

AMENDED IN ACT 8734

AMENDED IN ACT 8788

AMENDED IN ACT 8814

AMENDED IN ACT 8979

ACT NO. 86 81

BILL NO. 34-0153

THIRTY-FOURTH LEGISLATURE OF THE VIRGIN ISLANDS

Regular Session

2022

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

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

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

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

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

WHEREAS, Congress and President Barack Obama returned the draft document for revisions by the convention for reasons contained in a Memorandum dated February 23, 2010, by the United States Department of Justice, Office of the Assistant Attorney General, and Office of Management and Budget;

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

- (1) the absence of an express recognition of United States sovereignty and the supremacy of federal law;
- (2) provisions for a special election on the Virgin Islands territorial status;
- (3) provisions conferring legal advantages on certain groups defined by place and timing of birth, timing of residency, or ancestry;
- (4) residence requirements for certain offices;
- (5) provisions guaranteeing legislative representation of certain geographic areas;
- (6) provisions addressing territorial waters and marine resources;
- (7) imprecise language in certain provisions of the proposed constitution's bill of rights;
- (8) the possible need to repeal certain federal laws if the proposed Virgin Islands constitution is adopted; and
- (9) the effect of congressional action or inaction on the proposed constitution.

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

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

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

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

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

Be it enacted by the Legislature of the Virgin Islands:

SECTION 1. Convention established; authority.

(a) The Sixth Constitutional Convention ("Constitutional Convention" or "Convention") representing the people of the Virgin Islands is established and called to convene at the Capitol Building in either, Charlotte Amalie, St. Thomas, or Christiansted, St. Croix or at both places, in person or virtually. Delegates elected to the Constitutional Convention shall convene on the fourth ~~Monday~~Tuesday in January 20232025, and when assembled shall have the powers and duties set forth in this Act.

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

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

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

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

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

SECTION 2. Organization of Convention; quorum; meetings

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

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

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

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

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

(2) elect a vice president, secretary and all other officers considered necessary and appropriate from among the delegates sworn in; and

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

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

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

(f) All decisions must be by an affirmative vote of a majority of those voting, a quorum being present, but the final adoption of the proposed constitution must be by the affirmative vote of at least 10 delegates.

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

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

(a) The Constitutional Convention is composed of 15 delegates, who must be elected from the legislative districts of the Virgin Islands, as established 2 V.I.C. §101 and §102. The delegates must be selected as follows:

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

(2) Seven delegates must be elected from the island of St. Thomas, who must be residents of St. Thomas; and

(3) One delegate must be elected from the island of St. John, who must be a resident of St. John.

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

(1) a citizen of the United States;

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

(3) a bona fide resident of the Virgin Islands.

(c) An employee of the Government of the Virgin Islands who meets the qualifications under subsection (b) may seek election to and serve as a delegate to the Constitutional Convention established under this act. Any employee of the Government of the Virgin Islands who files a valid petition, as provided under section 4 (e) of this act, and becomes a candidate for delegate, must be granted a leave of absence ~~without pay as may be required to campaign for a delegate seat and may use accrued or accumulated annual leave in taking the leave of absence. Persons taking such leave of absence who have no accrued or accumulated annual leave shall do so without pay, but without prejudice to seniority or their employment rights.~~ If elected, the employee must be granted a leave of absence with pay as may be required to serve as delegate to the Constitutional Convention, as provided in section 5

(a) of this act. The leave of absence granted by this subsection must not, in any way, lessen the employment rights of the employee, the right to return to the employee's position and salary held prior to the employee's election to the Convention, and no leave of absence granted by this section may be charged against an employee's accumulated annual leave, unless the employee so elects.

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

(a) Every qualified voter may vote for no more than ~~five~~seven candidates for the legislative district for which the voter is a resident ~~and for no more than five candidates for delegate at large~~ and no more than one candidate for delegate at large.

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

(c) All delegates to the Constitutional Convention must be elected through an election that must be held on the Tuesday next after the first Monday in the month of November in the year 2024.

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

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

(f) All candidates for delegate whose valid petitions are filed with the Supervisor of Elections on the common filing date in 2024, must be listed on an official ballot as provided by the Supervisor of Elections.

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

(h) If at any time during the proceedings of the Constitutional Convention, any delegate dies, resigns, relocates out of the Territory or otherwise becomes disqualified or is unable to serve, the vacancy must be filled automatically by the unelected candidate who received the next highest number of votes in the election. If two or more candidates have an equal number of votes, lots must be drawn to determine which candidate shall fill the vacancy. If no such candidate is available, the Convention delegates shall elect a delegate from the appropriate district.

SECTION 5. Compensation of delegates; staffing

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

(b) Employers, must permit delegates employed by the employer to attend the Convention or any of its committee meetings or hearings without termination from position. Every delegate must be compensated not more than \$150 per day for each day or part thereof in which the employee is certified by the President of the Convention or the President's designee as being in full attendance at the Convention or one of its committee meetings or hearings.

~~(c) — To reduce costs, fees, and other expenses, the Constitutional Convention shall use for all revisions, modifications, a determination of legal sufficiency and legal matters, the Constitutional Convention legal team. This legal team is composed of three attorneys, including an attorney appointed by the Governor, an attorney appointed by the President of the Legislature and an attorney appointed by the Virgin Islands Bar Association. Members of the legal team shall serve pro bono. The Constitutional Convention shall use legal counsel that the Convention may secure for all revisions, modifications, determinations of legal sufficiency and legal matters.~~

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

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

(a) The Constitutional Convention shall adopt a proposed constitution no later than October 31, ~~2023~~2025. When the Constitutional Convention, with 10 of the 15 delegates to the Constitutional Convention, agree upon a proposed Constitution of the Virgin Islands, the final approved document becomes the proposed Constitution of the Virgin Islands.

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

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

SECTION 7. Public education campaign; referendum; certification of referendum results

(a) The Constitutional Convention shall develop a public education campaign plan in English and Spanish in plain language using broadcasts, including radio, and television; print, including newspapers and magazines; outdoor billboards, yard signs; and internet media platforms that must be launched after submitting the proposed Constitution of the Virgin Islands to the Governor. If the President or the United States Congress makes any modifications to the proposed document, the Constitutional Convention shall modify its educational campaign to reflect the modifications. The educational campaign must run up to the general election of 2024.

(b) Timely notice of the referendum must be broadcast and published as prescribed by the Constitutional Convention from May 1, ~~2024~~2026, up to and including the Tuesday next after the first Monday in November ~~2024~~2026. The form of the referendum ballot, including the questions presented to the voters, must be as prescribed by the Constitutional Convention. Except as provided otherwise in this act, the referendum must be governed by title 18 of the Virgin Islands Code, and all penalties provided by the laws apply to the election. The referendum becomes a binding referendum if the vote for approval prevails.

(c) Upon approval by not less than a majority of the voters participating in the referendum, the constitution becomes effective on March 31, ~~2025~~2027.

(d) The Constitutional Convention shall meet on the first Monday immediately after the conclusion of the counting of all the legal ballots of the 2024 general election for the purpose of:

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

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

(3) If adopted, formally establishing the March 31, ~~2025~~2027, date the enactment and effective date of the Constitution of the Virgin Islands; and

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

SECTION 8. Appropriations.

(a) There is appropriated to the Sixth Constitutional Convention established in section 1 of this act from any available funds in the Treasury of the Government of the Virgin Islands for the fiscal years ending September 30, ~~2023~~2025, and September 30, ~~2024~~2026, the sum of \$150,000.00 each fiscal year, or so much the sums as may be necessary to carry out the provisions of this act.

(b) The sum of \$150,000.00 for fiscal year ending September 30, ~~2023~~2025, must be used as follows:

- (1) \$100,000.00 - Operations of the Convention; and
- (2) \$50,000.00 - Territorial Education on Adopting a Constitution.

(c) The sum of \$150,000.00 for fiscal year ending September 30, ~~2024~~2026, must be used as follows:

- (1) \$50,000.00-Operations of the Convention; and
- (2) \$100,000.00 - Territorial Education Campaign.

(d) The sums appropriated by this section expire on September 30, ~~2024~~2026.

(e) All funds appropriated to the Convention shall be allotted to the Legislature of the Virgin Islands for disbursement to the Convention upon request, for all documented expenses until such time an independent fiscal entity is chosen by the Convention.

SECTION 9.

The territorial public libraries in the District of St. Croix and the District of St. Thomas and St. John are designated as repositories for the permanent housing and maintenance of all official records produced by the Sixth Constitutional Convention of the Virgin Islands.

Thus passed by the Legislature of the Virgin Islands on December 30, 2022.