

COMMITTEE ON ECONOMIC DEVELOPMENT, AGRICULTURE
AND PLANNING

08/11/14-REPORTED OUT TO THE COMMITTEE ON RULES AND JUDICIARY

BILL NO. 30-0431

Thirtieth Legislature of the Virgin Islands

July 02, 2014

An Act amending title 29 Virgin Islands Code, chapter 23 relating to the Hotel Development Program providing for government contingent lease guarantees

PROPOSED BY: Senator Alicia "Chucky" Hansen
Co-Sponsors: Donald G. Cole, Clifford F. Graham, Myron D. Jackson,
Shawn-Michael Malone, Terrence "Positive" Nelson,
Clarence Payne III, Sammuel Sanes, Nereida Rivera-O'Reilly and Diane
Capehart

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

2 **SECTION 1.** Title 29 Virgin Islands Code, chapter 23, subchapter I, is amended in the
3 following instances:

4 (a) Section 1303 is amended in subsection (h) after the word "Financing" by inserting "
5 Contingent Lease Guarantee", and the section is further amended by adding a paragraph for a new
6 definition in alphabetical order which reads as follows:

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

(b) Section 1305, subsection (b), paragraph (6) is amended after the word "Program" by inserting ", including a Contingent Lease Guarantee"; and

(c) Sections 1309, 1310 and 1311 are added and reads as follows:

"§1309. (a) The Virgin Islands Public Finance Authority ("PFA") shall assist the Program by issuing Government contingent lease guarantees for appropriate projects, as required to carry out the purpose of this chapter.

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

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

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

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

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

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

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

§1310. There is established an interest bearing contingent lease guarantee reserve account to fund potential guarantee calls. The account may be capitalized by initial cash deposit from proceeds

1 of initial project funding; bank instrument such as Stand by Letter of Credit, General Fund
2 appropriation; or any other arrangement determined necessary, including a fixed annual guarantee
3 fee of no less than 1% of the total obligation of project proponent.

4 §1311. The provisions under sections 1309 and 1310 expire two years from their effective
5 date unless further action is taken by the Legislature.

6 **SECTION 2.** Act No. 7301, Section 4 is repealed.

7 **BILL SUMMAY**

8 Section 1 amends the Hotel Development Act to authorize continent lease guarantees. A
9 contingent lease guarantee is a promise to make lease payments for the lessee if the lessee fails to
10 pay. It is similar to a letter of credit in concept. Under this lease guarantee may not exceed \$20,000
11 and its term may not exceed 25 years.

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13 Section 2 repeals section 4 of Act 7301, which limited the benefits of the Hotel Development
14 Program to the First Mortgage Holder and the First Mortgage prohibited their transfer or assignment.

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17 **BR14-1479/June 20, 2014/ Reviewed by YLT**
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