

**BILL NO. 34-0188**

**Thirty-Fourth Legislature of the Virgin Islands**

**January 27, 2022**

An Act amending title 29 Virgin Islands Code, by adding chapter 24 to authorize the sale of the Matching Fund Receipts and create a new entity named the “Matching Fund Special Purpose Securitization Corporation” to: (1) acquire during the Transfer Period all of the Virgin Islands Government’s right, title, and interest in the Matching Fund Receipts to be paid to or for the account of the Government by the United States Treasury and the Related Rights, (2) issue Matching Fund Securitization Bonds and the Residual Certificate in order to pay the purchase price therefor and as otherwise authorized under the act, and (3) direct the Secretary and the United States Department of Interior to pay the Matching Fund Receipts directly into the Deposit Account; to approve the issuance by the Virgin Islands Public Finance Authority or other entity of the GERS Funding Note to the Government for deposit as an in-kind contribution to the GERS; to ratify the amendments to the rum company agreements; repealing and replacing Act Nos 8329 and 8330; and for other related purposes

---

**PROPOSED BY:** Senators Kurt A. Vialet, Donna A. Frett-Gregory,  
Janelle K. Sarauw, Novelle E. Francis, Jr., Samuel Carrión,  
Marvin A. Blyden, Alma Francis Heyliger, Steven D. Payne, Sr.,  
Milton E. Potter, Carla J. Joseph, Franklin D. Johnson,  
Dwayne M. DeGraff, Javan E. James, Sr., Kenneth L. Gittens, and  
Genevieve R. Whitaker

---

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

2       **WHEREAS**, the Government Employees’ Retirement System of the Virgin Islands (the  
3 “GERS”) is nearing insolvency, with the GERS actuary’s having projected that the GERS will  
4 be insolvent by October 2024;

5       **WHEREAS**, the Board of Trustees of the GERS has repeatedly indicated that the  
6 insolvency of the GERS will necessitate substantial reductions in retiree benefits;

7       **WHEREAS**, if the GERS becomes insolvent, retirement payments to retirees not made  
8 by the GERS will be the responsibility of the Government of the Virgin Islands (the

1 “Government”), placing significant new funding burdens on the general fund of the  
2 Government;

3 **WHEREAS**, the GERS pension obligations are the largest liabilities of the Government,  
4 totaling approximately \$5.78 billion as of October 1, 2020, in contrast to the outstanding  
5 principal amount of the Government’s portion of the Existing PFA Bonds of approximately  
6 \$657.8 million and the Government’s gross receipts taxes bonds/notes of approximately \$559.9  
7 million;

8 **WHEREAS**, while the timing of repayment of bond indebtedness can be restructured  
9 through the redemption and restructuring of such bonds, pension liabilities cannot be materially  
10 restructured without modifications to retiree benefits;

11 **WHEREAS**, the Transaction, as defined in this act, allows the opportunity to increase  
12 revenues that can be dedicated to the GERS through the issuance by the Virgin Islands Public  
13 Finance Authority (“PFA”) or other entity of the GERS Funding Note (as hereinafter defined)  
14 to the Government for deposit as an in-kind contribution to the GERS;

15 **WHEREAS**, the GERS actuary has indicated to the GERS and the Government that so  
16 long as the Matching Fund Receipts (as hereinafter defined) remain at least at their Fiscal 2021  
17 levels, the foregoing proposed issuance of the GERS Funding Note to the Government and  
18 deposit of it with the GERS would provide financial stability and liquidity to the GERS;

19 **WHEREAS**, the Legislature of the Virgin Islands previously authorized the issuance of  
20 bonds, notes, or other evidences of indebtedness (as hereinafter defined as the “Existing PFA  
21 Bonds”) of the Government and/or the PFA to provide funds to finance all or a portion of the  
22 costs of certain infrastructure and economic development projects to support the production of  
23 rum by Cruzan VIRIL, Ltd. (“Cruzan”) and Diageo USVI, Inc. (“Diageo”) in the Virgin Islands;

24 **WHEREAS**, the Legislature previously authorized the Government to enter into certain  
25 agreements with Cruzan and Diageo in connection with the financing of the costs;

1           **WHEREAS**, the Legislature has determined that it is necessary to repeal Act Nos 8329  
2 and 8330, thereby repealing title 29 Virgin Islands Code, chapter 24 in its entirety and replacing  
3 it with a new chapter 24;

4           **WHEREAS**, to provide the financial stability and liquidity to the GERS, the Legislature  
5 has determined that the Matching Fund Receipts from the United States Treasury can be more  
6 efficiently used by creating a new special purpose vehicle to serve as an independent and  
7 autonomous public corporation and governmental instrumentality whose purpose would be to  
8 acquire all of the Government's rights, title, and interest in and to the Matching Fund Receipts  
9 during the Transfer Period and the Related Rights (as hereinafter defined), to issue Bonds and  
10 the Residual Certificate, (as such terms are hereinafter defined), in order to pay the purchase  
11 price therefor and as otherwise authorized, and to direct the Secretary of the U.S. Treasury and  
12 the United States Department of the Interior to pay the Matching Fund Receipts directly into  
13 the trust account established in the name of the Government, in trust for the sole benefit of the  
14 Corporation and the Corporation's collateral assignee, the trustee for the Bonds (the "GVI  
15 Restricted Account") (all such steps being collectively referred to as, the "Transaction");

16           **WHEREAS**, the Legislature has determined that to fulfill the objectives of the  
17 Transaction, it is necessary:

18           (1) for the Government to apply the proceeds it receives from the sale of the Matching  
19 Fund Receipts to prepay the Existing Matching Fund Loan Notes (as hereinafter defined) in  
20 order for the PFA to refund, redeem, pay and defease all of its Existing PFA Bonds; and

21           (2) as additional consideration for the sale of the Matching Fund Receipts and Related  
22 Rights, for the Corporation to deposit into the deposit account of the trustee for the GERS  
23 Funding Note an amount sufficient to fund the GERS Funding Note Payment Obligations (as  
24 hereinafter defined);

1           **WHEREAS**, the Legislature wishes to continue to use the Matching Fund Receipts that  
2 it receives from the U.S. Treasury to support its investment in infrastructure and economic  
3 development projects in the Virgin Islands, but to do so on a more efficient basis;

4           **WHEREAS**, the Legislature acknowledges that providing for a statutory lien on the  
5 assets of the Corporation to secure the payment on the Bonds and on the Ancillary Agreements  
6 entered into in connection with the Transaction would serve the interests of the Government;

7           **WHEREAS**, the Legislature seeks to authorize the Government to assign, sell, transfer  
8 or otherwise convey its interest in the Matching Fund Receipts that are to be received from the  
9 U.S. Treasury and to provide the Related Rights to the Corporation for as long as the Bonds are  
10 outstanding;

11           **WHEREAS**, upon the payment in full of all of the Bonds in accordance with their terms,  
12 and all obligations under all applicable Indentures and the Ancillary Agreements, the  
13 Government or the PFA or both of them shall assume control of the Matching Fund Receipts,  
14 subject to any liens on the Residual Certificate and the Residual Receipts (as such terms are  
15 hereinafter defined);

16           **WHEREAS**, the Legislature seeks to authorize the Corporation to issue Bonds, the  
17 proceeds of which must be used (i) to purchase from the Government all of its rights, title and  
18 interest in and to the Matching Fund Receipts and the Related Rights and pay the related costs  
19 of the issuance of the Bonds, and (ii) as additional consideration for the purchase of the  
20 Matching Fund Bonds and Related Rights, to deposit into the deposit account of the GERS  
21 Funding Note Trustee an amount sufficient to fund the GERS Funding Note Payment  
22 Obligations;

23           **WHEREAS**, the Legislature seeks to authorize the Government to use the cash purchase  
24 price for the Matching Fund Receipts and the Related Rights to prepay all Existing Matching  
25 Fund Loan Notes owing to the PFA so that the PFA will, in turn, refund, redeem, pay and  
26 defease all Existing PFA Bonds that secure the Existing Matching Fund Loan Notes, thereby

1 releasing the existing liens on the Matching Fund Receipts so that they can be sold and  
2 conveyed to the Corporation;

3 **WHEREAS**, in addition to the cash purchase price for the Matching Fund Receipts and  
4 the Related Rights, the Government is to receive (i) a Residual Certificate, pursuant to which  
5 the Government will have rights to the portion of the Matching Fund Receipts deposited by the  
6 U.S. Treasury into the GVI Restricted Account and then transferred into the deposit account of  
7 the Corporation and which remain after the Corporation pays the debt service and expenses in  
8 connection with the Bonds and other obligations (collectively, “Debt Service”), and (ii) the  
9 GERS Funding Note for deposit as an in-kind contribution to the GERS, which indebtedness  
10 shall be secured by a portion of the Residual Receipts received by the Government pursuant to  
11 the Residual Certificate;

12 **WHEREAS**, the Corporation shall use the Matching Fund Receipts so transferred into  
13 its deposit account to pay Debt Service; and

14 **WHEREAS**, the Legislature acknowledges that providing for a statutory lien on the  
15 Residual Receipts of the Government to secure the payment on the GERS Funding Note  
16 would serve the interests of the Government and the GERS; Now, Therefore,

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

18 **SECTION 1.** This act may be cited as The Matching Fund Special Purpose  
19 Securitization Act of 2022.

20 **SECTION 2.** Title 29 Virgin Islands Code is amended by adding ing a chapter 24 to  
21 read as follows:

22 **“Chapter 24. The Matching Fund Special Purpose Securitization**

23 **§ 1401. Short Title**

24 This chapter may be cited as “The Matching Fund Special Purpose Securitization  
25 Act”.

1           **§ 1402. Definitions**

2           For the purposes of this chapter, the following terms have the meanings set forth in this  
3 section:

4           (a)   “Additional Bonds” means one or more additional series or tranches or both series  
5 and tranches of Bonds issued pursuant to the Indenture or another indenture after the Initial  
6 Matching Fund Securitization Bonds are issued which are all secured by the Trust Estate.

7           (b)   “Ancillary Agreements” means the Sale Agreement, the initial Indenture, any  
8 supplemental Indentures, other Indentures, the bond purchase agreement between the  
9 Corporation and the initial bond purchasers, security enhancement agreements, if any,  
10 investment agreements, or any other agreement or instrument entered into by the Corporation,  
11 the Government, or the Trustee in connection with, or in furtherance of the sale and conveyance  
12 of the Matching Fund Receipts and the Related Rights pursuant to this chapter and the issuance  
13 of the Bonds.

14           (c)   “Board” means the board of directors of the Matching Fund Securitization  
15 Corporation established section 1405.

16           (d)   “Bondholder” means a registered owner of an outstanding Bond.

17           (e)   “Bonds” means the Matching Fund Securitization Bonds and the Subordinate Lien  
18 Bonds issued pursuant to the initial Indenture or other Indentures.

19           (f)   “Corporation” means the Matching Fund Special Purpose Securitization  
20 Corporation established by section 1404.

21           (g)   “Cover Over Rate” means the federal excise tax and the federal excise tax per proof  
22 gallon remitted by the U.S. Treasury to the Virgin Islands Government; the “Cover Over Rate”  
23 as set by Congress and codified in Section 5001(a)(1) and 7652(f) of the Internal Revenue Code  
24 of 1986, as amended.

1 (h) "Deposit Account" means a designated account in the name of the Corporation  
2 created and held by the Trustee pursuant to the initial Indenture at a bank or trust company  
3 having the authority to receive the transfer of the Matching Fund Receipts from the GVI  
4 Restricted Account and having trust powers under the initial Indenture.

5 (i) "DOI" means the United States Department of the Interior.

6 (j) Existing Matching Fund Loan Notes" means the outstanding special obligation  
7 notes issued to the Public Finance Authority by the Government pursuant to the Loan  
8 Agreement dated July 1, 2009, the Loan Agreement dated October 1, 2009, the Loan Agreement  
9 dated December 1, 2009, the Loan Agreement dated July 1, 2010, the Loan Agreement dated  
10 September 1, 2012, the Loan Agreement dated September 1, 2013, and the Loan Agreement  
11 dated October 1, 2013, each by and among the Public Finance Authority, the trustee and the  
12 Government, which Loan Notes are the security for the repayment of the corresponding  
13 Existing PFA Bonds.

14 (k) Existing PFA Bonds" means the various series of outstanding bonds issued by the  
15 Public Finance Authority pursuant to an Indenture of Trust dated May 1, 1998, as amended and  
16 supplemented, a Subordinated Indenture of Trust dated June 1, 2009, as supplemented, and a  
17 Subordinated Indenture of Trust dated December 1, 2009, as supplemented, secured by  
18 Matching Fund Receipts on a senior and subordinate basis, respectively, received by the  
19 Government from the U.S. Treasury.

20 (l) "Financing costs" means all costs associated with the following:

21 (1) the offering, issuance, repayment, financing, or refinancing of the Bonds,  
22 whether upon issuance or over the term of the Bonds;

23 (2) the making of payments required by the Ancillary Agreements;

24 (3) the preparation for and the entering into the transactions authorized by this  
25 chapter, including, but not limited to, any reasonable legal and financial advisory fees  
26 incurred by the Legislature, the Government, the PFA and the Corporation;

1           (4) the maintenance, preservation, protection, and defense of the Trust Estate,  
2 including any collection, enforcement, sale, protection or settlement actions relating to  
3 the Trust Estate;

4           (5) the confirmation, defense and protection of the statutory lien and the  
5 consensual lien on the Trust Estate;

6           (6) the performance of all ongoing activities relating to the Matching Fund  
7 Securitization Bonds, the Residual Certificate, the Subordinate Lien Bonds, the Matching  
8 Fund Receipts, any Ancillary Agreements, and the Trust Estate;

9           (7) the annual salary compensation (excluding retirement and health benefits of  
10 the employees of the Corporation), and reasonable travel and expenses of or relating to  
11 the directors of the Corporation;

12           (8) the compensation and reasonable travel expenses; and

13           (9) other reasonable expenses of the directors of the Corporation.

14           (m) “Financing entity” means the Corporation, the Trustee and any other person or  
15 entity acting for the benefit of the Bondholders or the Corporation that has rights under any  
16 Ancillary Agreements.

17           (n) “Fiscal Year” means the period beginning October 1 through and including  
18 September 30 of the following calendar year.

19           (o) “GERS” means Government Employee Retirement System.

20           (p) “GERS Funding Note” means the note or other form of indebtedness issued by PFA  
21 or other entity to the Government for deposit as an in-kind contribution to the GERS  
22 concurrently with the issuance of the Initial Matching Fund Securitization Bonds, which Bonds  
23 or other forms of indebtedness are secured by a portion of the Residual Receipts received by  
24 the Government pursuant to the Residual Certificate.



1 (q) “GERS Funding Note Payment Obligations” means the funding and payment  
2 obligations relating to the GERS Funding Note which are due in Fiscal Year 2022 and any cost  
3 of issuance relating to the GERS Funding Note.

4 (r) “GERS Funding Note Trustee” means the trustee under the indenture pursuant to  
5 which the GERS Funding Note is issued.

6 (s) “Government” means the Government of the Virgin Islands.

7 (t) “Governor” means the Governor of the Virgin Islands or the Governor’s designee,  
8 as may be named from time to time.

9 (u) “GVI Restricted Account” means the trust account established in the name of the  
10 Government, in trust for the sole benefit of the Corporation and the Corporation’s collateral  
11 assignee, the Trustee.

12 (v) “Indenture” means the master trust indenture, bond indenture, trust agreement or  
13 similar agreement between the Corporation and the Trustee, as amended or supplemented from  
14 time to time, from the date of the issuance of the Initial Matching Fund Securitization Bonds  
15 and the Residual Certificate.

16 (w) “Initial Matching Fund Securitization Bonds” means the initial series of Matching  
17 Fund Securitization Bonds issued pursuant to the initial Indenture.

18 (x) “Matching Fund Receipts” means the amounts paid and to be paid by the U.S.  
19 Treasury through the Secretary of the DOI as a transfer of federal excise taxes imposed and  
20 collected under the Internal Revenue Code of 1986, as amended in any Fiscal Year on rum  
21 produced in the Virgin Islands and exported to the United States and that is subject to federal  
22 excise tax pursuant to 26 USC §7652, as amended from time to time.

23 (y) “Matching Fund Securitization Bonds” means the Initial Matching Fund  
24 Securitization Bonds and any Additional Bonds issued on a parity therewith, which bonds may  
25 be issued as taxable or tax-exempt bonds, authorized to be issued by the Corporation from time

1 to time pursuant to an Indenture. The term does not include a Residual Certificate or any  
2 Subordinate Lien Bond.

3 (z) "PFA Indenture" means any indenture under which the Existing PFA Bonds were  
4 issued.

5 (aa) "Public Finance Authority" or "PFA" means the Virgin Islands Public Finance  
6 Authority, a public corporation and governmental instrumentality of the Government.

7 (bb) "Related Rights" means the contractual rights provided by the Government, the  
8 covenants made by the Government, and the Corporation's rights to enforce the rights and  
9 covenants, all pursuant to the Act and the Sale Agreement.

10 (cc) "Residual Certificate" means a certificate issued by the Corporation evidencing the  
11 right of the holder to receive any Residual Receipts on deposit in the Residual Fund.

12 (dd) "Residual Certificate Holder" means the holder or holders of the Residual  
13 Certificate. Upon its issuance by the Corporation, the Residual Certificate Holder is the  
14 Government.

15 (ee) "Residual Fund" means the fund or account so designated, created and established  
16 pursuant to the initial Indenture into which the Residual Receipts are deposited.

17 (ff) "Residual Receipts" means that portion of the Matching Fund Receipts deposited  
18 in the Residual Fund, if any, after making the deposits required in each Fiscal Year for the  
19 following, in the order of priority provided in the initial Indenture:

20 (1) Payment of debt service on the Bonds;

21 (2) Establishing, maintaining, or replenishing any reserve funds created in  
22 connection with the issuance of the Bonds;

23 (3) Payment of any other obligations of the Corporation under any Ancillary  
24 Agreement; or

25 (4) Payment of the operating expenses of the Corporation.

1 (gg) "Resolution" means one or more resolutions by the board of the Corporation,  
2 adopted in accordance with this chapter, authorizing:

3 (1) the Corporation's purchase of the Matching Fund Receipts and the Related  
4 Rights;

5 (2) the issuance of one or more series of Bonds;

6 (3) any redemption, defeasance or refunding of Bonds, or

7 (4) the execution and delivery of any Indenture or any Ancillary Agreement.

8 (hh) "Sale Agreement" means an agreement between the Corporation and the  
9 Government that provides for the irrevocable transfer, pursuant to Section 1403 and the  
10 Resolution, during the Transfer Period, to the Corporation of all of the Government's right,  
11 title, and interest in and to the Matching Fund Receipts paid and to be paid by the U.S. Treasury  
12 to the Government, by depositing such amounts into the GVI Restricted Account and the  
13 Related Rights, in exchange for:

14 (1) a cash payment of the net proceeds from the sale of any Matching Fund  
15 Securitization Bonds and any Subordinate Lien Bonds;

16 (2) the deposit into the GERS Funding Note Trustee deposit account of an  
17 amount sufficient to fund the GERS Funding Note Payment Obligations; and

18 (3) the Residual Certificate.

19 (ii) "Secretary" means the Secretary of the U.S. Treasury.

20 (jj) "Settlement Agreement" means a written agreement or other document evidencing  
21 that the GERS upon the issuance and delivery of the GERS Funding Note, shall release all  
22 pending claims, including all outstanding employer contributions, and dismiss all pending  
23 litigation against the Government, and that any pending or existing judgements against the  
24 Government shall be deemed satisfied.

25 (kk) "Subordinate Lien Bonds" means Bonds that may be issued by the Corporation  
26 from time to time after the issuance of the Initial Matching Fund Securitization Bonds pursuant

1 to a Resolution and an Indenture, which Bonds are secured by a subordinate pledge on the Trust  
2 Estate.

3 (ll) “Transfer Period” the period from means the period from and including 90 days  
4 after the enactment of this act through and including the date on which the last outstanding  
5 Bond is paid or defeased and all obligations under all applicable Indentures and the Ancillary  
6 Agreements are paid in full.

7 (mm) “Trustee” means the bank or trust company appointed as “Trustee” for the Bonds  
8 pursuant to the applicable Indenture and having the duties, responsibilities and rights provided  
9 for in the Indenture, and its successor or successors and any other bank or trust company that  
10 may at any time be substituted in its place pursuant to the Indenture.

11 (nn) “Trust Estate” means the right, title, and interest in and to:

12 (1) the Corporation’s interest in the funds in the GVI Restricted Account;

13 (2) during the Transfer Period, the Matching Fund Receipts paid and to be paid  
14 to the Corporation and the Related Rights;

15 (3) excluding Residual Receipts, all earnings, interest, claims, credit  
16 enhancement payments, and proceeds of or arising from the Matching Fund Receipts, and  
17 any adjustments to and from the Related Rights; and

18 (4) all rights of the Corporation under the Sale Agreement and all other Ancillary  
19 Agreements.

20 (oo) “U.S. Treasury” means the United States Department of the Treasury.

21 (pp) “Virgin Islands” means the unincorporated territory of the United States of America  
22 as described in the Revised Organic Act of the Virgin Islands, 48 U.S.C. § 1541 (a).

23 **§ 1403. Authority to sell and Transfer the Matching Fund Receipts and Provide**  
24 **Related Rights**

25 (a) For the purposes of prepaying the Existing Matching Fund Loan Notes and the  
26 refunding, redemption, paying or defeasing by the PFA of all Existing PFA Bonds secured

1 thereby, releasing the existing liens on the Matching Fund Receipts so that the Government  
2 may more efficiently leverage the value of the Matching Fund Receipts, the Government may  
3 sell to the Corporation all of the Government's right and title to , and interest in the Matching  
4 Fund Receipts and the Related Rights and any earnings or interest payable to the Government  
5 during the Transfer Period at a purchase price equal to (i) the net proceeds it receives from the  
6 sale of the Initial Matching Fund Securitization Bonds less the costs associated with the sale,  
7 plus (ii) the deposit into the deposit account of the GERS Funding Note Trustee of an amount  
8 sufficient to fund the GERS Funding Note Payment Obligations, plus (iii) the Residual  
9 Certificate, plus (iv) the GERS Funding Note for deposit as an in-kind contribution to the  
10 GERS, which indebtedness is secured by a portion of the Residual Receipts received by the  
11 Government pursuant to the Residual Certificate.

12 (b) The sale and conveyance of the Matching Fund Receipts and the Related Rights  
13 pursuant to this chapter may occur only when all of the following have occurred:

14 (1) The Corporation has adopted a Resolution;

15 (2) The documents evidencing the sale and conveyance of the Matching Fund  
16 Receipts and the Related Rights pursuant to this chapter have been executed and delivered  
17 to the Corporation;

18 (3) The Government has received the purchase price required for the rights to  
19 the Matching Fund Receipts and the Related Rights set forth in subsection (a) of this  
20 section;

21 (4) The U.S. Treasury has provided the written acknowledgment stating that it  
22 will deposit Matching Fund Receipts directly into the GVI Restricted Account;

23 (5) The Governor on behalf of the Government has delivered an irrevocable letter  
24 of instruction to the Secretary and the DOI); and

25 (6) The GERS Funding Note is issued concurrently with the sale and conveyance  
26 of the Matching Fund Receipts and the Related Rights.

1 (c) The sale and conveyance of the Matching Fund Receipts pursuant to this chapter  
2 are exempt from all taxes and similar charges imposed by the Virgin Islands or any  
3 instrumentality of the Virgin Islands.

4 (d) The Government may transfer all or a portion of the Residual Certificate in  
5 accordance with the conditions set forth in the initial Indenture.

6 (e) The right to receive the Matching Fund Receipts during the Transfer Period and to  
7 exercise and enjoy the Related Rights is a vested, presently existing property right  
8 notwithstanding that the amounts of the Matching Fund Receipts to be paid in the future depend  
9 on further acts that have not yet occurred, including but not limited to:

- 10 (1) the production of rum in the Virgin Islands;
- 11 (2) the sale and export of the rum exported from the Virgin Islands to the United  
12 States mainland;
- 13 (3) adjustments that may be made to the rate or amount of the Matching Fund  
14 Receipts to be paid by the U.S. Treasury; and
- 15 (4) the U.S. Treasury's paying the Matching Fund Receipts directly into the GVI  
16 Restricted Account, as irrevocably directed by the Government.

17 (f) Subject to the authorization and restrictions of this chapter, the Governor shall  
18 determine the terms and conditions of the Sale Agreement, which determination must be  
19 conclusively evidenced by the Governor's execution of the Sale Agreement. Once sold  
20 pursuant to the Sale Agreement and during the Transfer Period, the Matching Fund Receipts  
21 that would have been paid to the Government, the Related Rights, regardless of location,  
22 completion of any transfer process, or whether deposited into the GVI Restricted Account, are  
23 no longer the property of the Government, and the Government has no right to obtain the return  
24 of the Matching Fund Receipts or to exercise and enjoy any of the Related Rights, except as  
25 agent for the Corporation or the Trustee, as the case may be. Once sold pursuant to the Sale  
26 Agreement and during the Transfer Period, only the Corporation or the Trustee may transfer

1 Matching Fund Receipts from the GVI Restricted Account. However, for so long as the  
2 Government is the Residual Certificate Holder, the Residual Receipts must be deposited in the  
3 Residual Fund in accordance with the initial Indenture.

4 (g) The Government shall cause the net proceeds it receives from its sale of the  
5 Matching Fund Receipts and the Related Rights to be placed in one or more separate accounts  
6 and used to prepay the Existing Matching Fund Loan Notes and pay all costs associated with  
7 the prepayment, and if funds remain in those accounts after the prepayment of the Existing  
8 Matching Fund Loan Notes and the payment of all related costs, the funds must be released to  
9 the Government for any purpose authorized by an act of the Legislature. In no event shall  
10 amounts paid to purchase the Matching Fund Receipts and the Related Rights be available or  
11 be applied by the Government for payment of the Bonds, the Residual Certificate, any claim  
12 against the Corporation, or any debt or obligation of the Corporation.

13 (h) Upon the Public Finance Authority's receipt of the funds from the prepayment of  
14 the Existing Matching Fund Loan Notes by the Government, the Public Finance Authority shall  
15 use the amounts to cause all the Existing PFA Bonds to be redeemed or defeased in full and  
16 shall pay in full all other amounts outstanding under the applicable PFA Indentures and other  
17 documents related to the Existing PFA Bonds. In no event shall amounts paid to prepay the  
18 Existing Matching Fund Loan Notes be available or be applied for payment of the Bonds, the  
19 Residual Certificate, any claim against the Corporation, or any debt or obligation of the  
20 Corporation.

21 (i) Beginning in September 2022, or earlier, if requested by the DOI, and prior to end  
22 of each Fiscal Year thereafter until the Bonds are paid in full in accordance with their terms,  
23 the Government shall provide an estimate of the amount of rum to be produced in the Virgin  
24 Islands and exported to the United States mainland for the ensuing Fiscal Year, on a timely  
25 basis to the DOI, with a copy to the Corporation; and any information required to make the  
26 request for any adjustments to the Matching Fund Receipts for such year to the Corporation.

1 (j) Prior to the issuance of the Initial Matching Fund Securitization Bonds, the  
2 Government shall deliver one or more agreements or instruments, including an irrevocable  
3 letter of instruction from the Governor directing the Secretary and the DOI to cause to be  
4 transferred to the GVI Restricted Account promptly all payments of the Matching Fund  
5 Receipts, including any transferred in error, during the Transfer Period.

6 (k) The Government, acting through the Governor, may execute and deliver all  
7 documents and agreements and take all actions necessary or appropriate in connection with the  
8 sale and conveyance of the Matching Fund Receipts and the Related Rights pursuant to this  
9 chapter and the prepayment of the Existing Matching Fund Loan Notes, and to take all actions  
10 permitted or required by this chapter and included in the Sale Agreement to accomplish the  
11 purposes of this chapter.

12 (l) The Public Finance Authority shall:

13 (1) Execute and deliver all documents and agreements and take all actions  
14 necessary or appropriate in connection with the redemption or defeasance in full of the  
15 Existing PFA Bonds and the payment in full of all other amounts outstanding under the  
16 applicable PFA Indentures and other documents related to the Existing PFA Bonds;

17 (2) Take all actions necessary or appropriate in connection with the issuance of  
18 the GERS Funding Note.

19 (m) The Government shall cause a report of the final amount and disposition of the net  
20 proceeds from the sale of the Matching Fund Receipts and the Related Rights to be made to the  
21 Legislature of the Virgin Islands no later than 30 days after the sale.

22 (n) Upon the payment in full of all of the Bonds in accordance with their terms and all  
23 obligations under all applicable Indentures and the Ancillary Agreements, the Government and  
24 the PFA shall have the right to assume control of the Matching Fund Receipts, subject to any  
25 liens on the Residual Certificate and the Residual Receipts.

26 **§ 1404. Corporation; established; purpose; powers**



1           (a) The Matching Fund Special Purpose Securitization Corporation is established as a  
2 special purpose, independent and autonomous, public corporation and governmental  
3 instrumentality of the Government of the Virgin Islands. The Corporation is intended, created,  
4 and empowered to effectuate the purposes stated in this chapter. The Corporation has a legal  
5 existence separate from the Government. The debts, obligations, contracts, bonds, receipts,  
6 expenditures, accounts, funds, facilities and property of the Corporation are those of the  
7 Corporation and not those of the Government, or any office, bureau, department, agency,  
8 commission, branch, agent, office or employee of the Government. The Corporation is  
9 established as a not for profit, tax-exempt entity and is not established or organized, and its  
10 operations may not be conducted for the purpose of making a profit. The Corporation has no  
11 authority to engage in any business activities other than those provided in this chapter. The  
12 Corporation has no taxing power.

13           (1) The Corporation has the same fiscal year as the Government;

14           (2) Virgin Islands laws, rules, or orders governing procurement or administrative  
15 procedures, or personnel apply to the Corporation, its activities, board members, officers,  
16 or employees, except as otherwise provided for in this chapter.

17           (3) All operating and administrative expenses of the Corporation necessary for  
18 the proper business of the Corporation and budgeted at the time of the issuance of the  
19 Bonds or in any successive year and the costs of issuance and marketing of the Bonds  
20 must be paid by the Corporation out of the proceeds of the Bonds and the Matching Fund  
21 Receipts.

22           (4) An independent certified public accountant, designated by the board of the  
23 Corporation, shall conduct an annual audit of the accounts and records of the Corporation;

24           (5) All assets and income of the Corporation are exempt from Virgin Islands  
25 taxation;

26           (b) The purposes of the Corporation are to:

1           (1) Acquire during the Transfer Period all of the Government' s right, title, and  
2 interest in and to the Matching Fund Receipts to be paid to or for the account of the  
3 Government by the U.S. and the Related Rights;

4           (2) Issue Bonds and the Residual Certificate in order to pay the purchase price  
5 therefor and as otherwise authorized under this chapter; and

6           (3) Direct the Secretary and the DOI to pay the Matching Fund Receipts directly  
7 into the GVI Restricted Account.

8 (c) The Corporation, pursuant to a Resolution shall:

9           (1) Issue the Initial Matching Fund Securitization Bonds as contemplated by a  
10 Resolution, and use the net proceeds to purchase and acquire the Government' s right, title  
11 and interest in and to the Matching Fund Receipts to be paid to or for the account of the  
12 Government during the Transfer Period and the Related Rights, and own, hold and use  
13 the Trust Estate and pay any related closing costs and ongoing financing costs;

14           (2) Direct that Matching Fund Receipts deposited in the GVI Restricted Account  
15 and then transferred to the deposit account created by the Trustee for the Matching Fund  
16 Securitization Bonds be applied by the Trustee to the payments, at the times and in the  
17 order of priority, set forth in the Indenture;

18           (3) In addition to the statutory lien on the Trust Estate securing the payment of  
19 principal of and interest on the Bonds as referred to in section 1407b, as additional  
20 security for the payment of principal of and interest on any Bonds issued by it and of any  
21 and all other obligations under the applicable Indenture, pledge and automatically create  
22 a security interest that is a consensual lien on the Trust Estate, and take all actions to  
23 create, impose and document the liens or other encumbrances that arise by force of this  
24 applicable chapter;

25           (4) By the earlier of the date requested by the U.S. Treasury or such other  
26 deadline provided by law, for each fiscal year during the Transfer Period, when

1 appropriate, deliver to the DOI a written letter requesting any adjustment to the amounts  
2 based on actual federal excise taxes paid on rum produced in the Virgin Islands and  
3 exported to the United States, with the adjustment to be applied to the amount of the  
4 Matching Fund Receipts paid to the Corporation in the ensuing year;

5 (5) If authorized in the future by the Legislature, issue Additional Bonds  
6 including, but not limited to, Subordinated Lien Bonds, for purposes related to the  
7 Corporation as contemplated by a Resolution, and use the proceeds as contemplated in  
8 the related Indenture or supplemental indenture and pay any related closing costs and  
9 ongoing financing costs;

10 (6) Issue the Residual Certificate as described in section 1403(a); and

11 (7) Complete a financial audit no later than 270 days after the close of the fiscal  
12 year and provide the Corporation's annual audited financial statements to the Legislature  
13 30 days thereafter.

14 (d) In addition to the duties under subsection (c) in connection with the issuance of  
15 Bonds, the Corporation shall:

16 (1) Establish and maintain such reserves and special accounts for the benefit of  
17 the Bondholders to be held in trust or otherwise, as may be required by agreements made  
18 in connection with the Bonds, or any agreement between itself and third parties;

19 (2) Redeem, defease, or otherwise refund the Bonds in accordance with the terms  
20 of the applicable Indenture as long as the redemption, defeasance or refunding does not,  
21 solely by such action, reduce the expected Residual Receipts to the Residual Certificate  
22 Holder on a net present value basis compared to the net Residual Receipts that would  
23 have been expected to be available to the Residual Certificate Holder had the Bonds  
24 remained outstanding unless the Residual Certificate Holder otherwise consents to such  
25 action;

1           (3) Consistent with the statutory lien on the Trust Estate, execute and deliver one  
2 or more agreements or other instruments pursuant to which it shall take all actions  
3 necessary or appropriate to cause the Matching Fund Receipts to be paid directly from  
4 the U.S. Treasury into the GVI Restricted Account and transferred to the deposit account  
5 maintained in the custody of the Trustee and held separate from any other funds and  
6 accounts of the Government or the Corporation or a bank or trust company;

7           (e) In addition to other powers and duties provided in this chapter, the Corporation  
8 may:

9           (1) Adopt, amend, repeal, and enforce bylaws, rules, regulations, and procedures  
10 not inconsistent with this chapter as it determines appropriate to the governing of its  
11 affairs and the conduct of its business;

12           (2) Sue and be sued, and complain and defend, in its own name;

13           (3) Adopt, alter, and use a corporate seal, which must be judicially noticed, but  
14 the absence of the seal on a contract or other documents does not affect its validity;

15           (4) Acquire, hold, or pledge, contract rights, general intangibles, revenues,  
16 moneys, and accounts as may be proper or expedient to carry out the purposes of the  
17 Corporation and this chapter, and to assign, convey, sell, transfer, lease or otherwise  
18 dispose of such property;

19           (5) Elect, appoint, and employ officers and agents as the Corporation considers  
20 advisable to operate and manage the affairs of the Corporation, and to define their duties  
21 and fix, adjust, and define their compensation as it determines to be appropriate;

22           (6) Make, execute, and perform contracts, commitments, agreements, Indentures,  
23 instruments, and Ancillary Agreements in connection with the issuance of security for or  
24 administration of the Bonds and the Residual Certificate, as approved by its board and as  
25 necessary or appropriate to accomplish the purposes of the Corporation and this chapter;

1           (7) Select, retain, and employ professionals, contractors, agents, bond insurance  
2 providers, auditors, or rating agencies that are necessary or appropriate to enable or assist  
3 the Corporation in carrying out the purposes of the Corporation;

4           (8) Pay its financing costs, scheduled debt service on the Bonds and related  
5 financing costs;

6           (9) Indemnify or insure members of the board and officers of the Corporation as  
7 it determines appropriate;

8           (10) Purchase insurance or self-insure against loss in connection with its property  
9 and other assets or other risks, in amounts and from insurers as it determines appropriate;

10          (11) Invest any funds or other moneys under its custody and control in investment  
11 securities or under any Ancillary Agreement pursuant to the terms of the Indenture; and

12          (12) Do all things necessary or appropriate to carry out its purposes of and exercise  
13 the powers expressly granted in this chapter.

#### 14       **§ 1405. Corporation board**

15       (a) The Corporation is governed by a board of directors composed of five members,  
16 including four private members and one public member. Four members of the board must be  
17 private citizens known as “Independent Members”. The Governor shall serve as an ex-officio  
18 member and the chairperson of the board and shall appoint the four Independent Members no  
19 later than 30 calendar days after the effective date of this chapter, for a term of five years.

20       (b) The Independent Members of the board must:

21           (1) Have at least seven years of executive or board experience in accounting,  
22 banking, finance, law, management or public administration; and

23           (2) Not be a current officer, employee or director of any governmental entity of  
24 the Virgin Islands and must be at least three years removed from having served as an  
25 officer, employee or director of any governmental entity of the Virgin Islands.

1 (c) Each of the Independent Members of the board serves a four-year term, but a  
2 member selected to fill a vacancy occurring before the end of the term for which the member's  
3 predecessor was selected may serve only until the end of the predecessor's term. A director  
4 serves after the expiration of the director's term until the director's successor has taken office.  
5 Any director in good standing may be reappointed by the Governor for an additional term.

6 (d) The Independent Members of the board may receive compensation not in excess of  
7 \$1,500 for each day or part of a day spent in the meeting of the board, not to exceed one paid  
8 meeting per quarter. All directors are entitled to reimbursement for, the actual, reasonable, and  
9 necessary expenses incurred in the performance of their official duties;

10 (e) All directors are entitled to reimbursement for, the actual, reasonable, and necessary  
11 expenses incurred in the performance of their official duties;

12 (f) The Governor may remove any director for inefficiency, neglect of duty or  
13 misconduct in office after giving the director a copy of the charges against the director and an  
14 opportunity to be heard, in person or by counsel, in the director's defense, upon not less than  
15 10 days' notice. If any director is so removed, the Governor shall file in the Office of the  
16 Lieutenant Governor a complete statement of the charges made against the director and the  
17 Governor's findings, together with a complete record of the proceedings. Any director removed  
18 from the board pursuant to this subsection may not be reappointed at any time.

19 (g) Any vacancy occurring after the initial appointments and prior to the issuance of  
20 the Initial Matching Fund Securitization Bonds, must be filled by the Governor no later than 30  
21 days of the vacancy pursuant to subsection (b).

22 (h) A quorum of the board for conducting its business, exercising its powers, and for  
23 all other purposes consists of a majority of the members, one of whom must be the Governor.  
24 Any one or more directors may participate in a meeting of the board by means of a conference  
25 via telephone, video, or similar communications equipment allowing all persons participating  
26 in the meeting to hear one another at the same time and allowing for the verification of the

1 identity of each of the directors. Participation by such means constitutes presence in person at  
2 a meeting for purposes of establishing a quorum and voting;

3 (i) Actions of the board are determined by a majority vote of the members unless a  
4 unanimous vote of all the members is required by this chapter or the bylaws of the Corporation  
5 for certain purposes. The unanimous affirmative vote of the members is required for the  
6 issuance of any Additional Bonds,-as authorized pursuant to section 1404(c)(5).

7 (j) The board shall:

8 (1) Develop a policy of board governance that provides well-defined rules,  
9 processes, and by-laws, including documented procedures, routine internal audits, risk  
10 management and reporting required by this chapter;

11 (2) Build a framework for corporate governance that synchronizes with the rules  
12 of law, moral integrity, open participation and transparency, accountability, effectiveness  
13 and efficiency, and implements its legislative mandate;

14 (3) Act as a fiduciary in the best interest of the Corporation, including in the best  
15 interests of the Corporation's creditors, the Bondholders;

16 (4) keep the Corporation's assets and liabilities separate and distinct from those  
17 of any other entity; and

18 (5) Perform such other duties as may be specified in the organizational  
19 documents or other agreements of the Corporation.

## 20 **§ 1406. Term of Corporation**

21 The existence of the Corporation is perpetual; but the board by unanimous vote may  
22 dissolve the Corporation no earlier than one year and one day after the Bonds, and all other  
23 obligations of the Corporation under the applicable Indenture and the Ancillary Agreements  
24 have been repaid or their repayment has been provided for fully, and the existence of the  
25 Corporation terminates when adequate provision has been made for the payment of all other  
26 debts and obligations, and the winding up of the affairs of the Corporation. No assets or

1 earnings of the Corporation inures to a private person or entity. Upon dissolution of the  
2 Corporation, title to all property of the Corporation is vested in and becomes the property of the  
3 Government, subject to any liens on the Residual Certificate and the Residual Receipts.

4

5 **§ 1407. Bonds of the Corporation**

6 Subject to Section 1404(c)(5) and section 1414, the Corporation, as authorized by a  
7 Resolution, may issue Bonds in one or more series or tranches, or both, and at one or more  
8 times, including refunding Bonds at or before maturity, and the obligations are payable solely  
9 from the Trust Estate, and the Corporation has the power to provide for the authorization,  
10 securing, sale, and issuance of the Bonds and the Residual Certificate consistent with this  
11 Chapter. The Corporation may pledge the Trust Estate as security for the payment of all  
12 amounts payable under the initial Indenture, any supplemental Indenture, and other Indentures.

13 (a) The concurrent issuance of the GERS Funding Note secured by the Residual  
14 Certificate is a condition concurrent to the issuance of the Initial Matching Fund Securitization  
15 Bonds.

16 (b) The Corporation shall enter into an agreement with one or more underwriters or  
17 purchasers to sell the Initial Matching Fund Securitization Bonds in compliance with the  
18 Resolution, setting forth the principal amount of the Initial Matching Fund Securitization Bonds  
19 to be issued, the pricing and the proceeds expected from the issuance. The senior underwriter  
20 for any sale of the Bonds must have:

21 (1) sufficient assets in its capital account required to successfully underwrite and  
22 provide secondary market support for the Bonds;

23 (2) displayed an ability to sell high yield debt similar to the Corporation's Bonds,  
24 and

25 (3) experience working with the Government and special purpose vehicles.



1 (c) The initial purchaser who acts as the lead investor must be a qualified institutional  
2 investor willing to provide an indication of purchase of at least \$50,000,000 of any bonds to be  
3 sold by the Corporation.

4 (d) Any Bonds issued by the Corporation may be rated by any Nationally Recognized  
5 Statistical Rating Organization selected by the Corporation and, if so desired by the  
6 Corporation, may be insured with municipal bond insurance, if available and appropriate.

7 (e) A Resolution must authorize and describe the terms of the Initial Matching Fund  
8 Securitization Bonds to be issued to finance the Corporation's acquisition of the Matching Fund  
9 Receipts and the Related Rights. The Resolution must contain a statement of the board that  
10 the board has determined that the issuance of the Initial Matching Fund Securitization Bonds  
11 and the Residual Certificate is expected ultimately to result in increased receipts to the  
12 Government on a net present value basis, excluding the debt service reserve funds securing the  
13 Existing PFA Bonds, by way of the Residual Certificate as compared to the residual receipts  
14 that would have been expected to be available to the Government had the Existing Matching  
15 Fund Loan Notes and Existing PFA Bonds remained outstanding by taking advantage of the  
16 Corporation's expected lower borrowing cost.

17 (f) The Resolution of the board must stipulate the terms of the Bonds, and include  
18 including the following:

19 (1) Whether the Bonds will be issued as Matching Fund Securitization Bonds or  
20 as Subordinate Lien Bonds;

21 (2) The date a Bond bears;

22 (3) The date a Bond matures and, if different, the other date on which a Bond  
23 may be paid;

24 (4) Whether the Bonds are issued as current interest bonds, capital appreciation  
25 bonds, convertible, capital, appreciation bonds or a combination of them;

1           (5) Whether the Bonds are issued as serial bonds, term bonds or as a  
2 combination of the two;

3           (6) The denominations;

4           (7) The interest rate or rates, to be payable semi-annually, all as provided in or  
5 determined pursuant to, authorization under the Resolution;

6           (8) The method and terms of sale;

7           (9) The method for payment;

8           (10) Security for the Bonds;

9           (11) The terms of redemption;

10           (12) The establishment of debt service funds and the use of proceeds of the Bonds  
11 for costs of issuance, capitalized interest and otherwise in accordance with this chapter;

12           (13) The terms of any Ancillary Agreements to be entered into in connection with  
13 the issuance of such Bonds;

14           (14) The identity of the Trustee and other financing entities in connection with the  
15 issuance of the Bonds;

16           (15) whether the Corporation will seek a rating on the Bonds and whether the  
17 Bonds may be insured;

18           (16) A statement as to whether a series of the Bonds is intended to be issued on a  
19 federally tax-exempt or taxable basis; and

20           (17) A description of the use of the proceeds from the sale of the Bonds and  
21 provide for the payment of any closing financing costs and ongoing financing costs.

22           (g) The Resolution must be irrevocable but may be amended on or after the date of  
23 issuance of the Bonds approved thereunder only in accordance with and subject to the  
24 limitations of the applicable Indenture and must remain in effect and unabated until the Bonds  
25 authorized by the Resolution have been paid in full and all amounts required to be paid to any  
26 financing entity are paid in full and all obligations thereunder have been performed in full. (h)

1           (h) Notwithstanding subsection (e) as needed to facilitate the issuance of the Bonds,  
2 the board may delegate to its chairperson the authority to prescribe the terms and conditions of  
3 each series of Bonds, including those referred to in subsection (f), but the terms and conditions  
4 of the Residual Certificate issued in connection with the purchase of the Matching Fund  
5 Receipts and the Related Rights must be consistent with the terms of the Sale Agreement.

6           **§ 1407a. Nature and requirements of Bonds**

7           (a) The Bonds are securities in which all public officers and bodies of the Government  
8 and all agencies, instrumentalities, commissions, authorities, and political subdivisions thereof,  
9 all insurance companies and associations and other persons carrying on an insurance business,  
10 all banks, bankers, trust companies, savings banks and savings associations, including savings  
11 and loan associations, building and loan associations, investment companies and other persons  
12 carrying on a banking business, and all other persons whatsoever who are now or may hereafter  
13 be authorized to invest in Bonds or other obligations of the Corporation, may properly and  
14 legally invest funds including capital in their control or belonging to them.

15           (b) The Bonds are securities that may be deposited with and are received by all public  
16 officers and bodies of the Government and all agencies, instrumentalities, commissions,  
17 authorities, and political subdivisions thereof, for any purpose for which the deposit of Bonds  
18 or other obligations of the Corporation is now or may hereafter be authorized.

19           (c) The Bonds are the sole obligations of the Corporation.

20           (d) The Bonds, obligations of the Corporation under the Ancillary Agreements or other  
21 contracts, expenditures, accounts, funds, property and facilities of the Corporation are those of  
22 the Corporation and not those of the Government, or any department, office, agency,  
23 commission, municipality, branch, bureau, agent, officer or employee of the Government.

24           (e) The Bonds are not obligations of the Government and are not secured by a pledge  
25 of the full faith and credit of the Government, and the Bondholders may not require the levy or

1 imposition of taxes. Neither the full faith and credit nor the taxing power of the Virgin Islands  
2 is pledged to the payment of the principal of, or interest on, the Bonds.

3 (f) The Bonds and the Residual Certificate are special obligations of the Corporation  
4 payable solely from and secured by the Trust Estate.

5 (g) The Bonds must contain on their face the statements contained in paragraphs (1)  
6 through (4) of this subsection:

7 (1) Nothing contained in the Bonds or in the related financing or closing  
8 documents creates an obligation on the part of the Corporation or the Government to make  
9 payments with respect to the Bonds or the Residual Certificate from sources other than  
10 the assets of the Corporation.

11 (2) The issuance of the Bonds, the authority to issue the Bonds, the regularity  
12 thereof, the validity of any pledge or lien, and the validity and legality of each Resolution  
13 authorizing the Bonds and the proceedings so adopted are conclusively presumed.

14 (3) No official, employee, or agent of the Corporation or the Government is  
15 personally liable solely because the Bonds are issued. Members of the board, while acting  
16 within the scope of their authority as directors of the Corporation, are not subject to any  
17 personal or civil liability from the exercise of any of the Corporation's purposes, duties  
18 or responsibilities, unless the conduct of the director is determined by a court of  
19 competent jurisdiction to constitute willful wrongdoing or gross negligence.

20 (4) The signature of an officer of the Corporation that appears on the Bonds not  
21 yet issued or delivered, whether manual or facsimile, remains valid and sufficient  
22 notwithstanding that the person has ceased to hold that office.

23 (h) The Bonds are exempt as to principal and interest from taxation by the Government  
24 or by any political subdivision of the Government.

25 (i) The Corporation pursuant to section 1404(c)(5) may issue, for any lawful purpose,  
26 Subordinate Lien Bonds and any other bonds, notes, or other obligations secured in whole or in

1 part by liens on the Trust Estate that are junior and subordinate to the lien on revenues securing  
2 payment of the Bonds, parity notes, and other parity obligations. The Subordinate Lien Bonds  
3 may be further secured by any other source of payment lawfully available for such purpose.  
4

5 **§ 1407b. Statutory lien created**

6 (a) The Bonds are automatically upon issuance secured by a statutory lien on the Trust  
7 Estate created by this section. The Matching Fund Securitization Bonds and any Subordinate  
8 Lien Bonds have the benefit of and are secured by a statutory lien upon the Trust Estate, which  
9 statutory lien is effective, binding, and enforceable against creditors and all others asserting  
10 rights therein or having claims of any kind in tort, contract, or otherwise, irrespective of whether  
11 those parties have notice of the lien and without the need for any physical delivery, recordation,  
12 filing or further act of any kind. The statutory lien arises by operation of law pursuant to this  
13 section and automatically attaches to the Trust Estate from the time the Bonds are issued,  
14 without further action, filing or authorization by the Corporation or any other entity, person,  
15 governmental authority, or officer. As it relates to the Matching Fund Securitization Bonds and  
16 any Subordinate Lien Bonds, the statutory lien on Matching Fund Receipts that constitute  
17 Residual Receipts is automatically released and discharged immediately upon deposit by the  
18 Trustee of the amounts of Residual Receipts into the Residual Fund without further action,  
19 filing or authorization by the Corporation or any other entity, person, governmental authority,  
20 or officer.

21 **§ 1407c. Corporation's consent to lien on Trust Estate**

22 Any pledge by the Corporation of the Trust Estate as security for the Bonds has the benefit  
23 of a consensual lien, perfected, effective, binding, and enforceable against creditors and all  
24 others asserting rights therein or having claims of any kind in tort, contract, or otherwise,  
25 irrespective of whether those parties have notice of the lien and without the need for any  
26 physical delivery, recordation, filing or further act of any kind. As it relates to the Bonds, the

1 consensual lien on amounts on Matching Fund Receipts that constitute Residual Receipts is  
2 automatically released and discharged immediately upon any deposit by the Trustee of the  
3 Residual Receipts into the Residual Fund without further action, filing or authorization by the  
4 Corporation or any other entity, person, governmental authority, or officer.

5 **§ 1408. Sale of Matching Fund Receipts and Related Rights a true sale**

6 (a) The transfer of the Government's right, title, and interest in and to the Matching  
7 Fund Receipts and the Related Rights pursuant to this chapter to the Corporation or any assignee  
8 permitted under the initial Indenture must be treated as an absolute transfer and true sale of all  
9 of the Government's right, title, and interest in and to the Matching Fund Receipts designated  
10 as being sold pursuant to the terms of the Sale Agreement, and not a pledge of or secured  
11 transaction relating to the Government's right, title, and interest in the Matching Fund Receipts  
12 and the Related Rights, if the documents governing the transaction expressly state that the  
13 transaction is a sale or other absolute transfer.

14 (b) The existence of a statutory lien and consensual liens on all of the Corporation's  
15 right, title, and interest in and to the Trust Estate, including the moneys payable or received  
16 thereunder and any interest thereon, or the characterization of the transaction for accounting or  
17 securities regulation purposes may not impair or negate the characterization of any transfer as  
18 a true sale. The transfer of the Government's right, title and interest in and to the Matching  
19 Fund Receipts and the Related Rights to the Corporation or to any assignee pursuant to the Sale  
20 Agreement is irrevocable and is perfected, vested, valid and binding as against third persons  
21 having claims of any kind in tort, contract or otherwise against the Government, irrespective of  
22 whether the parties have notice thereof and are superior to any judicial liens or other liens  
23 obtained by the claimants or transferees. No instrument by which the sale is accomplished need  
24 be recorded in order to accomplish the transfer.

25 (c) The Legislature by this chapter is determining the nature of, and procedure for the  
26 absolute conveyance of, property rights. The characterization of the assignment, sale and

1 transfer of the Matching Fund Receipts and the Related Rights as an absolute transfer and true  
2 sale and the corresponding characterization of the property interest of the Corporation under  
3 this chapter may not be altered, adversely affected or impaired by, among other factors, the  
4 occurrence of any of the following factors:

5 (1) the commingling of the Matching Fund Receipts with other funds;

6 (2) the initial retention by the Government of interest in the Residual Receipts in  
7 the Trust Estate as part of the consideration for the sale of the Matching Fund Receipts  
8 and the Related Rights;

9 (3) any recourse that the Corporation may have against the Government pursuant  
10 to the Sale Agreement;

11 (4) any indemnification or other obligations of the Government in favor of the  
12 Corporation;

13 (5) the treatment of the sale, assignment or transfer for tax, financial reporting,  
14 or other purposes;

15 (6) any subsequent Resolution of the Corporation; or

16 (7) any deposit of Matching Fund Receipts in a separate fund in the treasury of  
17 the Virgin Islands referred to in 26 USC §7652(b)(3), despite the instruction by the  
18 Government to the Secretary of the Treasury and the DOI or otherwise.

19 (e) The sale and conveyance of the Matching Fund Receipts and the Related Rights  
20 pursuant to this chapter is not subject to disavowal, disaffirmance, cancellation, or avoidance  
21 by reason of insolvency of any party, lack of consideration, or any other fact, occurrence, or  
22 Virgin Islands law, the United States Code or other law or rule. On and after the effective date  
23 of the sale and conveyance of the Matching Fund Receipts and the Related Rights pursuant to  
24 this chapter, the Government has no right, title, or interest in or to the Matching Fund Receipts  
25 and the Related Rights conveyed, and the Matching Fund Receipts, and the Related Rights so  
26 conveyed are the property of the Corporation.

1 (f) The Corporation's right, title, and interest in and to the Trust Estate, including the  
2 moneys payable or received thereunder and any interest thereon, or the characterization of the  
3 transaction for accounting or securities regulation purposes may not impair or negate the  
4 characterization of any transfer as a true sale. The transfer of the Government's right, title and  
5 interest in and to the Matching Fund Receipts and the Related Rights to the Corporation or to  
6 any assignee pursuant to the Sale Agreement is irrevocable and is perfected, vested, valid and  
7 binding as against third persons having claims of any kind in tort, contract or otherwise against  
8 the Government, irrespective of whether the parties have notice thereof and are superior to any  
9 judicial liens or other liens obtained by the claimants or transferees. No instrument by which  
10 the sale is accomplished need be recorded in order to accomplish the transfer.

11 **§ 1409. Government's pledge**

12 (a) The Government pledges to and agrees with the Corporation for the Corporation  
13 and for the benefit of the Bondholders that, until at least one year and one day after the Bonds  
14 and all other obligations of the Corporation pursuant to the applicable Indenture, other than the  
15 Residual Certificate, have been paid or defeased and all unpaid closing financing costs or  
16 ongoing financing costs have been paid, the Government shall:

17 (1) Take all steps necessary or appropriate to provide, on a timely basis for each  
18 fiscal year;

19 (2) Provide an estimate of the amount of rum produced in the Virgin Islands and  
20 exported to the United States mainland in such year to the DOI, with a copy to the  
21 Corporation;

22 (3) Provide any information required to make a request to the U.S. Government  
23 for any adjustment to the Matching Fund Receipts for such year to the Corporation;

24 (4) Take all steps necessary or appropriate to ensure the Corporation's receipt  
25 and continued collection of the Matching Fund Receipts and payment thereof directly into



1 the GVI Restricted Account and the prompt transfer of such Matching Fund Receipts to  
2 the deposit account;

3 (5) Not divert, reclaim, sequester, commandeer, or use any Matching Fund  
4 Receipts transferred to the Corporation or deposited in the GVI Restricted Account;

5  
6 (6) Not close the GVI Restricted Account; and

7 (7) Not take or permit any other action to be taken that reduces, postpones, limits,  
8 alters, or impairs the value of or collections on the Trust Estate or the rights and powers  
9 vested in the Corporation and in Bondholders.

10 (b) The Government further pledges to take all actions as may be permitted by law fully  
11 to preserve, maintain, defend, protect and confirm the interests of the Corporation, the pledge,  
12 lien and security interest and all rights of the Bondholders in the Trust Estate, and the payments  
13 therefrom pursuant to the terms of the Sale Agreement against all claims and demands of third  
14 parties, and shall not revoke, terminate or amend such pledge, lien and security interest in any  
15 way that would adversely affect the rights of any Bondholder.

16 (c) Without limiting the foregoing, the Government pledges to the Corporation and the  
17 Bondholders that, until at least one year and one day after the Bonds and all other obligations  
18 of the Corporation pursuant to the applicable Indenture have been paid or defeased and all  
19 unpaid closing costs or ongoing financing costs have been paid, the Government shall:

20 (1) Take no action that would, directly or indirectly, result in the repeal,  
21 rescission, or termination of this Chapter; or

22 (2) Enact no law permitting or authorizing the Corporation, or allow any public  
23 officer or any organization, entity or other person to permit or authorize the Corporation,  
24 to be a debtor under any bankruptcy or similar law;

1 (d) The Corporation may include pledges and agreements of the Government contained  
2 in this section in the initial Indenture or other Indentures, any offering materials, marketing  
3 materials, or any Ancillary Agreement.

4 (e) No pledge or agreement of the Government in this section may be construed to  
5 indicate that the Government is a guarantor of any debt or obligation of the Corporation.

6 **§ 1410. No Bankruptcy or other actions by Corporation adverse to Bondholders**

7 The Corporation may not be a debtor under any provision of the United States Bankruptcy  
8 Code or under any other bankruptcy or similar law, and neither any public officer nor any  
9 organization, entity or other person may authorize the Corporation to be or become a debtor  
10 under any provision of the United States Bankruptcy Code or under any other bankruptcy or  
11 similar law. Until the date not earlier than one year and one day after the Bonds and all other  
12 obligations under the Indentures and Ancillary Agreements are paid in full:

13 (a) The Corporation may not dissolve or file a voluntary petition under any bankruptcy  
14 legislation in effect from time to time or sell all, or substantially all, of its assets.

15 (b) No public officer, organization, entity, or other person may authorize the  
16 Corporation to be or become a debtor under any bankruptcy legislation in effect from time to  
17 time;

18 (c) In addition, the Corporation may not incur, guarantee, or otherwise become  
19 obligated to pay any debt other than the Bonds, the Residual Certificate, or obligations other  
20 than those incurred pursuant to ancillary agreements and the related financing costs.

21 (d) The Corporation may not merge or consolidate, directly or indirectly, with any  
22 person or entity.

23 (e) The Corporation may not take any action that materially and adversely affects the  
24 rights of the Bondholders or other obligations issued by it.

25 **§ 1411. No other approvals required**

1 Notwithstanding any law to the contrary, no approvals, notices, authorizations or  
2 filings other than those specified in this chapter are required with respect to any Resolution  
3 or the transactions and contracts authorized in or contemplated by this chapter or any  
4 Resolution, including but not limited to the issuance of the Bonds and the Residual  
5 Certificate, the sale and conveyance of the Matching Fund Receipts and the Related Rights,  
6 the creation and perfection of the statutory lien or any consensual lien on the Trust Estate,  
7 the entering into or performance of any Ancillary Agreements, and the incurring of any  
8 expenses to facilitate the taking of the actions described in this chapter.

9 **§ 1412. Money bill; No Appropriation Required**

10 This chapter is a money bill of the Legislature for the purposes of 48 USC §1561 and  
11 there is no requirement under statutory or other provisions of Virgin Islands law that the  
12 Legislature enact further legislation to appropriate any funds to the Corporation or to  
13 implement the provisions of this chapter presently or in the future.

14 **§ 1413. Amendments or adjustments to existing agreements**

15 The Governor shall negotiate and execute amendments or adjustments to existing  
16 agreements with Cruzan and Diageo and any Ancillary Agreements relating to the Initial  
17 Matching Fund Securitization Bonds as are necessary and appropriate to carry out the  
18 transactions contemplated by this chapter, subject to ratification by the Legislature.

19 **§ 1414. Choice of law; conflict of laws**

20 (a) The law governing, as applicable, the validity, enforceability, attachment,  
21 perfection, priority and exercise of remedies with respect to the sale, transfer or conveyance of  
22 the Matching Fund Receipts and the Related Rights pursuant to this chapter or the creation of  
23 a security interest in, or lien on, the Trust Estate is exclusively the of the Virgin Islands,  
24 notwithstanding any contrary contract provision.

25 (b) If there is a conflict between this chapter and any other law regarding the  
26 attachment, assignment or perfection, or the effect of perfection, or priority of any pledge

1 of, security interest in or transfer of the Trust Estate, this chapter controls to the extent of the  
2 conflict.

3 **§ 1415. Invalidity; severability**

4 (a) Effective on the date that any Bonds are first issued, if any provision of this Chapter  
5 is held to be invalid or is invalidated, superseded, replaced, repealed or expires for any reason,  
6 that occurrence does not affect any action allowed under this chapter that is taken by the  
7 Government, the Public Finance Authority, the Corporation, any financing entity, a Bondholder  
8 or a party to an Ancillary Agreement prior to the provision being held to be invalid, or being  
9 invalidated, superseded, replaced, repealed or expired, and any such action remains in full force  
10 and effect.

11 (b) If a provision of this chapter or its application to a person or circumstances is held  
12 invalid, the invalidity does not affect other provisions or applications of this chapter that can be  
13 given effect without the invalid provisions, and to this end the provisions of this chapter are  
14 declared to be severable. It is the intent of the Legislature that this chapter would have been  
15 enacted even if the invalid provisions had not been included.”

16 **SECTION 3. True interest cost limit.** The true interest cost on the Initial Matching  
17 Fund Securitization Bonds may not exceed the current interest cost per annum.

18 **SECTION 4. Issuance of GERS Funding Note Authorized.** The PFA or other entity  
19 may issue the GERS Funding Note to the Government for deposit as an in-kind contribution to  
20 the GERS.

21 **SECTION 5. Assignment of amount as security; creation of statutory lien;**  
22 **Government’s consent to a consensual lien:**

23 (a) The Government assigns as security for the payment of the GERS Funding Note  
24 Residual Receipts received by the Government pursuant to the Residual Certificate in an annual  
25 amount calculated as follows: \$158,000,000 of Matching Fund Receipts less debt service on

1 the Initial Matching Funding Securitization Bonds and any other payment obligations under the  
2 Indenture allocable to the refunding, redemption, payment and defeasance of the Government's  
3 portion of the Existing PFA Bonds, subject to any agreements relating to the distribution of  
4 payment of Residual Receipts deposited into the Residual Fund (the "GERS Residual  
5 Receipts"). To the extent there is a shortfall in any Fiscal Year, the shortfall must be carried  
6 forward and must constitute GERS Residual Receipts in the next Fiscal Year until such shortfall  
7 has been satisfied. In all cases, the payment of the GERS Residual Receipts must be made only  
8 from Residual Receipts.

9 (b) The GERS Funding Note automatically upon issuance is secured by a statutory lien  
10 on the GERS Residual Receipts pursuant to this section. The GERS Funding Note has the  
11 benefit of, and is secured by, a statutory lien upon the GERS Residual Receipts, which statutory  
12 lien is effective, binding, and enforceable against creditors and all others asserting rights therein  
13 or having claims of any kind in tort, contract, or otherwise, irrespective of whether those parties  
14 have notice of the lien and without the need for any physical delivery, recordation, filing or  
15 further act of any kind. The statutory lien arises by operation of law pursuant to this subsection  
16 and automatically attaches to the GERS Residual Receipts from the time the GERS Funding  
17 Note is issued, without further action, filing or authorization by the Government, the PFA or  
18 any other entity, person, governmental authority, or officer.

19 (c) The pledge by the Government of the GERS Residual Receipts as security for the  
20 GERS Funding Note has the benefit of a consensual lien, perfected, effective, binding, and  
21 enforceable against creditors and all others asserting rights therein or having claims of any kind  
22 in tort, contract, or otherwise, irrespective of whether those parties have notice of the lien and  
23 without the need for any physical delivery, recordation, filing or further act of any kind.

24 (d) Upon the deposit by the Government of the GERS Funding Note with the GERS,  
25 the GERS is deemed the sole and exclusive owner of the GERS Funding Note, subject to such

1 rights of transfer by the GERS as set forth in the indenture or other financing document securing  
2 the GERS Funding Note.

3 (e) The Government pledges to holder(s) of the GERS Funding Note that, until at least  
4 one year and one day after the GERS Funding Note have been paid or defeased, the Government  
5 shall not take any action that would, directly or indirectly:

6 (1) result in the repeal, rescission, or termination of this section, or

7 (2) impair the rights of the holder(s) of the GERS Funding Note to receive  
8 payment from the GERS Residual Receipts.

9 (f) As a condition to the issuance of the GERS Funding Note, the GERS shall have  
10 delivered or filed, or caused to be delivered or filed, a Settlement Agreement.

11 (g) Upon the issuance and delivery of the GERS Funding Note, all amounts budgeted  
12 by the Government to be paid into the GERS during Fiscal Year 2022, are deemed voided,  
13 rescinded, and of no further effect.

14 **SECTION 6. Ratification of rum company agreements.**

15 Pursuant to 29 V.I.C. § 1413, the Legislature of the Virgin Islands ratifies:

16 (1) The Amendment dated September 11, 2020 amending the Agreement between  
17 Cruzan VIRIL, Ltd. and the Government of the United States Virgin Islands, dated as  
18 of October 6, 2009, as amended from time to time; and

19 (2) The Amendment dated September 11, 2020, amending the Agreement between  
20 Diageo USVI, Inc. and the Government of the United States Virgin Islands, dated as  
21 of June 17, 2008, as amended and supplemented from time to time.

22 **SECTION 7. Repeals.** Act No. 8329 and Act No. 8330 are repealed.

23 **BILL SUMMARY**

24 The bill establishes the Matching Fund Securitization Corporation to acquire during the  
25 Transfer Period all of the Virgin Islands Government's right, title, and interest in the Matching  
26 Fund Receipts to be paid to or for the account of the Government by the United States Treasury  
27 and the Related Rights. The bill authorizes the issuance of Matching Fund Securitization Bonds  
28 and the Residual Certificate in order to pay the purchase price therefor and directs the Secretary

1 and the Department of Interior to pay the Matching Fund Receipts directly into the Deposit  
2 Account. The bill also approves the issuance by the Virgin Islands Public Finance Authority or  
3 other entity of the GERS Funding Note to the Government for deposit as an in-kind contribution  
4 to the GERS.

5 **BR21-0685/November 8, 2021/LMW/Revised/January 25, 2022/YLT**