

COMMITTEE ON RULES AND JUDICIARY

09/15/2020-REPORTED OUT TO THE FLOOR

BILL NO. 33-0346

Thirty-Third Legislature of the Virgin Islands

July 14, 2020

An Act establishing a Management and Oversight Review Committee for the Virgin Islands Water and Power Authority

PROPOSED BY: Senators Janelle K. Sarauw, Donna A. Frett-Gregory,
Kurt A. Vialet and Kenneth L. Gittens
Co-sponsor: Javan E. James

1 **WHEREAS**, the Legislature of the Virgin Islands created the Virgin Islands Water and
2 Power Authority as a public utility to provide, *inter alia*, electricity and water to the public;

3 **WHEREAS**, the Virgin Islands Water and Power Authority is an autonomous
4 instrumentality of the Government of the Virgin Islands;

5 **WHEREAS**, the Virgin Islands Public Services Commission has authority to review and
6 set rates for the Virgin Islands Water and Power Authority, but such authority is severely limited;

7 **WHEREAS**, the Virgin Islands Water and Power Authority has broad discretion to operate
8 and conduct its business relatively unchecked;

9 **WHEREAS**, there is a Board of Directors for the Virgin Islands Water and Power
10 Authority;

1 **WHEREAS**, the Board of Directors has failed to take the necessary steps to ensure the
2 efficient and cost-effective operations of the Virgin Islands Water and Power Authority;

3 **WHEREAS**, the Virgin Islands Water and Power Authority continues to operate
4 inefficiently to the detriment of residential and commercial rate payers and to the economy of the
5 Territory;

6 **WHEREAS**, the Virgin Islands Water and Power Authority has been engaging in projects
7 without identified funding sources and without proper planning and management;

8 **WHEREAS**, the Virgin Islands Water and Power Authority does not have effective
9 controls and therefore lacks sufficient oversight of its finances;

10 **WHEREAS**, the Virgin Islands Water and Power Authority is slated to receive substantial
11 federal funds to assist in improving the electrical system, and it is necessary that the federal funds
12 are managed properly; and

13 **WHEREAS**, the Legislature of the Virgin Islands finds that there is an immediate need to
14 ensure that the mismanagement at the Virgin Islands Water and Power Authority discontinues and
15 that there be measures in place to ensure proper oversight of the day to day operations; Now,
16 Therefore,

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

18 **SECTION 1. Establishment of the Virgin Islands Water and Power Authority**
19 **Management and Oversight Review Committee.**

20 (a) There is created the “Virgin Islands Water and Power Authority Management and
21 Oversight Review Committee” (“Management Committee”). The Management Committee,
22 pursuant to the authority granted to it in this act, shall take all necessary action to ensure the proper

1 management of the Authority, by bringing the Authority to financial solvency, appropriate
2 regulatory standards, and efficient operations.

3 (b) The Management Committee is composed of five members:

4 (1) The Director of the Virgin Islands Energy Office;

5 (2) An expert in the field of utility finance, who must possess at a minimum a
6 Bachelor of Arts or Bachelor of Science in Finance, Accounting, Business, Math, or
7 Economics and possess at least seven years of experience in utility finance, budget
8 preparation and presentation, revenue and expenditure forecasting, rate case preparation
9 and presentation, and management of debt obligations.

10 (3) Two experts in the field of utility generation or engineering, who must
11 possess a Bachelor of Arts or Bachelor of Science in Engineering and seven years of
12 relevant experience in the electric power/generation industry. These members must also
13 possess in-depth technical knowledge and expertise in transmission and distribution,
14 renewable energy and grid integration, battery energy storage, knowledge of capital costs,
15 operating parameters and technical developments on diverse generation technologies and
16 transmission and distribution networks, and a successful track record in electric utility
17 management and operations, project development, power plant construction and
18 environmental compliance; and

19 (4) A legal expert in the field of public utility law, who must possess a juris
20 doctor from an American Bar Association accredited law school, and who must be a
21 member in good standing of the Virgin Islands Bar Association or permitted to practice
22 law by order of the Supreme Court of the Virgin Islands and has at a minimum, seven years
23 of active legal practice in the areas of electric utility, regulatory compliance, and oil and

1 gas law, and knowledge of utility rate-making principles and relevant federal statutes,
2 including the Federal Power Act, The Energy Policy and Conservation Act of 1975, The
3 National Environmental Policy Act, Administrative Procedure Act, Freedom of
4 Information Act.

5 (c) The five members of the Management Committee must be appointed as follows: in
6 addition to the Director of the Virgin Islands Energy Office, who sits on the Management
7 Committee by virtue of his appointment as Director of the Virgin Islands Energy Office. Not more
8 than 30 days after the enactment of this act, the Governor of the Virgin Islands shall appoint two
9 members of the Management Committee: one who must be an expert in the field of utility
10 generation or engineering and one who must be a legal expert in the field of public utility law. The
11 President of the Legislature of the Virgin Islands shall appoint two members of the Management
12 Committee: one who must be an expert in the field of utility generation or engineering and one
13 who must be an expert in the field of utility finance. With the exception of the Director for the
14 Virgin Islands Energy Office, no member of the Management Committee may have served or be
15 currently serving as an executive in any leadership position at the Authority or as a member of the
16 Authority's Governing Board.

17 (d) Not more than 15 days after a majority of the Management Committee members
18 have been appointed, the Director of the Virgin Islands Energy Office, who shall serve as the
19 Interim Chair of the Management Committee, shall call the first meeting of the Management
20 Committee to organize and choose a Chairperson. Three members of the Management Committee
21 constitute a quorum.

22 (e) Members of the Management Committee are entitled to receive \$2,000 per meeting,
23 as a *per diem*, and are entitled to be reimbursed for necessary and reasonable expenses incurred

1 while performing approved services for the Authority, in conformity with the authority granted
2 pursuant to this act. Members of the Management Committee who are employees of the
3 Government of the Virgin Islands, are not entitled to not receive compensation for work as a
4 Member of the Management Committee, but are entitled to be reimbursed for necessary and
5 reasonable expenses incurred while performing approved services for the Authority, in conformity
6 with the authority granted pursuant to this act.

7 (f) Services for the Authority must be approved by the Chair of the Management
8 Committee. Members of the Management Committee shall submit all requests for *per diem* and
9 for reimbursement accompanied with supporting documentation to the Virgin Islands Public
10 Service Commission for payment not later than 10 days after approved meetings. The request for
11 payment must include a certification by the member which provides that under penalty of law, the
12 member did in fact attend the meeting and that the expenses for which reimbursement is requested
13 are necessary and reasonable and were incurred while performing approved services for the
14 Authority.

15 (g) During the first year of the Management Committee, the members shall meet as
16 necessary to ensure the timely submission of initial reports mandated by this act. Thereafter, the
17 Management Committee shall meet at least once a quarter not to exceed three meetings per quarter.
18 However, the Management Committee may meet as needed during a declared state of emergency
19 or after a major disaster or emergency as defined in 23 V.I.C. § 1004.

20 **SECTION 2. Authority of the Management Committee**

21 (a) When a majority of the Management Committee has been appointed and until the
22 operation of the Management Committee has expired, all the language after “Virgin Islands Water
23 and Power Authority” where it first appears in title 30 Virgin Islands Code, chapter 5, section 103,

1 subsection (a) is suspended, and the Management Committee is vested with all the powers and the
2 authority that were granted to the Authority's Governing Board under title 30 Virgin Islands Code,
3 chapter 5, and the Management Committee automatically becomes responsible for the operations
4 of the Authority.

5 (b) Not more than 30 days after the Management Committee assumes operation of the
6 Authority, the Executive Director of the Virgin Islands Water and Power Authority shall provide
7 to the Management Committee all documents and information necessary for the Management
8 Committee to carry out its duties and responsibilities. The Management Committee must be
9 provided the means to have access to all of the Authority's financial records, organizational
10 information, including assets and any other information necessary for the Management
11 Committee to carry out the functions of managing the Authority and meeting the goals to return
12 the Authority to solvency and efficient operations.

13 (c) The Management Committee, in carrying out its duties pursuant to this act, and in
14 placing the Authority on a path to effective operations and solvency, shall report to the Legislature,
15 or the designated legislative committee, on the following listed areas, including in its report, clearly
16 defined markers for future assessment, progress, and success of the Authority:

17 (1) Assess the potential for a short-term period to levelize water and electric
18 rates;

19 (2) Develop an organizational plan that must include an internal organization
20 restructuring plan, inclusive of all divisions;

21 (3) Develop an energy plan that provides for appropriate base rates;

22 (4) Develop and structure a debt consolidation and management plan;

1 (5) Develop a water quality and distribution plan that includes assessing clean
2 water standards and effective distribution to consumers; and

3 (6) Develop a plan to increase service quality standards at the Authority and to
4 implement sound policy, rules, and regulations for consumer protection.

5 (d) If the Management Committee in exercising sound and proper best business
6 judgment determines that, in order to carry out duties and responsibilities of this act, it is necessary
7 to engage the services of a public utility management company with expertise and demonstrated
8 knowledge and success in restructuring and returning to solvency failing public utilities, then the
9 Management Committee shall follow the procurement laws of the Government of the Virgin
10 Islands in procuring the services of a public utility management company.

11 (e) Not more than 120 days after the date that the Management Committee is vested
12 with responsibility over the Authority, the Management Committee shall submit an initial
13 assessment report on the status of the Authority to the Legislature and the Governor. The
14 assessment report must inform the Legislature and the Governor of the following:

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

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

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

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

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

1 (6) An assessment of all water quality and distribution plans, which includes
2 assessing clean water standards and effective distribution to consumers considered by the
3 Authority; and

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

6 (f) After the issuance 120-day assessment report, the Management Committee shall
7 provide quarterly assessment reports to the Legislature and the Governor, detailing the status of
8 the Authority and projections in complying with subsection (d).

9 (g) The Management Committee shall remain in existence for a period of three years.
10 However, if the Management Committee determines that it needs additional time to complete the
11 objectives of this act, not later than six months before the expiration of the three-year period, the
12 Management Committee shall submit a report to the Legislature and the Governor advising that it
13 needs additional time to satisfy the purposes of this act, stating with specificity the reasons for the
14 extension and the amount of additional time needed. The tenure of the Management Committee
15 expires unless the Legislature takes further action.

16 **SECTION 3.** (a) There is established in the Treasury of the Virgin Islands a special
17 revolving fund to be designated the “Virgin Islands Water and Power Authority Management
18 Committee Revolving Fund”. The Commissioner of Finance shall provide for the administration
19 of the Fund as a separate and distinct fund in the treasury and all monies in the Fund must be
20 used exclusively to pay the necessary and proper expenses of the Management Committee.

21 (b) The Commissioner of Finance shall maintain a record of all monies deposited into
22 the Fund and shall annually report to the Governor and Legislature on the status of the Fund.

1 (c) The Fund shall consist of all sums appropriated by the Legislature of the Virgin
2 Islands. All monies contained in the Fund shall constitute the annual budget of the Management
3 Committee.

4 (d) This Fund lapses when the Virgin Islands Water and Power Authority Management
5 and Oversight Review Committee tenure ends, as provided in section two of this Act.

6 **SECTION 4.** The sum of \$250,000 is appropriated from the Internal Revenue Matching
7 Fund, to the Virgin Islands Department of Finance, for the fiscal year ending September 30, 2020,
8 to be deposited into the Virgin Islands Water and Power Authority Management Committee
9 Revolving Fund, to fund the activities of the WAPA Management and Oversight Review
10 Committee.

11 **BILL SUMMARY**

12 Section one establishes the WAPA Management and Oversight Review Committee whose
13 primary goal is to ensure the proper management of the Authority to bring it to financial solvency,
14 appropriate regulatory standards, and efficient operations. It further provides the make-up of the
15 Management Committee, how the members are appointed, their qualifications, and the manner the
16 Management Committee meets and conducts the business of the Authority.

17 Section two sets out the authority, duties, and responsibility of the Management
18 Committee. It further sets out the reporting requirements of the Management Committee during
19 its existence.

20 Section three provides for the establishment of the Virgin Islands Water and Power
21 Authority Management Committee Revolving Fund, a funding source for the Management
22 Committee.

1 Section four provides for a \$250,000, appropriation to the Management Committee from
2 the Internal Revenue Matching Fund.

3 **BR 19-0551/July 13, 2020/REVISED/SLR**