

**BILL NO. 29-0236**

**Twenty-Ninth Legislature Of The Virgin Islands**

**November 23, 2011**

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An Act to establish the Constitution Revision Convention

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**PROPOSED BY:** Senator Ronald E. Russell, Esq.

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**1**       **WHEREAS**, the American Law Division of the Library of Congress found, in response to  
**2** inquiries from concerned officials, that the congressional authorization to draft a United States Virgin  
**3** Islands constitution granted by federal law is a general grant of authority which did not expire when the  
**4** prior conventions failed to secure a constitution, and that the Virgin Islands could continue in its pursuit  
**5** of a constitution under the same conditions as were described in Public Law 94-584 without need for  
**6** further Congressional action; and  
**7**       **WHEREAS**, the United States Congress authorized the United States Virgin Islands to establish  
**8** a constitutional convention, and the rights, duties and obligations of the convention, as established for  
**9** the drafting of a proposed constitution, as set forth in Public Law No. 94-584, approved by Congress on  
**10** October 12, 1976, was fully exercised except for certain issues raised by the President of the United  
**11** States and the Congress of the United States; and

1           **WHEREAS**, the Fifth Constitutional Convention completed a draft document that was sent to  
2 the Governor of the United States Virgin Islands which was forwarded to the President of the United  
3 Sates and passed on to the United States Congress for review; and

4           **WHEREAS**, Congress and President Obama returned the draft document for revisions by the  
5 convention for reasons contained in a Memorandum dated February 23, 2010, by the U.S. Department of  
6 Justice Office of the Assistant Attorney General, for the Office of Management and Budget;

7           **WHEREAS**, the U.S. Department of Justice’s Memorandum, as published on the Department’s  
8 website, analyzes several features of the proposed constitution of the United States Virgin Islands  
9 including: “(1) the absence of an express recognition of United States sovereignty and the supremacy of  
10 federal law; (2) provisions for a special election on the USVI’s territorial status; (3) provisions  
11 conferring legal advantages on certain groups defined by place and timing of birth, timing of residency,  
12 or ancestry; (4) residence requirements for certain offices; (5) provisions guaranteeing legislative  
13 representation of certain geographic areas; (6) provisions addressing territorial waters and marine  
14 resources; (7) imprecise language in certain provisions of the proposed constitution’s bill of rights; (8)  
15 the possible need to repeal certain federal laws if the proposed USVI constitution is adopted; and (9) the  
16 effect of congressional action or inaction on the proposed constitution”; and

17           **WHEREAS**, the guidelines for drafting and completing the proposed revised constitution, as set  
18 forth in Public Law No. 94-584 were collectively modified when Congress and President Obama  
19 returned the draft document for revisions; and

20           **WHEREAS**, the United States Virgin Islands is experiencing a fiscal crisis that challenges the  
21 resources available to continue the work started by the Fifth Constitutional Convention, and provisions  
22 should be made to modify the law that established the Fifth Constitutional Convention; and

23           **WHEREAS**, the resources of the 29th Legislature of the United States Virgin Islands are  
24 available for use, integration and collaboration, without additional costs or fees for the completion of a  
25 constitutional document to be returned to President Obama and the United States Congress, and

26           **WHEREAS**, the 29<sup>th</sup> Legislature, representing the people of the United States Virgin Islands  
27 continue to favor the adoption of a constitution for the Territory as a significant step toward greater self-  
28 determination and autonomy in the Territory’s relationship with the United States Government, and that  
29 a modification to the law creating the Fifth Constitutional Convention is needed; Now, Therefore,

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

1           **SECTION 1.** (a) Notwithstanding any other law or any of the provisions of Act 6688 and the  
2 amendments thereto the fifth constitutional convention is hereby dissolved, and the 29th Legislature of  
3 the United States Virgin Islands provides the following modifications, amendments, and revisions to  
4 Act. No. 6688, the law establishing and convening the Fifth Constitutional Convention.

5           (b) The 29<sup>th</sup> Legislature of the United States Virgin Islands is hereby established as the  
6 Constitutional Revision Convention [CRC] to revise, modify and amend the draft Virgin Islands  
7 Constitution created by the Fifth Constitutional Convention, and is called to convene at the Earle B.  
8 Ottley Legislative Hall, Charlotte Amalie, St. Thomas. Elected officials identified in subsection (c) shall  
9 convene at the call of the President of the 29th Legislature to ratify and approve the final revised  
10 constitution drafted by the legal team assembled to revise the document drafted by the Fifth  
11 Constitutional Convention.

12           (c) The CRC shall be comprised of the fifteen elected Senators of the 29th Legislature.

13           (d) Powers and duties of the CRC are plenary concerning any revisions, modifications,  
14 substitutions and deletions to any draft document prepared by prior constitutional conventions, including  
15 the Fifth Constitutional Convention.

16           (e) The CRC shall have a legal team available and use for all legal matters the Chief Legal  
17 Counsel of the 29th Legislature and two Assistant Legislative Legal Counsels. The CRC legal team may  
18 also include two private attorneys and one government attorney designated by the President of the 29th  
19 Legislature, provided that they shall serve as part of the CRC legal team *pro bono*, and shall be subject  
20 to the supervision of the Chief Legal Counsel of the 29th Legislature.

21           (f) The CRC legal team shall be responsible for all modifications, revisions, legal review and  
22 legal analysis of: all prior drafts of the United States Virgin Islands Constitution including the draft  
23 produced by the Fifth Constitutional Convention; any revisions, modifications, substitutions and  
24 deletions deemed necessary as were recommended, commented and analyzed by Congress, President  
25 Barack Obama, and the United States Department of Justice. The legal team may conduct any further  
26 research, utilize other constitutions and/or expert opinions, as the legal team deems helpful in  
27 completing a draft document for review by the CRC.

28           (g) The CRC legal team shall first review and revise provisions of draft Fifth Constitutional  
29 Convention document that were identified by President Barack Obama and the United States Congress  
30 as problematic to make that document consistent with mandate of the United States Congress and the  
31 concerns raised; upon completion of those revisions and any other revisions it deems appropriate, the

1 Chief Legal Counsel shall provide the revised document to the President of the 29<sup>th</sup> Legislature for  
2 distribution to CRC members and the public for review, comments and further suggested revisions,  
3 modifications, substitutions and deletions as approved by a majority of the members of the CRC. The  
4 CRC legal team shall complete a revised draft Constitution of the Virgin Islands for the public and the  
5 CRC within sixty (60) days of the enactment of this law.

6 (h) The President of the 29<sup>th</sup> Legislature of the United States Virgin Islands shall preside over  
7 the CRC as its Chairman and any needed succession in leadership shall adhere to the Rules of the 29<sup>th</sup>  
8 legislature.

9 (i) To assist this process until completion and provide all needed resources, the President of the  
10 29<sup>th</sup> Legislature may appoint special committees of the CRC or 29<sup>th</sup> Legislature as may be needed to  
11 assist the Territory with the adoption of a constitution.

12 (j) All decisions of the CRC shall be by affirmative vote of a majority of the CRC.

13 (k) A quorum of the CRC shall be 8 members. No CRC business shall be conducted in the  
14 absence of a quorum.

15 (l) If at any time during the proceedings of the CRC any delegate dies, resigns, relocates outside  
16 of the Territory, or otherwise becomes disqualified, or is unable to serve, the vacancy shall automatically  
17 be filled by the unelected senatorial candidate that received the next highest number of votes in the 2010  
18 general election in the district that produced the vacancy, provided that he or she is willing to serve.

19 (m) The CRC shall adopt a proposed revised Virgin Islands Constitution no later than March 31,  
20 2012. When the CRC, by a majority vote agrees on a proposed revised Virgin Islands Constitution, the  
21 Chair of the CRC shall submit it to the Governor of the Virgin Islands, in compliance with the  
22 provisions of Public Law 94-584, section 4. Within ten (10) days of submission to the Governor of the  
23 Virgin Islands, the proposed revised Virgin Islands Constitution shall be submitted by the Governor to  
24 the President of the United States.

25 (n) The CRC shall go into recess pending action by the President and Congress, as required by  
26 Public Law 94-584, section 5. If the proposed revised Virgin Islands Constitution is approved by  
27 Congress on or before September 6, 2012, a territory-wide referendum shall be placed on the general  
28 election ballot/machine for the purpose of adopting or rejecting the proposed revised Virgin Islands  
29 Constitution by a vote of not less than a majority of the voters participating in the general election held  
30 on the first Tuesday in November, 2012. The form of the referendum ballot, including the question  
31 presented to the voters, shall be “Are you in favor of the Proposed Revised Virgin Islands Constitution”.

1 The options of “YES” and “NO” shall be provided. The ballots/machines for the referendum shall be  
2 available in English and with Spanish translation available on request. Timely notice of the referendum  
3 shall be broadcast and published by the 29th Legislature of the Virgin Islands and the Virgin Islands  
4 Board of Elections. Except as otherwise provided for in this Act, the referendum shall be governed by  
5 title 18 of the Virgin Islands Code, and all penalties provided by the law shall apply to the referendum.

6 (o) If the proposed revised Virgin Islands Constitution is approved by not less than a majority of  
7 the voters participating in the general election, the Virgin Islands Constitution shall become effective as  
8 approved by the public within ninety (90) days from the date of the referendum.

9 (p) The CRC shall meet at the call of the President of the 29th Legislature after the referendum  
10 election for the purpose of:

11 (1) Announcing the outcome of the referendum to the people of the Virgin Islands;

12 (2) Certifying the results of the referendum to Congress and the President of the United  
13 States;

14 (3) Establishing the date the Constitution of the Virgin Islands will become effective, as  
15 provided under subsection (o); and

16 (4) Adjourning sine die and discharging the CRC.  
17

## 18 BILL SUMMARY

19 This bill seeks to establish the Constitution Revision Convention to revise, modify, and amend  
20 the draft of the Virgin Islands Constitution. Subsection (a) indicates that this bill serves to modify and  
21 amend Act. No. 6688 establishing the Fifth Constitutional Convention. Subsection (b) establishes the  
22 Constitutional Revision Convention [CRC]. Subsection (c) establishes the composition of the CRC.  
23 Subsection (d) grants plenary powers to the CRC over revisions and modifications of the Virgin Islands  
24 Constitution. Subsection (e) establishes the CRC legal team and provides that the Chief Legal Counsel  
25 of the 29<sup>th</sup> Legislature shall supervise the legal team that may include private attorneys that work pro  
26 bono. Subsection (f) defines the legal responsibilities the legal team and their role in adhering to the  
27 recommendations of the Department of Justice Memorandum and their scope. Subsection (g) provides  
28 the priority for the CRC legal team, a time certain for the completion of the first draft of the revised draft

**1** constitution and delineates how the revised draft Constitution of the Virgin Islands is to be presented to  
**2** the CRC. Subsection (h) provides for the President of the 29<sup>th</sup> Legislature to preside over the CRC.  
**3** Subsection (i) authorizes the President of the 29th Legislature to appoint special committees to assist the  
**4** process and the CRC. Subsection (j) indicates how decisions of the CRC are to be made. Subsection (k)  
**5** tells how many members of the CRC establish a quorum. Subsection (l) provides for replacing CRC  
**6** members. Subsection (m) sets a deadline for the CRC to adopt a revised Virgin Islands Constitution.  
**7** Subsection (n) provides for the CRC to recess while the revised Virgin Islands Constitution is  
**8** considered by Congress and the President of the United States, and for a territory-wide referendum on  
**9** the Virgin Islands Constitution if it is approved. Subsection (o) provides for the CRC to establish an  
**10** effective date for the Constitution of the Virgin Islands. Subsection (p) indicates how the UCRC is to  
**11** come to a close.

**12** 11-1002/November 21, 2011/ EEM/Reviewed by TF

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