

COMMITTEE ON GOVERNMENT OPERATIONS
AND CONSUMER PROTECTION

BILL NO. 34-0153

Thirty-Fourth Legislature of the Virgin Islands

November 16, 2021

An Act establishing the Sixth Constitutional Convention of the Virgin Islands; and providing for an appropriation to cover convention-related expenses

PROPOSED BY: Senator Janelle K. Sarauw

1 **WHEREAS**, the United States Congress authorized the Virgin Islands to establish a
2 constitutional convention, and the rights, duties and obligations of the convention, as established
3 for the drafting of a proposed constitution, as set forth in Public Law No. 94-584. approved by
4 Congress on October 12, 1976, was fully exercised except for certain issues raised by the
5 President of the United States and the United States Congress;

6 **WHEREAS**, the American Law Division of the Library of Congress found, in response
7 to inquiries from concerned officials, that the congressional authorization to draft a Virgin
8 Islands Constitution granted by federal law is a general grant of authority which did not expire
9 when the prior conventions failed to secure a constitution, and that the Virgin Islands could
10 continue in its pursuit of a constitution under the same conditions as were described in Public
11 Law 94-584 without need for further Congressional action;

1 **WHEREAS**, the previous five constitutional conventions that were convened to pass a
2 Constitution for the Virgin Islands did not establish an adopted Constitution for the Virgin
3 Islands;

4 **WHEREAS**, the Fifth Constitutional Convention completed a draft document that was
5 sent to the Governor of the Virgin Islands which was forwarded to the President of the United
6 States and passed on to the United States Congress for review;

7 **WHEREAS**, Congress and President Obama returned the draft document for revisions
8 by the convention for reasons contained in a Memorandum dated February 23, 2010, by the
9 U.S. Department of Justice Office of the Assistant Attorney General, for the Office of
10 Management and Budget;

11 **WHEREAS**, the U.S. Department of Justice's Memorandum, as published on the
12 Department's website analysis of several features of the proposed constitution of the Virgin
13 Islands including:

14 (1) the absence of an express recognition of United States sovereignty and the
15 supremacy of federal law; and

16 (2) provisions for a special election on the USVI's territorial status; and

17 (3) provisions conferring legal advantages on certain groups defined by place and
18 timing of birth, timing of residency, or ancestry; and

19 (4) residence requirements for certain offices; and

20 (5) provisions guaranteeing legislative representation of certain geographic areas; and

21 (6) provisions addressing territorial waters and marine resources; and

22 (7) imprecise language in certain provisions of the proposed constitution's bill of
23 rights; and

24 (8) the possible need to repeal certain federal laws if the proposed USVI constitution
25 is adopted:

1 (9) the effect of congressional action or inaction on the proposed constitution; and

2 **WHEREAS**, the guidelines for drafting and completing the proposed revised
3 constitution, as set forth in Public Law No. 94-584 were collectively modified when Congress
4 and President Obama returned the draft document for revisions;

5 **WHEREAS**, the United States Congress, in Senate Joint Resolution 33, based on the
6 Department of Justice Memorandum, urged the Virgin Islands to reconvene a Constitutional
7 Convention to revise the Fifth Constitutional Convention draft consistent with the nine (9)
8 issues identified in the Department of Justice Memorandum;

9 **WHEREAS**, legislation was enacted convening the Fifth Revision Convention
10 sanctioned with addressing the reasons for the rejection of the proposed constitution, but failed
11 to act by the October 31st deadline;

12 **WHEREAS**, in the November 3, 2020, non-binding referendum, the VI electorate voted
13 in favor of the legislature establishing the Sixth Constitutional Convention to adopt the Revised
14 Organic Act or portions of it as the Constitution for the Virgin Islands; and

15 **WHEREAS**, it is the sense of the Legislature that the people of the Virgin Islands
16 continue to favor a constitution for the Territory as a significant step forward in internal self-
17 government, and that provision should be made by law for the convening of a new constitutional
18 convention to that end; Now, Therefore,

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

20 **SECTION 1. Convention established; authority.**

21 (a) The Sixth Constitutional Convention ("Constitutional Convention or "Convention")
22 representing the people of the Virgin Islands is established and called to convene at the Capitol
23 Building in either, Charlotte Amalie, St. Thomas or Christiansted St. Croix or at both places, in
24 person or virtually. Delegates elected to the Constitutional Convention shall convene on the

1 fourth Monday in January 2023 and when assembled shall have the powers and duties set forth
2 in this Act.

3 (b) The Constitutional Convention has the authority and duty to:

4 (1) Draft and finalize a proposed Constitution of the Virgin Islands in plain
5 language to include an official name of the Virgin Islands, a Preamble and an Amendment
6 Clause in compliance with Public Law 94-584; and

7 (2) Use, revise, modify, substitute, or delete parts of the Revised Organic Act of
8 1954; and

9 (3) Use, revise, modify, substitute, or delete parts of the 5th Constitutional
10 Convention draft document if the provisions in the proposed constitution are not
11 inconsistent with the U.S. Department of Justice Memorandum dated February 23, 2010
12 or violate Public Law 94-584 § 2(b)(1); and

13 (4) Forward the proposed document to the Governor of the Virgin Islands for
14 transmittal to the President of the United States.

15 **SECTION 2. Organization of Convention; quorum; meetings**

16 (a) The President of the Legislature of the Virgin Islands shall open the Convention and
17 preside until permanent officers are elected.

18 (b) The Convention is the judge of the qualifications and conduct of its delegates; but
19 certification of election by the Supervisor of Elections is conclusive to the fact of their election.

20 (c) The Convention shall promulgate rules consistent with Mason's Manual of
21 Legislative Procedure (2020 ed.) to govern all meetings of the constitutional convention.

22 (d) The Presiding Judge of the Superior Court of the Virgin Islands shall administer the
23 oath of office of delegate to each delegate before the delegate seated. Immediately following
24 the administration of the oath of office to the delegates, the delegates shall:

1 (1) elect a President from among the delegate membership, who shall serve as the
2 presiding officer of the Constitutional Convention; and

3 (2) elect a Vice President, Secretary and all other officers considered necessary
4 and appropriate from among the delegates sworn in; and

5 (3) draft, consider, and adopt rules of procedure for the Constitutional
6 Convention; and

7 (4) take all other steps necessary to organize and otherwise provide for the orderly
8 operation of the Constitutional Convention consistent with the provisions of this Act.

9 (e) A quorum for the Constitutional Convention is nine delegates. No business may
10 be conducted in the absence of a quorum.

11 (f) All decisions must be by an affirmative vote of a majority of those voting, a quorum
12 being present, but the final adoption of the proposed constitution must be by the affirmative
13 vote of at least thirteen delegates.

14 (g) Meetings may be conducted virtually, or in person on St. Croix, St. John, or St.
15 Thomas.

16 **SECTION 3. Selection of delegates, qualifications; eligibility of government**
17 **employees**

18 (a) The Constitutional Convention is composed of 15 delegates, who must be elected
19 from the legislative districts of the Virgin Islands, as established 2 V.I.C. §101. The delegates
20 must be selected as follows:

21 (1) Five delegates must be elected from the district of St. Croix, who must be
22 residents of St. Croix; and

23 (2) Five delegates must be elected from the district of St. Thomas-St. John, who
24 must be residents of either St. Thomas or St. John, but no fewer than two delegates must
25 be residents of St. John; and

1 (3) Five delegates must be elected at large by the qualified voters of the Virgin
2 Islands from the Virgin Islands as a whole. Of the five, two must be residents of the
3 district of St. Croix, and three must be residents of the district of St. Thomas-St. John, but
4 at least one delegate must be a resident of St. John.

5 (b) No person may file a petition to be a candidate for delegate, be elected to or be
6 seated as a member of the Constitutional Convention unless the person is:

7 (1) a citizen of the United States;

8 (2) a qualified voter of the Virgin Islands; and

9 (3) a bona fide resident of the Virgin Islands for not less than three years
10 immediately preceding the date of election.

11 (c) An employee of the Government of the Virgin Islands who meets the qualifications
12 under subsection (b) may seek election to and serve as a delegate to the Constitutional
13 Convention established under this Act. Any employee of the Government of the Virgin Islands
14 who files a valid petition, as provided under section 4 (e) of this act, and becomes a candidate
15 for delegate, must be granted a leave of absence without pay as may be required to campaign
16 for a delegate seat. If elected, the employee must be granted a leave of absence with pay as may
17 be required to serve as delegate to the Constitutional Convention, as provided in section 5 (a)
18 of this act. The leave of absence granted by this subsection must not, in any way, lessen the
19 employment rights of the employee, the right to return to the employee's position and salary
20 held prior to the employee's election to the Convention, and no leave of absence granted by this
21 section may be charged against an employee's accumulated annual leave, unless the employee
22 shall so elect.

23 **SECTION 4. Election of delegates; tie votes, filling of vacancies**

24 (a) Every qualified voter may vote for no more than five candidates for the legislative
25 district for which the voter is a resident and for no more than five candidates for delegate-at-
26 large.

1 (b) The Supervisor of Elections shall prescribe the form of the election ballot, but
2 neither political party symbols nor political party designations may appear on any ballot. Ballots
3 must be printed in English with a Spanish translation immediately following. All candidates'
4 names must be printed on the same face of the ballot, and no name may be displayed more
5 prominently than another. Timely notice of this election must be published and broadcast in
6 Spanish and English as prescribed by the Supervisor of Elections.

7 (c) All delegates to the Constitutional Convention must be elected through an election
8 that must be held on the Tuesday next after the first Monday in the month of November in the
9 year 2022.

10 (d) Except as provided otherwise in this act, the election must be governed by the
11 election laws of the Virgin Islands, as provided under title 18 of the Virgin Islands Code, and
12 all penalties provided by the law must apply to the election.

13 (e) Each candidate for delegate shall file a petition with the Supervisor of Elections
14 signed by 50 qualified voters of the district in which the candidate will seek election, but a
15 petition for the delegates-at-large must be signed by 25 qualified voters in both Virgin Islands
16 election districts for a total of 50 signatures.

17 (f) All candidates for delegate whose valid petitions are filed with the Supervisor of
18 Elections on the common filing date in 2022, must be listed on an official ballot as provided by
19 the Supervisor of Elections.

20 (g) If two or more candidates for a delegate seat receive the same number of votes for
21 the last seat from their district, or for the last seat for the delegate-at-large, the Supervisor of
22 Elections shall immediately direct the tied candidates to draw lots to determine which of them
23 is selected as delegate for the remaining seat.

24 (h) If at any time during the proceedings of the Constitutional Convention, any delegate
25 dies, resigns, relocates out of the Territory or otherwise becomes disqualified or is unable to

1 serve, the vacancy must be automatically filled by the unelected candidate who received the
2 next highest number of votes in the election. If two or more candidates have an equal number
3 of votes, lots must be drawn to determine which candidate shall fill the vacancy. If no such
4 candidate is available, the Convention delegates shall elect a delegate from the appropriate
5 district.

6 **SECTION 5. Compensation of delegates; staffing**

7 (a) Any delegate who is an employee of the Government of the Virgin Islands shall
8 receive the regular government compensation for the fraction of the day or days while attending
9 sessions of the Convention or any meeting or hearing thereof and for such times as the delegate
10 is certified by the President of the Convention or the President's designee as being in full
11 attendance at the Convention or one of its committee meetings or hearings.

12 (b) Employers, other than the Government of the Virgin Islands, must permit delegates
13 employed by the employer to attend the Convention or any of its committee meetings or
14 hearings without termination from position. Any delegate whose employer, other than the
15 Government of the Virgin Islands, interrupts or lessens the regular pay or amount that the
16 delegate would receive had the delegate not been attending the Constitutional Convention, must
17 be compensated not more than \$ 50 per day for each day or part thereof in which the employee
18 is certified by the President of the Convention or the President's designee as being in full
19 attendance at the Convention or one of its committee meetings or hearings.

20 (c) To reduce costs, fees, and other expenses, the Constitutional Convention shall use
21 for all revisions, modifications, a determination of legal sufficiency and legal matters, the
22 Constitutional Convention legal team. This legal team is composed of three attorneys, including
23 an attorney appointed by the Governor of the Virgin Islands, an attorney appointed by the
24 President of the Legislature and an attorney appointed by the Virgin Islands Bar Association.
25 Members of the legal team shall serve pro bono.

1 (d) The Constitutional Convention may hire staff, purchase supplies and contract for
2 technical, legal and research services as it considers necessary to carry out the purpose of this
3 act. The Legislature of the Virgin Islands and the Commissioner of the Department of Property
4 and Procurement, shall, to the fullest extent possible, provide assistance to the Constitutional
5 Convention by allowing the Constitutional Convention to use such government property and/or
6 supplies as it may request, subject to the availability of the property and/or supplies.

7 **SECTION 6.** Adoption of constitution by Convention; submission to Governor;
8 circulation

9 (a) The Constitutional Convention shall adopt a proposed constitution no later than
10 October 31, 2023. When the Constitutional Convention, with 13 of the 15 delegates to the
11 Constitutional Convention, agrees upon a proposed Constitution of the Virgin Islands, the final
12 approved document becomes the proposed Constitution of the Virgin Islands.

13 (b) The President of the Constitutional Convention shall submit the approved proposed
14 Constitution of the Virgin Islands to the Governor of the Virgin Islands, in compliance with the
15 provisions of Public Law 94-584, § 4. The Governor of the Virgin Islands shall within ten days
16 upon receipt of the proposed Constitution of the Virgin Islands, transmit the proposed
17 Constitution of the Virgin Islands to the President of the United States.

18 (c) The Convention shall publish and circulate among the residents of the Virgin
19 Islands a draft of the proposed constitution that has been approved and submitted to the
20 Governor of the Virgin Islands and to the President of the United States. The proposed
21 constitution circulated among the public must include a Spanish translation.

22 **SECTION 7.** Public education campaign; referendum; certification of referendum
23 results

24 (a) The Constitutional Convention shall develop a public education campaign plan in
25 English and Spanish in plain language using broadcasts, including radio, and television; print,

1 including newspapers and magazines; outdoor billboards, yard signs; and internet media
2 platforms that must be launched after submitting the proposed Constitution of the Virgin Islands
3 to the Governor of the Virgin Islands. If the President or the United States Congress makes any
4 modifications to the proposed document, the Constitutional Convention shall modify its
5 educational campaign to reflect the modifications. The educational campaign must run up to
6 the general election of 2024.

7 (b) Timely notice of the referendum must be broadcast and published as prescribed by
8 the Constitutional Convention from May 1, 2024 up to and including the Tuesday next after the
9 first Monday in November 2024. The form of the referendum ballot, including the questions
10 presented to the voters, must be as prescribed by the Constitutional Convention. Except as
11 provided otherwise in this act, the referendum must be governed by Title 18 of the Virgin
12 Islands Code, and all penalties provided by the laws apply to the election.

13 (c) Upon approval by not less than a majority of the voters participating in the
14 referendum, the constitution becomes effective on March 31, 2025.

15 (d) The Constitutional Convention shall meet on the first Monday immediately after the
16 conclusion of the counting of all the legal ballots of the 2024 General Election for the purpose
17 of:

18 (1) Announcing the outcome of the referendum to the people of the Virgin
19 Islands; and

20 (2) Certifying the results of the referendum to the President and Congress of the
21 United States; and

22 (3) If adopted, formally establishing the March 31, 2025 date the enactment and
23 effective date of the Constitution of the Virgin Islands; and

24 (4) Adjourning sine die and discharging of the delegates to the Constitutional
25 Convention.

