

# ACT NO. 6905

BILL NO. 26-0351

## TWENTY-SIXTH LEGISLATURE OF THE VIRGIN ISLANDS

### Special Session

2006

An Act authorizing the issuance of Pension Obligations Bonds; amending the Retirement System Reform Act, 3 V.I.C., chapter 27 by establishing a new retirement program for members of the Legislature and establishing a Supplemental Contribution Program; amending 3 V.I.C., sections 1 and 31 to increase the governor's salary to \$150,000 and the Lt. Governor's salary to \$125,000; amending 2 V.I.C., section 71 to increase the salaries of the members of the Legislature; authorizing the issuance of a guaranty to Golden Gaming LLLP, ratifying illegal contracts, making appropriations and for other purposes

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

#### SECTION 1. The Legislature finds and declares:

- (a) The Virgin Islands Government Employees Retirement System ("GERS") was created by 3 V.I.C., § 701, et seq.; and
- (b) Government of the Virgin Islands "(Government)" funds the GERS in accordance with the Code; and
- (c) the GERS actuary has determined that the funding levels are inadequate to meet the actuarially required contributions, and that, based on 2005 calculations, the GERS unfunded actuarial liability ("UAL") exceeds \$1.0 billion; and
- (d) The Government's annual contributions to the GERS are insufficient to amortize the UAL; and
- (e) Under present actuarial assumptions the UAL increases at an assumed rate of 8% per annum, which results in increased UAL; and
- (f) There has been presented to the Legislature a financing plan to (i) fund a portion of the UAL by the issuance of one or more series of taxable pension funding bonds or other evidence of indebtedness ("PFBs") of the Virgin Islands Public Finance Authority (the "Authority") in an amount of up to \$600,000,000; (ii) repay the PFBs through a contractual obligation of the Government pursuant to a Service Contract (the

“Service Contract”) between the Government and the Authority (in such role, “Pension Service Provider”) to provide services to the Government and the GERS, such contractual obligation to be a general contractual obligation of the Government; and

(g) The Service Contract with the Pension Service Provider would provide for the transfer by the Pension Service Provider of the net proceeds of the PFBs to the GERS to fund a portion of the UAL and for additional financial services by the Pension Service Provider, such services provided without duplication of existing services provided to GERS by actuaries and other consultants; and

(h) In order to facilitate the Government’s funding of a portion of the UAL, the Authority will issue up to \$600,000,000 aggregate principal amount of PFBs in one or more series; and

(i) The PFBs will be secured and paid solely from the payments received from the Government under the Service Contract and will not constitute a claim against the full faith, credit and taxing power or the general funds of the Virgin Islands; and

(j) The Legislature contemplates that the policies and procedures set forth in the Act will serve the best interest of the people of the Virgin Islands.

## **SECTION 2. Authorization of Service Contract**

(a) For the purposes of funding a portion of the UAL, the Government may enter into the Service Contract with the Authority.

(b) The Service Contract must provide, inter alia, that the Government shall pay all required amounts to thereunder, including, without limitations, amounts that are sufficient to pay the Authority’s required payments of principal of the PFBs on each principal maturity or mandatory redemption date and interest on the PFBs on each interest payment date therefor. The payment obligation is absolute and unconditional and the Government shall pay its obligations thereunder without abatement, diminution, set-off or deduction regardless of any cause or circumstance whatsoever.

(c) Subject to the authorization and restrictions of this chapter, the terms and conditions of the Service Contract must be determined by the Governor, and be conclusively evidenced by the execution of the Service Contract. The Governor may execute and deliver any administrative or other agreement or documents that are necessary or desirable relating to the Service Contract or in conjunction with the issuance of the PFBs.

(d) Proceeds from the sale of the PFBs must be delivered to the GERS for deposit with the GERS to fund a portion of the UAL, as well as to pay costs of issuing the PFBs, to establish and fund any necessary reserve funds and to pay other expenses and fees relating to the PFBs. In no event shall the GERS or funds held therein be available

or be applied for payment of the PFBs or any claim against the Authority or any other debt or obligation of the Authority.

(e) The Government may pledge its full faith and credit and taxing power and gross receipts taxes, as defined in title 33, section 43, Virgin Islands Code, and/or income taxes as provided in Section 1642 of the Revised Organic Act and Title 33 of the Virgin Islands Code, as security for performance of the Government's payment obligations under the Service Contract as may be required by the Service Contract. Any escrow agreement entered into by the Government and/or the Authority providing for the deposit and administration of funds to secure the payment obligations of the Government with respect to the Service Contract must be maintained for so long as the Service Contract is outstanding.

(f) In connection with the Service Contract and in furtherance of the pledge of the Gross Receipts Taxes and/or Income Taxes authorized herein, the Government and the Authority may execute one or more agreements or instructions, pursuant to which:

(1) All Gross Receipts Taxes and/or Income Taxes, as applicable, collected shall be deposited in an escrow account within the General Fund. The account must be maintained in custody of a banking institution approved by the Government and located in the Virgin Islands, must be held separate from any other funds and accounts of the Government or the banking institution.

(2) The Government shall pledge and assign to the Authority, which shall in turn assign to a trustee on behalf of the holders of the PFBs, the Trustee or a banking institution serving as escrow agent for the benefit of such Trustee a lien on and a security interest in all such amounts deposited into the Escrow Account.

(3) The escrow agent shall remit, or cause to be remitted, from amounts on deposit in the Escrow Account, to the Trustee, such amounts as are necessary under the Service Contract to satisfy the Government's payment obligations then due.

(g) Substitute Revenues. The Government covenants that, in the event of a disruption or reduction in collections of the Gross Receipts Taxes and/or Income Taxes, as applicable, the Government shall use its best efforts to add or substitute another source of the revenues, the "Substitute Revenues" to pledge as security for the repayment for the Service Contract. The Substitute Revenues must be deposited into Escrow Account, be subject to the security interest granted therein and remitted therefrom in the same manner as authorized in paragraphs (1), (2) and (3) in subsection (f).

(h) Priority of Liens. Notwithstanding any other law, rule or regulation to the contrary, upon deposit of the Gross Receipts Taxes and/or Income Taxes into the Escrow Account, the amounts deposited are not subject to any subsequent lien or attachment by any creditor of the Government or by any other person entity.

(i) Non-Impairment Covenant. In furtherance of the pledge of the Gross Receipts Taxes and/or Income Taxes authorized by subsection (b) of this section, the Government shall covenant and agree that so long as the Service Contract remains unpaid, the Government shall:

(1) take all steps necessary to ensure the receipt and continued collection of Gross Receipts Taxes and/or Income Taxes, as applicable, and the deposit of the Gross Receipts Taxes and/or Income Taxes, as applicable, into the Escrow Account.

(2) To the extent permitted by law, defend, preserve and protect such pledge, lien and security interest and all rights of the holders of such loan notes against all claims and demands of third parties.

(3) Not revoke, terminate or amend such pledge, lien and security interest in any way that materially adversely affects the rights of any holders of such loan notes.

(4) Not take any action that would, directly or indirectly, result in the repeal, rescission or termination of title 33, section 43, Virgin Islands Code, or any successor provisions, or a reduction in collections of Gross Receipts Taxes and/or Income Taxes, as applicable, or a restriction or reduction in application of the Gross Receipts Taxes and/or Income Taxes, as applicable, in general if such action would materially adversely affect the ability of the Government to honor its obligation under the Service Contract, or.

(5) Not take any action or fail to take any action that will limit, restrict or in any way impair in general the collection, transfer, deposit to, or disbursement of Gross Receipts Taxes and/or Income Taxes, as applicable, from the Escrow Account, or allow, permit or suffer to exist any prior lien, attachment or pledge, other than any lien and pledge authorized herein, of Gross Receipts Taxes and/or Income Taxes, as applicable, deposited into or required to be deposited into the Account; provided, however, the foregoing shall not interfere with the right of the Government to provide an exemption to any eligible businesses that apply for new or renewal benefits pursuant to chapters 12 and 13 of title 29, Virgin Islands Code, pertaining to the Economic Development Program, or any other similar incentive program determined by the Legislature to be in the best economic interest of the Government, so long as the grant of any such exemption does not cause the aggregate Gross Receipts Taxes estimated to be collected thereafter in any fiscal year of the Government to be less than 150% of the maximum annual scheduled payments of principal and interest on all outstanding bonds notes or other evidences of indebtedness of the Government or the Authority which are secured by a pledge of the Gross Receipts Taxes, such determination to be made only as of the date of the grant of any such exemption.

### **SECTION 3. Authorization to Borrow**

(a) Authorization to Borrow on a limited Obligation Basis. The Authority may issue up to \$600,000,000 in an aggregate principal amount of PFBs in order to accomplish the purpose of funding a portion of the UAL.

(b) Authorization to Assign Payments under Service Contract. In connection with the issuance by the Authority of the PFBs, the Authority may assign to the Trustee, for the benefit of the holders of the PFBs, the Authority's rights and interest in, to and under the Service Contract, and the related instruments authorized in this Act.

(c) Authorization to Execute All Necessary Agreements. The Government acting by the Governor or Commissioner of Finance, and the Authority, acting by the Governor as chairman, or other member designated in the resolution of the Authority, may each:

(1) execute and deliver all documents and agreements necessary to advisable in connection with the issuance of the PFBs.

(2) advance the proceeds of the PFBs to the GERS as contemplated in this Act, and

(3) pay all expenses associated with the issuance of the PFBs authorized in this Act, including without limitation, any costs or expenses required to be paid by or in relation to the Service Contract authorized in this Act.

### **SECTION 4. Bond Issuance, Interest Rate and Term**

(a) The PFBs may be issued in one or more series, in aggregate principal amount not in excess of \$600,000,000, may not bear interest in excess of 7.50%, if the PFBs bear interest at a fixed rate, and 15% if the PFBs bear interest at a variable rate, except that if the PFBs bear interest at a variable rate, an interest rate swap agreement or interest rate hedging agreement must be in place such that the effective rate to the Authority with respect to the variable rate PFBs must not exceed 7.50%; and must mature not later than thirty years from their date of issuance.

**SECTION 5.** Title 3, Chapter 27, as amended by Act No. 6794, The Retirement System Reform Act of 2005 is further amended in the following instances:

1. Section 702, subsection (k), is amended by striking the words "compounded annually,".

2. Section 705, is amended in the following instances:

(a) subsection (c) is amended by striking the phrase "Every member shall be retired automatically on a service retirement annuity upon reaching the age of seventy years, and after attaining a minimum of ten years of credited service, except that"

(b) subsection (d), is amended to read as follows:

"Any member who has completed thirty years of credited service may retire on a service retirement annuity which shall be reduced by .325 of 1% for each month, or fraction thereof that the member's age is less than fifth-five (55) years. Additionally, any member who is age fifty-five (55) years with ten (10) but less than thirty (30) years of service may retire on a service annuity which shall be reduced by .325% of one percent for each month, or fraction thereof, that the member's age is less than sixty (62) years. A policeman, eligible employee with the Virgin Islands Water and Power Authority, eligible employee working with chlorine, sewage or carcinogens, fireman, including a fireman and policeman employed by the Virgin Islands Port Authority, marshal of the Supreme and Superior courts, probation officer of the Superior Court, internal affairs agents, to include but not limited to the Director and Assistant Director and agents of the Internal Affairs Bureau of the Virgin Islands Police Department, peace officer as defined in Title 5, section 3561, Virgin Islands Code, emergency medical technician, a radiology or x-ray technician employed by the Department of Health or the Virgin Islands Hospitals or corrections officer who has completed twenty (20) years or more of credited service as a policeman, eligible employee with the Virgin Islands Water and Power Authority, eligible employee working with chlorine, sewage or carcinogens, fireman, including a fireman and policeman employed by the Virgin Islands Port Authority, marshal of the Supreme and Superior courts, probation officer of the Superior Court, internal affairs agents, to include but not limited to the Director and Assistant Director and agents of the Internal Affairs Bureau of the Virgin Islands Police Department, peace officer as defined in Title 5, section 3561, Virgin Islands Code, emergency medical technician, a radiology or x-ray technician employed by the Department of Health or the Virgin Islands Hospitals or corrections officer, or combination thereof, may retire notwithstanding his age without reduction of annuity. Except, that members who have completed ten years or more of credited service as of October 1, 2005 may retire after thirty years of credited service regardless of age, or a policeman, eligible employee with the Virgin Islands Water and Power Authority, eligible employee working with chlorine, sewage or carcinogens, fireman, including a fireman and policeman employed by the Virgin Islands Port Authority, marshal of the Supreme and Superior Courts and probation office of the Superior Court, internal affairs agents, to include but not limited to the Director and Assistant Director and agents of the Internal Affairs Bureau of the Virgin Islands Police Department, peace officer as defined in Title 5, section 3561, Virgin Islands Code, emergency medical technician, a radiology or x-ray technician employed by the Department of Health or the Virgin Islands Hospitals or corrections officer who has completed ten (10) years or more of credited service as a policeman, eligible employee with the Virgin Islands Water and Power Authority, eligible employee working with chlorine, sewage or carcinogens, fireman, including a fireman and policeman employed by the Virgin Islands Port Authority, marshal of the Supreme and Superior Courts and probation officer of the Superior Court, internal affairs agents, to include but not limited

to the Director and Assistant Director and agents of the Internal Affairs Bureau of the Virgin Islands Police Department, peace officer as defined in Title 5, section 3561, Virgin Islands Code, emergency medical technician, a radiology or x-ray technician employed by the Department of Health or the Virgin Islands Hospitals or corrections officer, or combination thereof, as of October 1, 2006 may retire after twenty (20) years of credited service.”

4. Section 710a, subsection (a), is amended to read as follows:

“There is hereby created a Committee of Medical Review to fulfill the requirements of Sections 708 and 710 of this chapter, and to assure fair and impartial evaluation of all claims for permanent disability retirement benefits. The Committee of Medical Review, shall consist of at least three (3) and no more than seven (7) physicians who are licensed and Board certified. Each physician must be retained by contract. Any member of the Committee of Medical Review shall refrain from participation when it is clear that they may have a conflict of interest on a particular case. When a member recuses himself, the Committee shall conduct its work with a majority of the members of the committee. The Committee of Medical Review, its substitutes, and its employees may not be held personally liable for conclusions, advice, or recommendations made in accordance with the duties of the Committee of Medical Review. The substitutes shall serve at the pleasure of the Board of Trustees and shall be paid at a rate of compensation set by the Board of Trustees.”

5. Section 717, subsection (b), paragraph (17) is amended by inserting the words “Governor and” before the word “Legislature”.

6. Section 718, is amended in subsection (h) to read as follows:

“Barring any unforeseen circumstances the employer and employee contributions shall be paid to the system within ten working days after the pay date. Any payment not made within the ten working days, must also include regular interest covering the time period that the payment remains unpaid.”

7. Section 718a is repealed and new section 718a is added to read as follows:

**“§718a. Financial Obligations; Government**

(a) Upon the basis of each annual actuarial valuation and appraisal provided for in this chapter, the Administrator, on or before the fifteenth day of September of each year shall prepare and file with the Budget Director and the Chairperson of Legislature’s Committee on Finance and itemized estimate of the amounts necessary to be appropriated by the government to the Government Employees Retirement System for the next fiscal year. Such amounts shall be sufficient to provide for payment in full for (i) the estimated obligations of the government to the retirement system for such respective fiscal years; and (ii) any actual obligations of the government to the retirement system remaining unpaid from the prior fiscal year on such amount to be paid in the next fiscal year. If, the

government overpaid its actual obligation to the retirement system for the prior fiscal year, such amount shall be credited as a reduction in amounts that would otherwise be estimated to be due the retirement system from the government. The estimate provided by the Administrator shall reflect the most recent data on annual salary and other related components, and be calculated in accordance with pension benefits authorized as of that time. Such estimate shall be provided by the Administrator within fifteen days of a request by the Budget Director.

(b) Such estimated amounts provided in subsection (a) of this section shall be revised to reflect updated information, including trends in salary growth and investment earnings through September thirtieth of the current fiscal year and resubmitted to the Budget Director and the Chairperson of the Legislature's Committee on Finance on or before December fifteenth of the current fiscal year. A revised actuarial estimate, including an explanation of any changes from the estimates submitted on September fifteenth of the current fiscal year, shall also accompany such re-submission.

(c) By January seventh of the current fiscal year, the Administrator shall notify the Budget Director and the Chairperson of the Legislature's Committee on Finance of his revised estimate of the government's contribution to the retirement system for the current and next fiscal years based on updated information through January thirty-first of the current fiscal year. Such notification shall be accompanied by a revised actuarial estimate, including an explanation of any changes from the estimate submitted on December fifteenth of the current fiscal year.

(d) The estimates provided in subsections (a), (b) and (c) of this section shall be accompanied by an actuarial report stating the assumptions used in calculating each of the estimates, including but not limited to:

- (1) projected growth in the billable salary base from the prior fiscal year, in total and by tier for the government and instrumentalities;
- (2) composition of the portfolio;
- (3) return on common stock investments, expressed as a percentage;
- (4) calculation of the actuarial value of common stock;
- (5) return on investments other than common stock, expressed as a percentage; and
- (6) itemization of the change from the government's prior year contribution, either actual or estimated, due to legislative changes in benefits, tier shift, salary base growth, investment return, and any other factors deemed appropriate for explaining such change.

(e) In addition to the above mentioned reporting requirements, the actuarial report shall also include the following information for the current fiscal year and estimated amounts for the next fiscal year.

(1) the market value and actuarial asset value of equities.

(2) a government reconciliation of the amounts paid and the final amounts for the two prior fiscal years.

(f) The system shall not provide any new increases in benefits to members or beneficiaries unless the Government has deposited the funding for the prior fiscal year into the bank account of the system and concurrently makes a provision for the funding of all future benefit improvements on a sound actuarial basis in the budget.”

8. Section 736, subsection (b) is amended to read as follows:

“(b) Whenever any agency, department instrumentality, or employer fails to make timely contributions, interest shall accrue on the amount of the contributions not paid based on the system’s domestic fixed income investment rate of return not to exceed the rate of 9%.”

9. Section 754, is amended in the following instances:

(a) subsection (e) is amended by inserting the words “Supreme and” before the word “Superior.

(b) subsection (f), paragraph (2) is amended by inserting the words “or police officer” after the phrase “including a firefighter” and by inserting the words “Supreme and” before the word “Superior”.

10. Section 755 is amended by inserting the words “or police officer” after the phrase “including a firefighter” wherever it appears and by inserting the words “Supreme and” before the word “Superior” wherever it appears.

11. Section 754, is amended in the following instances:

(a) subsection (c) is amended by striking the phrase “Every member shall be retired automatically on a service retirement annuity upon reaching the age of seventy years, and after attaining a minimum of ten years of credited service, except that in the case of”, by inserting the words “and police officer” after the words “including a firefighter” and by inserting the words “Supreme and” before the word “Superior”.

(b) subsection (e) is amended by inserting the words “Supreme and” before the word “Superior”.

12. (c) subsection (f), paragraph (2) is amended by inserting the words "or police officer" after the phrase "including a firefighter" and by inserting the words "Supreme and" before the word "Superior".

13. Section 806 is amended by striking the word "Twenty" and inserting the word "Twenty-Five" wherever it appears, by inserting the words "or police officer" after the phrase "including a firefighter" wherever it appears and by inserting the words "Supreme and" before the word "Superior" wherever it appears.

14. Section 818, subsections (a) and (b) are amended to read as follows:

"(a) The various obligations of the system may be financed in accordance with actuarial reserve requirements from contributions by members, contributions by the employer, interest income, and other income accruing to the system. From time to time, the Board shall actuarially calculate the rate of contribution for members and employers of the system and recommend to the Governor and Legislature any adjustments in contributions.

(b) Each employee who is a member of the Government Employee's Retirement System shall contribute a percentage of compensation as follows:

(1) Regular members must pay a rate of 8.5% of his compensation.

(2) Any police officer, firefighter, including a firefighter or police officer employed by the Virgin Islands Port Authority, marshal of the Supreme and Superior Court, or corrections officer must pay a rate of 10.625% of his compensation.

(3) The employer shall contribute an amount paid upon a percentage of employees' compensation of 14.50%"

**SECTION 6.** Title 3, Chapter 27, sub-chapter II, Virgin Islands Code is amended by adding a new section 814 to read as follows:

**"§814. Coverage for members of the Legislature**

(a) There is hereby created a new retirement program for members of the Legislature of the Virgin Islands. Membership in the System for members of the Legislature currently in service shall be optional. Each member currently in service on the date of enactment of this section shall have the opportunity to elect in writing to participate in this retirement program. Any such member currently in service who desires credit for prior service as a member of the Legislature shall contribute to the System 11% of his annual compensation effective on the date of enactment.

(b) Participation in this new program on the part of any current member of the Legislature shall continue until the date he becomes an annuitant, dies or accepts a refund of his contributions thereto.

(c) The rate of contribution to the System on the part of a member of the Legislature who becomes a member of the System after the date of enactment of this new program shall be 11% of his annual compensation. This rate shall apply to service rendered beginning from the first date said member takes the oath of office as a member of the Legislature of the Virgin Islands. For purposes of this Chapter, service as a member of the Legislature during any part of a calendar year shall be deemed to be a year of credited service; provided that contributions are made for the full calendar year.

(d) Members of the Legislature shall make arrangement with the System to pay the entire amount due as contributions for the benefits provided herein within four years either through bi-weekly payroll deduction for a deduction from their monthly Legislative annuity in order to receive the Legislative annuity and benefits provided under this section.

(e) The conditions governing eligibility for service retirement for any member of the Legislature and the amount of the annuity shall be as stated in this Section, provided, that the Legislature shall contribute, in addition to employer's contribution, any amounts that would increase the actuarial liability as determined by the Actuary.

Vesting in a service retirement annuity shall attach upon completion of three (3) terms. Any such member shall be eligible for service retirement beginning at age fifty (50) on a service retirement annuity equal to the rate set forth:

1. For each year while in office during the first 6 years – 3.5% of compensation.
2. For each year while in office from 7 to 12 years – 4.0% of compensation.
3. For each year while in office from 13 to 20 years – 4.5% of compensation.
4. For each year after 20 years in office 5.0% of compensation.

For purposes of this subsection, the term "compensation" shall mean the highest rate of compensation, as established by Title 2, section 71 of this Code, received by that member during his tenure as a member of the Legislature. No member shall receive more than 100% of compensation at retirement.

(f) In the case of any member of the Legislature who shall become separated from the service before he completes and aggregate of three (3) terms as a member of the Legislature, the total amount paid by such member of the Legislature shall, upon his

application, be returned to him or such legislative service shall be credited to the member's service as provided, that such service is not applied to legislative service retirement. No such member of the Legislature shall thereafter receive credit for such service unless he again becomes a member of the Legislature and redeposit the amount so returned.

1. No such member of the Legislature shall thereafter receive credit for such service unless he again becomes a member of the Legislature and redeposit the amount so returned, including any interest paid. Additionally, said member shall pay to the system the withdrawn contributions, the interest paid on those contributions prior to withdrawal, and the income the system would have earned had those contributions remained in the System, and the interest on the unpaid balance if the member elects to redeposit on an installment basis.

2. It is further provided that from time to time the Board shall determine the rate of interest being earned on the contributions of members of the Legislature, and shall credit all contributions of members with interest at the net earnings rate, in accordance with the provisions of Section 714 of this Chapter.

(g) Nothing contained in this Chapter shall be construed to prevent any person eligible therefore from simultaneously receiving an annuity computed on the basis of years of service other than as a member of the Legislature and an annuity computed in accordance with this section; nor shall anything contained in this Chapter be construed to prevent a member of the Legislature from receiving, while serving in the Legislature, an annuity for non-legislative service.

(h) No provision of this Chapter or any other Act relating to automatic separation from the service shall be applicable to a member of the Legislature.

(i) As used in this section, the term "Legislature" means the 26<sup>th</sup> Legislature of the Virgin Islands and all succeeding legislatures.

(j) In no case shall service other than as a member of the Legislature be considered service for purposes of this section, nor shall service as a member of the Legislature be considered service for any purpose other than as specified in this section.

(k) The provisions of this section with respect to conditions governing membership in the system, rates of contribution, conditions of retirement and rates of annuity, as prescribed by this Act, shall apply fully to all members of the Legislature in service on the date of enactment of this Act, and to those who become members of the Legislature thereafter. All other sections of this chapter to the extent that they confer additional rights or benefits in the System to participants therein, apply with equal force to members of the Legislature who are members of the System, as of the date of enactment of this Act, to the same extent as in the case of all other employee participants and their beneficiaries, and other provisions of this Chapter to the contrary notwithstanding."

**SECTION 7.** Title 3, chapter 27, Virgin Islands Code, is amended by adding a new sub-chapter III to read:

**Subchapter III. Supplemental Contributions Program**

**§901. Program established**

(a) The supplemental Contributions Program is hereby established to be a defined contribution plan pursuant to Title 26, Section 414, subsection (i) United States Code. This program shall operate solely at the option of the participants and shall in no way obligate employers for lifetime annuity payments to participating employees of their beneficiaries.

(b) This sub-chapter establishes a new program, and defines the Supplemental Contributions Program.

(c) The Supplemental Contributions Program Fund is established as a special trust fund in the Treasury of the Government of the Virgin Islands to accept participant contributions to the plan.

**§902. Design and administration**

The design and administration of the Supplemental Contributions Program must conform to the applicable provisions of Title 26 of the United States Code and the Internal Revenue Code.

**§903. Severability**

If any provision of this sub-chapter or application thereof to any person or circumstance is held invalid, that invalidity does not affect other provisions or applications of this sub-chapter that can be given effect without the invalid provision or application by a court of competent jurisdiction, and to this end the provisions of this sub-chapter are severable.

**§904. Definitions**

(a) "Account" means the account maintained with respect to the participant which reflects the aggregate value of the following amounts credited to the participants:

- (1) Employee after-tax contributions to the plan.
- (2) Net earnings of the Supplemental Contributions Program allocable to the participant.

(3) Any amount credited to the participant's account by reason of a transfer from another plan or arrangement in accordance with applicable laws.

(b) "Board" means the Board of Trustees of the Government Employees Retirement System.

(c) "Compensation" means the total amount paid to an employee for a plan year as required to be reported on the employee's Internal Revenue Service form W-2 for income tax withholding purposes. This amount includes employee contributions picked up by the employer under Title 26, Section 414, subsection (h), paragraph (2) of the United States Code; and any amounts deducted by the employer from the participant's salary, including deductions for tax-deferred retirement plans or insurance programs; deductions for participation in a tax-sheltered annuity within the meaning of Title 26, Section 403(b), of the United States Code; deductions for participation in an eligible deferred compensation plan within the meaning of title 26, Section 457 of the United States Code; and deductions for participation in a plan that meets the requirements of Title 26, Section 125 or Section 401, subsection (k) of the United States Code.

(d) "Disability" means disability of permanent or extended and uncertain duration, as determined by the Board.

(e) "Early retirement age" means the age at which the participant attains age 50 or qualifies for early retirement under the provisions of this title.

(f) "Eligible employee" means:

(1) Any person employed by the Government of the Virgin Islands and its instrumentalities or autonomous agencies.

(2) Any legislator, as defined pursuant to sections 714 and 814.

(3) Any justice or judge, as defined in section 733.

The Board shall determine when the members of the system or a contracting agency shall become eligible employees.

(g) "Employee contribution" means the amount contributed by the participating employee to his or her account in the plan.

(h) "Fund" means the Supplemental Contributions Program Fund.

(i) "Net earnings" means the income earned, or losses incurred, on the Supplemental Contributions Program Fund, less the cost of administering the plan.

(j) "Participant" means an eligible employee who has contributions credited under the plan.

- (k) "Plan" means the Supplemental Contributions Program.
- (l) "Plan year" means the 12-month period commencing on any January 1 and ending on the following December 31.
- (m) "Retirement" means termination of all employment for the employer and completion of all conditions precedent to receiving a distribution for retirement.
- (n) "System" means the Government Employees Retirement System.
- (o) "Termination" means termination of employment by reason of separation from all service for all employees that participate in the system.
- (p) "Valuation date" means the date as of which the assets of the fund are valued.

#### **§905. Administration**

(a) Except as provided in this sub-chapter, the Board shall administer the plan in conformity with its powers and duties for administration of the system as set forth in section 715 of this chapter. The Board shall, to the extent that it determines feasible, establish the procedures for the administration of this program.

(b) The Board may retain a third-party administrator to perform investment management, record keeping, customer service, or other plan administration services and the expenses associated with such retention shall be paid from the fund.

#### **§906. Rules and regulations**

(a) The Board shall adopt rules and regulations embodying the material terms and conditions of the plan consistent with this sub-chapter and the applicable provisions of Title 26 of the United States Code.

(b) The Board may, as it considers necessary or appropriate, amend the plan consistent with this sub-chapter and the applicable provisions of Title 26 of the United States Code.

#### **§907. Conditions**

(a) With regard to the plan, the board may not engage in any transaction prohibited by Title 26, Section 503, subsection (b) of the United States Code.

(b) The Board may require a third-party administrator, record keeper, custodian, or investment manager that is contracted with, or appointed by, the system to be subject to the duties set forth in subsection (a) of this section.

(c) The Board shall have control of the investment of the assets of the fund.

(d) Notwithstanding any other provision of law, the Board may retain a bank or trust company to serve as a custodian for safekeeping, record keeping, delivery, securities valuation, investment performance reporting, or other services in connection with investment and administration of the fund.

(e) All monies in the fund are annually appropriated, without regard to fiscal years or plan years, to the Board to carry out the purposes of this sub-chapter.

(f) The assets of the fund must be valued annually, and may be valued more frequently as prescribed by the Board.

(g) Any person who is an eligible employee may elect, in a manner prescribed by the Board, to participate in the plan.

#### **§908. Contributions**

(a) Employee contributions to the plan are made solely at the option of the participant.

(b) Employee contributions may be made directly by the participant to the plan on a periodic basis as specified by the Board, or may be withheld from the employee's compensation after taxes and submitted by the employer through payroll deduction.

(c) The Board shall establish the minimum contribution amount.

(d) Notwithstanding any other provision of law to the contrary, contributions to the plan are subject to the applicable limitations imposed by Title 26, Section 415 of the United States Code, as that section may be amended from time to time and as these limits may be adjusted by the Commissioner of the Internal Revenue Service.

(e) Notwithstanding any other provision of law to the contrary, the amount of compensation that is taken into account in determining the allocations to each participant's account under the plan may not exceed the applicable annual compensation limitations prescribed by Title 26, Section 401, subsection 9a), paragraph (17) of the United States Code, as that section may be amended from time to time and as that limit may be adjusted by the Commissioner of the Internal Revenue Service.

(f) The plan must provide for the return of excess annual additions and the gain attributable thereto in accordance with Title 26, Section 415 of the United States Code. In the event a participant participates in more than one plan of the employer, any annual additions shall be deemed to consist first of annual additions to this plan.

(g) There are no employer contributions to the plan.

(h) There are no employer payment of participant contributions on behalf of a participant in accordance with Title 26, Section 414, subsection (h), paragraph (2) of the United States Code.

(i) Contributions made by the participant to the plan must be credited to the participant's account.

(j) In the case of a contribution that is made under a mistake of fact, nothing in this part may prohibit the return of that contribution to the participant within one year after discovery of the mistake.

#### **§909. Participant provisions**

(a) The net earnings of the fund must be allocated to the participant's account as of each valuation date.

(b) The value of each participant's account must be determined at least once annually in a manner prescribed by the Board.

(c) A participant shall receive a statement that displays the value, or balance, of the participant's account and summarizes any credits to the account or other transactions.

(c) A participant has a vested right to one hundred percent of the value of the participant's account. The right accrues when the person becomes a participant.

(d) The right of a participant to allocations to the participant's account is not subject to execution or any other process whatsoever, except to the extent permitted by this chapter, and is unassignable except as specifically provided under this sub-chapter.

#### **§910. Distribution, death benefit provisions**

(a) The participant may designate any person or persons as beneficiaries to receive any amount that may be payable upon the death of the participant pursuant to the provisions of this chapter. The beneficiary or beneficiaries must be designated on a form prescribed by the board, signed by the participant, and delivered to a plan representative prior to the participant's death.

(b) The participant's beneficiary designation shall not be given effect and shall be overridden to the extent that such a designation would impair the rights of any surviving spouse under applicable federal, state or territorial law.

(c) Unless otherwise provided in the beneficiary designation form, each designated beneficiary shall be entitled to equal shares of the lump sum distribution that may be payable from the participant's account upon the death of the participant.

(d) In the event the participant dies without a valid beneficiary designation on file, any balance remaining in the participant's account shall be payable to the participant's survivors in the following order:

- (1) The participant's spouse.
- (2) The participant's natural or adopted children.
- (3) The participant's parents.
- (4) The participant's estate.

(e) Upon receipt of proof of a participant's death. The beneficiary or beneficiaries shall be entitled to a death benefit that is a lump sum distribution of the balance remaining in the participant's account.

(f) If the participant died prior to termination of employment or distribution of all of the contributions and earnings credited to the participant's account, lump sum distribution shall be an amount that is equal to the balance remaining in the participant's account.

(g) Application for the distribution shall be made on an application form and in the manner prescribed by the board.

#### **§911. Distribution, termination, retirement, disability**

(a) Upon termination for any reason other than death, disability, or retirement, a participant is entitled to a lump sum distribution of the balance of the participant's account within a reasonable time following the valuation date immediately following the date of the application.

(b) Application for a distribution for termination of employment shall be made on a distribution request form and in the manner prescribed by the Board.

(c) All employers with which the participant is employed as a member of the system shall certify on a form prescribed by the board that the participant's employment has terminated.

(d) Upon termination, a participant may apply for a distribution for retirement, provided the retirement date is no earlier than the date on which the participant attains the early retirement age pursuant to the provisions of this chapter. The retirement benefit is a distribution of the balance of the participant's account within a reasonable time following the valuation date immediately following the date of the application.

(e) Application for a distribution for retirement shall be made on a distribution request form and in the manner prescribed by the board.

(f) All employers with which the participant is employed as a member of the system, shall certify on a form prescribed by the Board that the participant's employment has terminated because of retirement.

(g) Upon termination, a participant may apply for a distribution for disability. A distribution for disability shall become payable only upon a determination by the board that the participant has a disability of permanent or extended and uncertain duration. The disability benefit is a distribution of the balance of the participant's account within a reasonable time following the valuation date immediately following the date of the application.

(h) Application for a distribution for disability shall be made on a distribution request form and in the manner prescribed by the board.

(h) All employers with which the participant is employed as a member of the system shall certify on a form prescribed by the board that the participant's employment has terminated because of disability.

#### **§912. Distribution, payment**

(a) Any participant who is entitled to a distribution may elect to receive the distribution in either of the following forms:

(1) A single lump sum payment.

(2) Substantially level installment payments for a period or years that extends no longer than the life expectancy of the participant.

(b) Any beneficiary who is entitled to a distribution may elect to receive the distribution in either of the following forms.

(1) A single lump sum payment.

(2) Substantially level installment payments for a period or years that extends no longer than the life expectancy of the beneficiary.

(c) Notwithstanding any other provision of this sub-chapter, a participant or beneficiary shall not be permitted to elect a distribution under this sub-chapter that does not satisfy the requirements of Title 26, Section 401, subsection (a), paragraph (9) of the United States Code, including the incidental death benefit requirements of title 26, Section 401, subsection (a), paragraph (9), subparagraph (g) of the United States Code

and the regulations thereunder. The required beginning date of distributions that reflect the entire interest of the participant shall be as follows:

(1) In the case of a lump sum distribution to the participant, the lump sum payment shall be made not later than April 1 of the calendar year following the later of the calendar year in which the participant attains the age of 70 ½ years or the calendar year in which the participant terminates employment.

(2) In the case of a distribution to the participant in the form of periodic payments, payment shall begin not later than April 1 of the calendar year following the later of the calendar year in which the participant attains the age of 70 ½ years or the calendar year in which the participant terminates employment.

(3) In the case of a benefit payable on account of the participant's death after distributions to the participant have commenced in the form of periodic payments, the remainder of the participant's account shall be distributed at least as rapidly as if the participant had not died.

(4) In the case of a benefit payable on account of the participant's death before distributions to the participant have commenced, distributions shall be paid no later than December 31 of the calendar year in which the fifth anniversary of the participant's date of death occurs unless the benefit is paid over a period not extending beyond the life expectancy of the beneficiary and distributions commence not later than December 31 of the calendar immediately following the calendar year in which the participant died, or in the event that the beneficiary is the participant's spouse, distributions must commence on or before the later of either:

(i) December 31 of the calendar year immediately following the calendar year in which the participant dies.

(ii) December 31 of the calendar year in which the participant would have attained the age of 70 ½ years.

(d) Distributions from the plan shall be made as soon as practicable after the first valuation date immediately following the date of request for distribution calculated based upon the valuation date immediately preceding the distribution.

(e) Notwithstanding any other law to the contrary, the death benefit payable under the plan may be requested by the beneficiary and paid as soon as practicable following receipt of proof of the participant's death.

(f) If a person becomes entitled to a distribution from the plan that constitutes an eligible rollover distribution within the meaning of Title 26, Section 401, subsection (a), paragraph (31) of the United States Code, the person may elect under terms and conditions established by the board to have the eligible rollover distribution or a portion

thereof paid directly to a plan that constitutes an eligible retirement plan within the meaning of Section 401, subsection (a), paragraph (31), as specified by that person. Upon the exercise of the election by a person with respect to a distribution or a portion thereof, the distribution by the plan of the amount so designated, once distributable under the terms of the plan, shall be made in the form of a direct rollover to the eligible retirement plan so specified.

(g) Notwithstanding any other provision of this sub-chapter, a participant may at any time, in writing, authorize the Board to apply any or all of the participant's account to payment of any contributions required as a member of the system or payable to the system at the option of the member pursuant to any provision of this chapter, except normal monthly contributions required by this chapter. Any distribution or transfer made pursuant to this subsection shall comply with the applicable provisions of Title 26 of the United States Code.

(h) Except as otherwise provided in this sub-chapter, all distributions shall be made directly from the fund to the participant or beneficiary. To the extent required by federal or territorial law, income and other taxes shall be withheld from each distribution, and the payment shall be reported to the appropriate governmental agency or agencies.

### **§913. Plan's obligations**

(a) The plan's obligations to a participant, beneficiary, or nonparticipant spouse who elected a lump sum distribution cease upon distribution of the lump sum benefit.

(1) Deposit in the United States mail of a warrant drawn in favor of the participant, beneficiary, or nonparticipant spouse and addressed to the latest address on file for that person constitutes distribution of the benefit.

(2) Deposit in the United States mail of a notice that the requested electronic funds transfer has been made as directed by the participant, beneficiary, or nonparticipant spouse constitutes distribution of the benefit.

(3) If the participant, beneficiary, or nonparticipant spouse has elected on a form prescribed by the Board to transfer all or a specific portion of the account that is eligible for a direct trustee-to-trustee under Title 26, Section 401, subsection (a), paragraph (31) of the United States Code to the trustee of a qualified plan under Title 26, Section 401 of the United States Code, deposit in the United States mail of a notice that the requested transfer has been made constitutes distribution of the benefit.

(b) The plan's obligations to a participant or beneficiary who elected to receive a benefit in the form of partial distributions cease upon distribution of the final payment.

(1) Deposit in the United States mail of a warrant drawn in favor of the participant, beneficiary, or nonparticipant spouse and addressed to the latest address on file for that person constitutes distribution of the benefit.

(2) Deposit in the United States mail of a notice that the requested electronic funds transfer has been made as directed by the participant, beneficiary, or nonparticipant spouse constitutes distribution of the benefit.

(c) Distribution under subsections (a) or (b) pursuant to the Board's determination in good faith of the existence, identity, or other facts relating to entitlement of persons constitutes a complete discharge and release of the Board, system and plan from liability for payments.

**SECTION 8.** (a) Title 3, section 1, subsection (a), Virgin Islands Code, is amended by deleting the figure "\$80,000" and inserting in lieu thereof the figure "\$150,000".

(b) Title 3 Virgin Islands Code, section 31, subsection (a), is amended by striking the figure "\$75,000" and inserting in lieu thereof the figure "\$125,000".

(c) Title 2, section 71, Virgin Islands Code, is amended by deleting the first sentence in its entirety and inserting in lieu thereof the following: "Each member of the Legislature shall receive an annual salary in equal biweekly installments, which salary shall be equal to the lowest annual compensation of the officers itemized in Title 3, section 29, Virgin Islands Code, as determined biennially on the date a majority of such members take office, provided, however, the President of the Legislature shall received an additional annual sum of \$10,000 which shall be payable in equal biweekly installments.

(6) The provisions of subsections (a) and (b) of this section shall be effective retroactive to October 1, 2006.

**SECTION 9. Authorization to Issue a Guaranty.** The Virgin Islands Public Finance Authority ("PFA"), acting on behalf of the Government of the "Virgin Islands ("Government"), may issue its Guaranty (the "Guaranty"), subject to proper due diligence, underwriting and on terms acceptable to the PFA, in an amount up to \$15,000,000 of a bridge loan to be undertaken by Golden Gaming LLLP, for the purpose of providing bridge financing of a development project on the island of St. Croix. The Guaranty must be a guaranty of collection and not a guaranty of payment and must terminate and expire not later than December 31, 2007. No present bond proceeds or similarly restricted funds of the PFA may secure the Guaranty or be subject to collection, garnishment or attachment in any action taken by a private lender to enforce the Guaranty.

(a) **Authorization to Execute All Necessary Agreements.** The Governor or the Commissioner of Finance and such other persons authorized by the PFA may each (1)

execute and deliver all documents and agreements necessary or advisable in connection with the issuance of the Guaranty authorized herein, and (2) pay all expenses associated with the issuance of the Guaranty authorized herein.

**SECTION 10.** Notwithstanding any other law to the contrary, the Commissioner of the Department of Property and Procurement may ratify the agreement between the Virgin Islands National Guard and Virgin Islands Paving, Inc., in the amount of \$98,341.00 for paving the parking lot at the Army Aviation Operation Facility, #25 Estate Negro Bay, Henry Rohlsen Airport, Christiansted, St. Croix.

**SECTION 11.** Notwithstanding any other law to the contrary, the Commissioner of the Department of Property and Procurement may ratify the agreement between the Virgin Islands National Guard and Virgin Islands Paving, Inc., in the amount of \$62,569.00 for paving the parking lot at the Combined Support #10A and 18 VICORP Land, Estate Bethlehem, Kingshill, St. Croix, Virgin Islands.

**SECTION 12.** Notwithstanding any other law to the contrary, the Commissioner of Property and Procurement may ratify the contract between the Department of Health and VIPS Inc. in the amount of \$142,915.66 for the period February 20, 2006 through June 6, 2006 for providing routine maintenance services to diagnose and correct computer system problems and to provide enhancement changes to the software as prioritized by the Medicaid Program.

**SECTION 13.** There is appropriated in the fiscal year ending September 30, 2007 from the General Fund of the Treasury of the Virgin Islands, the sum of \$417,076.00 to the Virgin Islands Department of Justice for the payment of the negotiated settlement to Coastal General Construction Services Inc. Civil No. 475/1994, 476/1994 and 306/1995.

**SECTION 14.** There is appropriated in the fiscal year ending September 30, 2007 from the General Fund of the Treasury of the Virgin Islands, the sum of \$179,259.50 to the Virgin Islands Department of Public Works for road paving in Tutu High-rise.

**SECTION 15.** There is appropriated in the fiscal year ending September 30, 2007 from the General Fund of the Treasury of the Virgin Islands the sum of \$2,850,000.00 to pay salary increases as mandated by Act No. 6817.

Thus passed by the Legislature of the Virgin Islands on December 28, 2006.

28<sup>th</sup> Witness our Hands and the Seal of the Legislature of the Virgin Islands this  
Day of December, A.D., 2006.



*Lorraine L. Berry*

Lorraine L. Berry  
President

*Juan Figueroa-Serville*

Juan Figueroa-Serville  
Legislative Secretary

The above bill is hereby approved.



Witness my hand and the Seal of the  
Government of the United States  
Virgin Islands at Charlotte Amalie,  
St. Thomas, this 29<sup>th</sup> day of December,  
A.D., 2006.

*Charles W. Turnbull*

Charles W. Turnbull  
Governor