

Virgin Islands Housing Authority

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Office of the Executive Director

December 7, 2023

The Honorable Carla Joseph
Committee on Government Operations, Veterans Affairs, and Consumer Protection
Legislature of the Virgin Islands
Capital Building
P.O. Box 1690
St. Thomas, USVI 00804

Dear Senator Joseph,

I regret to inform you that I will be unable to attend the committee's hearing on Monday, December 18, 2023.

In lieu of testimony, I am providing the legal analysis of the impact of the proposed Bill No. 35-0058 that was submitted to your office previously. In essence, the legal analysis prepared by the Virgin Islands Housing Authority's General Counsel surmises that the Bill as written will not impact the Virgin Islands Housing Authority because we must comply with HUD's federal procurement regulations.

Thank you for the opportunity to provide our perspective on the proposed Bill No. 35-0058, and as always, please feel free to contact me if you have any questions or concerns at (340) 715-7326.

Sincerely,

A handwritten signature in blue ink, appearing to read 'R. Graham', is written over a faint, larger version of the signature.

Robert Graham, CPM
Executive Director
Virgin Islands Housing Authority

cc: Lydia Pelle, Chief Operating Officer
Adriane Dudley, VIHA General Counsel

DUDLEY RICH LLP

TO: Robert Graham, CPM
Executive Director, Virgin Islands Housing Authority

FROM: Adriane J. Dudley, Esq.

DATE: September 22, 2023

RE: The impact of Bill No. 35-0058 on VIHA operations

Executive Director Graham has been asked to testify before the Legislature regarding Bill No. 35-0058, The Public-Private Partnership Act.

Law Governing VIHA

The Virgin Islands Housing Authority (VIHA) is established in section 31 of title 29 of the Virgin Islands Code. Section 31 declares that VIHA is a “public body corporate and politic of the Virgin Islands.” 29 V.I.C. § 31(a). This language has been interpreted to mean VIHA is an agency of the Government of the Virgin Islands. *V.I. Hous. & Redevelopment Auth. v. 19.1078 Acres of Land*, 161 F. Supp. 475 (D.V.I. 1958). However, because VIHA is authorized to enter into and execute contracts and instruments of every kind and nature necessary or convenient to the exercise of its powers and functions and may make rules and regulations that provide for the administration of its affairs and operations and for carrying out its purposes, VIHA has been held to be exempt from the procurement procedures applicable more generally to the Government. 29 V.I.C. § 35; see *Virgin Islands Taxi Association v. WICO*, 66 V.I. 473, 491 (V.I. 2017) (citing *Marco St. Croix, Inc. v. V.I. Housing Auth.*, 62 V.I. 586, 591 n.3 (V.I. 2015)).

In addition to the general powers set forth in section 35, section 36(b) empowers VIHA to enter into federal contracts and to comply with those contracts “and any Federal rules, requirements, regulations and procedures, applicable” and to otherwise “comply fully with any conditions imposed by the Federal Government upon participation” by VIHA. 29 V.I.C. § 36(b).

The Public Private Partnership Act

A procurement under this chapter serves a public purpose if it facilitates the timely development or operation of a qualifying project. Section 1 of the act, proposed 29 VIC § 1502(b)(3). This act provides definitions of the projects and government agencies to which this act would apply.

A “Qualifying Project” is “the development, construction, reconstruction, repair, alteration, improvement, extension, operation, and maintenance of any public road, structure, facility, or infrastructure that is used or will be used by the public at large or in support of a public purpose or activity.” The bill lists specific examples of Qualifying Projects, which include airports, seaports, hospitals, nursing homes, other healthcare facilities, sporting facilities, cultural

Impact of Bill No. 35-0058

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facilities, recreational facilities, civic or educational facilities, buildings used by a public educational institution, roads, bridges, public transit systems, ferries, port facilities, facilities for providing water and wastewater management and the related infrastructure, and telecommunications facilities. A "Responsible Public Entity" is "any department, board, commission, committee, authority, agency, officer, or other political subdivision of the Government or combination of entities, or other entity that serves a public purpose and is authorized to develop or operate a qualifying project."

Notably, VIHA enters into public-private partnerships for the development of low-income housing communities. Also, the public purpose of VIHA is, inter alia, to provide housing for the economically disadvantaged.

Analysis

The Virgin Islands Supreme Court has adopted the principle of statutory construction that the more specific statutory provision controls over the more general. *Ramirez v. People*, 56 V.I. 409 (V.I. 2012).

Section 36 of title 29 is a very specific statutory provision and is addressed to VIHA's compliance with federal procurement and contracting requirements. In relation to VIHA, the federal Department of Housing and Urban Development has specific procurement requirements with which VIHA must comply. Therefore, VIHA's procurement policies are written and designed to comply with such federal mandates. Subsection 36(b) of title 29 specifically contemplates such federal requirements and subsection 36(b) mandates that VIHA "shall comply" with federal contract requirements as well as federal policies and regulations.

As written, this bill (if enacted) would not alter the requirements of subsection 36(b) of title 29; and VIHA would remain exempt from the procurement requirements set forth in Bill No. 35-0058, The Public-Private Partnership Act.