

ACT NO. 8376

BILL NO. 33-0299

THIRTY-THIRD LEGISLATURE OF THE VIRGIN ISLANDS

Regular Session

2020

An Act amending title 29 of the Virgin Islands Code, chapter 19, section 1007 relating to the powers of the Enterprise Zone Commission, to expand its authority; amending section 116 to designate the South Shore of St. Croix as an Enterprise Zone; and adding subchapter IIIA to govern the Virgin Islands South Shore Trade Zone

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WHEREAS, the district of St. Croix is economically distressed;

WHEREAS, the severe deterioration of the district's tax base demands a coordinated effort to promote economic revitalization;

WHEREAS, it is the responsibility of Government of the Virgin Islands to provide a framework to encourage private investment, remove or abate barriers to investment, and provide mechanisms for the coordination and cooperation of private and public agencies in restoring the economic viability and prosperity of the St. Croix District;

WHEREAS, it is the intent of the Legislature to designate an area that eliminates traditional barriers, such as tariffs, and minimizes bureaucratic regulations for the purposes of developing economic opportunities and promoting commercial trade and investment between and amongst local and international markets;

WHEREAS, the Legislature finds it is necessary to expand the enterprise zone in order to promote greater efficiency in the services to the business sector, to achieve a greater presence in the international arena, to present a coherent and integrated offer of services and to have an agile and dynamic structure, capable of easily adapting to the changes, challenges, and opportunities that are presented in the future;

WHEREAS, the southside ports of entry of the district are attractive for transshipment and create opportunities for the development of light manufacturing and other industries;

WHEREAS, the designation of the South Shore of St. Croix as an Enterprise Zone area will enhance a global market presence and create family wage jobs by attracting new business and foreign investments;

WHEREAS, recruiting companies with operations appropriate for approval for Beneficiary status within the Virgin Islands South Shore Trade Zone in accordance with best international practices, similar to those employed by the United States Federal Free Trade Commission and the provisions of this act and regulations promulgated under this act is intended to ensure the creation of the proper economic and social environment to induce the investment of private resources in productive business enterprises located in Enterprise Zone areas; Now, Therefore,

Be it enacted by the Legislature of the Virgin Islands:

SECTION 1. This act may be cited as “The Virgin Islands South Shore Trade Zone Act of 2020”.

SECTION 2. Title 29, chapter 19, subchapter I, section 1007 of the Virgin Islands Code is amended by:

(a) Re-designating subsections (a) through (j) as paragraphs (1) through (10)

(b) Re-designating subsections (k) and (l) as paragraphs (23) and (24) respectively; and

(c) Adding paragraphs (11) through (22) to read as follows:

“(11) Make and execute contracts, and all other instruments desirable, convenient or necessary for the exercise of its powers and functions under this chapter;

(12) Contract with any department, agency, or instrumentalities of the Government of the Virgin Islands or with any person, firm, partnership, corporation, or other entity to operate or manage the Virgin Islands South Shore Trade Zone;

(13) Contract with any department, agency, or instrumentality of the Government of the Virgin Islands or with any person, firm, partnership, corporation, development company or other entity to monitor the Enterprise Zone projects' progress and compliance with their respective plans and agreements;

(14) Contract with any agency, company or other entity registered with the Division of Corporations and Trademarks which has and expertise in financial feasibility analysis and experience in management of developments similar in type and scope to the project to be operated, managed, or monitored;

(15) Acquire real property by grant, gift, purchase, devise or bequest, and hold, lease mortgage and otherwise exercise the rights of ownership of property, and dispose of such

property, including by sale, lease or other disposition of such property to any person or entity, including the Government of the Virgin Islands, or any agency, instrumentality, commission, authority or political subdivision of the Virgin Islands;

(16) Acquire any property in the settlement or reduction of debts previously contracted or in exchange for investments previously made in the course of its business, where the acquisition is necessary to minimize or avoid loss in connection therewith, and to hold such property for such periods as the Commission may consider advisable and exercise the rights of ownership of and to dispose of the property;

(17) Accept funds, properties, or financial assistance of any nature, from any person, or public or private entity, and accept and comply with the conditions attached to the financial assistance;

(18) Establish reasonable administrative fees;

(19) Assess, in addition to the application fees and annual compliance fees against an applicant or Beneficiary any extraordinary costs and expenses incurred to process the application or monitor the performance of the terms and conditions of its Certificate, including costs for the services of outside consultants necessitated by the application or the compliance investigation;

(20) Act as a link between local and international markets promoting commercial trade of goods and services between the Virgin Islands, the United States and the rest of the world and promote and market Virgin Islands goods and services in the United States and abroad;

(21) Make recommendations to the Department of Public Works or Office of Highways and Motor Vehicles, as applicable, with respect to the planning, re-planning, opening, dedicating, creation or closing of private or public streets, roads, roadways, alleys, sidewalks and other rights of way in compliance with applicable regulations, and provide, or contract with the Government of the Virgin Islands or any other department, agency or instrumentalities or others for the providing any public facilities or services, including local transportation facilities in connection with a Virgin Islands South Shore Trade Zone project; and

(22) Prepare and submit annual reports, including a summary of the proceedings of the Commission, to the Board containing data regarding all Enterprise Zone Designations outstanding, and Beneficiaries in the district.

SECTION 3. Title 29, chapter 19, subchapter III, section 1016 of the Virgin Islands Code amended by:

(1) Adding a new sentence after the first sentence to read as follows “The South Shore in St. Croix is designated the Virgin Islands South Shore Trade Zone as defined in subsection (e).”; and

(2) Adding subsection (e) to read as follows:

“(e) (1)The Virgin Islands South Shore Trade Zone is designated as the areas on or around the southside ports of entry on the island of St. Croix including the Wilfred “Bomba” Allick Port and Transshipment Center (“The Container Port”) and the Gordon A. Finch Molasses Pier located at Krause Lagoon, thence continuing west along the south shore to Plot No. 1 Estate Anguilla, Plot No. 1 Estate Annaberg and Shannon Grove and No. 2 Estate Annaberg and Shannon Grove, Plot No. 1 Estate Spanish Town, Remainder Plot No. 5 Estate Blessing, Plot No. 6 Estate Blessing, Plot No. 7 Estate Blessing, Plot No. 10 Estate Blessing, Plot No. 11 Estate Blessing and Plot Numbers 12-A, 12-D and 12-E of VI Corps Land and all roads and easements known as the St. Croix Renaissance Park, thence continuing west along the shoreline to Estate Betty’s Hope, Cooper’s, Diamond, Envy, Golden Grove, Manning’s Bay, Negro Bay, Paradise, and VI Corp land, also known as the Alexander Hamilton Field or the Henry E. Rohlsen Airport. The Virgin Islands South Shore Trade Zone also includes the William D. Roebuck Industrial Park located at No. 4 Manning’s Bay and undeveloped properties of the Virgin Islands Port Authority located along the South Shore.

(2) The inclusion of Virgin Islands Port Authority properties in this Zone does not affect the ability of the Authority to lease its properties.”

SECTION 4. Title 29, chapter 19 of the Virgin Islands Code is amended by adding a Subchapter V that reads as follows:

“Subchapter V. The Virgin Islands South Shore Trade Zone

§116a. Definitions. As used in this subchapter:

(1) “Certificate” means the contract between the Government of the Virgin Islands through the Commission and the Beneficiary for benefits under this subchapter.

(2) “Programs” means the initiatives and offerings of the Virgin Islands Enterprise Zone.

(3) “Virgin Islands South Shore Trade Zone” means the areas described in section 116 (e) of this chapter.

§116b. Virgin Islands South Shore Trade Zone; beneficiary eligibility.

(a) A person or company wishing to be designated as a Beneficiary shall apply to the Commission on forms prescribed and made available by the Commission and pay the applicable fee. In order to qualify and remain eligible for benefits provided under this subchapter, an applicant must fulfill the following specific qualifications and requirements:

(1) Invest at least \$100,000, exclusive of inventory, in one of the following approved industries or businesses: light manufacturing, assembly, fulfillment centers, bonded warehousing, dry dock and ship repair service, fuel storage and export, refiners, power production and air and sea transshipment. 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.

(2) Establish or continue to maintain a business with valid licenses and permits within a Virgin Islands South Shore Trade Zone;

(3) Meet such standards of ecological compatibility as may be established by federal or Virgin Islands law, or by both;

(4) Employ at least 10 residents of the Virgin Islands and one paid apprentice in such business directly or through subcontractors or, for existing businesses, add at least 10 new fulltime employees and one paid apprentice who are residents of the Virgin Islands. The Commission may waive the requirements of this paragraph upon a demonstration to the Commission that the employment of this number of persons in this 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 employment requirement;

(5) Comply with all federal and Virgin Islands laws.

(6) Agree to notify the Virgin Islands Department of Labor in writing of the availability of employment by the business or its subcontractors, the number of employees required, the occupational classification of such employees and the applicable wage rate;

(7) File with the Commission stamped copies of current gross receipts tax returns, current property tax returns, and current income tax returns, which the Commission shall maintain as confidential information and not release, except as provided under 33 V.I.C. § 822 Code, for gross receipts and property tax returns, and 26 U.S.C. § 6103.

(8) In the case of a Virgin Islands or foreign corporation, partnership, limited liability company, trust, or other entity, be in compliance with all applicable federal and territorial statutes and any rules or regulations promulgated under this subchapter.

(9) Comply with such other requirements, not inconsistent with this subchapter, considered in the interest of the Program by the Commission.”

(b) The Commission shall charge reasonable application and other administrative fees established by regulations.

(c) After the receipt of an application that meets the criteria set forth in subsections (a), and (b) the Commission shall approve or deny the applicant. In determining whether to approve the applicant, the Commission shall consider the following criteria:

(1) Whether the application's approval will likely result in a significant benefits to the economy of the Virgin Islands to justify the cost of providing tax incentive benefits; and

(2) Whether the applicant's total anticipated benefits to the Government of the Virgin Islands, including public benefits as well as financial benefits, exceed the total anticipated costs to the Government of the Virgin Islands; and

(d) If the project does not comply with the criteria, the Commission shall so notify the applicant in writing, not later than 60 days after the date of application, stating the areas in which the applicant fails to meet the criteria. The Commission shall allow the applicant up to 60 days to comply and cure any defects before the application is deemed expired.

(e) The Commission shall notify the Office of the Lieutenant Governor of any corporation, joint venture, limited liability partnership, limited partnership or any other organization that signed its certificate as a Beneficiary not later than 60 days after the approval; and shall prepare and submit an annual listing of all entities that are approved for designation regardless of whether they are operational or not at the time of the annual listing.

§116c. Tax exemptions; tax subsidies; benefit options for Beneficiary

(a) Each applicant granted a certification as a Beneficiary is exempt from the payment of the following taxes:

(1) Taxes on real property to the extent that is used in the business or industry for which a certification has been granted for a period of 20 years if the Beneficiary remains in compliance with all the requirements of this subchapter;

(2) Gross receipts taxes, for a period of 20 years, if the Beneficiary remains in compliance with all the requirements of this subchapter; but this exemption does 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 are not otherwise eligible for economic development benefits as a distinct enterprise,

(3) Excise taxes on raw materials for entities in the manufacturing industries 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.

(4) Ninety percent of income taxes for a period of 20 years, if the Beneficiary remains in compliance with all the requirements of this subchapter.

(b) Tax exemptions and benefits may be granted under this section only if the applicant granted the certificate can provide certification from the Bureau of Internal Revenue 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.

(c) A successful applicant may be entitled to:

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

(2) reduce the income tax liability shown on the income tax return for the taxable year by 90%; for each of the remaining years specified in the revised Economic Zone certificate granted the applicant under this section. In the case of estimated income taxes the reduction must be prorated over the quarterly payments due, or constructively due by the applicant, and in the case of the determination of the applicant's income tax liability, by the entire amount of the subsidy thus constructively calculated.

(d) The reduction of income tax liability on a current basis of, or the reduction of income taxes otherwise payable by an applicant entitled to such reduction is 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 taxes, as provided by applicable law.

(e) An individual whose permanent residence is in the Virgin Islands; a corporation that 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 Commonwealths of the United States, 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 superseded by a new residence or domicile.

(f) (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 Enterprise Zone 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 Commission.

(2) The shareholders, members, partners, grantors, beneficiaries, or other owners referenced in paragraph (1) of this subsection are entitled to a 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) of this title.

(g) Not later than June 30 of each year, the Director of the Virgin Islands Bureau of Internal Revenue shall remit the income taxes received pursuant to subsection (a)(4) to the Commissioner of Finance. The Commissioner of Finance shall deposit one percent of the amount received into the Education Maintenance Fund.

§116d. Exemption from customs laws, custom duties, excise taxes and Gross Receipt Taxes for merchandise imported to and exported from the Virgin Islands South Shore Trade Zone

(a) Handling of merchandise in zone; shipment of foreign merchandise into customs territory; appraisal; reshipment of foreign and domestic merchandise of every description, except such as is prohibited by law, may, without being subject to the customs laws of the Virgin Islands, except as otherwise provided in this subchapter, be brought into a zone and may be stored, sold, exhibited, broken up, repacked, assembled, distributed, sorted, graded, cleaned, mixed with foreign or domestic merchandise, or otherwise manipulated, or be manufactured except as otherwise provided in this subchapter, and be exported, destroyed, or sent into customs territory of the Virgin Islands therefrom, in the original package or otherwise; but when foreign merchandise is so sent from a zone into customs territory of the Virgin Islands it must be subject to the laws and regulations of the Virgin Islands affecting imported merchandise but:

(1) The merchandise, goods, machinery and equipment brought into the Virgin Islands South Shore Trade Zone for re-shipment out of the Territory are exempt from custom duties, and excise taxes; and

§116e. Economic development benefits exclusion

(a) Beneficiaries of the Economic Development Program in title 29 Virgin Islands Code, chapter 12 and the University of the Virgin Islands Research and Technology Park

in title 17 Virgin Islands Code, chapter 34 are not eligible to be designated as a Beneficiary or to receive benefits authorized pursuant to this subchapter.

(b) An individual or entity that was formerly a Beneficiary of the Economic Development Program may, however, apply for benefits as a Beneficiary, and a current beneficiary of the Economic Development Program may apply for benefits as a Beneficiary if such beneficiary terminates its benefits under the Economic Development Program as of the effective date of its benefits as a Beneficiary.

(c) A Beneficiary may apply for such benefits under the Economic Development Program and upon the receipt of such benefits must elect to terminate its benefits under the Virgin Islands South Shore Trade Zone Program as of the effective date of its benefits under the Economic Development Program.

§ 116f. Virgin Islands South Shore Trade Zone: Electrical Power & Water Generation

Notwithstanding any other law to the contrary, Beneficiaries have the right to generate, sell, trade, or otherwise distribute electrical power and water to Beneficiaries within the South Shore Trade Zone.

§116g. Revocation, suspension, or modification of certificate

(a) A Virgin Islands South Shore Trade Zone certificate granted in accordance with 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 knowledge by the Commission that the corporation:
 - (A) has been dissolved; or
 - (B) has filed, or there has been filed against the corporation, a petition in bankruptcy that has been approved; or
- (3) the Beneficiary has failed to file an annual report of ownership; 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 crimes involving moral turpitude; or

(5) 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 or agreement therefore, 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 industrial development program. In addition to the fine 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 is void as to the briber and recoverable from the briber as the circumstances of the case may dictate.

(b) 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 modified, suspended or revoked.

(c) In connection with any hearings or investigations required under this section the Commission subpoena witnesses, records and books, administer oaths and inspect properties.

(d) The expenses of any investigation or any proceeding by the Commission to determine compliance by any Beneficiary must be borne by the Beneficiary.


§116g. False or fraudulent statements or representations; false claims for benefits

Any applicant or Beneficiary who willfully makes any false or fraudulent statement or representation as to any fact required or appropriate, necessary or related to the determination of the eligibility qualifications of such applicant or Beneficiary for benefits under this subchapter, or for the continuation or extension of benefits, or who willfully makes or presents any claim for benefits under this subchapter knowing the claim to be false, fictitious or fraudulent, must 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 are automatically revoked; all taxes that were otherwise due and payable by such applicant or Beneficiary but for the tax exemption benefits granted, are due and payable as of the date or dates when, but for such tax exemption, they would have been due and payable, and the taxes must be assessed and collected in accordance with 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, must 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.

Thus passed by the Legislature of the Virgin Islands on September 25, 2020.

Witness our Hands and Seal of the Legislature of the Virgin Islands this 10th day of October, A.D., 2020.




Novelle E. Francis, Jr.
President


Alicia V. Barnes
Legislative Secretary



Bill No. 33-0299 is hereby approved.

Witness my hand and the seal of the Government of the United States Virgin Islands at Charlotte Amalie, St. Thomas, this 26th day of October, 2020 A.D.


Albert Bryan, Jr.
Governor