

BILL NO. 33-0299

Thirty-Third Legislature of the Virgin Islands

June 15, 2020

An Act amending title 29 of the Virgin Islands Code, chapter 19, section 107 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 Enterprise Zone

PROPOSED BY: Senator Novelle E. Francis, Jr.

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

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

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

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

12 **WHEREAS**, the Legislature finds it is necessary to expand the enterprise zone in

1 order to promote greater efficiency in the services to the business sector, to achieve a
2 greater presence in the international arena, to present a coherent and integrated offer of
3 services and to have an agile and dynamic structure, capable of easily adapting to the
4 changes, challenges, and opportunities that are presented in the future;

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

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

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

17 Now, Therefore,

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

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

21 **SECTION 2.** Title 29, chapter 19, subchapter I, section 107 of the Virgin Islands
22 Code is amended by:

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

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

25 respectively; and

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

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

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

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

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

15 (15) Acquire real property by grant, gift, purchase, devise or bequest, and hold,
16 lease mortgage and otherwise exercise the rights of ownership of property, and dispose of
17 such property, including by sale, lease or other disposition of such property to any person
18 or entity, including the Government of the Virgin Islands, or any agency, instrumentality,
19 commission, authority or political subdivision of the Virgin Islands;

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

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

4 (18) Establish reasonable administrative fees;

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

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

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

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

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

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

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

5 “(e) The Virgin Islands South Shore Enterprise Zone is designated as the
6 areas on or around the southside ports of entry on the island of St. Croix including
7 the Wilfred “Bomba” Allick Port and Transhipment Center or The Container port
8 located at Krause Lagoon, the Gordon A. Finch Molasses Pier located at Krause
9 Lagoon, thence continuing west along the south shore to No. 2 Estate Annaberg
10 and Shannon Grove known as the St. Croix Renaissance Park, thence continuing
11 west along the shoreline to Negro Bay and Estate Betty’s Hope, also known as the
12 Alexander Hamilton Field or the Henry E. Rohlsen Airport. The South Shore
13 Enterprise Zone also includes the William D. Roebuck Industrial Park located at
14 No. 4 Manning’s Bay and undeveloped properties of the Virgin Islands Port
15 Authority located along the South Shore.”

16 **SECTION 4.** Title 29, chapter 19 of the Virgin Islands Code is amended by adding
17 a subchapter IIIA that reads as follows:

18 **“Subchapter IIIA. The Virgin Islands South Shore Enterprise Zone**

19 **§116a. Definitions.** As used in this chapter:

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

22 (2) “Grantee” means any individual, partnership, corporation, limited liability
23 company, proprietorship, other business, trust, or estate granted benefits pursuant to this
24 chapter.

1 (3) “Programs” means the initiatives and offerings of the Virgin Islands
2 Economic Development Commission.

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

5 **§116b. South Shore Enterprise Zone; Grantee eligibility.**

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

10 (1) Establish or continue to maintain a business with valid licenses and
11 permits within a South Shore Enterprise Zone;

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

14 (3) Employ at least 10 residents of the Virgin Islands and one paid
15 apprentice in such business directly or through subcontractors or, for existing
16 businesses, add at least 10 new employees and one paid apprentice annually who
17 are residents of the Virgin Islands. The Commission may waive the requirements
18 of this paragraph upon a demonstration to the Commission that the employment of
19 this number of persons in this enterprise would not be economically feasible or
20 practical, and upon a further finding by the Commission that the desirability of the
21 proposed enterprise outweighs the employment requirement;

22 (4) Comply with all federal and Virgin Islands laws.

23 (5) Agree to notify the Virgin Islands Department of Labor in writing
24 of the availability of employment by the business or its subcontractors, the number

1 of employees required, the occupational classification of such employees and the
2 applicable wage rate;

3 (6) File with the Commission stamped copies of current gross receipts
4 tax returns, current property tax returns, and current income tax returns, which the
5 Commission shall maintain as confidential information and not release, except as
6 provided under 33 V.I.C. § 822 Code, for gross receipts and property tax returns,
7 and 36 U.S.C. § 6103.

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

12 (8) Comply with such other requirements, not inconsistent with this
13 chapter, considered in the interest of the Program by the Commission.”

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

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

19 (1) Whether the application’s approval will likely result in a net increase
20 in the taxes payable to the Government of the Virgin Islands, taking into
21 consideration income taxes, franchise taxes, real property taxes, gross receipt taxes,
22 and other taxes, if applicable, over the amount that would have been payable to the
23 Government Virgin Islands in the absence of the applicant; and

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

4 (d) If the project does not comply with the criteria, the Commission shall so
5 notify the applicant in writing, not later than 30 days after the date of application, stating
6 the areas in which the applicant fails to meet the criteria. The Commission shall allow the
7 applicant up to 60 days to comply and cure any defects before the application is deemed
8 expired. If the Commission does not notify the applicant within the 30-day period for
9 analysis of meeting the criteria, the application must be deemed as having met the criteria,
10 and the Commission shall deem the applicant a Grantee.

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

17 **§116c. Tax exemptions; tax subsidies; benefit options for Grantees**

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

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

23 (2) Gross receipts taxes, for a period of 20 years, if the Grantee remains
24 in compliance with all the requirements of this chapter; but this exemption does not
25 apply to the gross receipts of businesses operated by a concession or rental

1 agreement on the premises of beneficiaries, including hotels, for which businesses
2 separate licenses are required or which, as determined by the Commission, are not
3 ordinarily related to, or do not constitute an essential part of the operation of the
4 Grantee, and which are not otherwise eligible for economic development benefits
5 as a distinct enterprise,

6 (3) Excise taxes on building materials, tools, pipes, pumps, conveyor
7 belts or other appliances, materials and supplies necessary for use in the
8 construction, alteration, reconstruction or extension of the physical plant or
9 facilities of the applicant.

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

12 (b) Tax exemptions and benefits may be granted under this section only if the
13 applicant granted the certificate can provide certification from the Internal Revenue Bureau
14 and Department of Finance that the applicant has filed and paid all taxes, penalties and
15 interest and from the Office of the Lieutenant Governor that the applicant has filed its
16 required annual report or has satisfactorily made agreement to pay the taxes or file the
17 required reports.

18 (c) A successful applicant may be entitled to:

19 (1) reduce the amount of each payment of estimated income taxes by
20 90%; and

21 (2) reduce the income tax liability shown on the income tax return for
22 the taxable year by 90%; for each of the remaining years specified in the revised
23 economic development certificate granted the applicant under this section. In the
24 case of estimated income taxes the reduction must be prorated over the quarterly
25 payments due, or constructively due by the applicant, and in the case of the

1 determination of the applicant's income tax liability, by the entire amount of the
2 subsidy thus constructively calculated.

3 (d) The reduction of income tax liability on a current basis of, or the reduction
4 of income taxes otherwise payable by an applicant entitled to such reduction is applicable
5 with respect to all of the computations, assessments, and collection of such income taxes,
6 as provided by the 1954 Internal Revenue Code, as amended, and with respect to the
7 payment of the estimated income taxes, as provided by applicable law.

8 (e) An individual whose permanent residence is in the Virgin Islands; a
9 corporation that is organized under the laws of the Virgin Islands; or a corporation
10 organized under the laws of the United States, or one of the states, territories or
11 Commonwealths of the United States, whose principal office is located in the Virgin
12 Islands, is presumed to continue to be permanently domiciled in the Virgin Islands for
13 purposes of this section, unless it is established that such residency or domicile has been
14 superseded by a new residence or domicile.

15 (f) (1) This subsection applies to:

16 (A) shareholders, members, partners, grantors, beneficiaries, or
17 other direct or indirect owners who are bona fide residents of the Virgin
18 Islands pursuant to *section 932(c) of the Internal Revenue Code of 1986*, as
19 amended and who have been approved for tax reductions by the Economic
20 Development Commission; and

21 (B) entities, including without limitation, corporations, trusts,
22 partnerships and limited liability companies, established in, qualified, or
23 registered to do business in the Virgin Islands which have been approved
24 for tax reductions by the Commission.

1 (2) The shareholders, members, partners, grantors, beneficiaries, or
2 other owners referenced in paragraph (1) of this subsection are entitled to a 90%
3 reduction on income taxes payable with respect to income derived from the
4 dividends paid to them or the distributive share allocated to them by the Grantee,
5 as applicable, and which dividends or distributive shares are attributable to income
6 derived from the business or industry for which the certificate is granted and income
7 from investments described in section 713d(c)(2) of this title.

8 **§116d. Exemption from customs laws, custom duties, excise taxes and Gross Receipt**
9 **Taxes for merchandise imported to and exported from the South Shore Enterprise**
10 **Zone**

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

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

1 (2) The gross receipts taxes on merchandise, goods, machinery and
2 equipment brought into the South Shore Enterprise Zone for the purpose of re-
3 shipment out of the Territory are exempt from custom duties, and excise taxes,
4 except that this exemption does not apply to the gross receipts of businesses
5 operated by a concession or rental agreement on the premises of the South Shore
6 Enterprise Zone, for which businesses separate licenses are required or which, are
7 not ordinarily related to, or do not constitute an essential part of, the operation of
8 the South Shore Enterprise Zone, and are not otherwise eligible for tax incentives
9 as a distinct enterprise.

10 **§116e. Economic development benefits exclusion**

11 (a) Beneficiaries of the Economic Development Program in title 29 Virgin
12 Islands Code, chapter 12 are not eligible to be designated as a Grantees or to receive
13 benefits authorized pursuant to this chapter.

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

19 (c) A Grantee may apply for such benefits under the Economic Development
20 Program and upon the receipt of such benefits must elect to terminate its benefits under the
21 South Shore Enterprise Zone Program as of the effective date of its benefits under the
22 Economic Development Program.”

1 **§ 116f. South Shore Enterprise Zone: Electrical Power & Water Generation**

2 Notwithstanding any other law to the contrary, Grantees have the right to generate,
3 sell, trade, or otherwise distribute electrical power and water to Grantees within the Free
4 Trade Zone.

5 **§116g. Revocation, suspension, or modification of certificate**

6
7 (a) A South Shore Enterprise Zone certificate granted in accordance with this
8 chapter may be revoked, suspended or modified by the Commission, after due notice,
9 public hearing and written findings by the Commission that:

10 (1) the Grantee has failed to maintain compliance with the requirements
11 of this chapter, or any regulation hereunder; or

12 (2) in the case of a corporation, upon finding submitted to the
13 Commission by the Attorney General of the Virgin Islands that the corporation:

14 (A) has been dissolved; or

15 (B) has filed, or there has been filed against the corporation, a
16 petition in bankruptcy that has been approved; or

17 (3) the Grantee has failed to file an annual report of ownership; or

18 (4) the Grantee, or in the case of a corporate Grantee, any officer acting
19 in behalf of the corporation, has been convicted of a felony connected with the
20 operation of the Grantee's business or industry; or

21 (5) the Grantee, or in the case of a corporation an officer acting in behalf
22 of the corporation, has given or offered, or caused to be given or offered, a bribe,
23 or any money, property, or value of any kind, or any promise or agreement
24 therefore, to a public officer, or to a person executing any of the functions of a
25 public office, or to a person elected, appointed or designated to thereafter execute
26 the same, with intent to influence him with respect to any act, decision, vote,

1 opinion or other proceedings, in the exercise of the powers or functions which he
2 has or may have pertaining in any way to the industrial development program. In
3 addition to the fine or imprisonment provided in title 14, section 406 of the Virgin
4 Islands Code for this offense, any benefit granted or obtained as a result of such act,
5 decision, vote, opinion or other proceeding is void as to the briber and recoverable
6 from the briber as the circumstances of the case may dictate.

7 (b) If notified by the Commissioner of Labor that a Grantee has violated the
8 resident employment requirements of this chapter, the Commission shall hold a hearing at
9 which the Grantee must show cause why its certificate should not be modified, suspended
10 or revoked.

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

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

16 **§116g. False or fraudulent statements or representations; false claims for benefits**

17 Any applicant or Grantee who willfully makes any false or fraudulent statement or
18 representation as to any fact required or appropriate, necessary or related to the
19 determination of the eligibility qualifications of such applicant or Grantee for benefits
20 under this chapter, or for the continuation or extension of benefits, or who willfully makes
21 or presents any claim for benefits under this chapter knowing the claim to be false, fictitious
22 or fraudulent, must be fined not more than \$25,000 or imprisoned not more than two years,
23 or both. In addition to the foregoing, any benefits previously granted under this chapter to
24 such applicant or Grantee are automatically revoked; all taxes that were otherwise due
25 and payable by such applicant or Grantee but for the tax exemption benefits granted, are

1 due and payable as of the date or dates when, but for such tax exemption, they would have
 2 been due and payable, and the taxes must be assessed and collected in accordance with the
 3 applicable tax laws in force for such date or dates; and the amount or amounts of all subsidy
 4 benefits, based on income tax liability, actually received, must be deemed debts due and
 5 owing to the Government of the Virgin Islands as of the date or dates when payment of
 6 subsidy was made.

7 BILL SUMMARY

8 Section 1 of the bill names the act “The Virgin Islands South Shore Enterprise Zone
 9 Act”. Section 2 amends title 29, chapter 19, subchapter III, section 1016 to add the South
 10 Shore Enterprise. This bill amends title 29 Virgin Islands Code by adding a new
 11 subchapter. governing the South Shore of St. Croix as an enterprise zone and expands the
 12 duties of the Enterprise Zone Commission. The new subchapter is divided into seven
 13 sections.

14
 15 Section 116a defines terms as used in the subchapter., including “certificate and
 16 grantee.

17
 18 Section 116c sets forth the benefits to which the grantees are entitled for
 19 establishing a business in the South Shore Enterprise Zone. Section 116d sets for the
 20 grantees’ exemptions from customs laws, custom duties, excise taxes and Gross Receipt
 21 Taxes for merchandise imported to and exported from the South Shore Enterprise Zone
 22

23 Section 116e excludes grantees of Enterprise Zone benefits economic development
 24 benefits. Section 115f gives grantees the right to generate, sell, trade, or otherwise
 25 distribute electrical power and water to Grantees within the Free Trade Zone. Section 116g
 26 sets forth the grounds for revocation of a grantee’s benefits.
 27

28 29 DRAFTER’S NOTE

30 **The description of the South Shore Enterprise Zone in section 3 of the bill may**
 31 **not meet the requirements of a legal description. A legal description of real property**
 32 **is one that accurately identifies and locates the boundaries in a manner that is**
 33 **acceptable to a court, if there is a dispute. The description in section 3 attempts a**
 34 **metes (distance)and bounds (direction) method of description. I do not profess to be**
 35 **a surveyor or know much about surveying real property, but I do know that in a**
 36 **metes and bounds legal description, there must depict a Point of Beginning. The legal**
 37 **description must begin with identifying beginning point. From the Point of**
 38 **Beginning, the legal description would following a variety of degrees and angles**
 39 **defining the border of the area until it has connected a line back to the Point of**

1 **Beginning. A legal description using the metes and bounds method of describing**
2 **property always begins and ends at the Point of Beginning. It is important that the**
3 **description clearly identify the boundaries of the zone, where the zone begins and**
4 **ends, for the purposes of the Program.**

5

6 **BR19-0035/April 17, 2020LMW/ Revised May 15, 2020/YLT**