An Act amending titles 3 and 30 of the Virgin Islands Code, pertaining to the Public Services Commission

PROPOSED BY: Senators Janelle K. Sarauw and Javan E. James

1. WHEREAS, the Public Services Commission serves a critical function in ensuring that the citizens of the Virgin Islands have well-functioning, efficient and fair public utilities;

2. WHEREAS, it is the intent of this act to definitively establish the Virgin Islands Water and Power Authority generally as a public utility and subject to all the normal regulatory authority of the Public Services Commission pursuant to 30 V.I.C, chapter 1, without exception;

3. WHEREAS, it is the intent of the Legislature to definitively establish the Virgin Islands Waste Management Authority generally as a public utility and subject the complete regulatory authority of the Public Services Commission pursuant to title 30 V.I.C. Chapter 1, without exception;

4. WHEREAS, the 2017 hurricane season damaged the territory’s communications infrastructure, leaving consumers without reliable telephone and wireless communication;
WHEREAS, wireless telecommunications consumers were subject to poor connectivity, dead zones, and an increase in dropped calls in the months after the hurricanes;  
WHEREAS, response by wireless telecommunications providers to the plight of the affected customers was poor;  
WHEREAS, many Virgin Islands consumers have still not received promised credits for the months with intermittent and disrupted service; and  
WHEREAS, there is no Virgin Islands regulatory authority to accept complaints from wireless telecommunications consumers or to advocate on their behalf; Now, Therefore,  

Be it enacted by the Legislature of the Virgin Islands:  

SECTION 1. Title 3 Virgin Islands Code, chapter 16, section 273, subsection (a) is amended by striking all the language after “Commission” and inserting the following language in its place: “is established as a semiautonomous agency of the Government of the Virgin Islands.  

SECTION 2. Title 30 Virgin Islands Code, chapter 1, subchapter I is amended in the following instances:  

(a) Section 1 is amended as follows:  

(1) Subsection (a) is amended by:  
(A) inserting “public or private partnership” after “co-partnership”;  
(B) inserting “public or private” before “corporation”;  
(C) inserting “autonomous governmental instrumentality or agency” after “corporation”;  
(D) striking paragraphs (1), (2) and (6), redesignating the affected paragraphs accordingly, and inserting a new paragraph (5) that reads as follows: “(5) Waste management service provided by the Virgin Islands Waste Management Authority or any successor agency”.  

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(2) Subsection (c) is amended by striking “The rates for public utility service supplied by the Government shall be fixed, unless fixed by law,” and inserting “Any public utility service supplied by a government owned or created corporation or authority must be regulated”.

(3) Subsection (f) is added and reads as follows: “(f) All utilities, including government owned or created corporations or authorities, regulated by the Public Services Commission are subject to the full regulatory powers and authority of this chapter.”

(b) Sections 15a, 15b, 15c, and 15d are repealed.

(c) Section 25 is amended as follows:

(1) The first sentence, is amended by:

(A) Striking “with a net investment of $1,000,000 or more”.

(B) Striking “and” after “shall deem proper”.

(C) Inserting a period (.) after “deem proper” and the following language “If the charged entity is a regulated utility, the expenses must”.

(D) Striking “except any cost or expenses associated with any investigation or proceedings regarding the certification or interconnection of a “Qualifying Cogeneration Facility or, Qualifying Small Power Production Facility”, as defined in 30 V.I.C. § 46 is governed solely by 30 V.I.C. §§ 47 and 48”.

(2) Striking in the second sentence, all the language after “Special Public Utility Deposit Account”.

(d) Section 39, subsection (a) is amended by striking “$100” and inserting “$1,000 per day” in its place.

SECTION 3. (a) Title 30 Virgin Islands Code, chapter 1, subchapter II is amended in Section 45 by striking all the language therein and inserting new language to read as follows:
“The Public Services Commission shall, within the limits of legislative appropriations, employ and determine the salaries of, or contract for the services of professional, technical and operational personnel and consultants as the execution of its duties and the operation of the Public Services Commission may require. The administrative management of the duties and responsibilities of the Public Services Commission under this chapter are vested in an Executive Director who is appointed by the Governor, upon recommendation of the Commission, and with the advice and consent of the Legislature. The Executive Director must:

1. be knowledgeable and experienced in public administration and fiscal management;
2. be knowledgeable in the areas of utility regulation by the Public Services Commission; and
3. have no pecuniary interest in any entity regulated by the Commission.

(b) The Executive Director shall:

1. Direct the daily operation of the Public Services Commission, including budget preparation, administration, human resources management, purchases and acquisitions made by the Public Services Commission, and contracts and leases entered into by the Public Services Commission.
2. Develop and implement policies and procedures to ensure the efficient operation of the Public Services Commission;
3. Oversee the review of applications, schedule and maintain a calendar of all matters before the Public Services Commission;
4. Ensure compliance with and enforcement of statutes and regulations pertaining to utilities which are regulated by the Public Services Commission; and
5. Serve as custodian of all Public Services Commission records and authenticate documents; and
(6) Perform such other duties as the Public Services Commission or law may require.

(c) The Public Services Commission shall appoint an Assistant Executive Director from the alternate district in which the Executive Director is located.

(d) The Public Services Commission may appoint one or more hearing officers for a period not to exceed three months to conduct proceedings or hearings on behalf of the Public Services Commission.”

SECTION 4. Title 30 Virgin Islands Code, chapter 5, subchapter II, section 104 is amended in the following instances:

(a) Subsection (d) is amended as follows:

(1) The following language is added after the first sentence:

“The Executive Director, at a minimum, shall possess combined minimum 10 years of documented experience successfully managing a public or private utility or business activity similar, or greater, in scope and size to the Authority, and either graduation from an accredited institution of higher education with (i) a bachelor’s degree or higher in business or public sector management, or closely related field or discipline, or (ii) graduation from an accredited institution of higher learning with a bachelor’s degree or higher in engineering or engineering technology.”

(2) The existing language is designated as paragraph (1) and a paragraph (2) is added to read as follows:

“(2) The powers of the Executive Director include the following:

(A) Enforcement of all regulations of the Authority.

(B) Attendance at all meetings of the Board and submission of a general report of the affairs of the Authority.”
(C) Advisement of the Board as to the needs of the Authority and approval demands for the payment of obligations of the Authority within the purposes and amounts authorized by the Board.

(D) Preparation of or causing to be prepared all plans and specifications for the construction of the works of the Authority.

(E) Selection and appointment of the employees of the Authority, except as otherwise provided by this chapter, and the planning, organization, coordination and control of the services of the employees in the exercise of the powers of the Authority under the general direction of the Board.

(F) Subject to the approval of the Board, contracting with a corporation to perform some of the duties of the Authority, or to render expert and technical assistance in the operation of the Authority. The contract must not exceed a three-year term. A corporation contracted pursuant to this section must have a minimum of five years of experience in the operation of an electrical power utility of similar or greater scope than the Authority.

(G) Performance of any other powers or duties delegated by the Board.”

(b) Subsections (e) through (i) are re-designated as subsections (h) through (j), respectively, and new subsections (e), (f), and (g) are inserted and read as follows:

“(e) The Chief Financial Officer of the Authority must be appointed by the Board exclusively upon the basis of merit as determined by technical training, skill, experience, and other qualifications best suited to carrying out the purposes of the Authority. The Chief Financial Officer is removable by the Board but only for cause and after notice and an opportunity to be heard. The Chief Financial Officer must be, at a minimum, a Certified Public Accountant or a Chartered Financial Analyst and possess five years of documented, progressively responsible experience at a public/private utility, a major company or division
of a large corporation. The Chief Financial Officer must have full charge and control of
the fiscal, business and accounting operations of the Authority, subject to the supervision
of the Board, and the Board shall fix the Chief Financial Officer’s compensation.

(f) The Board shall hire Board Counsel who must have been admitted to practice
law in the Virgin Islands. The Board Counsel works solely for the Governing Board and
shall advise the Board on all legal matters and may represent the Governing Board in
connection with legal matters before the Legislature, boards and other agencies of the
Territory.

(g) The Board may contract with a corporation to perform any or all of the duties
and to exercise any or all of the powers of the Executive Director as provided in this section.
However, if the Board decides to contract with a corporation to perform all of the duties
and to exercise all of the powers of the Executive Director, the contract must not exceed a
term of three years. The company contracted pursuant to this section must have a minimum
of five years of experience in the operation of an electrical power utility of similar, or
greater, scope than the Authority, and the contract must be submitted to the Legislature of
the Virgin Islands for its approval.”

SECTION 5. Title 30 Virgin Islands Code, chapter 5, subchapter V is amended in the
following instances:

(a) Section 116, subsection (a) is amended by striking “two thousand five hundred
($2,500) dollars” and inserting in its place “$10,000”.

(b) Section 118 is amended by

(1) Striking “as soon as practicable after the close of each fiscal year of the
Government of the Virgin Islands” and inserting “by January 31 of each calendar year”.

(2) Striking “a financial statement” and inserting “audited financial statements”.


(3) Inserting “, to include balance sheets, statements of revenues, expenses and changes in net assets, and statements of cash flows,” after “financial statements”.

(4) Inserting “a” before “complete report” where it appears in the first instance.

(5) Inserting “of the Authority” after the second occurrence of “fiscal year”.

(c) Section 121 is amended by

(1) Striking “or any power over the regulation of rates, fees, rentals and other charges to be fixed, revised and collected by the Authority,”

(2) Designating the existing language as subsection (a) and adding subsection (b) to read as follows:

“(b) Nothing contained in subsection (a) may be construed to preclude the Virgin Islands Public Services Commission from exercising jurisdiction to regulate the Authority as a public utility subject to its broad regulatory authority pursuant to chapter 1 of this title.”

(d) Section 122 is amended by inserting “public utilities, or” before “independent instrumentalities”.

(e) Section 125 is amended as follows:

(1) Subsection (a) is amended by striking “by duly trained personnel of the Authority”.

(2) Subsection (b) is amended by striking all the language therein and inserting new language that reads as follows:

“The Authority shall make the actual reading and date of the reading available to the customer on the customer’s bill not later than 30 days after the date of the reading.”

(f) Section 128 is added and reads as follows:
“§128. Quarterly LEAC Filings

The Authority shall submit quarterly Levelized Energy Adjustment Clause filings to the V. I. Public Services Commission for rate adjustments. Filings are due by the 15th day of the month following the close of the quarter. LEAC filing dates are January 15th, April 15th, July 15th, and October 15th.”

SECTION 6. Title 30 Virgin Islands Code is amended by inserting a chapter 9 to read as follows:

“Chapter 9. Wireless Telecommunications Providers

§ 401. Limited Oversight by the Public Services Commission

Oversight of wireless telecommunications providers is limited to service issues only.

§ 402. No Regulation as a common carrier

Neither the Virgin Islands Public Services Commission nor any other government authority within the Virgin Islands may impose on wireless telecommunications providers regulation as a common carrier or a utility.

§ 403. Complaint; procedure

(a) The Commission shall accept, compile, and attempt to resolve consumer complaints regarding wireless telecommunications providers informally. When the Commission reasonably suspects a pattern of customer abuses, the Commission may, on its own motion, initiate investigations into the activities of wireless telecommunications providers offering cellular service.

(b) The Commission’s authority in these complaint proceedings is limited to adjudication of complaints regarding wireless telecommunication service provided by wireless telecommunication carriers. A person that takes a complaint to the Commission may pursue an appeal of the decision through the courts as provided for in law.
(c) In connection with customer complaints or Commission investigations into consumer abuses, wireless telecommunication providers shall provide the Commission access to their accounts, books, papers, and documents related to Virgin Islands’ transactions, if the information is relevant to the complaint or investigation.

(d) No wireless telecommunication provider may discontinue service to a customer for a disputed amount if that customer has filed a complaint that is pending with the Commission, and that customer has paid the disputed amount into an escrow account.

(e) The Commission may adopt additional consumer protection standards that are in the public interest.”

SECTION 7. Title 12 Virgin Islands Code, chapter 16A is amended in the following instances:

(a) Section 691b is amended as follows:

(1) A new subsection (c) is inserted to read as follows:

“(c) “Communications Provider” means an entity that offers an Internet Protocol-based transmission service that enables users to send and receive voice, video, data, graphics or a combination of them.”

(2) The language in subsection (j) is stricken in its entirety and replaced with the following:

“Government agency” means any governmental entity, board, bureau, commission, department, agency, division, authority, office, or agent, or any autonomous or semi-autonomous instrumentality of the Government of the Virgin Islands, or any communications provider owned in whole or in part by the Government of the Virgin Islands.”

(3) The affected subsections are re-designated accordingly.
(b) Section 698a. is amended by designating the existing language as subsection (a) and adding a subsection (b) that reads as follows:

“(b) A government agency that installs, relocates, or improves conduits within the public rights-of-way, including a government agency that receives federal funding in whole or in part to install, relocate, or improve conduits, shall ensure that the conduit is of sufficient size to accommodate use by multiple communication providers for their use in providing service, or shall permit a communications provider to install its own conduit at the option of and cost to the communications provider, and shall place hand-holes and manholes for fiber access and pulling with respect to such conduit at intervals consistent with industry standards and practice. A government agency subject to this section shall provide reasonable notice to communication providers and shall ensure that any requesting communication provider has access to the conduit on a competitively neutral and non-discriminatory basis for a charge not to exceed a cost-based rate.”

SECTION 8. Title 29 Virgin Islands Code, chapter 8, subchapter I, section 500m. is amended by designating the existing language as subsection (a) and adding a subsection (b) that reads as follows:

“(b) Nothing contained in subsection (a) may be construed to preclude the Virgin Islands Public Services Commission from exercising jurisdiction to regulate the Authority as a public utility subject to the Commission’s regulatory authority pursuant to title 30, Chapter 1 of the Virgin Islands Code.”

SECTION 9. Title 3, chapter 16, section 273 of the Virgin Islands Code is amended as follows: By adding subsections (g) and (h) that read as follows:

“(g) The Commission has the authority to sue and be sued in its own name and may retain counsel for its representation notwithstanding title 3, section 114 of the Virgin Islands Code.
(h) Neither the Commissioners nor the Commission’s employees or agents can be held personally liable for statements made, information delivered, or conduct performed in good faith while carrying out the Commission’s duties and are entitled to an award of attorney’s fees and costs if they are the prevailing party in a civil cause of action for libel, slander or any other relevant tort arising out of their activities in carrying out their responsibilities or assigned duties.”

**BILL SUMMARY**

Section 1 of the bill amends 3 V.I.C. §273 by establishing the Public Services Commission (“Commission”) as semiautonomous agency of the Government of the Virgin Islands. Section 2 of the Bill amends 30 V.I.C. §1 designating the VI Waste Management Authority as a “public utility”, removing lighterage and cargo handling services; dockage, wharfage or related cargo services; and passenger services by motor busses or trucks services from the definition of public utility under, allowing public utilities to be subject to the full regulatory powers of the Commission. This bill amends title 30 V.I. Code, chapter 1, subchapter I, by inserting a new section 3a. granting the PSC the authority to regulate underground utilities, by amending sections 15a-15d. removing provisions relating to the transportation rate reductions for the elderly, section 25 relating to the payment of investigatory costs in connection with proceedings involving a public utility, section 39 by increasing the penalty from $100 for each offense to $1,000 each day for violations of any provisions of the chapter, and inserting a new section 43b allowing the Commission to appoint a receiver when the Commission finds that a public utility has failed or there is an imminent threat that the public utility may fail to provide adequate and reasonable service to its customers. Section 3 of the bill amends Title 30 V.I. Code, chapter 1, subchapter II, by amending section 45 establishing the qualifications and duties of the Executive Director of the Commission and allowing the Commission to appoint hearing officers to conduct hearings. by inserting a new
section 45b granting the Commission the authority to issue a certificate of public convenience and necessity to a person or entity seeking to provide intrastate telecommunications services or to be a small power producer. Section 4 of this bill amends Title 30 Virgin Islands Code, chapter 5, subchapter II, by amending section 104 establishing the qualification and duties of the Executive Director and the Chief Financial Officer of the Virgin Islands Water and Power Authority (“VIWAPA”), requiring that the CFO be appointed by VIWAPA’s Governing Board and that the WAPA Board hire Board Counsel, and authorizing the Board to contract with a corporation to perform any or all of the duties and to exercise any or all of the powers of the Executive Director. Section 5 of this bill amends Title 30 Virgin Islands Code, chapter 5, subchapter V, by amending section 116 relating to competitive bidding and increasing the do not exceed amount from $2,500 to $10,000 for purchases or work to be carried out without advertisement for bids, amending section 118 requiring that VIWAPA submit audited financial statements to the Legislature and the Governor by January 31st of each calendar year, amending sections 121 and 122 by clarifying that the PSC has jurisdiction to regulate the VIWAPA as a public utility subject to its broad regulatory authority pursuant to Title 30, Chapter 1 of the Virgin Islands Code, amending section 125 by removing the requirement that electric meters have to read by duly trained personnel of the VIWAPA and the requirement that the meter reader leave a written notice informing the customer of the reading, and requiring that VIWAPA make the actual reading and date of the reading available on the customer’s bill no later than 30 days after the date of the reading, by inserting a new section 128 requiring that VIWAPA to submit monthly Leveled Energy Adjustment Clause filings to the Commission for rate adjustments. Section 6 of this bill amends Title 12 Virgin Islands Code, chapter 16A, by amending section 691a. declaring as a policy of the Government of the VI the encouragement of “dig once” efforts and amending section 691b. creating requirements for government agencies when performing underground work. Section 7 of this Bill amends 29 V.I.C.§ 500m
granting the PSC jurisdiction to regulate the Virgin Islands Waste Management Authority as a public utility subject to its broad regulatory authority pursuant to Title 30, Chapter 1 of the Virgin Islands Code.

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