

COMMITTEE ON GOVERNMENT OPERATIONS
AND CONSUMER PROTECTION

12/29/2022-SPECIAL ORDERED

01/19/2022-REPORTED OUT TO THE COMMITTEE ON RULES AND JUDICIARY

BILL NO. 34-0153

Thirty-Fourth Legislature of the Virgin Islands

November 16, 2021

An Act establishing the Sixth Constitutional Convention of the Virgin Islands; and providing for an appropriation to cover convention-related expenses

PROPOSED BY: Senators Janelle K. Sarauw and Genevieve R. Whitaker,
Novelle E. Francis, Jr. and Alma Francis Heyliger

1 **WHEREAS**, the United States Congress authorized the Virgin Islands to establish a
2 constitutional convention, and the rights, duties and obligations of the convention, as established
3 for the drafting of a proposed constitution, as set forth in Public Law No. 94-584. approved by
4 Congress on October 12, 1976, was fully exercised except for certain issues raised by the
5 President of the United States and the United States Congress;

6 **WHEREAS**, the American Law Division of the Library of Congress found, in response
7 to inquiries from concerned officials, that the congressional authorization to draft a Virgin
8 Islands Constitution granted by federal law is a general grant of authority which did not expire
9 when the prior conventions failed to secure a constitution, and that the Virgin Islands could
10 continue in its pursuit of a constitution under the same conditions as were described in Public
11 Law 94-584 without need for further Congressional action;

1 **WHEREAS**, the previous five constitutional conventions that were convened to pass a
2 Constitution for the Virgin Islands did not establish an adopted Constitution for the Virgin
3 Islands;

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

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

11 **WHEREAS**, the U.S. Department of Justice's Memorandum, as published on the
12 Department's website analysis of several features of the proposed constitution of the Virgin
13 Islands including:

14 (1) the absence of an express recognition of United States sovereignty and the
15 supremacy of federal law;

16 (2) provisions for a special election on the USVI's territorial status;

17 (3) provisions conferring legal advantages on certain groups defined by place and
18 timing of birth, timing of residency, or ancestry;

19 (4) residence requirements for certain offices;

20 (5) provisions guaranteeing legislative representation of certain geographic areas;

21 (6) provisions addressing territorial waters and marine resources;

22 (7) imprecise language in certain provisions of the proposed constitution's bill of
23 rights;

24 (8) the possible need to repeal certain federal laws if the proposed USVI constitution
25 is adopted; and

26 (9) the effect of congressional action or inaction on the proposed constitution.

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

4 **WHEREAS**, the United States Congress, in Senate Joint Resolution 33, based on the
5 Department of Justice Memorandum, urged the Virgin Islands to reconvene a Constitutional
6 Convention to revise the Fifth Constitutional Convention draft consistent with the nine (9)
7 issues identified in the Department of Justice Memorandum;

8 **WHEREAS**, legislation was enacted convening the Fifth Revision Convention
9 sanctioned with addressing the reasons for the rejection of the proposed constitution, but failed
10 to act by the October 31st deadline;

11 **WHEREAS**, in the November 3, 2020, non-binding referendum, the VI electorate voted
12 in favor of the legislature establishing the Sixth Constitutional Convention to adopt the Revised
13 Organic Act or portions of it as the Constitution for the Virgin Islands;

14 **WHEREAS**, it is the sense of the Legislature that the people of the Virgin Islands
15 continue to favor a constitution for the Territory as a significant step forward in internal self-
16 government, and that provision should be made by law for the convening of a new constitutional
17 convention to that end; Now, Therefore,

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

19 **SECTION 1. Convention established; authority.**

20 (a) The Sixth Constitutional Convention ("Constitutional Convention or "Convention")
21 representing the people of the Virgin Islands is established and called to convene at the Capitol
22 Building in either, Charlotte Amalie, St. Thomas or Christiansted St. Croix or at both places, in
23 person or virtually. Delegates elected to the Constitutional Convention shall convene on the
24 fourth Monday in January 2023 and when assembled shall have the powers and duties set forth
25 in this Act.

26 (b) The Constitutional Convention has the authority and duty to:

1 (1) Draft and finalize a proposed Constitution of the Virgin Islands in plain
2 language to include an official name of the Virgin Islands, a Preamble and an Amendment
3 Clause in compliance with Public Law 94-584; and

4 (2) Use, revise, modify, substitute, or delete parts of the Revised Organic Act of
5 1954; and

6 (3) Use, revise, modify, substitute, or delete parts of the 5th Constitutional
7 Convention draft document if the provisions in the proposed constitution are not
8 inconsistent with the U.S. Department of Justice Memorandum dated February 23, 2010
9 or violate Public Law 94-584 § 2(b)(1); and

10 (4) Forward the proposed document to the Governor of the Virgin Islands for
11 transmittal to the President of the United States.

12 **SECTION 2. Organization of Convention; quorum; meetings**

13 (a) The President of the Legislature of the Virgin Islands shall open the Convention and
14 preside until permanent officers are elected.

15 (b) The Convention is the judge of the qualifications and conduct of its delegates; but
16 certification of election by the Supervisor of Elections is conclusive to the fact of their election.

17 (c) The Convention shall promulgate rules consistent with Mason's Manual of
18 Legislative Procedure (2020 ed.) to govern all meetings of the constitutional convention.

19 (d) The Presiding Judge of the Superior Court of the Virgin Islands shall administer the
20 oath of office of delegate to each delegate before the delegate seated. Immediately following
21 the administration of the oath of office to the delegates, the delegates shall:

22 (1) elect a President from among the delegate membership, who shall serve as the
23 presiding officer of the Constitutional Convention; and

24 (2) elect a Vice President, Secretary and all other officers considered necessary
25 and appropriate from among the delegates sworn in; and

1 (3) draft, consider, and adopt rules of procedure for the Constitutional
2 Convention; and

3 (4) take all other steps necessary to organize and otherwise provide for the orderly
4 operation of the Constitutional Convention consistent with the provisions of this Act.

5 (e) A quorum for the Constitutional Convention is nine delegates. No business may
6 be conducted in the absence of a quorum.

7 (f) All decisions must be by an affirmative vote of a majority of those voting, a quorum
8 being present, but the final adoption of the proposed constitution must be by the affirmative
9 vote of at least thirteen delegates.

10 (g) Meetings may be conducted virtually, or in person on St. Croix, St. John, or St.
11 Thomas.

12 **SECTION 3. Selection of delegates, qualifications; eligibility of government**
13 **employees**

14 (a) The Constitutional Convention is composed of 15 delegates, who must be elected
15 from the legislative districts of the Virgin Islands, as established 2 V.I.C. §101. The delegates
16 must be selected as follows:

17 (1) Five delegates must be elected from the district of St. Croix, who must be
18 residents of St. Croix; and

19 (2) Five delegates must be elected from the district of St. Thomas-St. John, who
20 must be residents of either St. Thomas or St. John, but no fewer than two delegates must
21 be residents of St. John; and

22 (3) Five delegates must be elected at large by the qualified voters of the Virgin
23 Islands from the Virgin Islands as a whole. Of the five, two must be residents of the
24 district of St. Croix, and three must be residents of the district of St. Thomas-St. John, but
25 at least one delegate must be a resident of St. John.

1 (b) No person may file a petition to be a candidate for delegate, be elected to or be
2 seated as a member of the Constitutional Convention unless the person is:

3 (1) a citizen of the United States;

4 (2) a qualified voter of the Virgin Islands; and

5 (3) a bona fide resident of the Virgin Islands for not less than three years
6 immediately preceding the date of election.

7 (c) An employee of the Government of the Virgin Islands who meets the qualifications
8 under subsection (b) may seek election to and serve as a delegate to the Constitutional
9 Convention established under this Act. Any employee of the Government of the Virgin Islands
10 who files a valid petition, as provided under section 4 (e) of this act, and becomes a candidate
11 for delegate, must be granted a leave of absence without pay as may be required to campaign
12 for a delegate seat. If elected, the employee must be granted a leave of absence with pay as may
13 be required to serve as delegate to the Constitutional Convention, as provided in section 5 (a)
14 of this act. The leave of absence granted by this subsection must not, in any way, lessen the
15 employment rights of the employee, the right to return to the employee's position and salary
16 held prior to the employee's election to the Convention, and no leave of absence granted by this
17 section may be charged against an employee's accumulated annual leave, unless the employee
18 shall so elect.

19 **SECTION 4. Election of delegates; tie votes, filling of vacancies**

20 (a) Every qualified voter may vote for no more than five candidates for the legislative
21 district for which the voter is a resident and for no more than five candidates for delegate-at-
22 large.

23 (b) The Supervisor of Elections shall prescribe the form of the election ballot, but
24 neither political party symbols nor political party designations may appear on any ballot. Ballots
25 must be printed in English with a Spanish translation immediately following. All candidates'
26 names must be printed on the same face of the ballot, and no name may be displayed more

1 prominently than another. Timely notice of this election must be published and broadcast in
2 Spanish and English as prescribed by the Supervisor of Elections.

3 (c) All delegates to the Constitutional Convention must be elected through an election
4 that must be held on the Tuesday next after the first Monday in the month of November in the
5 year 2022.

6 (d) Except as provided otherwise in this act, the election must be governed by the
7 election laws of the Virgin Islands, as provided under title 18 of the Virgin Islands Code, and
8 all penalties provided by the law must apply to the election.

9 (e) Each candidate for delegate shall file a petition with the Supervisor of Elections
10 signed by 50 qualified voters of the district in which the candidate will seek election, but a
11 petition for the delegates-at-large must be signed by 25 qualified voters in both Virgin Islands
12 election districts for a total of 50 signatures.

13 (f) All candidates for delegate whose valid petitions are filed with the Supervisor of
14 Elections on the common filing date in 2022, must be listed on an official ballot as provided by
15 the Supervisor of Elections.

16 (g) If two or more candidates for a delegate seat receive the same number of votes for
17 the last seat from their district, or for the last seat for the delegate-at-large, the Supervisor of
18 Elections shall immediately direct the tied candidates to draw lots to determine which of them
19 is selected as delegate for the remaining seat.

20 (h) If at any time during the proceedings of the Constitutional Convention, any delegate
21 dies, resigns, relocates out of the Territory or otherwise becomes disqualified or is unable to
22 serve, the vacancy must be automatically filled by the unelected candidate who received the
23 next highest number of votes in the election. If two or more candidates have an equal number
24 of votes, lots must be drawn to determine which candidate shall fill the vacancy. If no such
25 candidate is available, the Convention delegates shall elect a delegate from the appropriate
26 district.

1 **SECTION 5. Compensation of delegates; staffing**

2 (a) Any delegate who is an employee of the Government of the Virgin Islands shall
3 receive the regular government compensation for the fraction of the day or days while attending
4 sessions of the Convention or any meeting or hearing thereof and for such times as the delegate
5 is certified by the President of the Convention or the President's designee as being in full
6 attendance at the Convention or one of its committee meetings or hearings.

7 (b) Employers, other than the Government of the Virgin Islands, must permit delegates
8 employed by the employer to attend the Convention or any of its committee meetings or
9 hearings without termination from position. Any delegate whose employer, other than the
10 Government of the Virgin Islands, interrupts or lessens the regular pay or amount that the
11 delegate would receive had the delegate not been attending the Constitutional Convention, must
12 be compensated not more than \$ 50 per day for each day or part thereof in which the employee
13 is certified by the President of the Convention or the President's designee as being in full
14 attendance at the Convention or one of its committee meetings or hearings.

15 (c) To reduce costs, fees, and other expenses, the Constitutional Convention shall use
16 for all revisions, modifications, a determination of legal sufficiency and legal matters, the
17 Constitutional Convention legal team. This legal team is composed of three attorneys, including
18 an attorney appointed by the Governor of the Virgin Islands, an attorney appointed by the
19 President of the Legislature and an attorney appointed by the Virgin Islands Bar Association.
20 Members of the legal team shall serve pro bono.

21 (d) The Constitutional Convention may hire staff, purchase supplies and contract for
22 technical, legal and research services as it considers necessary to carry out the purpose of this
23 act. The Legislature of the Virgin Islands and the Commissioner of the Department of Property
24 and Procurement, shall, to the fullest extent possible, provide assistance to the Constitutional
25 Convention by allowing the Constitutional Convention to use such government property and/or
26 supplies as it may request, subject to the availability of the property and/or supplies.

1 **SECTION 6.** Adoption of constitution by Convention; submission to Governor;
2 circulation

3 (a) The Constitutional Convention shall adopt a proposed constitution no later than
4 October 31, 2023. When the Constitutional Convention, with 13 of the 15 delegates to the
5 Constitutional Convention, agrees upon a proposed Constitution of the Virgin Islands, the final
6 approved document becomes the proposed Constitution of the Virgin Islands.

7 (b) The President of the Constitutional Convention shall submit the approved proposed
8 Constitution of the Virgin Islands to the Governor of the Virgin Islands, in compliance with the
9 provisions of Public Law 94-584, § 4. The Governor of the Virgin Islands shall within ten days
10 upon receipt of the proposed Constitution of the Virgin Islands, transmit the proposed
11 Constitution of the Virgin Islands to the President of the United States.

12 (c) The Convention shall publish and circulate among the residents of the Virgin
13 Islands a draft of the proposed constitution that has been approved and submitted to the
14 Governor of the Virgin Islands and to the President of the United States. The proposed
15 constitution circulated among the public must include a Spanish translation.

16 **SECTION 7.** Public education campaign; referendum; certification of referendum
17 results

18 (a) The Constitutional Convention shall develop a public education campaign plan in
19 English and Spanish in plain language using broadcasts, including radio, and television; print,
20 including newspapers and magazines; outdoor billboards, yard signs; and internet media
21 platforms that must be launched after submitting the proposed Constitution of the Virgin Islands
22 to the Governor of the Virgin Islands. If the President or the United States Congress makes any
23 modifications to the proposed document, the Constitutional Convention shall modify its
24 educational campaign to reflect the modifications. The educational campaign must run up to
25 the general election of 2024.

1 (b) Timely notice of the referendum must be broadcast and published as prescribed by
2 the Constitutional Convention from May 1, 2024 up to and including the Tuesday next after the
3 first Monday in November 2024. The form of the referendum ballot, including the questions
4 presented to the voters, must be as prescribed by the Constitutional Convention. Except as
5 provided otherwise in this act, the referendum must be governed by Title 18 of the Virgin
6 Islands Code, and all penalties provided by the laws apply to the election.

7 (c) Upon approval by not less than a majority of the voters participating in the
8 referendum, the constitution becomes effective on March 31, 2025.

9 (d) The Constitutional Convention shall meet on the first Monday immediately after the
10 conclusion of the counting of all the legal ballots of the 2024 General Election for the purpose
11 of:

12 (1) Announcing the outcome of the referendum to the people of the Virgin
13 Islands; and

14 (2) Certifying the results of the referendum to the President and Congress of the
15 United States; and

16 (3) If adopted, formally establishing the March 31, 2025 date the enactment and
17 effective date of the Constitution of the Virgin Islands; and

18 (4) Adjourning sine die and discharging of the delegates to the Constitutional
19 Convention.

20 **SECTION 8. Appropriations.**

21 (a) There is appropriated to the Sixth Constitutional Convention established in section
22 1 of this act from any available funds in the Treasury of the Government of the Virgin Islands
23 for the fiscal years ending September 30, 2023, and September 30, 2024, the sum of
24 \$150,000.00 each fiscal year, or so much the sums as may be necessary to carry out the
25 provisions of this act.

1 (b) The Sum of \$150,000.00 for fiscal year ending September 30, 2023, must be used
2 as follows:

3 (1) \$100,000.00 – Operations of the Convention; and

4 (2) \$50,000.00 – Territorial Edification on Adopting a Constitution.

5 (c) The Sum of \$150,000.00 for fiscal year ending September 30, 2024 must be used
6 as follows:

7 (1) \$50,000.00 – Operations of the Convention; and

8 (2) \$100,000.00 – Territorial Educational Campaign.

9 (d) The sums appropriated by this section expire on September 30, 2024.

10 **BILL SUMMARY**

11 The bill establishes the Sixth Constitutional Convention and provides for appropriations
12 to carry out its duties.

13 **BR21-0139/July 7, 2021/YLT**