001, p. 10; amended Oct. 13, 2014, No. 7651, § 2(a), Sess. L. 2014, p. 250.

§ 703a. Additional definitions

In order to effectuate the policy and purpose of the Low and Moderate Income Affordable Housing Act of 1990, the following terms shall have the meaning ascribed to them herein:

(a) "Act" means the Low and Moderate Income Affordable Housing Act of 1990.

(b) "Affordable housing" means, with respect to living accommodations, a dwelling unit for which a household pays, with regard to a unit for sale, not more than the "applicable percentage" (determined by the VIHFA) of gross income for mortgage payments, property taxes, insurance and homeowners association fee, if any, and, with regard to a rental unit, not more than the "applicable percentage" of gross income for all shelter costs including utilities. The "applicable percentage" for purposes of this definition may be established by the VIHFA in a manner consistent with the various Federal housing programs designed to assist low and moderate income households.

(c) "Affordable Housing Development Agreement" means one or more agreements executed between and among an applicant for a development permit for affordable housing, the VIHFA and the Zoning Administrator providing for development of affordable housing units in accordance with an Affordable Housing Development Plan.

(d) "Affordable Housing Development Plan" means a plan submitted to the VIHFA, the Legislature and the Zoning Administrator in connection with a request for a development permit for affordable housing.

(e) "Affordable Housing Program" or "Program" means the Government's Program adopted pursuant to the Low and Moderate Income Affordable Housing Act of 1990, as from time to time amended, to facilitate development of affordable housing in the Virgin Islands.

(f) [Deleted.]

(g) "VIHFA" means the Virgin Islands Housing Finance Authority established pursuant to Title 21, chapter 2, section 103, Virgin Islands Code.

HISTORY: --Added Mar. 19, 1990, No. 5523, § 12, Sess. L. 1990, p. 63; amended May 3, 1994, No. 5978, § 3(f), Sess. L. 1994, p. 67; Apr. 1, 2008, No. 6973, § 17, Sess. L. 2007, p. 190.

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§ 704. Virgin Islands Economic Development Commission

(a) There is created a Virgin Islands Economic Development Commission. Such Commission shall be within, and shall constitute a subsidiary entity wholly administered and operated by the Economic Development Authority established in chapter 21 of title 29, Virgin Islands Code.

(b) The Commission shall be composed of the members of the Economic Development Authority established in chapter 21 of title 29, Virgin Islands Code.

(c) The Commission members shall meet, as soon as practicable, and organize, electing a Chairman, Vice Chairman and such other officers as may be deemed appropriate from among its members at the beginning of each calendar year.

(d) Persons appointed to fill vacancies on the Commission shall serve only the remainder of the term of the member replaced, which remainder shall not be considered a full term for the purpose of this subchapter.

(e) The Director, appointed pursuant to section 706 of this subchapter, shall serve, ex-officio, as Executive Secretary of the Commission.

(f) Non-government appointed members of the Commission shall receive compensation of \$ 150.00 per day while attending Commission meetings, plus necessary travel expenses incurred thereby.

(g) The Commission shall meet as required at the discretion and call of the Chairman on his own motion, or at the request of the Director with the concurrence of the Chairman or two Non-government appointed Commission members.

(h) A quorum for the transaction of Commission business shall be four (4) members, not more than three (3) of whom shall be from the same district.

HISTORY: --Added July 17, 1972, No. 3263, § 1, Sess. L. 1972, p. 197; amended Sept. 23, 1975, No. 3748, § 1, Sess. L. 1975, p. 142; Jan. 14, 1981, No. 4519, § 1(a), Sess. L. 1980, p. 255; Apr. 7, 1983, No. 4797, § 2, Sess. L. 1983, p. 27; Dec. 8, 1986, No. 5224, § 1(5), (6), Sess. L. 1986, p. 344; Sept. 28, 1990, No. 5636, § 1(l), Sess. L. 1990, p. 347; Dec. 28, 1990, No. 5666, § 5(b), Sess. L. 1990, p. 471; Dec. 28, 1995, No. 6090, § 12, Sess. L. 1995, p. 255; Mar. 20, 2000, No. 6344, § 8, Sess. L. 2000, p. 14; Feb. 1, 2001, No. 6390, §§ 7, 15, 18, 21, Sess. L. 2000, pp. 407-409, 420, 421; amended Oct. 13, 2014, No. 7651, § 2(b), (c), Sess. L. 2014, p. 251.

§ 705. Powers and duties of Commission

The Commission shall have the following powers and duties:

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(a) Based upon the investigation and recommendation of the Director, review all applications for economic development benefits, hold public hearings thereon as provided in section 717 of this chapter, and (1) subject to the Governor's approval, grant certificates for same, or (2) deny such certificate, which denial shall not be subject to review by the Governor.

(b) Based upon the investigation and recommendation of the Director, determine compliance of the beneficiary with the provisions of this subchapter and all regulations promulgated hereunder. The expenses of any investigation or any proceeding by the Commission to determine compliance by any beneficiary shall be borne by the beneficiary. If notified by the Commissioner of Labor that a beneficiary has violated the resident employment requirements of this subchapter, the Commission shall hold a hearing at which the beneficiary must show cause why its certificate should not be revoked, suspended, or modified.

(c) Subject to the Governor's approval, revoke, suspend or modify economic development certificates in accordance with the provisions of section 722 of this subchapter.

(d) In connection with any hearings or investigations required by the provisions of this chapter or any rules and regulations issued hereunder, to subpoena witnesses, records, and books, administer oaths and inspect properties and facilities with respect to which economic development certificates have been granted or applied for.

(e) Request and obtain from the Commissioner of Finance and the Director of Internal Revenue Bureau and the Director of the Office of Inspector General such auditing services as it deems necessary to the proper administration of this subchapter.

(f) Prepare and promulgate, in accordance with the provisions of Title 3, Chapter 35 of the Code, such rules and regulations as may be necessary to implement the provisions of this subchapter.

(g) Prepare and submit annual reports, including a summary of the proceedings of the Commission, to the Governor and each member of the Legislature containing data regarding all economic development benefits outstanding, and the beneficiaries of same.

(h) In addition to the Application Fee and Annual Compliance Fees, the Commission may also assess against an applicant or Beneficiary any

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extraordinary costs and expenses incurred to process the application or monitor the Beneficiary's performance of the terms and conditions of its Certificate. The cost and expenses may include but are not limited to the services of outside consultants necessitated by the Application or the Compliance Investigation.

(i) Notify the Office of the Lieutenant Governor of any corporation, joint venture, limited liability partnership, limited partnership or any other organization which has been approved for economic development benefits, within sixty (60) days of such approval; as well as prepare and submit an annual listing of all entities which are approved for benefits regardless of whether they are currently operational or not.

(j) Perform such other acts and functions within its area of responsibility as it may deem necessary in furtherance of the purposes of this subchapter.

HISTORY: --Added July 17, 1972, No. 3263, § 1, Sess. L. 1972, p. 198; amended Sept. 23, 1975, No. 3748, § 1, Sess. L. 1975, p. 143; Dec. 8, 1986, No. 5224, § 1(7)-(9), Sess. L. 1986, p. 344; Feb. 12, 1998, No. 6204, § 6(b), Sess. L. 1998, p. 100; Feb. 1, 2001, No. 6390, § 5, Sess. L. 2000, p. 13.

§ 706. Appointment of Director; salary, supporting personnel

(a) The Governor may appoint an Assistant Chief Executive Officer of the V.I. Economic Development Authority for economic development, which Assistant Chief Executive Officer shall assist the Chief Executive Officer in overseeing the operations of the Economic Development Program established by this subchapter. The Assistant Chief Executive Officer shall perform such services as directed by the Chief Executive Officer and shall receive such salary as may be recommended by the Commission and approved by the Governor.

(b) The Assistant Chief Executive Officer shall perform such duties with respect to the Economic Development Program or Industrial Park Development as assigned by the Chief Executive Officer.

HISTORY: --Added July 17, 1972, No. 3263, § 1, Sess. L. 1972, p. 198; amended Sept. 23, 1975, No. 3748, § 1, Sess. L. 1975, p. 144; April 7, 1983, No. 4797, § 5, Sess. L. 1983, p. 28; Jan. 19, 1984, No. 4888, Sess. L. 1984, p. 3; Feb. 1, 2001, No. 6390, § 22, Sess. L. 2000, p. 421.

§ 707. Powers and duties of Director

The Chief Executive Officer or at his direction, the Assistant Chief Executive Officer shall have the following powers and duties:

(a) Conduct preliminary investigations with regard to all applications for economic development benefits.

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(b) Submit his recommendations with regard to economic development benefits applications to the Commission as required under this subchapter.

(c) Advise the Commission regarding compliance by beneficiaries with the terms and conditions of their certificates and with the general requirements of this subchapter, and aid in the enforcement of all such conditions and requirements.

(d) Promote the economic development program by initiating contact and communication with prospective investors and, to the extent that funds are available therefor, cause to be produced and distributed such promotional literature, brochures and pamphlets, and place advertisements in such trade, industrial or other publications, as will adequately inform and familiarize prospective investors of investment opportunities, advantages and benefits in the Virgin Islands.

(e) Coordinate and expedite the prompt processing and payment of subsidy claims.

(f) Aid the Commission in the preparation of its annual budget proposed for consideration and approval by the Governor.

(g) Attend all meetings of the Commission and conduct such research and submit such reports as may be requested by the Commission.

(h) Actively and aggressively promote the economic development program, and, in so doing, undertake and carry out studies, research and investigations with respect to the establishment and expansion of industrial or business enterprises in the Virgin Islands.

(i) Hire and remove employees of the Commission and the Economic Development Park Corporation subject to the approval of the Board of Directors of the Economic Development Authority;

(j) Be responsible for the general administration of the Commission and the Economic Development Park Corporation; and

(k) Collect and assemble, or cause to be collected and assembled, information pertinent to carrying out the purposes of the Economic Development Park Corporation in providing industrial plants, equipment and facilities for the encouragement of new trade, industry and commerce and the expansion of existing trade, industry and commerce within the Territory.

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HISTORY: --Added July 17, 1972, No. 3263, § 1, Sess. L. 1972, p. 200; amended Sept. 23, 1975, No. 3748, § 1, Sess. L. 1975, p. 144; Feb. 1, 2001, No. 6390, § 23, Sess. L. 2000, p. 422.

§ 708. Specific requirements for granting of benefits

In order to qualify and remain eligible for benefits provided under this subchapter, an applicant specified in sections 713a through 715 of this subchapter must fulfill the following specific qualifications and requirements. The Commission may not require an applicant to meet qualifications or requirements in excess of those representations made by the applicant to the Commission during the application process as a condition of granting an initial certificate.

(a) Invest at least \$ 100,000, exclusive of inventory, in an approved industry or business that the Commission has determined to advance the economic well-being of the Virgin Islands and its people. The approved industries or businesses and their established categories are:

Category I -- Legacy Virgin Islands Industries -- including Rum Production, Milk/Dairy Production, Watch and Jewelry Manufacturing and Assembly.

Category II -- Product Assembly, Manufacturing, Repair and Maintenance and/or Export Operations (other than Historic VI industries) -- including but not limited to Agriculture/Mariculture and Food Processing, Marine and Aircraft Industry, Machine and Heavy Equipment, and Bottling and Packing.

Category III -- Facilities, Tourism and Communications Developments -- including Hotel/Guesthouses, Health Care, Recreation and Retirement Facilities, Transportation, Utilities (including Alternative Energy Industry) and Telecommunication.

Category IV -- Designated Services Businesses -- as defined in section 703(g).

(1) The Commission may approve other such industries or businesses as may be considered appropriate by the Commission and which a finding by the Commission has determined will advance the economic well-being of the Virgin Islands and its people, and the applicant of such industry or business has agreed to the investment and employment requirements along with any other such special conditions as agreed between the applicant and the Commission.

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(2) Any application that qualifies in two categories under this section, however, must be considered to be in the highest payment fee and term category for the purpose of this chapter. An applicant may apply in more than one approved industry or business, but two categories may not be combined in one certificate unless the businesses are integral to each other.

(3) In determining the amount of the investment undertaken by the applicant for purposes of this section:

(A) The assessed value of land and previously existing buildings (as assessed for tax purposes) used in the industry or business shall be included only to the extent that it does not exceed twenty (20%) percent of the investment undertaken; however, this provision does not apply to an industry or business of a nature in which investment in land and alteration or improvement thereof represents its primary investment factor.

(B) The fair market value of all equipment leased for a term of at least five years must be included in determining compliance with the investment requirement.

(C) The minimum investment required by this section may be reduced, if the Commission finds that the proposed industry or business will provide sufficient additional investment in workforce development and/or public educational projects, Enterprise Zone community redevelopment and revitalization projects, or community based organizations to justify the lower investment.

(b) In the case of a natural person, be a bona fide resident of the Virgin Islands with his principal place of business in the Virgin Islands and a citizen or legal resident of the United States; in the case of a partnership, limited liability company, trust or similar entity, be a partnership, limited liability company, trust or similar entity within the meaning of that term under the laws of the Virgin Islands with its principal place of business in the Virgin Islands; in the case of a corporation, be either incorporated under the laws of the Virgin Islands with its principal place of business in the Virgin Islands or under the laws of the United States, a state, territory, or commonwealth thereof, or a foreign country, and be duly registered to conduct business in the Virgin Islands.

(c) (1) In the case of a Virgin Islands corporation, receive income that is covered by section 934 of the Internal Revenue Code of 1986, as amended, as applicable in the Virgin Islands, and meet the requirements of any other

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applicable federal or local law, any implementation agreement, as amended from time to time, required under federal law, the provisions of this subchapter, and any rules or regulations promulgated under such laws of this subchapter.

(2) In the case of a partnership, limited liability company, trust or similar entity, meet the requirements of any applicable federal or local law, the provisions of this chapter and any rules or regulations promulgated under such laws or under this subchapter.

(d) Be the actual investor in the enterprise for which economic development benefits are sought and not a contractor, subcontractor or other person or corporation acting as an agent or in a similar capacity to the investor; provided, that corporate affiliates who are actual investors may also qualify for individual benefits.

(e) Meet such standards of ecological compatibility as may be established by federal and/or local law.

(f) (1) Employ at least ten (10) persons on a full time basis in such enterprise; and all employees in such enterprise shall, subject to the exceptions contained in section 711 of this subchapter, be residents of the Virgin Islands (as defined in section 703(e) of this subchapter); provided, however, that the applicant may employ fewer than ten such persons upon demonstrating to the Commission that the employment of this number of persons in his particular enterprise would not be economically feasible or practical, and upon a further finding by the Commission that the desirability of the proposed enterprise outweighs the fact that it is not labor intensive.

(2) An enterprise which is applying for economic development benefits as a Category IIA Enterprise engaged in non-labor intensive financial services shall be required to employ a minimum of five (5) full-time persons who, subject to the exceptions contained in section 711 of this subchapter, must be residents of the Virgin Islands.

(g) Comply with all federal and local laws, including anti-discrimination laws.

(h) Agree in writing to employ or contract, and to require all contractors retained by him to employ or subcontract, for services and to purchase goods, materials and supplies with and from those persons, firms and corporations who are residents of the Virgin Islands, or incorporated under the laws of the Virgin Islands, and who are duly licensed to do business in the Virgin Islands

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and have been so duly licensed for one year or more prior to the initial date of any such employment, contract, subcontract, or purchase. Each applicant shall agree in writing to invite competitive bidding, and require all contractors retained by it to invite competitive bidding for all such services, goods and materials pursuant to the publication requirements of title 31, section 236, of this Code, and to notify each bidder in writing of the name of the successful bidder and amount of its bid. Each applicant shall advise the Economic Development Commission, in writing with a copy to the Commissioner of Licensing and Consumer Affairs when goods and materials are not available under the above-defined Virgin Islands sources and demonstrate in writing of efforts to obtain such services, goods and materials, and to require contractors or subcontractors retained by the applicant to likewise comply with this requirement.

(i) For any applicant who proposes to do business on land adjoining any beach or shoreline of the Virgin Islands, agree to grant to the Government of the Virgin Islands a perpetual easement upon and across such land to the beach or shoreline to provide free and unrestricted access thereto to the public, which easement shall be duly recorded in the Recorder of Deeds upon the granting of a certificate of economic development benefits. This provision shall not be construed as requiring free use of private facilities, but only as requiring free access to the beach or shoreline to the general public as a condition precedent to the granting of economic development benefits.

(j) Meet any time restraints or deadlines imposed by the Commission with respect to the initiation of operations or construction activity; provided, that the Commission may extend any such time restraints or deadlines upon good cause shown by the beneficiary.

(k) Agree in writing to notify the Virgin Islands Employment Service as to the availability of employment by him or his subcontractors, the number of employees required, the occupational classification of such workers, and the applicable wage rate.

(l) In the case of an applicant whose investment, pursuant to subsection (a) of this section, is in excess of \$ 500,000.00, agree in writing to employ at least two individuals from the Welfare to Work Program, administered by the Labor and Human Services Department.

(m) Provide educational assistance to residents of the Virgin Islands in an amount and form which is acceptable to the Commission or provide a financial contribution to a fund established by the Commission, except that fifty percent of any such financial contribution must be designated for public school

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programs and initiatives and in addition, any entity receiving benefits under this subchapter shall contribute a minimum of \$ 3,000 annually to the Board of Education to be placed in the Territorial Scholarship Fund and used in accordance with the purpose of the fund; except that, this section shall not apply to beneficiaries under title 29 Virgin Islands Code, chapter 12, section 708b. As used in this subsection, educational assistance included all types of educational assistance including but not limited to vocational and other job training programs.

(n) Agree in writing to submit plans for a management-training program for approval by the Commission. The plan shall establish a program through which the beneficiary shall have as managers and officers, residents of the Virgin Islands, as defined in section 703(e) of this subchapter. The Commission shall use the beneficiary's organizational chart and job descriptions as the sole guide as to whether a beneficiary's employee is management or non-management. The Commission shall establish, by regulation, the requirements for management training programs as guidance for all beneficiaries and the reasonable number of Virgin Islands residents to be employed by each beneficiary in accordance with the specific normal requirements of the business cycle involved. The Commission shall report annually to the Governor the titles and compensation of all trainees who are placed in management positions by beneficiaries.

(o) The Commission is authorized to impose a monetary penalty for delinquent reports as required by the rules and regulations or by law. Any monetary penalties imposed by the Commission pursuant to this section shall be deposited into the Territorial Scholarship Fund, established pursuant to Title 17, section 171, Virgin Islands Code.

(p) Provide their employees additional leave from work, other than time applied to their annual leave, to participate and represent the Virgin Islands in athletic and sporting events.

(q) Establish and maintain an employee pension benefit plan, as provided under the Employee Retirement Income Security Act, 29, U.S.C. 1001 et seq., and an employee welfare benefits plan that includes medical insurance, vacation and sick leave or paid time off in amounts that are determined by the Board and reported as required by the Employee Retirement Income Security Act, 29, U.S.C. 1001 et seq.; however, the provisions of this subsection shall not apply to beneficiaries that qualify under section 708b, of this subchapter.

(r) (1) Except as provided in paragraph (2) of this subsection, agree in

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writing and require all contractors retained by him to purchase all insurance from resident insurance companies, agents, or brokers licensed to operate in the Virgin Islands.

(2) If a particular type of insurance is not available in the Virgin Islands, the applicant shall submit to the Commission written certification from the Office of Banking and Insurance that the insurance is unavailable.

(s) Establish and maintain a Donated Leave Program similar to the program established under title 3, chapter 25, section 583b, Virgin Islands Code.

HISTORY: --Added Sept. 23, 1975, No. 3748, § 1, Sess. L. 1975, p. 145; amended Oct. 27, 1980, No. 4502, § 1(b)-(d), Sess. L. 1980, p. 237; Dec. 19, 1984, No. 5031, § 1(a), (b), Sess. L. 1984, p. 412; Dec. 8, 1986, No. 5224, § 1(10)-(14), Sess. L. 1986, p. 345; Dec. 29, 1986, No. 5227, § 4, Sess. L. 1986, p. 383; May 5, 1998, No. 6228, § 21, Sess. L. 1998, p. 321; May 29, 1998, No. 6232, § 18, Sess. L. 1998, p. 332; Oct. 31, 1998, No. 6269, § 47, Sess. L. 1998, p. 468; Feb. 1, 2001, No. 6390, §§ 1, 4, 11, Sess. L. 2000, pp. 402, 404, 407; June 5, 2001, No. 6412, § 2, Sess. L. 2001, p. 37; June 17, 2002, No. 6508, § 1, Sess. L. 2002, p. 292; Dec. 23, 2003, No. 6634, § 57, Sess. L. 2003, p. 159; July 13, 2004, No. 6662, § 12, Sess. L. 2004, p. 19; Sept. 1, 2005, No. 6748, §§ 1(a)(1), (2), 6, 8, 9, Sess. L. 2005, pp. 205, 209, 210; July 19, 2006, No. 6842, § 1, Sess. L. 2006, pp. 102, 103; Sept. 22, 2006, No. 6864, § 18, Sess. L. 2006, p. 219; amended Dec. 27, 2012, No. 7470, § 1, Sess. L. 2012, p. 448; amended Oct. 13, 2014, No. 7651, § 2(f), Sess. L. 2014, p. 251.

§ 708a. Fees; application, compliance

The following fees shall be assessed against each applicant or beneficiary other than a Participant in the Small Business Program, for applications submitted beginning February 1, 2001.

	<u>Application Fee</u>	<u>Activation Fee</u>	<u>Annual Compliance Fee</u>
Category I	\$1,500	\$1,000	\$1,500
Category II	\$3,500	\$1,500	\$3,000
Category III	\$5,000	\$3,500	\$5,000
Category IV	\$5,000	\$2,500	\$7,500

All Application fees and Annual Compliance Fees collected pursuant to the provisions of this Act shall be deposited into the Industrial Promotion Fund, established pursuant to section 726 of this subchapter. Any fee adjustments may be made by the Commission on an annual basis, with the approval of the Governor, and such fee adjustments shall not exceed the Consumer Price Index for that year.

HISTORY: --Added Feb. 1, 2001, No. 6390, § 14, Sess. L. 2000, p. 409; amended Dec. 23, 2003, No. 6634, § 59, Sess. L. 2003, p. 160; Sept. 1, 2005, No. 6748, § 7(1), Sess. L. 2005, p. 209; amended Oct. 13, 2014, No. 7651, § 2(g), Sess. L. 2014, p. 252.

§ 708b. Small Business Program

(a) The Commission may with respect to a small business:

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(1) reduce the minimum investment requirement of section 708(a) of this subchapter to not less than \$ 20,000; and

(2) reduce the minimum employment requirement of section 708(f) of this subchapter to not less than two (2) employees. However, the participant shall hire one (1) Virgin Islands resident, as defined in section 703(e) of this subchapter, for every \$ 1,000,000 of net income prior to salaries.

(b) Notwithstanding section 713a(b) of this subchapter, the term for a participant in the Small Business Program is fifty percent of the otherwise applicable term that would apply to a participant in the Economic Development Program other than a participation in the Small Business Program. However, at the conclusion of the initial term, a participant in the Small Business Program may apply for an extension in accordance with section 715 of this subchapter.

(c) Notwithstanding and in addition to the residency requirements of section 708 of this subchapter, the participant shall agree in writing to purchase or build a home in the Virgin Islands within 18 months of obtaining benefits under this subchapter as evidence of permanent residency in the Virgin Islands and commitment to the Virgin Islands community.

(d) Notwithstanding the definition of "employer" set forth in title 24, chapter 3, section 62, of this Code, as amended, all participants in the Small Business Program established under this section are subject to the provisions of title 24, chapter 3, section 76, of this Code (1997 ed., 2000 supp.) relating to grounds for discharge of employees.

HISTORY: --Added Dec. 8, 1986, No. 5224, § 1(16), Sess. L. 1986, p. 346; amended May 2, 2001, No. 6396, § 2, Sess. L. 2001, p. 10; Sept. 1, 2005, No. 6748, § 7(2), Sess. L. 2005, p. 209; Sept. 20, 2011, No. 7279, § 1(1.), (2.), Sess. L. 2011, p. 151.

§ 708c. Tax credits or benefits for clean up and redevelopment activities

The Commission may provide tax credits or benefits under this subchapter for clean up and redevelopment activities by developers real property declared and certified to the Commission as Brownsfields sites under 12 V.I.C., chapter 14. The Commission shall promulgate rules and regulations to carry out the purpose of this section.

HISTORY: --Added Sept. 17, 2008, No. 7014, § 3, Sess. L. 2008, pp. 232, 233.

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§ 709. General guidelines to be applied by Commission

In addition to the specific requirements and qualifications of beneficiaries enumerated in section 708 of this subchapter, the anticipated pollution potential of an applicant's proposed industry and the applicant's needs for resources, utilities and social services shall be closely evaluated and considered by the Commission as a factor in determining whether an economic development certificate should be granted. Applicant's proposed enterprise should be one which would utilize human resources, which are available in the Virgin Islands at the time of application and meet the requirements of section 703(e), to the maximum while minimizing demands for public utilities services and social and other government services. Applicant's proposed business or industry should be compatible with existing businesses and industries in the Virgin Islands and should be of a nature that will utilize to the maximum degree local skills and intellectual capabilities while avoiding imbalances in the social and economic structure of the Virgin Islands community. The provisions of this section shall not be construed as being specific requirements, but shall serve only as general guidelines to be applied in determining whether economic development benefits should be granted.

HISTORY: --Added Sept. 23, 1975, No. 3748, § 1, Sess. L. 1975, p. 147.

§ 709a. Discrimination; hearing; certificate revocation

If after notice and hearing the Commissioner of Labor finds that the beneficiary or any contractor or any other agent of the beneficiary has wilfully practiced discrimination in employment based on sex, race or religion or to deny employment in serving or dispensing food or beverages solely by reason of sex, he shall certify his finding to the Commission, which shall revoke the beneficiary's certificate without need for further proceedings under section 722 of this subchapter.

HISTORY: --Added Sept. 23, 1975, No. 3748, § 1, Sess. L. 1975, p. 148.

§ 710. Employment of residents--Temporary permits

(a) Eighty percent of all persons employed by beneficiaries under this chapter shall be residents of the Virgin Islands; provided that, after the third year of operation, a beneficiary shall be required to have at least 20% of its management, supervisory and/or technical positions filled by residents of the Virgin Islands unless granted a waiver by the Commission.

A waiver shall be granted only when—

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(1) the Commissioner of Labor has certified that:

(A) he has not been able to recruit individuals to fill the positions;

(B) he has not been able to train individuals to fill the positions; or

(C) the beneficiary has demonstrated to the Commissioner of Labor that the beneficiary's training program has failed to provide individuals capable of filling the positions and that the beneficiary has made a public effort to recruit personnel for the positions; or

(2) when the Economic Development Commission has made a finding that the economic position of the beneficiary is such that the beneficiary cannot comply with the requirement without further erosion of its financial position or that the beneficiary cannot comply for such other practical reasons that the Commission has established by its rules and regulations.

(b) Each applicant employing nonresidents shall agree to either establish and conduct training classes for residents to fill the positions held by nonresidents or agree to subsidize the cost of training pre-selected resident employee applicants in a school or other facility not conducted by the applicant, which training procedures are further described under section 712 of this subchapter. However, an applicant may elect to meet the training requirements of this subsection by annually transferring \$ 2,500 to the Territorial Scholarship Fund (established under Title 17, section 171, Virgin Islands Code) for each nonresident employed by the applicant.

(c) When a nonresident employee is to be replaced by a resident employee pursuant to the requirements of this section, the employer shall give the nonresident employee 14 days notice of such fact prior to his termination.

(d) No resident employee of a beneficiary shall be laid off or have his work week reduced to provide employment for a nonresident.

(e) Any beneficiary who hires nonresidents shall bear the full responsibility for bonding and other procedures required by law for the employment of nonresidents.

(f) Wilful violation of this section by a beneficiary shall be cause for suspension, modification or revocation of his certificate pursuant to section 722 of this subchapter.

HISTORY: --Added July 17, 1972, No. 3263, § 1, Sess. L. 1972, p. 200; amended Sept. 23, 1975, No. 3748, § 1,

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Sess. L. 1975, p. 148; Dec. 8, 1986, No. 5224, § 1(17), Sess. L. 1986, p. 346; Sept. 11, 1992, No. 5809, § 1, Sess. L. 1992, p. 116; Feb. 1, 2001, No. 6390, § 15, Sess. L. 2000, p. 409.

§ 711. Powers and duties of Commissioner of Labor

(a) The Commissioner of Labor shall appoint a qualified and responsible employee of the Department of Labor to administer, supervise and enforce, or cause to be enforced the provisions of sections 710 and 712 of this subchapter, and in this connection may promulgate necessary rules and regulations, conduct such investigations and institute such remedial actions as may be required.

(b) Any beneficiary applying for permission to hire nonresidents in accordance with subsection (c), paragraph (2) of this section, shall submit a specification of the number of nonresident workers required and their occupational classifications and wage rates, to the Commissioner of Labor for review prior to any grant of permission to hire said nonresidents. Upon receiving said information and material, the Commissioner shall:

(1) promptly supply same to all labor unions operating in the Virgin Islands;

(2) at the expense of the beneficiary, to give public notice of such employment opportunity; and

(3) assist beneficiaries in the recruitment of residents.

It shall be the responsibility of the Commissioner of Labor to provide an evaluation of those residents available in the labor market with necessary skills suitable for employment by the beneficiary. All beneficiaries employing nonresidents shall annually prepare, and file with the Commissioner of Labor, a complete roster of all nonresidents and a detailed description of the positions held by such nonresidents. The Commissioner of Labor shall promulgate specific rules and regulations governing compliance with these requirements.

(c) A beneficiary may not employ a person who is not a resident of the Virgin Islands unless:

(1) after hiring the nonresident, at least eighty percent (80%) of the beneficiary's employees are residents of the Virgin Islands; or

(2) the Department of Labor has certified that:

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(A) the beneficiary requested the Department's assistance in filling the vacancy; and

(B) the Department was unable, within ten (10) working days after the beneficiary's request, to refer any qualified applicants to the beneficiary for employment.

(d) The Commissioner of Labor shall report all violations of the resident employment provisions of this subchapter to the Commission.

HISTORY: --Added July 17, 1972, No. 3263, § 1, Sess. L. 1972, p. 202; amended Sept. 23, 1975, No. 3748, § 1, Sess. L. 1975, p. 149; Dec. 8, 1986, No. 5224, § 1(18), Sess. L. 1986, p. 347.

§ 712. Training of employees

(a) Any applicant for economic development benefits proposing to employ persons who are not residents of the Virgin Islands shall, at the time of filing his application for benefits, submit to the Commissioner of Labor a comprehensive plan for the establishment and conduct of an occupational training program for the purpose of adequately training resident employees in the skills necessary for their employment by the applicant. The training program shall be approved and monitored pursuant to rules and regulations promulgated by the Commissioner of Labor.

(b) An employee who is engaged in training pursuant to this subchapter shall receive at least the minimum wage prescribed by law for trainees or apprentices.

(c) Any beneficiary who employs one (1) or more persons who are not residents of the Virgin Islands, other than a beneficiary who contributes to the Territorial Scholarship Fund in accordance with section 710, subsection (b) of this subchapter, shall establish or subsidize a training program in conformity with the comprehensive plan required under subsection (a) of this section, and shall maintain said program so long as any person who is not a resident of the Virgin Islands is employed by the beneficiary.

HISTORY: --Added July 17, 1972, No. 3263, § 1, Sess. L. 1972, p. 202; amended Sept. 23, 1975, No. 3748, § 1, Sess. L. 1975, p. 150; Dec. 8, 1986, No. 5224, § 1(19), (20), Sess. L. 1986, p. 348.

§ 713. [Renumbered.]

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§ 713a. Tax exemptions; tax subsidies; benefit options

(a) Each applicant granted an economic development certificate as hereunder provided shall be exempted from the payment of the following taxes:

(1) Taxes on real property to the extent that same is utilized in the business or industry for which an economic development certificate has been granted.

(2) Gross receipts taxes, except that this exemption shall not apply to the gross receipts of businesses operated by a concession or rental agreement on the premises of beneficiaries, including hotels, for which businesses separate licenses are required or which, as determined by the Commission, are not ordinarily related to, or do not constitute an essential part of, the operation of the beneficiary, and which businesses are not otherwise eligible for economic development benefits as a distinct enterprise.

(3) All excise taxes on building materials, tools, pipes, pumps, conveyor belts or other appliances, materials and supplies necessary for use in the construction, alteration, reconstruction or extension of the physical plant or facilities of the applicant.

(b) The Commission shall grant each approved applicant eligible for benefits provided under this section as follows:

(1) St. Thomas/St. John District approved applicants are entitled to 100% benefits for a period of 20 years if they remain in compliance with all the requirements of this chapter.

(2) St. Croix District approved applicants are entitled 100% benefits for a period of 30 years if they remain in compliance with all the requirements of this chapter.

(3) Approved applicants, or Board approved affiliates that make an initial or additional investment in the beneficiary business, in infrastructure, new construction, or refurbishment greater than Ten Million Dollars are entitled to 100% benefits for an additional period of 10 years if they remain in compliance with all the requirements of this chapter.

(4) Approved applicants, or Board approved affiliates, that make an initial, or additional investment in the beneficiary business, in infrastructure, new construction, or refurbishment greater than One Million Dollars but less than Ten Million Dollars, upon a finding by the Board of good cause, may be granted

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100% benefits for an additional period of 5 years if they remain in compliance with all the requirements of this chapter.

(5) Beneficiaries that remain in compliance with all the requirements of this chapter and their certificate are eligible for one 10-year extension at 100% of benefits. This extension must be recommended by the Commission and approved by the Governor, but does not require a public hearing.

(6) The Commission may consider and approve a lesser percentage of benefits and/or term of benefits, upon the request of the applicant.

(c) Tax exemptions and benefits shall be granted under this section only if the applicant granted an economic development certificate can provide certification from the Internal Revenue Bureau and Department of Finance that the applicant has filed and paid all taxes, penalties and interest and from the Office of the Lieutenant Governor that the applicant has filed its required annual report or has satisfactorily made agreement to pay the taxes or file the required reports.

(d) Existing beneficiaries may apply for a modification to take advantage of longer benefit period. Any modification of benefit period, when added to current period used, could not exceed the maximum period as if granted at time of initial approval. Any modifications shall be at the beneficiary's existing benefit level. Any increased benefits must be prospective only, with no retroactive benefits increase.

HISTORY: --Amended Sept. 23, 1975, No. 3748, § 1, Sess. L. 1975, p. 150; Oct. 27, 1980, No. 4502, § 1(e), Sess. L. 1980, p. 238; Jan. 8, 1982, No. 4665, §§ 11, 12, Sess. L. 1981, p. 294; Dec. 8, 1986, No. 5224, § 1(21), Sess. L. 1986, p. 348; July 30, 1987, No. 5270, § 2, Sess. L. 1987, p. 111; Feb. 1, 2001, No. 6390, § 2, Sess. L. 2000, p. 403; amended Oct. 13, 2014, No. 7651, § 2(h), (i), Sess. L. 2014, p. 252, 253.

§ 713b. Income tax reduction

(a) Each applicant, who is granted an economic development certificate, shall have his income tax liability, for income derived from the business or industry for which the certificate is granted, and income from investments described in section 713d(c)(2), reduced on a current basis, as provided in this section.

1. All exemptions granted under section 713a of this title shall be made available to the applicant hereunder.

2. The option to choose the term and the percentage of its tax exemptions, granted under section 713a(b) of this title, shall be made available to the applicant hereunder.

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3. Beneficiaries receiving subsidies of income taxes under this chapter prior to the effective date of this act who elect to have their income tax liability, or payments, date of this act who elect to have reduced on a current basis (after December 31, 1990), as provided in this section, must obtain a revised economic development certificate evidencing this election, along with the terms thereof, prior to its implementation; provided, that no increase in the term or in the percentage of benefit shall be granted under this section than appertained at the date of the election to have its income tax liability or payments reduced on a current basis. Notwithstanding section 715(a) of this subchapter, the Commission shall issue a revised certificate without public hearings, provided, that no beneficiary issued a certificate before January 1, 1987, and no successor beneficiary to whom benefits are transferred (from a predecessor beneficiary who received a certificate prior to January 1, 1987) may receive income tax exemptions prior to January 1, 1991.

4. An applicant may obtain the benefits effective only commencing with the first day of said applicant's taxable year for income tax purposes, or commencing one day after the due date for the payment of an installment of estimated income taxes by said applicant. If no payment of an installment of estimated income taxes by the applicant is due, then the date of commencement of the benefits under this section shall be the due date of such a payment if one were due from the applicant.

(b) An applicant shall be entitled to:

(1) reduce the amount of each payment of estimated income taxes by ninety percent (90%); and

(2) reduce his income tax liability shown on his income tax return for the taxable year by ninety percent (90%); for each of the remaining years specified in the revised economic development certificate granted him under the provisions of this section. In the case of estimated income taxes such reduction shall be prorated over the quarterly payments due, or constructively due by the applicant, and in the case of the determination of his income tax liability, by the entire amount of the subsidy thus constructively calculated.

(c) The reduction of income tax liability on a current basis of, or the reduction of income taxes otherwise payable by, applicants entitled to such reduction shall be applicable with respect to all of the computations, assessments, and collection of such income taxes, as provided by the 1954 Internal Revenue Code, as amended, and with respect to the payment of the estimated income

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taxes, as provided by sections 6105, 6153, 6154 and 6201 of the 1954 Internal Revenue Code, as amended.

(d) An individual whose permanent residence is in the Virgin Islands; a corporation which is organized under the laws of the Virgin Islands; or a corporation organized under the laws of the United States, or one of the states, territories or commonwealth thereof, whose principal office is located in the Virgin Islands, is presumed to continue to be permanently domiciled in the Virgin Islands for purposes of this section, unless it is established that such residency or domicile has been superceded by a new residence or domicile.

(e)(1) This subsection applies to:

(A) shareholders, members, partners, grantors, beneficiaries, or other direct or indirect owners who are bona fide residents of the Virgin Islands pursuant to section 932(c) of the Internal Revenue Code of 1986, as amended and who have been approved for tax reductions by the Economic Development Commission; and

(B) entities, including without limitation, corporations, trusts, partnerships and limited liability companies, established in, qualified, or registered to do business in the Virgin Islands which have been approved for tax reductions by the Economic Development Commission.

(2) The shareholders, members, partners, grantors, beneficiaries, or other owners referenced in paragraph (1) of this subsection are entitled to a ninety percent (90%) reduction on income taxes payable with respect to income derived from the dividends paid to them or the distributive share allocated to them by the beneficiary, as applicable, and which dividends or distributive shares are attributable to income derived from the business or industry for which the certificate is granted and income from investments described in section 713d(c)(2).

HISTORY: --Added Jan. 8, 1982, No. 4665, § 12, Sess. L. 1981, p. 294; amended Dec. 8, 1986, No. 5224, § 1(22), (23), Sess. L. 1986, p. 348; Feb. 1, 2001, No. 6390, § 13, Sess. L. 2000, p. 408; Sept. 1, 2005, No. 6748, § 3, Sess. L. 2005, pp. 206, 207.

§ 713c. Customs duty reduction

Notwithstanding any other law, raw materials and component parts (as defined by the Commission) brought into the Virgin Islands by a beneficiary for the purpose of producing, creating or assembling an article, good or commodity as a result of industrial or manufacturing processing such raw

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materials or component parts shall be imported into the United States Virgin Islands at a customs duty rate of one percent (1%).

HISTORY: --Added Dec. 8, 1986, No. 5224, § 1(24), Sess. L. 1986, p. 350.

§ 713d. Exemption and partial exemption of tax on interest and dividends; withholding

(a) Every person who receives a payment of dividends or interest subject to the tax imposed by section 871(a)(1) or 881 of the Internal Revenue Code (as it applies in the Virgin Islands) from an applicant granted an economic development certificate as hereunder provided, and every such applicant subject to a tax on a dividend equivalent amount imposed by section 884 of the Internal Revenue Code (as it applies to the Virgin Islands) shall be exempted from the payment of 100% of such tax on interest and of that percentage of such tax on dividends and dividend equivalent amounts as is determined pursuant to subsection (c) of this section, to the extent that such dividends, interest and dividend equivalent amounts are derived from or related to the business or industry for which the said certificate has been granted.

(b) An applicant granted an economic development certificate as hereunder provided shall be exempted from the requirement to withhold tax pursuant to sections 1441 and 1442 of the Internal Revenue Code (as it applies in the Virgin Islands) with respect to the payments and dividend equivalent amounts referred to in subsection (a) of this section to the extent that such payments and dividend equivalent amounts are exempt from the tax described in said subsection.

(c)(1) The percentage of exemption from tax on dividends and dividend equivalent amounts referred to in subsection (a) of this section shall be 60% unless the conditions of paragraph (2) of this subsection are met, in which case the percentage shall be 80%.

(2) The percentage of exemption of 80% shall apply with respect to the tax on dividends and dividend equivalent amounts paid by an applicant granted an economic development certificate who, at any time from the beginning of each taxable year that the certificate is in effect, but not later than ninety (90) days after the date of filing of the corresponding income tax return for such taxable year, places, invests, and maintains, for a fixed term of not less than (5) years, not less than fifty percent (50%) of its net income derived from the business or industry for which an economic development certificate has been granted for such year after the payment of the taxes provided by law, in the payment of the balance of the principal of any debt by

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law, in the payment of the incurred by the applicant for the acquisition of property to be devoted to said business or industry or in any of the following:

(A) obligations of the Government of the Virgin Islands or any of its instrumentalities;

(B) mortgage loans or loans guaranteed by an instrumentality or agency of the Government of the Virgin Islands or of the Government of the United States for the financing of the construction or acquisition or improvement of housing in the Virgin Islands;

(C) loans for the construction, expansion or purchase of industrial buildings or industrial land, and for the acquisition of machinery and equipment or working capital utilized in businesses or industries granted economic development benefits;

(D) loans of the Virgin Islands Government Development Bank;

(E) commercial loans in excess of one million dollars made to Virgin Islands borrowers or borrowers in the Virgin Islands that (i) have been rejected by, or not approved within 30 days from the date a written loan application has been made to, any licensed Virgin Islands financial institution; and (ii) bear interest at an interest rate of not less than five percentage points above the Federal Home Loan Mortgage Corporation's posted yield on the last business day of the month on thirty-year standard conventional fixed-rate mortgages committed for delivery within sixty days, rounded to the nearest one-fourth percent, which rate shall take effect (a) on the first day of the immediately subsequent month and continue in effect for the remainder of said month, and (b) apply to all commitments made by a beneficiary during such month. If for any reason, the Federal Home Loan Mortgage Corporation ceases its auction, temporarily or permanently, the index in the preceding sentence shall be based on the Federal Home Loan Bank Board's average monthly contract rate. All existing and future beneficiaries are permitted to make such loans without modification of their certificates;

(F) capital contributions in excess of one million dollars made to Virgin Islands business entities or business entities in the Virgin Islands. All existing and future beneficiaries are permitted to make such capital contributions without modification of their certificates.

(i) All loans and investments made under subparagraphs (E) and (F) must be registered with the Economic Development Commission within thirty days after the investment or loan was made.

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(ii) For the purposes of this paragraph, the prime interest rate is determined by the Lieutenant Governor pursuant to title 9, section 183 of the Virgin Islands Code.

(iii) All companies wishing to make loans under this section must register with and provide quarterly reports to the Office of the Lieutenant Governor.

(G) any other loans, obligations, or investments approved by the Governor and the Legislature of the United States Virgin Islands.

HISTORY: --Added Dec. 8, 1986, No. 5224, § 1(25), Sess. L. 1986, p. 350; amended Sept. 1, 2005, No. 6748, § 4, Sess. L. 2005, pp. 207, 208; Oct. 17, 2005, No. 6793, § 8, Sess. L. 2005, p. 354.

§ 713e. Tax exemptions for the production of affordable housing

(a) Notwithstanding any other provision of law to the contrary, in order to carry out the purposes of the Act, every person, firm, partnership, joint venture or corporation providing affordable housing pursuant to an approved Affordable Housing Development Agreement entered into with the Government of the Virgin Islands pursuant to the Virgin Islands Affordable Housing Program shall be entitled to an exemption from payment of the following taxes:

(1) all gross receipts taxes related to receipts, cash or accrued, derived from or directly connected with the production of affordable housing units under the Act, but if such receipts are derived from or effectively connected with the production of affordable housing units under the Act and other housing units or other types of construction, then the provider of affordable housing under the said Act must allocate the gross receipts between the housing units under the Act and the other construction, based on the provider of affordable housing's total cost of construction. The provider of affordable housing must only claim an exemption for the portion of the receipts allocated to the production of affordable housing units under the Act. The costs of any common facilities must also be allocated between the housing units under the Act and the other construction;

(2) all excise taxes on building materials, articles, supplies, goods, merchandise, tools manufactured or brought into the Virgin Islands on or after April 1, 1990, to be used or employed exclusively in the production of affordable housing units under the Act;

(3) all customs duties in excess of a 1% handling charge on all materials,

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goods, tools, equipment, articles and commodities imported into the Virgin Islands to be used exclusively for the production of affordable housing under an approved Affordable Housing Development Agreement under the program.

(b) In addition to the exemptions provided in subsection (a), every person, firm, partnership, joint venture or corporation qualifying under subsection (a) of this section, shall have all corporate and individual income tax liability reduced to zero for a period equal to the term of the applicable Affordable Housing Development Agreement or applicable construction, operation or management agreement with respect to income derived: (1) from the construction of affordable housing units under the Virgin Islands Affordable Housing Program; (2) from or effectively connected with the sale or rental of affordable housing under the Virgin Islands Affordable Housing Program, whether such housing is new construction, rehabilitated or improved; (3) from the operation or management of such affordable housing during the period in which it is not sold; or (4) where applicable, from the management of rental property, provided that, in addition to any prerequisites stated in the Act, the person seeking such exemption meets the following conditions:

(1) in the case of an individual or a partner in a firm or partnership or a participant in a joint venture, such person is a bona fide resident of the Virgin Islands, and in the case of a corporation, is created under the laws of the Virgin Islands;

(2) such person meets the requirements of subsection (b) of section 934 of the Internal Revenue Code of 1986, as amended, or any other applicable provision of federal law, and the provisions of this section 713e, or any regulations issued under such laws;

(3) such person undertakes to provide affordable housing as provided in the Act.

The exemptions granted in this section shall apply to any vendor of construction supplies and material for use in affordable housing projects pursuant to the Affordable Housing Program authorized by Title 29, chapter 16, Virgin Islands Code, in the same manner that such exemption is applied to providers of affordable housing.

(c) Notwithstanding any provision of law to the contrary, the exemption from payment of gross receipts taxes set forth in paragraph (1) of subsection (a) of this section, shall also be granted to all subcontractors for work performed on affordable housing projects pursuant to the Virgin Islands Affordable

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Housing Program in the same manner that such exemption is applied to providers of affordable housing.

(d) Any person entitled to the tax benefits hereby conferred shall apply to the Director under this subchapter for an appropriate certificate of tax exemption. Certificates shall be approved or disapproved by the Commission and the Governor in accordance with rules and regulations promulgated by the Commission. In considering an application for a certificate, the Director shall consult with the Department or the VIHFA as the case may be to determine whether the applicant for tax benefits hereunder is in default under the Affordable Housing Development Agreement signed by the applicant or under any other agreement or arrangement undertaken by the applicant in connection with the program.

(e) Subject to the approval of the Governor, the Commission shall issue rules and regulations, consistent with this section and the Act, as may be necessary and appropriate to implement this section.

(f) No loan made pursuant to any provision of this Act, including, without limitation, any loan to finance the construction, rehabilitation, improvement, or purchase of affordable housing under this Act, shall be considered a below-market loan for the purposes of section 7872 of the Internal Revenue Code of 1986, as amended. Accordingly, no interest in excess of the rate charged on a loan shall be imputed as income with regard to any loan made pursuant to any provision of this Act.

(g) A developer agreement with the Housing Finance Authority entered into by such Authority in connection with mortgage revenue bonds issued by such Authority before December 1, 1990, pursuant to the provisions of applicable Federal tax law shall be treated for all purposes of this section as an approved Affordable Housing Development Agreement entered into pursuant to the Affordable Housing Program for the production of affordable housing units under the Low and Moderate Income Affordable Housing Act of 1990, as amended.

(h) A developer who has entered into an Affordable Housing Development Agreement with the Virgin Islands Housing Finance Authority for the construction, rehabilitation or improvement of housing units under the Low and Moderate Income Affordable Housing Act of 1990, as amended, for a project included in an Affordable Housing Plan, which is approved pursuant to Title 21, chapter 2, Virgin Islands Code, shall automatically receive a certificate of exemption from taxes as provided under this section.

HISTORY: --Added Mar. 19, 1990, No. 5523, § 13, Sess. L. 1990, p. 64; amended June 8, 1990, No. 5575, §§ 1(b),

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2, Sess. L. 1990, p. 226; Jan. 3, 1991, No. 5694, Sess. L. 1990, p. 588; May 3, 1994, No. 5978, §§ 3(g), (h), 7, Sess. L. 1994, p. 67.

§ 713f. Virgin Islands Building Contractors Incentive Program

(a) There is established in the Virgin Islands Building Contractors Incentive Program to encourage local employment, to encourage investors to build more hotel rooms on the island of St. Croix, and to stimulate the Virgin Islands economy.

(b) A building contractor, subcontractor, hotel developer, supplier, or vendor providing construction services, building materials, supplies or related services to companies and developers that have invested in major hotel developments are eligible to participate in the Building Contractors Incentive Program. To qualify and remain eligible for benefits under this section:

(1) An applicant shall complete and submit to the Director an application for participation in the Program and provide the information requested by the Director.

(2) An applicant must be in compliance with all tax, licensing and other applicable laws of the Virgin Islands. The applicant shall provide certification from the Internal Revenue Bureau and Department of Finance that the applicant has filed and paid all taxes, penalties and interest and from the Office of the Lieutenant Governor that the applicant has filed its required annual report or has satisfactorily made agreement to pay the taxes or file the required reports.

(3) An applicant must, in the case of a natural person, be a bona fide resident of the Virgin Islands with his principal place of business in the Virgin Islands and a citizen or legal resident of the United States; in the case of a partnership, limited liability company, trust or similar entity, be a partnership, limited liability company, trust or similar entity within the meaning of that term under the laws of the Virgin Islands with its principal place of business in the Virgin Islands; in the case of a corporation, be either incorporated under the laws of the Virgin Islands with its principal place of business in the Virgin Islands or under the laws of the United States, a state, territory, or commonwealth thereof, or a foreign country, and be duly registered to conduct business in the Virgin Islands.

(4) An applicant must agree in writing to comply with all the applicable requirements of this subchapter, and agree in writing, as applicable to the applicant's business, to employ or contract, and to require all contractors retained by him to employ or subcontract, for services and to purchase goods,

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materials and supplies with and from those persons, firms and corporations who are residents of the Virgin Islands, or incorporated under the laws of the Virgin Islands, and who are duly licensed to do business in the Virgin Islands and have been so duly licensed for one year or more prior to the initial date of any such employment, contract, subcontract, or purchase, agree, where applicable to provide training in the applicant's trade, and agree to comply with any regulations promulgated under this section and conditions imposed in the certificate of tax exemption.

(c) Notwithstanding any other provision of this subchapter to the contrary, in order to carry out the purposes of the Building Contractors Incentive Program, every approved building contractor, subcontractor, hotel developer, supplier and vendor providing construction services, supplies, equipment and related services to companies and developers that are developing hotels in the Territory are entitled to an exemption from payment of the following taxes:

(1) all gross receipts taxes related to receipts, cash or accrued, derived from or directly connected with the development of hotels;

(2) all excise taxes on building materials, articles, supplies, goods, merchandise, tools manufactured or brought into the Virgin Islands on or to be used or employed exclusively in the production of hotel units under the section; and

(3) all customs duties in excess of a 1% handling charge on all materials, goods, tools, equipment, articles and commodities imported into the Virgin Islands to be used exclusively for the development of hotels.

(d) In addition to the exemptions provided in subsection (a), every building contractor, subcontractor, hotel developer, supplier and vendor qualifying under this section, shall have all corporate and individual income tax liability reduced to zero for a period equal to the period in which the beneficiary under this section provides services or supplies to a hotel development, or such other period as the Commission by regulation may determine.

(e) Any person entitled to the tax benefits conferred under this section shall apply to the Director under this subchapter for an appropriate certificate of tax exemption. Certificates must be approved or disapproved by the Commission and the Governor in accordance with rules and regulations promulgated by the Commission.

(f) Subject to the approval of the Governor, the Commission shall issue rules

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and regulations, consistent with this section as may be necessary and appropriate to implement the Building Contractors Incentive Program.

HISTORY: --Added Feb. 2, 2010, No. 7149, § 14(b), Sess. L. 2009, p. 413; amended Oct. 13, 2014, No. 7651, § 2(j), Sess. L. 2014, p. 253.

§ 714. Special provisions or limitations

(a) If the beneficiary owns and operates more than one enterprise in the Virgin Islands, benefits granted under this subchapter shall apply only to those specified in the certificate.

(b) With respect to a corporation, partnership, including a general partnership, limited partnership, limited liability partnership, or limited liability limited partnership, the Commission shall review the ownership structure, or the proposed ownership structure, of the corporation, partnership, limited liability company, trust or similar entity and may, upon review of the applicant's business plan or amended business plan, and consistent with the basic purposes and objectives of this subchapter, limit the number of shareholders, partners, owner or beneficiary of the entity. Any new shareholder, partner, owner or beneficiary added to the entity after its application has been approved may not claim benefits under this subchapter without the prior written approval of the Commission prior to the establishment of the new shareholder, partner owner or beneficiary of the entity. The Commission may adopt additional rules governing the approval of additional entities. The Commission shall provide to the applicant a written, detailed explanation of the basis for any withholding of approval.

(c) Any entity, including without limitation, a limited liability company, that is disregarded for income tax purposes pursuant to Treasury Regulation section 301.7701-3(b)(1)(ii), as applicable in the Virgin Islands, shall be similarly disregarded for all purposes of title 29, chapter 12 of the Virgin Islands Code, so that a beneficiary can establish directly or indirectly one or more such single-owner entities, and such entity or entities shall be considered to be a part of the beneficiary.

HISTORY: --Added July 17, 1972, No. 3263, § 1, Sess. L. 1972, p. 205; amended Sept. 23, 1975, No. 3748, § 1, Sess. L. 1975, p. 152; Jan. 8, 1982, No. 4665, §§ 13, 14, Sess. L. 1981, p. 296; June 7, 2004, No. 6675, § 27, Sess. L. 2004, p. 47; Sept. 1, 2005, No. 6748, §§ 1(b), 2, Sess. L. 2005, pp. 205, 206; Oct. 17, 2005, No. 6793, § 9, Sess. L. 2005, p. 354; amended Oct. 13, 2014, No. 7651, § 2(l), Sess. L. 2014, p. 253, 254.

§ 714a. Extended tax benefits for producers of Virgin Islands rum

(a) Notwithstanding any other law, Virgin Islands producers of Virgin Islands rum, who possess an economic development certificate, under the provisions of this subchapter, shall receive extended benefits under sections 713a and

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713b of this subchapter, for a period of time equal to the greater of (1) twenty (20) years from the date of enactment of this section, or (2) the period of time during which any bonds, issued by the Government of the Virgin Islands pursuant to 48 USC § 1574a(a) ("Matching Fund Bonds", in existence on the date of enactment of this section which remain outstanding. However, should the Government of the Virgin Islands after the enactment of this section, issue any new Matching Fund Bonds secured by United States excise taxes returnable to the Treasury of the Government of the Virgin Islands pursuant to section 28(b) of the Revised Organic Act of 1954 and section 7652(b) of the United States Internal Revenue Code, as amended, the period of time referenced in (2) hereof shall be the period of time during which any new Matching Fund Bonds remain outstanding.

(b) The provisions of section 715, of this subchapter, shall not apply to the provisions of this section.

HISTORY: --Added Oct. 6, 2000, No. 6360, § 18, Sess. L. 2000, p. 420.

§ 714b. Extended tax benefits for Virgin Islands processors and producers of milk and milk products

(a) Notwithstanding any other law, Virgin Islands processors and producers of milk and milk products, who possess an Economic Development Certificate, under the provisions of this subchapter, shall receive extended benefits under sections 713a, 713b, 713c and 713d of this subchapter, for a period of time equal to twenty-five (25) years from the date of enactment of this section.

(b) The provisions of section 715 of this subchapter shall not apply.

HISTORY: --Added Feb. 1, 2001, No. 6391, § 2(n), Sess. L. 2000, p. 453.

§ 714c. Extended benefits for watch and jewelry manufacturing and assembly business

(a) Notwithstanding any other law, watch and jewelry manufacturing and assembly businesses that possess an economic development certificate or an economic development certificate, under the provisions of this subchapter, shall receive extended benefits under sections 713a, 713b, 713c and 713d of this subchapter, for a period of time equal to the greater of (1) twenty (20) years from the date of enactment of this section, or (2) the period of time that the Federal Production Incentive Certificate Program provisions, which are set forth in the Harmonized Tariff Schedule of the United States, Supplement 1, Chapter 91, Additional U.S. Note 5 and Chapter 71, Additional U.S. Note, are in effect.

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(b) The provisions of section 715, of this subchapter, shall not apply to the provisions of subsection (a) of this section.

HISTORY: --Added Dec. 23, 2003, No. 6634, § 58, Sess. L. 2003, p. 159.

§ 715. Certificate modifications, extensions or renewals; reopening of industries

(a) Upon proper application or reapplication, public hearing and in compliance with all other relevant provisions of this subchapter pertaining to the grant of initial benefits, as determined and required by the Commission, any recipient of economic development benefits, granted either pursuant to this subchapter or under previously existing law, may be granted a modification of those benefits subject to the conditions stated herein.

(1) Benefits granted hereunder shall be pursuant to the provisions of this subchapter only, and not pursuant to the provisions of any previous law.

(2) The Commissioner of Labor shall certify the applicant's compliance with all labor laws, rules and regulations prior to extension, modification or renewal of benefits.

(3) All benefits granted under this section shall be subject to the approval of the Governor.

(b) The Commission shall not grant any modification of benefits under an existing certificate or grant a new certificate unless it is determined at the time of the application or reapplication for same that the industry or business of the applicant is deserving of the benefits applied for and that it will or continues to promote the economic development of the Virgin Islands.

However, the Commission shall not grant any extension or modification under an existing certificate if that industry or business is expanded as a result of a merger of a similar business or acquisition of an existing business.

In making such determination the Commission shall consider all of the following:

(1) The amount of additional investment utilized in improving or expanding existing equipment or facilities.

(2) Increase in employment of Virgin Islands residents and the progressive nature, or lack thereof, of the applicant's employment practices

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in general, including the scope and effectiveness of employee training programs designed to qualify Virgin Islands residents for employment or promotion within the applicant's industry or business.

(3) Whether the industry or business continues to be compatible with the ecology of the Virgin Islands.

(4) Such other criteria as are required to be applied in determining qualification for the initial economic development certificate under this subchapter as are appropriate, as determined by the Commission.

(c) Notwithstanding the other provisions of this section, and consistent therewith, it is specifically contemplated that this section may be utilized to permit the granting of exemption and subsidy benefits for the continuation or reopening of businesses or industries which have previously enjoyed such benefits but which the Commission deems to be a particular importance to the economy of the Virgin Islands and finds could not otherwise continue or reopen.

HISTORY: --Added July 17, 1972, No. 3263, § 1, Sess. L. 1972, p. 205; amended Sept. 23, 1975, No. 3748, § 1, Sess. L. 1975, p. 153; Dec. 2, 1999, No. 6333, § 32, Sess. L. 1999, p. 206; Sept. 1, 2005, No. 6748, § 14, Sess. L. 2005, p. 210; Oct. 26, 2010, No. 7233, § 54, Sess. L. 2010, p. 268; amended Oct. 13, 2014, No. 7651, § 2(m), Sess. L. 2014, p. 254.

§ 716. Applications to Director; report to Commission

(a) Applications for economic development benefits shall be filed with the Director on forms to be designed, printed and provided by him or at his direction. All applications of partnerships shall include a list of the names and addresses of the partners. All applications from a corporation shall include a statement listing the names and addresses of all persons, firms or corporations owning five or more percent of the stock or equitable interest in the enterprise filing the application, which statement shall specify the percentage of stock or equitable interest owned by each such listed person, firm or corporation and, in the case of such a firm or corporation, shall also specify the names of its directors and principal officers. All applications of limited liability companies shall include a list of the names and addresses of the members. If the applicant is granted an economic development certificate, the holder of such certificate shall annually file in the office of the Lieutenant Governor, not later than April 15, a report authenticated by the beneficiary's president, vice-president or other authorized officer or employee, listing the names and addresses of all persons owning five or more percent of the stock or equitable ownership in the benefitted business or industry of such certificate holder, which report shall specify the percentage of stock or equitable interest owned by each such listed person. The report must also include the names

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and addresses of all legal or equitable owners of such benefited business who have or will claim benefits under this subchapter as bona fide residents of the Virgin Islands. The Director shall carefully review all such applications and undertake such preliminary research and investigations, including, but not limited to the reputation, business background and experience of the applicant, as he deems necessary in formulating his recommendations with regard to same.

(b) The Director shall, within forty-five (45) working days after receiving an application for economic development benefits, submit such application to the Commission Chairman accompanied by a detailed report containing his findings and recommendations with regard to that application. The Director shall, prior to submitting his recommendations, consult with the Virgin Islands Planning Office and any other governmental department or agency possessing expertise regarding a particular application, and shall conduct such other investigations or inquiries as he deems appropriate. The Director may recommend that all economic development benefits available under this subchapter be granted or may recommend the certificate be denied outright or until such time as the applicant effects specific changes in his investment proposals.

(c) If an applicant under this section is an Electronic Commerce Business or e-Commerce Business or Knowledge-Based Business as defined in 17 V.I.C. § 482, the Director shall promptly, but no later than 10 days after receipt of the application, refer the applicant and application to the University of the Virgin Islands Research and Technology Park for consideration as a tenant and title 17 benefit recipient. If the Board of Directors denies benefits to the applicant, the Board shall no later than 10 days refer the application back to the EDA for consideration of granting Economic Development Benefits. The EDA and RT Park may promulgate joint regulations to implement this section.

HISTORY: --Added July 17, 1972, No. 3263, § 1, Sess. L. 1972, p. 207; amended Aug. 11, 1972, No. 3293, Sess. L. 1972, p. 430; Dec. 21; 1973, No. 3504, § 1, Sess. L. 1973, p. 295; Sept. 23, 1975, No. 3748, § 1, Sess. L. 1975, p. 154; Oct. 27, 1980, No. 4502, § 1(f), Sess. L. 1980, p. 238; Feb. 12, 1998, No. 6204, § 6(c), Sess. L. 1998, p. 100; Sept. 1, 2005, No. 6748, § 1(c), Sess. L. 2005, pp. 205, 206; amended June 18, 2014, No. 7632, § 7, Sess. L. 2014, p. 174.

§ 717. Action by Commission; public hearings

(a) Upon receiving the report and recommendations of the Director on a particular application the Commission shall, after due public notice, hold a public hearing on said application, of which a verbatim transcript shall be taken, at which hearing all interested parties, including members of the public, shall have an opportunity to appear and testify. After carefully considering all relevant factors regarding an application for economic development benefits,

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the Commission shall make its determination regarding whether said benefits should be granted or denied, and shall prepare and submit to the Governor and the applicant a detailed report containing its findings thereon.

(b) A finding that said benefits should be denied shall be final and not subject to review by the Governor, and the report submitted to the applicant shall constitute official notice of the denial of benefits. Said report of denial shall describe in detail the reasons for said denial and may specify changes in the investment proposal which would likely lead to a more favorable consideration of a future benefit application. If an application is disapproved, the applicant or beneficiary may petition the Commission, through a written petition to the Commission, in accordance with Rules & Regulations of the EDC, for reconsideration of action within 10 calendar days, excluding Sundays and holidays, from the date the disapproval is received by the applicant.

(c) A report finding that said benefits should be granted shall be subject to the approval of the Governor as provided in section 717a, and in this event the Commission shall submit the public hearing transcript and all other relevant data to the Governor along with its reports for the Governor's consideration.

HISTORY: --Added Sept. 23, 1975, No. 3748, § 1, Sess. L. 1975, p. 155; amended Oct. 13, 2014, No. 7651, § 2(n), Sess. L. 2014, p. 254.

§ 717a. Action by Governor and Commission

Upon receiving a finding from the Commission that economic development benefits applied for should be granted, the Governor shall proceed to make his determination as to whether to approve the Commission's finding.

(a) If the Governor approves the Commission's finding he shall certify his approval forthwith to the Commission, which shall then proceed to issue the appropriate certificate.

(b) If the Governor disapproves the Commission's finding, he shall certify his disapproval forthwith to the Commission, accompanied by specific reasons for the disapproval and, at the Governor's discretion, specifying changes in the investment proposal which would likely lead to his more favorable consideration of a future benefit application. The Commission shall then forward a copy of the Governor's disapproval and accompanying comments to the applicant, which copy shall constitute official notice of the denial of benefits.

(c) If, after 60 calendar days, excluding Sundays and holidays, have

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elapsed from the date of receipt of the Commission's findings, the Governor has neither actively approved nor disapproved the issuance of an economic development certificate, the issuance of said certificate shall be deemed approved, and the Commission shall then proceed to issue the appropriate certificate. However, if the Governor has concerns with a recommendation of benefits, the Governor has the option of returning a recommendation package to the EDC for reconsideration and thus stop the 60-day time limit in subsection (c). Upon a resubmission after reconsideration a new 60-day period commences.

HISTORY: --Added Sept. 23, 1975, No. 3748, § 1, Sess. L. 1975, p. 156; amended Oct. 13, 2014, No. 7651, § 2(o), Sess. L. 2014, p. 254.

§ 718. Contents of certificate

(a) An economic development certificate shall be issued by the Commission in the name of the Government of the Virgin Islands and shall bear the signature of the Commission Chairman. The certificate shall specify all of the following:

(1) In the case of a non-publicly owned corporation, a partnership, including a general partnership, limited partnership, limited liability partnership or limited liability limited partnership; a limited liability company; a trust, or similar entity, the names and addresses of all shareholders, partners, owners or beneficiaries.

(2) The line or lines of businesses for which benefits have been granted.

(3) The date by which the required financial investment shall have been completed by the beneficiary.

(4) The beneficiary may receive credit for capital investments that occur no earlier than the date the beneficiaries EDC application is deemed complete by the EDC.

(5) The specific commencement and termination dates for the benefits granted under the certificate.

(6) Such other conditions as the Commission shall deem appropriate, not inconsistent with the provisions of this subchapter or regulations promulgated hereunder.

(b) In addition to the foregoing specifications, the certificate shall include a recital that it is conditioned upon the performance and observance of same by

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the beneficiary within a period of time specified, and upon the final determination of the Secretary of the Treasury of the United States or his delegate, of compliance with the requirement of Internal Revenue Code section 934 or 936. Upon failure of the beneficiary to perform or observe the conditions as required by the Commission within the specified period, or any extension thereof granted for good cause shown to the Commission, the certificate shall be deemed to be of no force and effect, and the beneficiary shall pay or refund as the case may be, to the Government of the Virgin Islands the amount of any benefit actually received under the certificate. Upon a final determination by the Secretary of the Treasury of the United States or his delegate that the beneficiary has not complied with the requirement of Internal Revenue Code section 934 or 936, the beneficiary shall pay or refund, as the case may be, to the Government of the Virgin Islands, the amount of any subsidy benefits, based on income tax liability, actually received, or the amount of the reduction of income tax liability on a current basis for all the years of non-compliance.

HISTORY: --Added Sept. 23, 1975, No. 3748, § 1, Sess. L. 1975, p. 156; amended Jan. 8, 1982, No. 4665, § 15, Sess. L. 1981, p. 297; Dec. 8, 1986, No. 5224, § 1(26), Sess. L. 1986, p. 352; Sept. 1, 2005, No. 6748, § 1(d), Sess. L. 2005, p. 206; amended Oct. 13, 2014, No. 7651, § 2(p), Sess. L. 2014, p. 254.

§ 719. Transferability Voluntary Termination

(a) An economic development certificate granted under the provisions of this subchapter may be transferred, for the unexpired portion of the term of the certificate, to another person, corporation, partnership, who or which succeeds the beneficiary in carrying on or in operating the industry or business for which the certificate is granted, upon determination of the Commission that such person, corporation or partnership, is otherwise qualified to receive such benefits and provided the industrial or business activity with respect to which the certificate was granted is continued by the said person, corporation or partnership. Thereafter the transferor of the certificate shall lose all economic development benefits under this subchapter and shall be subject to the operation of the tax laws of the Virgin Islands.

(b) Requests by the beneficiary to terminate benefits prior to the expiration of benefits agreed to within the certificate must be put in writing to the Commission. The Commission may:

(1) Release the beneficiary from its stated monetary or contractual obligations to the EDC and the Islands; or

(2) Take any other reasonable action within the authority of the Commission as authorized in this chapter.

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(c) Any of the action in subsection (a) by the Commission does not release the EDC beneficiary from any other obligations, contractual agreements, laws, or regulations related to the beneficiary's activities with any other federal or local governmental entity or its obligation contractual or otherwise with other entities.

HISTORY: --Added Sept. 23, 1975, No. 3748, § 1, Sess. L. 1975, p. 157; amended Oct. 27, 1980, No. 4502, § 1(g), Sess. L. 1980, p. 238; amended Oct. 13, 2014, No. 7651, § 2(q), Sess. L. 2014, p. 254, 255.

§ 720. Computation and determination of subsidy

(a) The Director of the Virgin Islands Bureau of Internal Revenue, upon application for payment made by a beneficiary entitled to subsidy under the provisions of this subchapter and after audit, shall compute and determine currently the amount of such subsidy. Upon certification of the Director of the Economic Development Commission, the proper officers are hereby authorized to make payments of the subsidy in each case to the beneficiary entitled to receive the same from funds in the special account in the Treasury of the Virgin Islands designated as the "Economic Development Fund", as provided for in subsection (b) of this section.

(b) Import duties or income tax payments made by persons qualifying for Economic Development certificates under the provisions of this subchapter shall be covered into a special account in the Treasury of the United States Virgin Islands to be designated as the "Economic Development Fund". The proper officers are authorized, without further legislation, to pay the subsidies authorized under the provisions of this subchapter from moneys in such special account and to transfer, with the consent of the Legislature or if the Legislature is not in session then with the consent of the Committee on Finance, surplus fund in the special account not required for the payment of such subsidies into the General Fund of the Treasury of the Virgin Islands.

(c) In the case of any beneficiary who, in accordance with the applicable laws of the Virgin Islands, shall have applied for and been granted a redetermination of tax liability or taxes payable and a reduction in the amount of such tax liability or taxes payable has been granted pursuant thereto, the amount of subsidy determined for such beneficiary for the taxable years affected shall be accordingly adjusted by the Director of the Virgin Islands Bureau of Internal Revenue and such beneficiary shall be required to refund the excess of subsidy received for the said taxable years, together with interest at the rate of nine (9%) percent per annum from the date the beneficiary received the subsidy, or otherwise realized the subsidy benefit;

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provided, that said subsidy return, including accrued interest, may be offset or credited against any tax refund due to the beneficiary.

HISTORY: --Added July 17, 1972, No. 3263, § 1, Sess. L. 1972, p. 208; amended Sept. 23, 1975, No. 3748, § 1, Sess. L. 1975, p. 158; May 11, 1977, No. 3977, Sess. L. 1977, p. 66; Jan. 14, 1981, No. 4519, § 1(b), (c), Sess. L. 1980, p. 255; Feb. 1, 2001, No. 6390, § 15, Sess. L. 2000, p. 409.

§ 721. Limitation of claims or deductions

No claim or deduction by a beneficiary from income tax liability to the Virgin Islands for any taxable year based upon subsidy benefits provided for under this subchapter shall be allowed or made after the expiration of two years from the time the tax was paid.

HISTORY: --Added July 17, 1972, No. 3263, § 1, Sess. L. 1972, p. 209; amended Sept. 23, 1975, No. 3748, § 1, Sess. L. 1975, p. 158.

§ 722. Revocation, suspension or modification of certificate

Subject to the approval of the Governor, an economic development certificate granted in accordance with the provisions of this subchapter may be revoked, suspended or modified by the Commission, after due notice, public hearing and written findings by the Commission that:

(1) the beneficiary has failed to maintain compliance with the requirements of this subchapter, or any regulation hereunder; or

(2) in the case of a corporation, upon finding submitted to the Commission by the Attorney General of the Virgin Islands that the corporation:

(A) has been dissolved; or

(B) has filed, or there has been filed against the corporation, a petition in bankruptcy which has been approved; or

(3) the beneficiary has failed to file an annual report of ownership as required by subsection (a) of section 716 of this subchapter; or

(4) the beneficiary, or in the case of a corporate beneficiary, any officer acting in behalf of the corporation, has been convicted of a felony connected with the operation of the beneficiary's business or industry; or

(5) (A) the beneficiary, or in the case of a corporation an officer acting in behalf of the corporation, has given or offered, or caused to be given or offered, a bribe, or any money, property, or value of any kind, or any promise

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or agreement therefor, to a public officer, or to a person executing any of the functions of a public office, or to a person elected, appointed or designated to thereafter execute the same, with intent to influence him with respect to any act, decision, vote, opinion or other proceedings, in the exercise of the powers or functions which he has or may have pertaining in any way to the economic development program. In addition to the fine and/or imprisonment provided in Title 14, section 406 of the Virgin Islands Code for this offense, any benefit granted or obtained as a result of such act, decision, vote, opinion or other proceeding shall be void as to the briber and/or recoverable from the briber as the circumstances of the particular case may dictate.

(B) The Commission may also suspend or modify the certificate of a beneficiary, or in the case of a corporate beneficiary, any officer or member acting on behalf of the corporation or in the case of a partnership any partner acting on behalf of the partnership, that is the subject of federal or local law enforcement charges or investigations connected with the operation of the beneficiary business. Such suspension must be reviewed by the Commission after resolution of any investigation or charges.

HISTORY: --Added July 17, 1972, No. 3263, § 1, Sess. L. 1972, p. 210; amended Sept. 23, 1975, No. 3748, § 1, Sess. L. 1975, p. 159; amended Oct. 13, 2014, No. 7651, § 2(r)(1), (2), Sess. L. 2014, p. 255.

§ 723. Penalty for violations

(a) The Commission shall promulgate a schedule of fines for violation of any provision of this subchapter and the Beneficiary's Certificate within 90 days of the effective date of this section and submit the schedule of fines to the Governor for approval.

(b) If any Beneficiary shall violate any provision of this subchapter, any rule or regulation promulgated hereunder, or provision of its Economic Development Certificate, or shall fail or refuse to perform any duty, requirement or lawful order made by the Commission, such beneficiary, after notice and the opportunity of a hearing, shall be fined in accordance with the schedule of fines under subsection (a) of this section. These fines shall be deposited into the Industrial Promotion Fund. In construing and enforcing the provisions of this section, the act, omission, or failure of any officer, agent, or person acting for or employed by any Beneficiary, acting within the scope of employment, shall, in every case be deemed to be an act, omission, or failure of such Beneficiary.

(c) The Attorney General of the Virgin Islands, at the request of the Commission, shall forthwith bring appropriate action to compel adherence to, or enjoin violations of any lawful orders of the Commission issued pursuant to

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this subchapter, and to recover in the name of the Government of the Virgin Islands the penalties provided herein.

HISTORY: --Added Feb. 1, 2001, No. 6390, § 6, Sess. L. 2000, p. 406.

§ 724. Appeals

Any applicant or beneficiary aggrieved by any action of the Commission or the Governor under the provisions of this subchapter shall be entitled to judicial review thereof by appealing to the District Court of the Virgin Islands within 30 days after final decision by the Commission or Governor. Upon such review all findings, decisions or determinations by the District Court shall be deemed final in the absence of conclusive showing to the court of fraud or misrepresentation.

HISTORY: --Added Sept. 23, 1975, No. 3748, § 1, Sess. L. 1975, p. 159.

§ 725. False or fraudulent statements or representations; false claims for benefits

Any applicant or beneficiary who shall willfully make any false or fraudulent statement or representation as to any fact required or appropriate to the determination of the qualifications of eligibility of such applicant or beneficiary for benefits under this subchapter, or for the continuation or extension of the same, or who shall willfully make or present any claim for benefits under this subchapter knowing such claim to be false, fictitious or fraudulent, shall be fined not more than \$ 25,000 or imprisoned not more than two years, or both. In addition to the foregoing, any benefits previously granted under this subchapter to such applicant or beneficiary shall be deemed automatically revoked, without necessity for the procedures established under section 722 of this subchapter; all taxes that were otherwise due and payable by such applicant or beneficiary but for the tax exemption benefits granted, shall become due and payable as of the date or dates when, but for such tax exemption, they would have been due and payable, and the same shall be assessed and collected in accordance with the provisions of the applicable tax laws in force for such date or dates; and the amount or amounts of all subsidy benefits, based on income tax liability, actually received, shall be deemed debts due and owing to the Government of the Virgin Islands as of the date or dates when payment of subsidy was made.

HISTORY: --Added Sept. 23, 1975, No. 3748, § 1, Sess. L. 1975, p. 160.

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§ 726. Industrial Promotion Fund

There is established in the Treasury of the Virgin Islands a special account to be known as the "Industrial Promotion Fund" (hereinafter, the "Fund"). The Fund shall contain all appropriations made by the Legislature to the Fund for promotional activities and other purposes, and all monies deposited therein, pursuant to section 705 of this subchapter shall remain available until expended. Expenditures from the Fund shall be made in accordance with law. The Director shall be the certifying officer for the Fund.

HISTORY: --Added Dec. 8, 1986, No. 5224, § 1(27), Sess. L. 1986, p. 352; amended Feb. 1, 2001, No. 6390, § 9, Sess. L. 2000, p. 407.