An Act amending the Virgin Islands Code title 3, section 273(a) to as a semiautonomous agency of the Government o relating to the Public Services Commission to re-establish the Commission as a semi-autonomous agency; amending title 30 section 1 relating to public utilities subject to regulation to eliminate from regulation as utilities lighterage and cargo, dockage, wharfage and related cargo handling services, and passenger services by motor busses or trucks, to subject waste management service provided by the Virgin Islands Waste Management Authority to regulation by the Public Services Commission to repeal sections 15a through 15d abolishing transportation rate reductions for seniors and the standard residential base rate for use of electricity, to increase the penalty for each violation by a utility from $100 to $1,000; amending section 45 to provide for the appointment, qualifications and duties of an executive director of the Public Services Commission; amending section 104 relating to the executive director of the Virgin Islands Water and Power Authority to require additional qualifications and duties, to provide for the appointment, qualifications and duties of a chief financial officer and to authorize the Authority’s governing board to hire counsel and contract with a corporation to perform the duties of the executive; amending section 116(a) to increase the amount at which the Virgin Islands Water and Power Authority may purchase supplies and services without competitive bidding from $2,500 to $10,000; amending section 118 relating to reports to require the Virgin Islands Water and Power Authority to submit audited financial statements to the Governor and the Legislature by January 31 annually; amending section 121 relating to the lack of jurisdiction of agencies over the Authority to make rates, fees, rentals and other charges of the Authority not subject to the jurisdictional limitation; amending section 122 relating to the applicability of the Public Services Commission’s regulation of the Virgin Islands Water and Power Authority to make the Commission’s regulatory authority applicable to public utility Independent instrumentalities of the Government; amending section 125 relating to the reading of electric service meters to require the Authority to make the reading and date available on the customer’s bill within 30 days after the reading; adding section 128 to require the Authority to make quarterly filings of the LEAC to the Public Services Commission; directing the Virgin Islands Water and Power Authority to hire a turnaround management company to make an assessment of the Authority and to make recommendation; adding chapter 9 to provide for resolution of customer complaints against wireless telecommunication providers; amending title 12, section 68a to add a subsection (b) to direct government agencies that install, conduits within the public rights-of-way to ensure access to t
conduits by multiple communication providers; amending title 29, section 500m relating to the lack of jurisdiction of other agencies over the Waste Management Authority to negate a statutory construction that would preclude the Public Services Commission from regulating the Waste Management Authority; amending title 3, section 273 by adding subsections (g) and (h) to authorize the Public Services Commission to sue and be sued, to retain counsel, and to grant the Commission members immunity from personal liability; and for other related purposes

**PROPOSED BY:** Senators Janelle K. Sarauw, Marvin M. Blyden, Samuel Carrión, Novelle E. Francis, Jr., Donna A. Frett-Gregory, Kenneth L. Gittens, Javan E. James, Sr., Franklin D. Johnson, Alma Francis Heyliger and Kurt A. Vialet

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;

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;

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;

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”.

(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. (a) Not later than 60 days after enactment of this act, the Virgin Islands Water and Power Authority’ Governing Board shall hire a turnaround management company
to conduct an assessment on the status of the Authority and provide recommendations on how
to generate water and power efficiently, reliably and in the most cost-effective manner.

(b) Not later than 120 after being hired, the turnaround management company shall,
submit to the Legislature and the Governor the following:

(1) An account of the financial status of the Authority;

(2) The status of all ongoing programs and projects at the
Authority;

(3) An assessment of the current organizational and management
organizational structure of the Authority;

(4) An assessment of all energy plans considered by the Authority
which provide for appropriate base rates;

(5) An assessment of all debt consolidation and management plans
considered by the Authority;

(6) An assessment of all water quality and distribution plans,
including an assessment of clean water standards and effective distribution to
consumers considered by the Authority; and

(7) An assessment of all plans to increase service quality standards
at the Authority and to implement sound policy, rules, and regulations for
consumer protection.

(c) Not later than 60 days from submittal of its initial assessment referenced in
subsection (b), the turnaround management company shall submit to the Legislature and the
Governor a Turnaround Report consisting of the following:

(1) Recommendations for short-term measures to reduce the
Levelized Energy Adjustment Clause;
Recommendations for gradually reducing the base rate over a 24-month period; and

Recommendations on how best to incorporate renewable resources for the generation of electricity and water and reduce dependence on fossil fuels by the end of a five-year period.

(d) The turnaround management company shall work with the Authority and the Governing Board to implement the recommendations.

(e) The Governing Board shall provide quarterly assessment reports to the Legislature and the Governor, detailing the status of the Authority and projections in complying with the Turnaround Report.

SECTION 7. Title 30 Virgin Islands Code is amended by adding 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 8. 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 9. 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 10. 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 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. 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 directs the VIWAPA to hire a
turnaround management company to assess its status and make recommendations. Section 7
amends title 30 Virgin Islands Code to add a chapter 9 that provides for the PSC to handle
customer service complaints against wireless telecommunications providers. Section 8 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. establishing requirements for government agencies when performing underground work. Section 8 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. Section 10 amends title 3, section 273 by adding subsections (g) and (h) to authorize the Public Services Commission to sue and be sued, to retain counsel, and to grant Commission members immunity against personal liability

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