

**Virgin Islands
Economic Development Commission**

Hotel Development Program

TITLE TWENTY-NINE Public Planning and Development

Chapter 23. Hotel Development Program

*** Current through Act 8206 of the 2019 Regular and Special Session ***

Chapter 23. Hotel Development Program

**As amended by Act 8206 passed by the Legislature of the Virgin Islands on September 25, 2019
and approved by the Governor on October 07, 2019**

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§ 1301. Short title

This chapter may be cited as the Hotel Development Act.

HISTORY: --Added Oct. 7, 2011, No. 7301, § 1, Sess. L. 2011, p. 183.

§ 1302. Legislative findings

The Legislature finds and declares that:

(a) The tourist, hotel and resort industry constitutes a major element of the Territorial economic structure;

(b) Additional hotel accommodations and tourist facilities and services are essential to the further development of the Territory's tourism industry;

(c) Additional hotel accommodations and tourist facilities have a direct impact on the local economy through construction, wages, and other benefits and will grow the economy of the Virgin Islands;

(d) The provision of such additional accommodations and facilities, particularly on the island of St. Croix, is declared for the purpose of assisting in the economic growth, restoration, and revitalization of certain underdeveloped areas;

(e) In order to promote the tourism industry of the Virgin Islands, it is essential to provide for the planning, financing, acquisition, construction, improvement, maintenance and operation of new hotels, and the planning, financing, reconstruction, renovation, maintenance, and operation of existing hotels in the Territory;

(f) The development of additional hotel accommodations and facilities is calculated to result in a significant contribution to the general public welfare and prosperity of the Virgin Islands; and

(g) Using future gains in taxes to assist in the development of areas which would not otherwise happen solely through private investment in the reasonably foreseeable future has been proven to have a positive economic impact in their areas of operation.

HISTORY: --Added Oct. 7, 2011, No. 7301, § 1, Sess. L. 2011, p. 183; amended Apr. 4, 2018, No. 8030, § 1(a)(1)-(4), Sess. L. 2018, p. 6; amended June 14, 2018, No. 8056, § 18(a)(1), (2), Sess. L. 2018, p. 96; amended Oct. 6, 2019, No. 8206, § 1(a), Sess. L. 2019, p. -.

§ 1303. Definitions

As used in this chapter, the following terms have the meaning set forth in this section:

(a) "Agreement" means the agreement between the Government and a developer which sets forth the terms and conditions for assistance for Project development under this chapter.

(b) "Authority" means the Virgin Islands Economic Development Authority established in section 1101 of this title.

(c) "Designated Casino Tax on Gross Revenue" means the gross revenue tax, pursuant to 32 V.I.C., Chapter 21, Section 514-515, generated from each proposed hotel development project under this chapter.

(d) "Designated Hotel Room Occupancy Tax" means the hotel room taxes, pursuant to 33 V.I.C., Chapter 3, Section 54, generated from each proposed hotel development project under this chapter.

(e) "Developer" means any entity or person that seeks to undertake a Project pursuant to this chapter.

(f) “Economic Recovery Fee” means the Economic Recovery Fee pursuant to section 1312 of this chapter.

(g) “ERF Project” means ERF Project as defined in section 1312 of this chapter.

(h) “Government” means the Government of the Virgin Islands.

(i) “Hotel” means every building or other structure or group of structures where sleeping accommodations are furnished by the day, week, or month for pay, to guests, whether with or without meals. The term “hotel” includes resorts.

(j) “Hotel Development Notes” means the notes, bonds or other evidence of indebtedness incurred by the Developer or by the Notes Issuer for the benefit of the Developer, with respect to an approved Project, including but not limited to Hotel Revenue Bonds, Conventional Loans, Institutional Financing, or other financing issued with respect to the eligible Project.

(k) “Notes Issuer” means the PFA or another issuer authorized to issue Hotel Development Notes under this chapter including, at Developer’s option, a multi-jurisdictional issuer of notes or bonds, or both.

(l) “PFA” means the Virgin Islands Public Financing Authority established pursuant to title 29 Virgin Islands Code, chapter 15.

(m) “Program” means the Hotel Development Program established in section 1304 of this chapter.

(n) “Project” means a proposed hotel development or reconstruction or renovation of a hotel under this chapter that may include all ancillary facilities servicing the hotel development, including without limitation, solar and other energy generation equipment; related marina facilities, including docks and wharves; residential housing; community centers; infrastructure and other facilities.

(o) “Reconstruction” means construction related to existing hotel properties and related facilities or infrastructure that have been substantially demolished or damaged by natural or manmade causes, including expansion or extensions of the properties and related facilities or infrastructure as provided by this chapter.

(p) “Renovation” means construction in the nature of substantial repair, updating, enhancement, and refurbishment of existing hotel properties and related facilities or infrastructure as provided by this chapter.

(q) “Trust Fund” means the Hotel Development Trust Fund created for each respective Project established in section 1308.

HISTORY: -- Added Oct. 7, 2011, No. 7301, § 1, Sess. L. 2011, p. 184; amended Oct. 13, 2014, No. 7661, § 1(a), Sess. L. 2014, p. 288; amended Apr. 4, 2018, No. 8030, § 1(b)(1)-(5), Sess. L. 2018, p. 6, 7; amended June 14, 2018, No. 8056, § 18(b), Sess. L. 2018, p. 96; amended Oct. 6, 2019, No. 8206, § 1(b)(1)-(6)(A), (B), Sess. L. 2019, p. -.

§ 1304. Program established, purpose

(a) The Hotel Development Program is established within the Virgin Islands Economic Development Authority.

(b) The purpose of the Program is to encourage and promote development, construction, reconstruction, and renovation of hotel and resort facilities in the Virgin Islands and to provide financial assistance and other incentives for such development, construction, reconstruction, and renovation which may include commercial facilities, and other hotel facilities for the accommodation and entertainment of tourists and visitors.

HISTORY: -- Added Oct. 7, 2011, No. 7301, § 1, Sess. L. 2011, p. 184; amended Apr. 4, 2018, No. 8030, § 1(c)(1), (2), Sess. L. 2018, p. 7; amended June 14, 2018, No. 8056, § 18(c), Sess. L. 2018, p. 96; amended Oct. 6, 2019, No. 8206, § 1(c), Sess. L. 2019, p.

§ 1305. Administration and powers

(a) The Authority shall administer a program designed to assist in the development of hotels, resorts and related hotel facilities to increase opportunities in tourism enterprises in the Virgin Islands so as to facilitate and to accelerate opportunity for employment in these enterprises, particularly of unemployed and underemployed residents of the jurisdiction in which the hotel investment is to be made.

(b) The Authority has the following powers in the administration of the Program:

(1) To assist those persons interested in building new tourist hotels and resorts or other related tourist facilities in the Virgin Islands by maintaining and disseminating information regarding financing available through private and public sources through a Notes Issuer;

(2) To grant assistance in the construction of new hotel facilities or the reconstruction or renovation of existing hotel facilities and related infrastructure by offering certain tax incentives;

(3) To review promptly and in reasonable order all applications and causes affecting the granting, suspension, renewal or revocation thereof for assistance under this chapter;

(4) To promote due diligence to determine a Project's eligibility for financial assistance to accomplish the purpose of this chapter;

(5) To hold public hearings on applications considered for approval;

(6) To require and collect application and administrative fees and charges as the Authority determines to be reasonable in connection with the exercise of any power given to the Authority under this chapter;

(7) To assist developers to apply for and accept advances, loans, grants, contributions, gifts, donations, appropriations of funds and any other form of financial assistance from the Federal Government, or other private source for the purposes of this chapter;

(8) To provide administrative and financial assistance on such terms and upon such conditions as the Authority may determine for the preparation of feasibility studies relating to an eligible project;

(9) To enter into any agreements or contracts and to execute any instruments and perform any acts or things necessary, convenient, or desirable for the purposes of the Program, including the entering into of agreements or contracts to provide for the payment of principal of and interest on any obligations issued, and to provide necessary reserves in connection with these obligations; and

(10) To promulgate regulations the Authority considers necessary to achieve the objectives of this chapter.

HISTORY: -- Added Oct. 7, 2011, No. 7301, § 1, Sess. L. 2011, pp. 184, 185; amended Oct. 13, 2014, No. 7661, § 1(b), Sess. L. 2014, p. 288; amended Apr. 4, 2018, No. 8030, § 1(d)(1)-(4), Sess. L. 2018, p. 7; amended June 14, 2018, No. 8056, § 18(d), Sess. L. 2018, p. 96; amended Oct. 6, 2019, No. 8206, § 1(d)(1)-(3), Sess. L. 2019, p. -.

§ 1306. Application and certification of Project; eligibility

(a) A person wishing to develop a hotel shall apply to the Authority on forms prescribed and made available by the Authority.

(b) Before a hotel development project is approved, the applicant must produce a letter of intent from a financial institution and a copy of all documents submitted to the financial institution. The application for certification must contain the following information:

(1) Description of the proposed land with the appropriate zoning to construct the Project;

(2) A pro forma projection of the revenues and expenses of the Project;

(3) An assessment of the financial feasibility of the Project;

(4) A schedule of the timing and phasing of the Project prepared no earlier than six months before the date the application is submitted; and

(5) Such other information as the Authority may require.

(c) If a Developer is applying for authorization to impose an Economic Recovery Fee pursuant to section 1312(c)(1) of this chapter, the application shall, in addition to the requirements set forth in subsection (b) of this section, include the following:

(1) A statement of the intention to obtain authorization to assess an Economic Recovery Fee;

(2) The amount of the proposed fee, which shall not be greater than the amount set forth in section 1312(g);

(3) The expected uses of the proposed fee; and

(4) The time frame for expected imposition of such fee which shall not exceed the longer of the maturity of the Hotel Development Notes or thirty years.

(d) To be eligible for benefits under this chapter, the project must be located in the U.S. Virgin Islands.

(e) The Authority shall establish by regulations comprehensive eligibility requirements for applicants' participation in the Program.

HISTORY: --Added Oct. 7, 2011, No. 7301, § 1, Sess. L. 2011, pp. 185, 186; amended Aug. 13, 2014, No. 7641, § 1, Sess. L. 2014, p. 200; amended Apr. 4, 2018, No. 8030, § 1(e), Sess. L. 2018, p. 8; amended Oct. 6, 2019, No. 8206, § 1(e)(1), (2), Sess. L. 2019, p. -.

§ 1307. Approval or denial; agreement; cure of defects; reimbursement of costs

(a) After receipt of the criteria set forth in section 1306, the Authority shall certify or deny certification of the proposed project under such procedures as may be established by regulations. In determining certification of the Project, the Authority shall consider the following criteria:

(1) Whether the project is financially feasible;

(2) Whether the project would likely result in the increase of tax revenues payable to the Government, specifically with regard to hotel room occupancy tax revenues, casino tax revenues, and Economic Recovery Fee revenues generated from such Projects to be applied to payment of the project funding;

(3) Whether the development would not happen solely through private investment in the reasonably foreseeable future;

(4) Whether an allocation, dedication or contribution of the hotel room occupancy tax incremental revenues, casino tax incremental revenues, and Economic Recovery Fee revenues will be sufficient, together with the other moneys available therefor to support payment of the debt obligation and whether the Project's total anticipated benefit to the Government, including public benefits as well as financial benefits, exceeds the total anticipated costs to the Government; and

(5) The Authority may establish other criteria by regulations.

(b) If, upon consideration of the criteria set forth in subsection (a), the Authority decides to certify the Project, the Authority shall finalize an agreement setting forth the respective obligations of the parties, on such terms and conditions as the Authority and the Developer agree upon.

(c) The agreement referenced in subsection (b) must be approved by the Governor and ratified by the Legislature.

(d) If the project does not comply with the criteria set forth in subsection (a), the Authority shall so notify the Developer in writing stating the areas the Project fails to meet the required criteria. The Authority shall allow a Developer up to 60 days to cure and comply with any defects.

(e) Upon approving a Project the Authority may pursuant to regulations require the developer to reimburse the Authority for all or part of the costs of the independent financial assessment conducted in reviewing the application for certification of a proposed Project and any other related costs incurred. The costs may be paid, in the discretion of the Authority, from the proceeds of bonds, Hotel Development Notes or other evidences of indebtedness issued with respect to a Project under conditions prescribed in the regulations promulgated by the Authority.

(f) The regulations governing the agreement specified in section 1307(b) may provide that the Designated Casino Tax on Gross Revenue, Designated Hotel Room Occupancy Tax, and the Economic Recovery Fee payable into the Project's Hotel Development Trust Fund and securing Hotel Development Notes may be paid directly to the trustee or to the trustee's collecting agent for the Hotel Development Notes for deposit into the funds and accounts held by the trustee or trustee's collection agent for the benefit of the noteholders.

HISTORY: --Added Oct. 7, 2011, No. 7301, § 1, Sess. L. 2011, pp. 186, 187; amended Apr. 4, 2018, No. 8030, § 1(f)(1)-(8), Sess. L. 2018, p. 8, 9; amended June 14, 2018, No. 8056, § 18(e)(1)-(3), Sess. L. 2018, p. 96, 97; amended Oct. 6, 2019, No. 8206, § 1(f)(1)(A), (B), (2)-(4), Sess. L. 2019, p. -.

§ 1308. Hotel Development Trust Funds

(a) The Authority shall establish for each approved project a separate Trust Fund, which for the purposes of this chapter shall also be known as "the Project's Hotel Development Trust Fund" or the "Project's Fund". Monies allocated to and deposited into the Project's Fund from the hotel occupancy tax revenues, the casino tax revenues, and the Economic Recovery Fees revenues, if applicable, generated from the approved Project must be made available as revenue to be utilized towards reducing the Hotel Development Notes incurred for the development of the approved Project. Existing levels of Designated Hotel Room Occupancy Taxes and Designated Casino Taxes in the amount generated by a particular project in the 12 months prior to the submission of the application for the issuance of the Hotel Development Notes may not be used to fund the Hotel Development Trust Fund.

(b) Notwithstanding the provisions of sections [33 V.I.C. § 54\(e\)](#) and [32 V.I.C. § 517\(c\)](#), and subject to the limitations set forth in section 1313 of this chapter, the hotel occupancy taxes, pursuant to [33 V.I.C. § 54\(b\)](#), the casino revenue tax pursuant [32 V.I.C. § 515](#), and the Economic Recovery Fee, if applicable, pursuant to section 1312(c)(1) of this chapter, generated from the approved Project must be deposited into the Project's Hotel Development Trust Fund. For the purposes of this section, notwithstanding the provisions of 32 V.I.C. §§ 514-515, until the outstanding Hotel Development Notes with respect to a Project have been paid, the maximum casino tax rate may be increased to 35%. Once the debt is retired the casino tax shall return to 12% according to the provisions of [title 32 V.I.C. § 515](#).

(1) During the period that any hotel occupancy taxes, casino taxes, or Economic Recovery Fees, if applicable, are applied towards the payment of any Hotel Development Note with respect to a Project, not less than 80% of the persons employed in the operation, maintenance, and management of the Project facilities must be legal residents of the Virgin Islands for not less

than 5 years prior to employment, or a graduate of a Virgin Islands high school; provided that upon application for a waiver from the Department of Labor:

(A) The Government, acting through the Department of Labor certifies that legal residents as defined under this chapter, with the necessary ability to perform the services required and in numbers sufficient to meet the needs for personnel for such employment are not available within the Virgin Islands for employment;

(B) The Department of Labor shall proceed to verify the facts stated in the application and unless it is determined that such application is without factual basis, promptly after the filing of such application, authorize the hotel operator to employ a greater percentage of non Virgin Islands residents for such period or periods that such non-availability of personnel exists;

(C) If the Government has not notified the hotel operator in writing within 14 days after the filing of the hotel operator's application that it has determined such application to be without factual basis, stating its reasons for such determination, then the hotel operator's application must be granted, subject only to the right of the Government to proceed to revoke the application as set forth in paragraph (2).

(2) Any authorization by the Government pursuant to subparagraphs (A) or (B) of paragraph (1) may not be revoked except upon 30 days' notice to the hotel operator and after opportunity for the hotel operator to appear and be heard and present evidence with respect to the revocation, which opportunity may not exceed 60 days after the date of the notice.

(3) Notwithstanding any certification in effect by the Government, the Government shall cooperate with the hotel operator in an effort to make available for employment by the hotel operator and its affiliates a sufficient number of persons with appropriate aptitude, training and experience regardless of their nationality, domicile, residence or place of origin.

(4) In constructing hotel facilities, the hotel operators shall give preference in employment to residents of the Virgin Islands.

(5) Penalties. Any hotel operator found in violation of this subsection, after notice to the hotel operator and after opportunity for the hotel operator to appear and be heard and present evidence with respect to such violation, shall have their tax subsidy decreased by 10% each month until the defect is cured. The decrease in tax subsidy shall be cumulative and shall be held in the Hotel Development Trust Fund until said defect is cured. The funds held may be released by the Authority upon notification from the Department of Labor that the hotel operator has complied with this section.

(c) The Authority may not expend, commit to expend or pledge an interest in any of the revenues held in the Project's Hotel Development Trust Fund, other than to the payment of a Hotel Development Note or express relating to the administration of the Project's Hotel Development Trust Fund.

(d) The dedications and contributions of the hotel room tax, casino tax revenues, and the Economic Recovery Fee revenues, if applicable, may not impair the existing obligations of the Government of

the Virgin Islands, the PFA or the Authority and may not include tax revenues that would violate the revised Organic Act of the Virgin Islands.

(e) Upon adoption of a Resolution by the Authority or the Notes Issuer, as applicable, following ratification of the Agreement by the Governor or the PFA, the Director of the Internal Revenue Bureau, as applicable, shall transfer to the Note Issuer for deposit in the Project's Hotel Development Trust Fund or directly to the trustee of the Hotel Development Notes for deposit into the funds and accounts held by the trustee for the benefit of the holders thereof, all tax revenues, and the Economic Recovery Fee revenues, if applicable, that are allocated to the Project's Fund pursuant to section 1313 of this chapter, related to such Hotel Development Notes until the certification by the Authority, the Notes Issuer, or such trustee that all development costs to be paid from the Hotel Development Trust Fund including the Hotel Development Notes have been paid in full.

(f) While Hotel Development Notes remain outstanding, the tax rates and the Economic Recovery Fee, if applicable, may not be reduced, if the reduction would impair the ability to pay any costs to which the tax revenues, and the Economic Recovery Fee revenues, if applicable, have been pledged or otherwise committed by the Authority or the Notes Issuer, as applicable, including the timely payments of debt service on the Hotel Development Notes.

(g) Hotel Development Notes of every issue may, by their terms, be payable solely out of the tax revenues and the Economic Recovery Fee, if applicable, pledged to and received in connection with an approved Project and deposited to the project's Hotel Development Trust Fund. The lien created to secure the Hotel Development Notes may not attach to any other assets of the Authority or the Government or the PFA and are special limited obligations of the Authority, the Government, the PFA or the Developer, as applicable, payable solely from the pledged tax revenues and the Economic Recovery Fee, if applicable, of the Project. The holders of the Hotel Development Notes have no right to require the imposition of any tax or establishment of any rate of taxation in order to obtain the amounts necessary to pay and retire such Hotel Development Notes. Hotel Development Notes may be issued that are secured separately by any Designated Hotel Room Occupancy Taxes, any Designated Casino Taxes or any Economic Recovery Fees, or any combination thereof.

HISTORY: --Added Oct. 7, 2011, No. 7301, § 1, Sess. L. 2011, pp. 187-189; amended Apr. 4, 2018, No. 8030, § 1(g)(1)-(11), Sess. L. 2018, p. 9, 10; amended June 14, 2018, No. 8056, § 18(f)(1)-(5), Sess. L. 2018, p. 97; amended Oct. 6, 2019, No. 8206, § 1(g)(1)(A), (B), (2)(A)-(C), (3)-(7), Sess. L. 2019, p. -.

§ 1309. Hotel Development Notes authorization

(a) The Notes Issuer may issue Hotel Development Notes to finance total Project costs of eligible Projects approved pursuant to this chapter, including, without limitation, costs of issuance, debt service and other reserves, and related ancillary costs and expenses. Hotel Development Notes may be issued to refund other Hotel Development Notes issued pursuant to this chapter. Hotel Development Notes may not be issued in an amount exceeding the total costs of implementing the hotel development financing plan for which they were issued.

(b) Hotel Development Notes for renovation or reconstruction Projects cannot include the amount received from insurance proceeds.

(c) The Notes Issuer may execute such financing documents as may be necessary or appropriate for the issuance, security, and administration of Hotel Development Notes, investment of proceeds and moneys in the accounts provided for in, or pursuant to, this chapter, and the application of the proceeds of the Hotel Development Notes and the moneys and investments in such accounts, and for the purposes set forth in section 1304, including financing documents with developers.

(d)

(1) To secure the full and timely payment of Hotel Development Notes for each Project issued under this chapter in accordance with their respective terms, all such Hotel Development Notes shall be secured upon issuance by a statutory lien on all Designated Hotel Room Tax and Designated Casino Taxes on Gross Revenue and Economic Recovery Fees allocated to the Project's Fund pursuant to section 1313 of this chapter. The lien shall arise solely by force of this chapter specifically upon the issuance of any Hotel Development Notes issued after the effective date of this chapter and shall automatically attach without further action or authorization by the Government or the PFA. The lien shall be valid and binding from the time the Designated Hotel Room Occupancy Tax and Designated Casino Tax on Gross Revenue and Economic Recovery Fees are received by or for the account of the Government, allocated to the Project's Fund pursuant to section 1313 of this chapter and the lien shall immediately attach to the Designated Hotel Room Occupancy Tax and Designated Casino Tax on Gross Revenue and Economic Recovery Fees allocated to the Project's Fund pursuant to section 1313 of this chapter and be effective, binding and enforceable against the Government or the PFA, as applicable, their respective successors, transferees, or creditors, and all others asserting rights therein, irrespective of whether those parties have notice of the lien and without the need for any physical delivery, recordation, filing, or further act.

(2) The Government is hereby authorized and directed to covenant and agree for the benefit of the holders of the Hotel Development Notes outstanding from time to time that for so long as any Hotel Development Notes remain unpaid, the Government shall defend, preserve and protect such statutory lien against all claims and demands of third parties, and not revoke, terminate or amend such statutory lien in any way that materially adversely affects the rights of any holder of Hotel Development Notes.

HISTORY: -- Added as 29 V.I.C. § 1312, Apr. 4, 2018, No. 8030, § 2, Sess. L. 2018, p. 98-100. Renumbered as 29 V.I.C. § 1309, June 14, 2018, No. 8056, § 18(g), Sess. L. 2018, p. -; amended Oct. 6, 2019, No. 8206, § 1(h)(1)(A)(i)-(iv), (B)(i)-(iii), (C)(i)-(vii), (2), (3), Sess. L. 2019, p. -.

§ 1310. Hotel Development Notes security

(a) A series of Hotel Development Notes may be secured by a trust agreement or trust indenture between the Notes Issuer and a trustee having trust powers, or by a secured loan agreement or other instrument giving power to the trustee by means of which the Notes Issuer may do the following:

(1) Make and enter into any and all agreements and covenant with the trustee or the holders of the Hotel Development Notes that the Notes Issuer may determine to be necessary or desirable,

including, without limitation, covenants and agreement as to any of the following:

(A) the application, investment, deposit, use and disposition of the proceeds of Hotel Development Notes and the other monies, securities, and property;

(B) the assignment by the Notes Issuer of its rights in any agreement;

(C) the terms and conditions upon which additional Hotel Development Notes may be issued by the Notes Issuer; provided that the term of any Hotel Development Notes may not exceed 30 years from the date of issuance;

(D) providing for the appointment of a trustee to act on behalf of noteholders; and

(E) vesting in a trustee, for the benefit of the holders of Hotel Development Notes, or in the noteholders directly, such rights and remedies as the Notes Issuer determines.

(2) Pledge, mortgage or assign monies, agreements, property or other assets of the PFA or the Government, either presently in hand or to be received in the future, or both.

(3) Provide for bond insurance and letters of credit, or otherwise enhance the credit of and security for the payment of its Hotel Development Notes; and

(4) Provide for any other matters of like or different character that in any way affects the security for or payment of the Hotel Development Notes.

(b)

(1) The Government pledges to contract and agree with the holders of any Hotel Development Notes issued pursuant to this chapter that, subject to the provisions of the financing documents, the Government may not limit or alter the basis upon which available revenues are received, allocated, applied and pledged pursuant to this chapter; may not impair the contractual obligations of the Notes Issuer to fulfill the terms of any agreement made with the holders of the Hotel Development Notes, may not in any way impair the rights or remedies of the holders, and may not in any way alter the exemptions from taxation provided for in this chapter, until the Hotel Development Notes and the interest on the Hotel Development Notes, with interest on any unpaid installment of interest and all costs and expenses in connection with any suit, action or proceeding by or on behalf of the holders, are fully met and discharged.

(2) The Notes Issuer may include the pledge and agreement of the Government as part of the contract with the holders of any of its notes. This chapter constitutes a contract between the Government and the holder of the Hotel Development Notes authorized by this chapter.

(3) To the extent that any acts or resolutions of the PFA may be in conflict with this chapter, this chapter is controlling.

(c) Any pledge made by the Notes Issuer with respect to its Hotel Development Notes is valid and binding from the time the pledge is made. The money or property so pledged and thereafter received is immediately subject to the lien of the pledge without physical delivery or further act, and the lien of the pledge is valid and binding as against all parties having any claim of any kind in tort, contract or

otherwise against the Notes Issuer irrespective of whether the parties have notice. Neither the resolution, trust agreement, nor any other instrument by which a pledge is created is required to be recorded or filed under the provisions of the Uniform Commercial Code to be valid, binding, and effective against the parties.

(d) Pursuant to the authority granted in section 8(b) of the Revised Organic Act of the Virgin Islands, the principal and interest of Hotel Development Notes issued under this chapter are exempt from taxation by the Government of the Virgin Islands.

HISTORY: -- Added as 29 V.I.C. § 1313, Apr. 4, 2018, No. 8030, § 2, Sess. L. 2018, p. -. Renumbered as 29 V.I.C. § 1310, June 14, 2018, No. 8056, § 18(g), Sess. L. 2018, p. -.

§ 1311. Default

(a) If there is a default in the payment of the principal of or interest on any Hotel Development Notes of a series after the principal or interest becomes due and payable, whether at maturity or upon call for redemption, or if the Notes Issuer or the Government fails or refuses to carry out and perform the terms of any agreement with the holders of any of the Hotel Development Notes, then the holders of the Hotel Development Notes, or the trustee appointed to act on behalf of the holders, may, subject to the provisions of the financing documents, do the following:

(1) By action, writ, or other proceeding enforce all rights of the holders of the Hotel Development Notes, including the right to require the Notes Issuer to carry out and perform the terms of any agreement with the holders of the Hotel Development Notes or its duties under this chapter;

(2) By action, petition to enjoin any acts or things that may be unlawful or in violation of the rights of the holders of the Hotel Development Notes; and

(3) Declare all Hotel Development Notes due and payable, whether or not in advance of maturity and, if all the defaults be made good, annul the declaration and its consequences.

(b) A default with respect to one Hotel Development Note shall not constitute a default with respect to any other Hotel Development Note unless the Hotel Development Notes by their specific terms provide for such a cross-default to occur.

HISTORY: -- Added as 29 V.I.C. § ?1314, Apr. 4, 2018, No. 8030, § 2, Sess. L. 2018, p. 100. Renumbered as 29 V.I.C. § 1311, June 14, 2018, No. 8056, § 18(g), Sess. L. 2018, p. -; amended Oct. 6, 2019, No. 8206, § 1(i), Sess. L. 2019, p. -.

§ 1312. Economic recovery fee

(a) Purpose. The purpose of the Economic Recovery Fee is to encourage and promote the recovery and improvement, and expansion of the Territory's hotel sector.

(b) Fee. Developers of hotels located or to be located in the U.S. Virgin Islands may apply for authorization to impose and collect an Economic Recovery Fee to finance, fund, or cover the costs incurred for renovation or reconstruction, construction, improvement, and development of hotel

properties and related facilities or infrastructure ('ERF Projects'), subject to the provisions of this chapter. The scope of the facilities and infrastructure that may be financed, funded or covered and authorized pursuant to this section, includes the scope of the facilities and infrastructure described in the definition of Project pursuant to section 1303 of this chapter.

(c) Application and approval.

(1) A Developer seeking authorization to impose an Economic Recovery Fee which is being used to secure Hotel Development Notes shall submit an application in accordance with the requirements set forth in section 1306 of this chapter and shall be considered for approval in accordance with section 1307 of this chapter.

(2) A Developer seeking authorization to impose an Economic Recovery Fee which is not being used to secure Hotel Development Notes shall submit an application in accordance with the requirements set forth in subparagraph (A) of this paragraph and shall be considered for approval or disapproval in accordance with the procedures set forth in subsection (d), paragraphs (2) through (4) of this section.

(A) Any application submitted by a Developer seeking to impose an Economic Recovery Fee which is not being used to secure Hotel Development Notes shall include the following:

(i) A statement of the intention to obtain authorization to assess an Economic Recovery Fee;

(ii) The amount of the proposed fee which shall not be greater than the amount set forth in section 1312(g) of this chapter;

(ii) Information identifying the applicant, its ownership and corporate structure, and demonstrating its ownership or possessory interest in a hotel property;

(iii) The applicant's most recent audited financial statements if the applicant is a new applicant or an applicant that is not a beneficiary in good standing with the Economic Development Program, as set out in title 29, chapter 12, subchapter I of the Virgin Islands Code, at the time of its application;

(iv) A description in reasonable detail of the plans for the proposed ERF Project including, as applicable: the number of rooms to be constructed or renovated; the approximate square footage of the area(s) to be constructed, reconstructed or renovated; the nature, size, and scope of any amenities or infrastructure to be constructed, reconstructed, or renovated; the general standard of finish sought to be achieved by the construction, reconstruction, or renovation; and a schedule of the timing and phasing of the ERF Project(s); and

(v) the time frame in which the imposition of the Economic Recovery Fee is sought to be imposed, not to exceed thirty (30) years.

(d) Economic recovery fee committee and approval process.

(1) An Economic Recovery Fee Committee ('ERF Committee') is hereby established to review any application submitted pursuant to subsection (c)(2) of this section for approval of the Economic Recovery Fee, and to recommend approval or disapproval of the application to the Authority. The ERF Committee shall consist of the Commissioner of the Department of Tourism; the Commissioner of the Department of Finance; and a member of the Authority's Governing Board or an appropriate designee, which member or designee shall be selected by the Authority's Governing Board.

(2)

(A) In reviewing an application, the ERF Committee shall:

(i) Determine whether the application contains the information required pursuant to paragraph (2) of subsection (c) of this section;

(ii) Consider the creditworthiness, financial history, and financial stability of the applicant; and

(iii) Review the application and recommend approval or disapproval of the application to the Authority no later than thirty (30) days after receipt of the application.

(B) An applicant who is an EDC Beneficiary in good standing shall be presumed to have sufficient creditworthiness, financial history, and financial stability.

(C) If the ERF Committee is unable to reach a consensus on a recommendation, the Committee shall vote, and the majority vote will control.

(D) The ERF Committee shall return the application to the Authority along with the ERF Committee's written recommendation of approval or disapproval.

(3)

(A) Within 30 days following the Authority's receipt of the application and the ERF Committee's recommendation of approval or disapproval pursuant to paragraph (2) of this subsection, the Authority's Board, by majority vote, with a quorum being present, shall vote to approve or disapprove the application.

(B) If the Board fails to vote within the 30-day period set forth in subparagraph (A) of this paragraph, the application shall be deemed approved as of the date the 30-day period expires; except that in a force majeure event that prevents the Board from voting during the 30-day period, the Board shall have up to 60 days to vote to approve or disapprove the application.

(e) *Contractual agreement.* Upon approval of an application pursuant to subsection (d), paragraph (3) of this section, the applicant shall be deemed to have entered into a contractual agreement with the Authority to impose an Economic Recovery Fee in the amount set forth in its application, and to perform the ERF Project as described in the application which may be modified from time to time pursuant to

subsection (f) of this section. The Authority and the applicant shall use their good faith efforts to prepare the terms of a written agreement for execution within a reasonable period of time following the Board's approval.

(f) Modification. Following approval of an application pursuant to the provisions of section 1312(c)(2) of this chapter, the applicant may modify the Economic Recovery Fee and/or the ERF Project described in the application only as provided in this subsection.

(1) To increase or decrease the amount of an Economic Recovery Fee, the applicant shall notify the Authority in writing of the change in the amount of the fee, which change shall be consistent with subsection (g) of this section, and which change shall take effect 30 days following the Authority's receipt of the notification.

(2) To modify an approved ERF Project, the applicant shall submit to the Authority a written request to modify the ERF Project, describing in reasonable detail the nature of the modification and the justification for the modification.

(A) Upon receipt of a request to modify the ERF project, the Authority shall forward the modification request to the ERF Committee to determine whether the modification is consistent with the purposes for which the ERF Project was originally approved. The ERF Committee shall recommend approval or disapproval of the modification to the Authority no later than thirty (30) days after receipt of the modification request.

(B) Within 30 days of the Authority's receipt of the ERF Committee's recommendation pursuant to paragraph (2)(A) of this subsection, the Authority's Board, by majority vote, with a quorum being present, shall vote to approve or disapprove the modification request.

(C) If the Board fails to vote within the 30-day period set forth in subparagraph (B) of this paragraph, the modification request shall be deemed approved. However, in the event of a force majeure occurrence, this thirty (30) day period shall be extended to sixty (60) days.

(g) Amount of fee. The amount of the Economic Recovery Fee for any ERF Project shall be the difference between (1) a percentage rate of the Designated Hotel Room Occupancy Tax to be selected by the applicant, which rate, notwithstanding provisions [33 V.I.C. § 54 \(b\)\(1\)](#), may be increased up to 20%, and (2) the percentage rate of Designated Hotel Room Occupancy Tax established by [33 V.I.C. § 54\(b\)\(1\)](#) applicable at the time of the application, provided that such difference may never be greater than 7.5%.

(h) Initiation and cancellation of economic recovery fee.

(1) Prior to assessing or collecting an approved Economic Recovery Fee the applicant shall notify the Authority of the date on which it intends to begin assessing and collecting the Fee, which date shall not be fewer than 60 days following the notification.

(2)

(A) If an applicant requests to stop collecting the Economic Recovery Fee, approved

pursuant to section 1312(c)(2) of this chapter on a date sooner than what was approved in the application, the applicant must notify the Authority. The applicant's ability to assess an Economic Recovery Fee will cease 30 days following the notification.

(B) An applicant may not request to cease collecting the Economic Recovery Fee approved pursuant to section 1312(c)(1) of this chapter until all Hotel Development Notes secured by the Economic Recovery Fee are paid in full.

(i) Notification. Within 30 days of receipt by the Authority of (1) a notification by the applicant pursuant to subsection (h)(1) of this section of its intention to commence assessment of an Economic Recovery Fee, or (2) a notification by the applicant pursuant to subsection (f)(1) of this section of a change in the amount of an Economic Recovery Fee, the Authority shall notify the Virgin Islands Bureau of Internal Revenue of the identity of the applicant, the amount of the Economic Recovery Fee, and the date on which the new or modified Economic Recovery Fee will go into effect.

(j) Collection, calculation and deposit of the economic recovery fee.

(1) Each hotel that is the subject of an approved ERF Project shall include on each guest invoice a separate line item for the Economic Recovery Fee.

(2) The amount of Economic Recovery Fee charged to any hotel guest shall be calculated in the same manner as the amount of Hotel Room Occupancy Tax charged to a guest pursuant to [33 V.I.C. § 54\(b\)\(1\)](#).

(3) All Economic Recovery Fee revenues approved pursuant to section 1312(c)(2) of this chapter collected by a hotel shall, upon collection, be separated from Designated Hotel Room Occupancy Tax and the Casino Tax revenues and deposited in the ERF Trust Account established for the Project pursuant to subsection (k) of this section. Economic Recovery Fee revenues, approved pursuant to section 1312(c)(1) of this chapter collected by a hotel shall be applied in accordance with the provisions of section 1308 of this chapter.

(k) Creation of economic recovery fee trust account.

(1) Within 30 days of receipt by the Authority of a notification by the applicant pursuant to subsection (h) of this section of the applicant's intention to commence assessment of an Economic Recovery Fee approved pursuant to section 1312(c)(2) of this chapter, the Authority shall coordinate with the Executive Director of the Virgin Islands Public Finance Authority ("VIPFA"), who shall establish for each approved ERF Project a separate, interest-bearing Economic Recovery Fee Trust Account ("ERF Trust Account") at a financial institution selected by the VIPFA, for the purpose of receiving, holding, and distributing the revenues generated by the ERF Project's Economic Recovery Fee and any Designated Hotel Room Occupancy Taxes and any Designated Casino Tax on Gross Revenue directed by the applicant pursuant to section 1313(b) of this chapter. Upon creation of an ERF Trust Account, the VIPFA shall notify the Virgin Islands Bureau of Internal Revenue of the location of the account, the account number, and the identity of the applicant and the ERF Project with which the account is associated. The VIPFA shall maintain the account, and shall not expend, commit to expend or pledge an interest in any of the revenues held in an ERF Project's Trust Account, other than payment of expenses relating to the administration of that ERF Project's Trust Account.

(2) Monies in an ERF Trust Account, upon request by the applicant, may be withdrawn, pledged, encumbered, or otherwise utilized by the applicant solely for purposes directly related to the associated ERF Project including, but not limited to, direct funding of Project expenses, any reconstruction or renovation related expenses, payment of interest and other expenses associated with any financing of the Project, and reimbursement for expenses previously incurred in executing the Project.

(3) If, upon expiration of the Economic Recovery Fee for a particular Project, that Project's ERF Trust Account contains unused Economic Recovery Fee funds, the funds may be used by the applicant solely for other expenditures for improving or enhancing the completed ERF Project, and any such expenditure must be approved in advance by the Authority using the procedure for modifying ERF Projects set forth in subsection (f) of this section.

(l) Reporting. On or before March 31 of each year while an Economic Recovery Fee is in effect, each applicant that is a beneficiary of an Economic Recovery Fee shall deliver a report to the Authority describing, in reasonable detail, for the prior calendar year the following information:

- (1)** The progress made on any ERF Project or whether the ERF Project has been completed;
- (2)** Any material modifications to any ERF Projects or the amount of the Economic Recovery Fee;
- (3)** The amount of Economic Recovery Fees charged and collected; and
- (4)** The amount of Economic Recovery Fees used to cover costs incurred for the ERF Projects.

(m) Violations. An applicant who is determined by the Authority to be in material violation of its Agreement or of the requirements of this section may be subject to a fine not to exceed \$30,000 for each violation, or imprisonment for a period not to exceed 90 days, or both a fine and imprisonment.

(n) Sunset. The Economic Recovery Fee shall be available to new applicants whose applications are received prior to December 31, 2028.

HISTORY: -- Added Oct. 6, 2019, No. 8206, § 2, Sess. L. 2019, p. -.

§ 1313. Use of revenues

(a) The revenues generated from the Designated Hotel Room Occupancy Tax, Designated Casino Tax on Gross Revenue, and the Economic Recovery Fee, approved in accordance with section 1312(c)(1) of this chapter, are to be allocated to and deposited into the Project's Fund as follows:

- (1)** For new hotel development projects where all non-appealable permits for development have not been finalized prior to the effective date of this Act, 100% of the revenues generated from the Designated Hotel Room Occupancy Tax, Designated Casino Tax on Gross Revenue, and the Economic Recovery Fee, if applicable, shall be allocated to and deposited into the Project's Fund;
- (2)** For hotel projects where not less than 70% of the units that have not been able to be occupied due to natural events and related effects, or otherwise, 50% of the revenues

generated from the Designated Hotel Room Occupancy Tax and the Designated Casino Tax on Gross Revenue, and 100% of the revenues generated from the Economic Recovery Fee, if applicable, shall be allocated to and deposited into the Project's Fund; and

(3) For hotel projects that are reconstruction and renovation of existing hotel sites not satisfying the requirements of paragraph (2) of this subsection, 100% of the revenues generated from the Economic Recovery Fee, and no revenues generated from the Designated Hotel Room Occupancy Tax and the Designated Casino Tax on Gross Revenue shall be allocated to and deposited into the Project's Fund;

(b) The revenues generated from the Economic Recovery Fee approved in accordance with section 1312(c)(2) of this chapter are to be allocated to and deposited into the ERF Trust Account established under section 1312(k) of this chapter and, at the election of the applicant, one hundred percent (100%) of the revenue generated from the Designated Hotel Room Occupancy Tax and the Designated Casino Tax on Gross Revenue for projects pursuant to section 1313(a)(1) of this chapter and also fifty percent (50%) of the revenue generated from the Designated Hotel Room Occupancy Tax and the Designated Casino Tax on Gross Revenue for projects under section 1313(a)(2) of this chapter.

HISTORY: -- Added Oct. 6, 2019, No. 8206, § 2, Sess. L. 2019, p. -.

§ 1314. Annual payments and pledges

(a) Any hotel project that is a beneficiary of the Hotel Development Program shall pay to the Authority an annual fee to be determined by the Authority; provided that the annual fee shall be either (1) 1.5% of the projected debt service payable that year, or (2) \$100,000 per Project, whichever is less.

(b) Any hotel receiving financial assistance or any other incentives under the Hotel Development Program must include, as a part of its self-funded marketing plan, a component to market the Territory, which component must be approved by the Commissioner of Tourism.

HISTORY: -- Added Oct. 6, 2019, No. 8206, § 2, Sess. L. 2019, p. -.

§ 1315. Limitation of liability

(a) Neither the Directors of the Notes Issuer nor any persons executing Hotel Development Notes issued pursuant to this chapter are liable personally on the Hotel Development Notes by reason of the issuance of the Hotel Development Notes.

(b) Notwithstanding any other provision of this chapter, Hotel Development Notes issued pursuant to this chapter are not general obligations of Notes Issuer or the Government and are not in any way a debt or liability of the Government within the meaning of any debt or other limit prescribed by law. Neither the full faith and credit nor the taxing power of the Government, other than the revenues authorized under this chapter may be pledged to secure the payment of any Hotel Development Notes issued pursuant to this chapter.

HISTORY: -- Added Apr. 4, 2018, No. 8030, § 2, Sess. L. 2018, p. 13, 14; added June 14, 2018, No. 8056, § 18(h), Sess. L. 2018, p. 100, 101.

§ 1316. Project Financing

If a Developer is financing a Project that could be financed with the proceeds of Hotel Development Notes under this chapter and the proceeds of Tax Incremental Financing Bonds (TIF Bonds) issued under the provisions of the Tax Incremental Financing Act, title 29 Virgin Islands Code, chapter 22, the Notes Issuer may, as the issuer of Hotel Development Notes under this chapter, additionally secure its Hotel Development Notes with the tax increment revenues that are authorized to be pledged to the payment of TIF Bonds thereunder as if the Notes Issuer was an authorized issuer of TIF Bonds under the Tax Incremental Financing Act. Conversely, the PFA may additionally secure its TIF Bonds with the revenues that are declared to be dedicated pursuant to this chapter to the payment of debt service on Hotel Development Notes as if the PFA was the Notes Issuer hereunder. If the Notes Issuer is issuing Hotel Development Notes secured in part by tax increment revenues, the applicable provisions of the Tax Increment Financing Act must be satisfied by the Project Developer.

HISTORY: -- Added Apr. 4, 2018, No. 8030, § 2, Sess. L. 2018, p. 14; added June 14, 2018, No. 8056, § 18(h), Sess. L. 2018, p. 101.

§ 1317. Expiration

(a) The provisions of this chapter, except any provisions pertaining to the Economic Recovery Fee for which the expiration is governed by the provisions of section 1312(n) of this chapter, expire on December 31, 2028, with an automatic two-year extension if substantial permitting by an applicant is completed by December 2028.

(b) Notwithstanding subsection (a) of this section, nothing herein shall adversely affect the continuing applicability of the provisions of this chapter for the benefit of the Developer, or the holders of the Hotel Development Notes, or any other person with respect to approved Projects including, without limitation, the continuing deposits of the Designated Casino Tax on Gross Revenue, and/or the Designated Hotel Room Occupancy Tax, and/or the Economic Recovery Fee into the applicable Trust Funds.

HISTORY: -- Added Oct. 6, 2019, No. 8206, § 2, Sess. L. 2019, p. -.