

BILL NO. 35-0058

Thirty- Fifth Legislature of the Virgin Islands

March 24, 2023

An Act amending title 29 Virgin Islands Code, by adding a chapter 25 to enact The Public-Private Partnership Agreement Act

PROPOSED BY: Senator Marise C. James

Be it enacted by the Legislature of the Virgin Islands:

SECTION 1. Title 29 Virgin Islands Code is amended by adding a chapter 25 that reads as follows:

“§ 1501. Short title

This chapter may be referred to and cited as “The Public-Private Partnership Agreement Act.”

§ 1502. Legislative findings, intent, and purpose

(a) The Legislature of the Virgin Islands finds that there is a public need for the construction or upgrade of facilities that are used predominantly for public purposes, and that it is in the public’s interest to provide for the construction or upgrade of these facilities.

(b) The Legislature also finds that:

(1) There is a public need for timely and cost-effective acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, operation, implementation, or installation of projects serving a public purpose, including airport and

1 seaport facilities, educational facilities, transportation facilities, water or wastewater
2 management facilities and infrastructure, technology infrastructure, roads, highways,
3 bridges, and other public infrastructure and government facilities within the Virgin
4 Islands that serve a public need and purpose, and that the public need may not be wholly
5 satisfied by existing procurement methods.

6 (2) There are inadequate existing local methods of procurement and financing to
7 develop these public infrastructures and government facilities for the benefit of residents
8 of the Virgin Islands, and a public-private partnership has demonstrated that it can meet
9 the needs by improving the schedule for delivery, lowering the cost, and providing other
10 benefits to the public.

11 (3) There may be local and federal tax incentives that promote partnerships
12 between public and private entities to develop and operate qualifying projects.

13 (4) A procurement under this chapter serves the public purpose if the
14 procurement facilitates the timely development or operation of a qualifying project.

15 (c) It is the intent of the Legislature to encourage investment in the Virgin Islands by
16 private entities; to promote the financing mechanisms, private capital, and other funding
17 sources for the development, management, and operation of qualifying projects to meet the
18 needs of the public; and to provide the greatest possible flexibility to public and private entities
19 contracting for the provision of public services.

20 (d) The purpose of a public-private partnership is to establish the goals, structure, roles,
21 and responsibilities of a collaborative working relationship between the Government of the
22 Virgin Islands and nongovernmental private partners. To ensure that these partnerships further
23 the interests of the people of the Virgin Islands, to preserve the integrity of the Government of
24 the Virgin Islands, and to avoid actual or apparent impropriety, the responsible public entity or
25 appropriate designated public officials may enter into partnerships only in accordance with the
26 provisions of this chapter. The public-private partnership must:

1 (1) Promote the development, financing, and operation of quality infrastructure
2 projects or services that serve the needs of the people of the Virgin Islands;

3 (2) Promote the use of private sector capital and resources to reduce the total
4 costs of public infrastructure projects or services; and

5 (3) Provide a well-defined mechanism to facilitate and manage collaboration
6 between the Government of the Virgin Islands and private entities.

7 **§ 1503. Definitions**

8 As used in this chapter, except as otherwise specifically provided, the term:

9 (a) “Affected local jurisdiction” means the island, town, or district in which all
10 or a portion of a qualifying project is located.

11 (b) “Comprehensive Agreement” means an agreement between one or more
12 private entities and one or more responsible Government of the Virgin Islands
13 department, agency, or office, contractually providing for the arrangements and
14 responsibilities of all parties in developing or operating a qualifying project in a public-
15 private partnership.

16 (c) “Develop” means to plan, design, finance, lease, acquire, install, construct, or
17 expand.

18 (d) “Fees” means rates, costs, or other charges imposed by the private entity
19 partner on a qualifying project or service for use of all or part of a qualifying project
20 pursuant to a comprehensive agreement.

21 (e) “Interim agreement” means an agreement that authorizes the temporary
22 activities by the private entity partner related to the qualifying project during the
23 negotiation of a comprehensive agreement.

24 (f) “Lease payment” means any form of payment, including a land lease, by a
25 public entity to the private entity for the use of a qualifying project.

1 (g) “Material default” means a nonperformance of its duties by the private entity
2 of a qualifying project, as outlined in a comprehensive agreement, that jeopardizes
3 adequate service to the public from a qualifying project and is not remedied following
4 notice and a reasonable cure period.

5 (h) “Operate” means to finance, maintain, improve, equip, modify, or repair, or
6 operate a qualifying project.

7 (i) “Private entity” or “private partner” means any natural person, corporation,
8 general partnership, limited liability company, limited partnership, joint venture,
9 business trust, public benefit corporation, nonprofit entity, other private business entity,
10 or combination thereof.

11 (j) “Project labor agreement” means an agreement that sets forth the terms and
12 conditions for employment of manpower for a qualifying project and must, to the extent
13 possible, enhance employment opportunities for individuals residing in the affected local
14 jurisdiction.

15 (k) “Proposal” means any material, document, and plan with details beyond a
16 conceptual level prepared by or on behalf of a private entity, relating to a qualifying
17 project for which all terms determined to be necessary by the responsible public entity,
18 including costs, payment schedules, financing, deliverables, and project schedule, are
19 defined.

20 (l) “Public building, road, structure, infrastructure, or facility” means any site
21 building, road, structure, infrastructure, or facility used or to be used by the Government
22 to house a government function or functions, including any infrastructure or facility used
23 or to be used by the public or in support of a public purpose or activity.

24 (m) “Public-private agreement” means the agreement between a private entity
25 and the responsible public entity relating to the development, financing, or operation of
26 a qualifying project entered into under the provisions of this chapter.

1 (n) “Qualifying Project” means the development, construction, reconstruction,
2 repair, alteration, improvement, extension, operation, and maintenance of any public
3 road, structure, facility, or infrastructure that is used or will be used by the public at large
4 or in support of a public purpose or activity, including, but not limited to:

5 (1) airport or seaport facility;

6 (2) hospital, other medial healthcare, or nursing care facility;

7 (3) sporting, cultural, or recreational facility;

8 (4) civic or educational facility or other building that is used or will be used
9 by a public educational institution;

10 (5) transportation facilities such as roads, bridges, public transit systems,
11 ferry, port facilities;

12 (6) water, wastewater, water management facility, or other related
13 infrastructure; and

14 (7) telecommunications facilities.

15 (o) “Responsible public entity” means any department, board, commission,
16 committee, authority, agency, officer, or other political subdivision of the Government
17 or combination of entities, or other entity that serves a public purpose and is authorized
18 to develop or operate a qualifying project.

19 (p) “Revenues” means all revenues including income; earnings; dedicated tax
20 revenues; fees; lease payments; federal, and local appropriations or the appropriations of
21 other funds available to any department, agency, authority, or instrumentality thereof;
22 bond proceeds; equity investments, service payments, or any combinations thereof
23 arising out of or in connection with supporting the development or operation of a
24 qualifying project, including money received as grants or otherwise from the United
25 States of America, from any public entity, or from any agency or instrumentality of the
26 foregoing in aid of the a qualifying project.

1 (q) “Service contract” means an agreement between a responsible public entity
2 and a private entity that defines the terms of the services to be provided with respect to a
3 qualifying project.

4 **§ 1504. Proposal procedures**

5 (a) A responsible public entity may receive unsolicited proposals or may solicit
6 proposals from private partners for the development or operation of a qualifying project and
7 may thereafter enter into a comprehensive agreement with a private entity, or a consortium of
8 private entities, for the building, upgrading, operating, ownership, or financing of facilities.

9 (b) A request for proposal for a qualifying project must be advertised in a newspaper
10 of general circulation or on an appropriate public internet site for not less than 90 days before
11 the date established for submission of the proposals. The request for proposal must include
12 relevant technical submissions, documents, and the evaluation criteria to be used for the
13 selection of the respondent.

14 (c) If the qualifying project includes design work, the solicitation for proposal must
15 include a design criteria package prepared by an architect, a landscape architect, or an engineer
16 licensed in the Virgin Islands. The responsible public entity shall exercise its best effort to
17 retain the licensed design professional who prepares the design criteria package to serve on the
18 project until its completion. The design package must include sufficient, specific, relevant
19 information such as:

- 20 (1) the legal description of the site, with survey information;
- 21 (2) interior space requirements;
- 22 (3) material quality standards;
- 23 (4) schematic layouts and conceptual design criteria for the qualifying project;
- 24 (5) cost or budget estimates;
- 25 (6) design and construction schedules; and
- 26 (7) site development and utility requirements.

1 (d) If the responsible public entity receives an unsolicited proposal for a qualifying
2 project and the responsible public entity intends to enter into a comprehensive agreement for
3 the project, before entering into a comprehensive agreement, the responsible public entity shall
4 publish notice in a newspaper of general circulation at least once a week for two weeks. The
5 notice must:

6 (1) state that the responsible public entity has received a proposal and will accept
7 other proposals for the same project;

8 (2) set the timeframe within which the responsible public entity may accept other
9 proposals; however, the timeframe for allowing other proposals must not be less than 21
10 days, but not more than 120 days after the initial date of publication; and

11 (3) invite the public to submit to the responsible public entity written comments
12 on the project's potential impact or compatibility with local budgets and infrastructure
13 plans.

14 (e) A responsible public entity may not charge a fee to cover the costs of processing,
15 reviewing, and evaluating proposals received in response to a solicited proposal request and
16 may establish a reasonable application fee to cover the cost to process and review an unsolicited
17 proposal.

18 (f) A private entity that submits an unsolicited proposal shall pay an initial application
19 fee, as determined by the responsible public entity. Payment must be made by cash, cashier's
20 check, or another noncancelable instrument. Personal checks may not be accepted.

21 (g) If the initial application fee does not cover the costs to evaluate the unsolicited
22 proposal, the responsible public entity shall make a written request for the additional amounts
23 required. The private entity shall pay the requested additional amounts not later than 30 days
24 after receipt of the notice. The responsible public entity may stop its review of the unsolicited
25 proposal if the private entity fails to pay the additional amounts. The responsible public entity
26 shall return the application fee if it does not evaluate the unsolicited proposal.

1 (h) If the responsible public entity chooses to evaluate an unsolicited proposal
2 involving architecture, engineering, or landscape architecture, it shall request a professional
3 review and evaluation of the proposed design and construction by an architect, a landscape
4 architect, or an engineer licensed in the Virgin Islands to ensure material quality standards,
5 interior space utilization, budget estimates, design and construction schedules, and sustainable
6 design and construction standards consistent with public projects. The cost of the professional
7 review and evaluation must be covered by the application fee.

8 (i) Upon submitting a proposal, a private partner shall identify those portions of a
9 proposal that the partner considers to be a trade secret or confidential commercial, financial, or
10 proprietary information and provide any justification why the responsible public entity may
11 not disclose the materials upon request. For material to be exempt from disclosure, a private
12 partner shall fully comply with all applicable territorial laws.

13 (j) Patent information are covered until the patent expires. Other information, such-as
14 originality of design or records of negotiation, are protected under this section until a
15 comprehensive agreement is reached. Projects under federal jurisdiction or using federal funds
16 must conform to federal regulations and are subject to information disclosure under the
17 Freedom of Information Act.

18 **§ 1505. Finding of public interest**

19 (a) The responsible public entity may enter into a comprehensive agreement for the
20 development or operation of a qualifying project only after a due diligence review and a finding
21 that the proposed project:

22 (1) benefits the public;

23 (2) is for a facility that is owned by the responsible public entity or for a facility
24 for which ownership will be conveyed to the responsible public entity upon completion,
25 expiration, or termination of the comprehensive agreement and upon payment of the
26 amounts financed;

1 (3) has adequate safeguards in place to ensure that additional costs or service
2 disruptions are not imposed on the public if there is a material default or cancellation of
3 the comprehensive agreement by the responsible public entity; and

4 (4) has adequate safeguards in place to ensure that the responsible public entity
5 or private entity can add capacity to the proposed project or other facilities serving similar
6 predominantly public purposes.

7 (b) The responsible public entity shall also consider:

8 (1) the qualifying project cost; revenues by source; available financing; internal
9 rate of return on private investments, if governmental funds are assumed in order to
10 deliver a cost-feasible project; and a total cash-flow analysis beginning with the
11 implementation of the project and extending for the term of the comprehensive
12 agreement;

13 (2) the advantages or disadvantages of developing or operating the qualifying
14 project as a public-private partnership versus a traditional procurement, including the
15 anticipated cost over the project life cycle, adjusted for risk and risk transfers;

16 (3) sources of funding and financing for the qualifying project;

17 (4) the general reputation, qualifications, industry experience and financial
18 capacity of the private partner;

19 (5) the proposal's compatibility with Virgin Islands infrastructure plans;

20 (6) any comments received from the public on the project's potential impact or
21 compatibility with local budgets and infrastructure plans; and

22 (7) any other criteria that the responsible public entity considers appropriate.

23 **§ 1506. Project approval requirement**

24 (a) Before entering into a comprehensive agreement with a private partner, the
25 responsible public entity shall obtain information to show that the partnership will serve the
26 desired purposes and protect the valuable associated resources of the Virgin Islands.

1 (b) The responsible public entity shall:

2 (1) obtain an independent audit of the proposed private-public partnership,
3 including an assessment of projected usage and public costs;

4 (2) as necessary, engage consultants and experts at any point to assist in the
5 evaluation, negotiation, development, or operation of qualifying projects; and

6 (3) consider a reasonable finance plan; the qualifying project cost; revenues by
7 source; available financing; major assumptions; internal rate of return on private
8 investments, if governmental funds are assumed to deliver a cost-feasible project; and
9 perform a total cash-flow analysis, beginning with the implementation of the project and
10 extending for the term of the comprehensive agreement.

11 (c) In addition to the requirements set forth in subsection (b), for an unsolicited
12 proposal, the responsible public entity shall require the private entity to submit a technical
13 study prepared by a nationally recognized expert with experience in preparing analysis for bond
14 rating agencies. In evaluating the technical study, the responsible public entity may rely upon
15 internal staff reports prepared by personnel familiar with the operation of similar facilities or
16 the advice of external advisors or consultants who have relevant experience.

17 (d) Unless waived by the responsible public entity, the private entity shall provide:

18 (1) a description of the qualifying project, including the conceptual design of the
19 facilities or a conceptual plan for the provision of services, and a schedule for the
20 initiation and completion of the qualifying project;

21 (2) a description of the method by which the private entity proposes to secure the
22 necessary property interests that are required for the qualifying project;

23 (3) a description of the private entity's general plans for financing the qualifying
24 project, including the sources of the private entity's funds and the identity of any
25 dedicated revenue source or proposed debt or equity investment on behalf of the private
26 entity;

1 (4) any pricing or financial terms included in an unsolicited proposal must be
2 specific as to when the pricing or terms expire;

3 (5) the name and address of a person who may be contacted for additional
4 information concerning the proposal;

5 (6) the proposed user fees, lease payments, or other service payments over the
6 term of a comprehensive agreement and the methodology for and circumstances that
7 would allow changes to the user fees, lease payments, and other service payments over
8 time; and

9 (7) additional material or information that the responsible public entity
10 reasonably requests.

11 **§ 1507. Project qualification and process**

12 (a) The private entity, or the applicable party or parties of the private entity's team,
13 shall meet the minimum industry professional standards to be awarded the qualifying project.

14 (b) The responsible public entity shall take certain safeguards to ensure that:

15 (1) Provision is made for the private entity's performance and payment of
16 subcontractors, including, but not limited to, surety bonds, letters of credit, parent
17 company guarantees, and lender and equity partner guarantees; and

18 (2) The most efficient pricing of the security package provides for the
19 performance and payment of subcontractors.

20 (c) For the components of the qualifying project which involve construction
21 performance and payment, bonds are required and are subject to the recordation, notice, suit
22 limitation, and other requirements of 31 V.I.C. § 236 or other applicable provisions.

23 (d) After the public notification period has expired for an unsolicited proposal, the
24 responsible public entity shall:

1 (1) Rank the proposals received in order of preference; taking into consideration
2 factors that include, but are not limited to professional qualifications, general business
3 terms, innovative design techniques or cost-reduction terms, and finance plans;

4 (2) Perform an independent analysis of the proposed public-private partnership
5 which demonstrates the cost-effectiveness and overall public benefit before the
6 procurement process is initiated or before the contract is awarded; and

7 (3) Charge a reasonable fee to cover any additional costs of processing,
8 reviewing, and evaluating the proposal, including, but not limited to, reasonable attorney
9 fees; fees for financial and technical advisors or consultants; independent experts to
10 review, analyze, and advise the responsible public entity; and for other necessary advisors
11 or consultants.

12 (e) The responsible public entity may then begin negotiations for a comprehensive
13 agreement with the highest-ranked private entity. If the responsible public entity is not satisfied
14 with the results of the negotiations, the responsible public entity may terminate negotiations
15 with the highest-ranked private entity and negotiate with the second-ranked or subsequent-
16 ranked private entities.

17 (f) If only one proposal is received, the responsible public entity may negotiate in good
18 faith with that private entity, if the proposal meets the project approval requirements. If the
19 responsible public entity is not satisfied with the results of the negotiations, the responsible
20 public entity may terminate negotiations with the private entity.

21 (g) The responsible public entity may reject all proposals at any point in the process
22 until a contract with an acceptable proposer is executed.

23 **§ 1508. Project approval**

24 (a) The responsible public entity may approve the development, construction, repair,
25 alteration, improvement, extension, operation, or maintenance of a public infrastructure or a
26 government facility if:

1 (1) The responsible public entity solicited proposals for the qualifying project or
2 there is a public need for, or benefit derived from a project of the type that the private
3 entity proposes as the qualifying project;

4 (2) The estimated cost of the qualifying project is reasonable in relation to similar
5 facilities; and

6 (3) The private entity's plans will result in the timely acquisition, design,
7 construction, improvement, renovation, expansion, equipping, maintenance, or operation
8 of the qualifying project.

9 (b) Approval of a qualifying project is subject to entering into a comprehensive
10 agreement with the private entity.

11 (c) Upon approval of a qualifying project, the responsible public entity and the private
12 entity shall establish a date for the commencement of the qualifying project. The responsible
13 public entity and the private entity may extend the commencement date for a reasonable period.

14 **§ 1509. Interim agreement**

15 (a) Before entering a comprehensive agreement, or during the negotiation of a
16 comprehensive agreement, the responsible public entity may enter into an interim agreement
17 with the private entity, which outlines the development or operation of the qualifying project.

18 An interim agreement:

19 (1) is discretionary and is not required;

20 (2) does not obligate the responsible public entity to enter into a comprehensive
21 agreement; and

22 (3) is limited to the provisions that:

23 (A) authorize the private entity to commence activities for which it may be
24 compensated related to the proposed qualifying project, including, but not limited
25 to, project planning and development, design, environmental analysis and
26 mitigation, survey, other activities concerning any part of the proposed qualifying

1 project and ascertaining the availability of financing for the proposed facility or
2 facilities;

3 (B) establish the process and timing of the negotiation of the
4 comprehensive agreement; and

5 (C) relate to an aspect of the development or operation of a qualifying
6 project that the responsible public entity and the private entity deem appropriate.

7 (b) A responsible public entity may enter into an interim agreement with multiple
8 private partners if the responsible public entity determines that is it in the public interest to do
9 so. The responsible public entity must reduce to writing its findings that justifies entering into
10 an interim agreement with multiple private partners.

11 (c) The parties may proceed directly to a comprehensive agreement without the need
12 for an interim agreement.

13 **§ 1510. Terms of the comprehensive agreement**

14 (a) Notwithstanding the existence of an interim agreement between the responsible
15 public entity and a private entity, before developing or operating a qualifying project, the
16 private entity partner that submitted the selected proposal shall enter into a comprehensive
17 agreement with the responsible public entity. The comprehensive agreement, in addition to
18 other contract terms stipulating the obligations of the parties, must include provisions
19 addressing the following:

20 (1) a description of which party will assume responsibility for specific project
21 elements and the deadlines for performing those responsibilities;

22 (2) the allocation of risk management among the parties;

23 (3) the allocation among the parties of the development costs or operation of the
24 project;

25 (4) the delivery of performance and payment bonds, letters of credit, or other
26 security required under Virgin Islands law and acceptable to the responsible public entity

1 in connection with the development or operation of the qualifying project in the form and
2 amount satisfactory to the responsible public entity. For the components of the qualifying
3 project which involve construction, the form and amount of the bonds must comply with
4 31 V.I.C. § 236 or other applicable provisions.

5 (5) a provision for the review and approval of the design for the qualifying
6 project by the responsible public entity; but this does not require the private entity to
7 complete the design of the qualifying project before the execution of the comprehensive
8 agreement;

9 (6) a provision for the inspection and monitoring of the qualifying project by the
10 responsible public entity to ensure that the private entity's activities and maintenance
11 practices are acceptable and that the qualifying project is properly maintained;

12 (7) the private entity's maintenance of a policy of public liability insurance, a
13 copy of which must be filed with the responsible public entity and accompanied by proofs
14 of coverage, or self-insurance, each in the form and amount satisfactory to the responsible
15 public entity and reasonably sufficient to ensure coverage of tort liability and to enable
16 the continued operation of the qualifying project;

17 (8) periodic filing by the private entity of the appropriate financial statements
18 that pertain to the qualifying project;

19 (9) terms and conditions that govern the rights and responsibilities of the parties
20 during the construction and operation of the qualifying project, and in the event of the
21 termination of the comprehensive agreement or a material default by either party;

22 (10) the duties of the private entity, including the terms and conditions that the
23 responsible public entity determines serve the public purpose.

24 (11) the fees, lease payments, or service payments as may be established by
25 agreement of the parties; and

1 (12) a provision by which a private entity expressly agrees that it is prohibited
2 from seeking injunctive or other equitable relief to delay, prevent or otherwise hinder the
3 responsible public entity from developing or operating any project that was planned and
4 that may impact the revenue that the private partner may derive from the qualifying
5 project under a public-private partnership, except that the comprehensive agreement may
6 provide for reasonable compensation to the private partner for the adverse effect on
7 revenues resulting from an unplanned revenue impacting project.

8 (b) The comprehensive agreement may include:

9 (1) A provision providing that the responsible public entity may make grants or
10 loans to the private entity from amounts received from the federal or local government
11 or an agency or instrumentality thereof;

12 (2) A provision under which each entity agrees to provide notice of default and
13 cure rights for the benefit of the other entity, including, but not limited to, a provision
14 regarding unavoidable delay;

15 (3) A provision that terminates the authority and duties of the private entity under
16 this section and dedicates the qualifying project to the responsible public entity or to the
17 affected local jurisdiction for public use;

18 (4) The allocate financial responsibility for cost overruns;

19 (5) Safeguards to mitigate additional costs or service disruptions to the public in
20 the event of material default or cancellation of the agreement;

21 (6) Performance standards and any damages for nonperformance;

22 (7) performance incentives;

23 (8) Accounting and auditing standards to be used to evaluate the financing of the
24 qualifying project;

25 (9) Provision that the qualifying project contain a project labor agreement
26 subject to Virgin Islands law and is in a manner that, to the greatest extent possible,

1 enhances employment opportunities for individuals residing in the affected local
2 jurisdiction;

3 (10) For a project that reverts to public ownership, the responsibility for
4 reconstruction or renovations required for a qualifying project to meet all applicable
5 government standards upon reversion to the public entity or to the affected local
6 jurisdiction for public use; and

7 (11) Such other terms and conditions agreed to mutually by the responsible public
8 entity and private entity.

9 (c) The comprehensive agreement may provide for fees as agreed by the parties. The
10 comprehensive agreement may:

11 (1) authorize the private entity to impose fees on the public for the use of the
12 facility;

13 (2) permit the responsible public entity to develop new facilities or increase
14 capacity in existing facilities;

15 (3) permit the responsible public entity to lease existing fee-for-use facilities;
16 and

17 (4) provide that a negotiated portion of revenues from fee-generating uses may
18 be returned to the responsible public entity over the life of the comprehensive agreement.

19 (d) The terms adopted pursuant to subsection (a)(9) must also address the assumption
20 of the duties and responsibilities of the private entity by another entity that funded, in whole or
21 part, the qualifying project or by the responsible public entity; the responsible public entity's
22 assumption of the development or operation of the qualifying project does not obligate it to pay
23 any obligation of the private entity from sources other than revenues from the qualifying project
24 unless stated otherwise in the comprehensive agreement. The procedures must also provide
25 for the transfer or purchase of property or other interests of the private entity by the responsible
26 public entity.

1 (e) The fees provided for in subsection (a)(11) must be the same for persons using the
2 facility under like conditions and must not materially discourage use of the qualifying project.
3 Fees or lease payments established in the comprehensive agreement as a source of revenue may
4 be in addition to, or in lieu of, service payments.

5 **§ 1511. Duties of the private entity**

6 The private entity shall:

7 (1) Develop or operate the qualifying project in a manner that is acceptable to the
8 responsible public entity in accordance with the provisions of the comprehensive agreement.

9 (2) Maintain or contract for the maintenance or improvement of the qualifying project
10 if required by the comprehensive agreement.

11 (3) Cooperate with the responsible public entity in making best efforts to establish
12 interconnection between the qualifying project and any other facility or infrastructure as
13 requested by the responsible public entity in accordance with the provisions of the
14 comprehensive agreement.

15 (4) Comply any lease or service contract.

16 (5) Complete each qualifying project in a manner that complies with the requirements
17 of federal and territorial laws; the comprehensive plan; the responsible public entity's rules,
18 procedures, and standards for facilities; and such other conditions that the responsible public
19 entity determines to be in the public's best interest and that are included in the comprehensive
20 agreement.

21 (6) Provide additional services for the qualifying project to the public or to other
22 private entities if the provision of additional services does not impair the private entity's ability
23 to meet its commitments to the responsible public entity pursuant to the comprehensive
24 agreement.

25 (7) Pay each worker employed by the private entity that has entered into a public-
26 private partnership agreement pursuant to this chapter a wage that is not less than the prevailing

1 wage rate for the worker's craft or trade as determined by the Virgin Islands Department of
2 Labor.

3 **§ 1512. Eligible funding and financing**

4 (a) Financing of a qualifying project may be in such amounts and upon such terms and
5 conditions as may be determined by the parties. The parties may use all revenues that may
6 be available to them and may, to the fullest extent permitted by applicable law:

7 (1) issue debt, equity, or other securities or obligations;

8 (2) enter into leases, concessions, and grant and loan agreements;

9 (3) access any designated territorial funds;

10 (4) borrow or accept grants from any commercial or infrastructure bank; and

11 (5) secure any other financing with a pledge of, security interest in, or lien on
12 any or all its property, including all its property interests in the qualifying project.

13 (b) A private entity may enter into a private-source financing agreement between
14 financing sources and the private entity. But any financing agreement or liens on the property
15 or facility must be paid in full at the closing that transfers ownership or operation of the facility
16 to the responsible public entity at the conclusion of the term of the comprehensive agreement.

17 (c) Prior to commencement of work on a qualifying project, the private entity shall
18 establish a construction account. The construction account must include the funding, financial
19 instruments, or both, that fully capitalizes and funds the project. The funds and instruments
20 must be held in trust for the benefit of the contractor, construction manager, and design-build
21 team. The funds and instruments in the construction account are not the property of the private
22 entity unless all amounts due to the construction account beneficiaries are paid in full. The
23 construction account may not be designated for more than one project.

24 (d) The responsible public entity may:

25 (1) lend funds to private entities; that construct projects containing facilities that
26 are approved under this chapter.

1 (2) use innovative finance techniques associated with a public-private
2 partnership, including, but not limited to, federal loans, commercial bank loans, and
3 hedges against inflation from commercial banks or other private sources;

4 (3) provide its own capital or operating budget to support a qualifying project,
5 which may be from any legally permissible funding sources including the proceeds of
6 debt issuances;

7 (4) use a financing agreement for its financing of a facility it owns; and

8 (5) take any action to obtain federal or territorial assistance for a qualifying
9 project that serves the purpose of this chapter and may enter into contracts required to
10 receive federal assistance.

11 (e) To the fullest extent allowed by law, federal and territorial monies may be
12 combined with any private sector monies for any qualifying project.

13 (f) A financing agreement obtained pursuant to subsection (a)(4) may not be used to
14 secure financing by a mortgage on, or security interest in, the real or tangible personal property
15 of the responsible public entity in a manner that could result in the loss of the fee ownership of
16 the property. Any such financing agreement is void.

17 (g) The full faith and credit of the responsible public entity may not be pledged to
18 secure the financing by the private entity for the qualifying project.

19 **§ 1513. Termination of agreement**

20 (a) Upon the expiration or termination of a comprehensive agreement, the responsible
21 public entity may use revenues from the qualifying project to pay current operation and
22 maintenance costs of the qualifying project.

23 (b) If the private entity materially defaults under the comprehensive agreement, the
24 compensation or other payment that is otherwise due to the private entity is payable to satisfy
25 all financial obligations to investors and lenders on the qualifying project in the same way that
26 is provided in the comprehensive agreement or any other agreement involving the qualifying

1 project, if the costs of operating and maintaining the qualifying project are paid in the normal
2 course. Revenues more than the costs for operation and maintenance costs may be paid to the
3 investors and lenders to satisfy payment obligations under their respective agreements.

4 (c) A responsible public entity may terminate a comprehensive agreement for cause
5 and may exercise any right or remedy that may be available to it in accordance with the
6 provisions of the comprehensive agreement.

7 **§ 1514. Sovereign immunity**

8 A responsible public entity or an officer or employee thereof does not waive sovereign
9 immunity with respect to participation in, or approval of, any part of a qualifying project or its
10 operation, including, but not limited to, the design, construction, and operation of a qualifying
11 project or the interconnection of the qualifying project with any other public infrastructure or
12 project.

13 **§ 1515. Construction of chapter**

14 (a) This chapter must be liberally construed to effectuate the intended overarching
15 purpose of the chapter. This chapter is cumulative and supplemental to any other authority
16 vested in any local governmental entity and does not limit any local governmental entity in the
17 procurement or operation of a qualifying project pursuant to other regulatory or constitutional
18 authority.

19 (b) Except as otherwise provided, this chapter does not amend existing laws by
20 granting additional powers to, or further restricting any local governmental entity from,
21 regulating, and entering into cooperative arrangements with the private sector for the planning,
22 construction, or operation of a facility.”

23 **BILL SUMMARY**

24 This bill provides the framework for government entities that seek to enter into public-
25 private partnerships for the construction, upgrade, development, construction, reconstruction,
26 repair, alteration, improvement, extension, operation, and maintenance of any public road,

1 structure, facility, or infrastructure to include support of a public purpose or activity, including,
2 but not limited to: airport or seaport facility; hospital, other medial healthcare, or nursing care
3 facility; sporting, cultural, or recreational facility; civic or educational facility or other building
4 that is used or will be used by a public educational institution; transportation facilities such as
5 roads, bridges, public transit systems, ferry, port facilities; water, wastewater, water
6 management facility, or other related infrastructure; and telecommunications facilities.

7 This bill sets forth the procedure for the submittal of solicited and unsolicited proposals;
8 what must be contained in the proposals; the process for reviewing and accepting proposals;
9 the minimum standards that must be met by a private entity; the criteria that must be met to
10 enter into an agreement, whether interim or comprehensive; the duties and responsibilities of
11 the private entity partner; the requirements for funding and financing of projects; and the
12 responsibilities of the parties if the agreement is terminated. The bill also provides for the
13 governmental entities entering into public-private partnerships do not waive sovereign
14 immunity.

15 **BR23-0353/March 9, 2023/SLR**