BILL NO. 33-____

THIRTY-THIRD LEGISLATURE OF THE VIRGIN ISLANDS

Emergency Session

2020

An act authorizing the Governor to borrow monies from public funds of the Virgin Islands to offset cash flow problems caused by shortfalls in the collection of revenues resulting from the COVID-19 Pandemic and to create working capital, avoid layoffs of Government Employees, pay essential obligations and meet the operating expenses of the Government for fiscal year 2020 and to issue a revenue anticipation note in the maximum amount of $60,000,000 to provide funding for authorized governmental operations.

PROPOSED BY THE GOVERNOR

WHEREAS, The Coronavirus Disease 2019 ("COVID-19") has negatively impacted commerce, tourism, and revenues of the Virgin Islands; and

WHEREAS, travel world-wide has almost come to a halt due to the advent of COVID-19 ultimately resulting in sharp declines in the Territory's GDP, industries that heavily depend on tourism where many residents are employed; and

WHEREAS, all cruise ship calls to the Territory have been suspended for an unknown length of time, crippling the Virgin Islands economy; and

WHEREAS, many of the Territory's residents have become unemployed, and many of the Territory's small businesses have closed due to the reduction in demand for services as travel has become significantly reduced for extended periods of time; and

WHEREAS, the Virgin Islands has been unable to collect excise taxes since December 2018 as a result of ongoing litigation; and

WHEREAS, damage to the Territory caused by Hurricanes Irma, Maria, and Dorian totaled a loss upwards of five billion dollars; and

WHEREAS, the Virgin Islands is still slowly recovering from the devastating financial impacts of the 2017 Category 5 Hurricanes Irma and Maria; and

WHEREAS, the Territory is currently rebuilding from all three devastating hurricanes; and

WHEREAS, there are significant damages to infrastructure, including schools, hospitals, government buildings, businesses, and homes of Virgin Islanders; and

WHEREAS, the current financial resources of the Government of the Virgin Islands will become insufficient to cover operating expenses and other important financial obligations; and

WHEREAS, the Government of the Virgin Islands has limited access to investment-grade capital markets; and

WHEREAS, the Government will require financial flexibility to meet payroll obligations, make vendor payments, maintain working capital, and meet any existing or pending financial emergency; and

WHEREAS, any loan to be made must be taken from public funds and accounts of the Government of the Virgin Islands, but if these public funds and accounts are insufficient, then loans, notes or other evidence of indebtedness must be obtained from banks or other financial institutions or through public or private bond or note offerings; and

WHEREAS, the Legislature's grant of this financial flexibility to the Executive Branch is not unprecedented, as similar actions have been taken in prior years to meet cash flow problems; and

WHEREAS, it is the intent of the Legislature that short-term borrowing under this act be used to offset cash flow problems caused by shortfalls in the collection of taxes and other anticipated revenues; Now, Therefore,

Be it enacted by the Legislature of the Virgin Islands:

SECTION 1. Act No. 8292, as passed by the Thirty-Third Legislature of the U.S. Virgin Islands on March 27, 2020 and signed into law by the Governor of the U.S. Virgin Islands on April 14, 2020, is hereby repealed and rescinded in its entirety.

SECTION 2. (a) The Government of the Virgin Islands, acting through the Commissioner of Finance, or the Virgin Islands Public Finance Authority, may issue revenue anticipation notes in FY 2020, in anticipation of the receipt of taxes, rates, charges, and other revenues to be received within such fiscal year, not inconsistent with section 8 of the Revised Organic Act of the Virgin Islands (the "Series 2020 Debts"). The proceeds of the notes issued pursuant to this section may be applied to provide funds

for any purpose for which the Government is authorized to use and expend monies, including but not limited to, current expenses, capital expenditures, and discharge of any obligations of the Government.

(b) The interest on Series 2020 Debts must not exceed a maximum interest rate of 6% and the maximum principal amount must not exceed $60,000,000, plus the associated fees, charges, and carrying costs associated with the issuance of any such debt or required reserves. The notes must mature no later than the last day of Fiscal Year 2021.

SECTION 3. With the exception of the Virgin Islands Insurance Guaranty Fund established pursuant to 33 V.I.C. § 3061, the Governor of the Virgin Islands, acting through the Commissioner of Finance, may borrow or pledge monies from any public fund of the Virgin Islands, in anticipation of collection of taxes and other revenues, to cover the projected shortfalls in revenue collection in Fiscal 2020, to pay only those mandatory operating costs, including payroll, utilities, rents, and ongoing essential obligations. Nothing in this section may be construed as authorizing any department or agency of the Government to use funds to hire additional non-essential or replacement employees or to incur any obligation not authorized by FY 2020 appropriations acts for the operation of the Government for the fiscal year beginning October l, 2019, and ending September 30, 2020.

SECTION 4. (a) The Series 2020 Debts may be paid from the General Fund; provided, however, that the Series 2020 Debts shall not be secured by a pledge of the full faith and credit of the Government of the Virgin Islands.

The Series 2020 Debts will be secured by a pledge of and limited statutory lien on, and paid from the following sources, or a combination thereof:

(l) "Real Property Tax Collections", consisting of Real Property Taxes, including any penalties and interest charges, to be collected by the Government of the Virgin Islands pursuant to title 33, chapter 89 of the Virgin Islands Code (the "Real Property Tax"), and all payments collected in lieu of such taxes, exclusive of (a) the portion that is required to be deposited in the St. John Capital Improvement Fund pursuant to section 2302(b) of said chapter 89, (b) the portion that is required to be deposited in the Housing Trust Fund pursuant to section 2302(c)(2) of said chapter 89, (c) the portions that are required to be deposited in each island's Public Road Account pursuant to chapter 111, section 3002(b) of said title 33, and (d) and the amount of such revenues required to be remitted as security for the payment of bonds or notes, issued or to be issued under the Tax Increment Revenue Bond Indenture, dated September 1, 2009, of the Virgin Islands Public Finance Authority that are secured by such Real Property Tax;

(2) "Gross Receipts Tax Collections", consisting of Gross Receipts Taxes, including any penalties and interest charges, paid to the Virgin Islands Bureau of Internal Revenue for deposit into the General Fund of the Government, pursuant to 33 Virgin Islands Code, chapter 3, section 43 (the "Gross Receipts Tax"), excluding (i) the first $250,000 of the tax collected during each fiscal year required to be

deposited into the Moderate Income Housing Fund, pursuant to title 33 Virgin Islands Code, chapter 111, section 3027(a)(3), and (ii) the amount of such revenues required to be remitted as security for the payment of bonds or notes, issued or to be issued under the Indenture of Trust, dated November 1, 1999, as amended and supplemented from time to time (collectively, the "Gross Receipts Tax Indenture") and the Tax Increment Revenue Bond Indenture, dated September 1, 2009, of the Virgin Islands Public Finance Authority that are secured by such Gross Receipts Taxes; and

(3) "Income Tax Collections", consisting of income tax revenues and proceeds paid into the Treasury of the Virgin Islands pursuant to Title 48, chapter 7, section 1397, of the United States Code.

(b) In furtherance of the pledge of, and limited statutory lien on, the Real Property Tax Collections authorized by this Act, the Government is hereby authorized and directed to covenant and agree for the benefit of the lenders or registered owners of the Series 2020 Debts that, for so long as the principal of or interest accrued on any Series 2020 Debts remain unpaid, the Government shall continue to (i) take all steps necessary to ensure the receipt and continued collection of Real Property Tax Collections, (ii) to the extent permitted by law, defend, preserve and protect such pledge and limited statutory lien and all rights of the lenders or registered owners of the Series 2020 Debts against all claims and demands of third parties, (iii) not impair, revoke, terminate or amend such pledge, lien and security interest in any way that materially adversely affects the rights of any lenders or registered owners of the Series 2020 Debts, (iv) not take any action that would, directly or indirectly, result in the repeal, rescission or termination of the Real Property Tax (or any successor provision of Virgin Islands law) or a reduction in collections of Real Property Tax Collections or a restriction or reduction in application of the Real Property Tax in general, if such action would materially adversely affect the rights of any lenders or registered owners of the Series 2020 Debts, and (v) not allow, permit or suffer to exist any prior lien, attachment or pledge (other than any liens and pledges authorized herein for the benefit of the lenders or registered owners of the Series 2020 Debts) of Real Property Tax Collections.

(c) In furtherance of the pledge of the Gross Receipts Tax Collections authorized by this Act, the Government is hereby authorized and directed to covenant and agree for the benefit of the lenders or registered owners of the Series 2020 Debts that, for so long as the principal of or interest accrued on any Series 2020 Debts remain unpaid, the Government shall continue to (i) take all steps necessary to ensure the receipt and continued collection of Gross Receipts Tax Collections, (ii) to the extent permitted by law, defend, preserve and protect such pledge and all rights of the lenders or registered owners of the Series 2020 Debts against all claims and demands of third parties, (iii) not impair, revoke, terminate or amend such pledge and limited statutory lien in any way that materially adversely affects the rights of any lenders or registered owners of the Series 2020 Debts, (iv) not take any action that would, directly or indirectly, result in the repeal, rescission or termination of the Gross Receipts Tax (or any successor provision of Virgin Islands law) or a reduction in collections of Gross Receipts Tax Collections or a restriction or reduction in application of the Gross Receipts Tax in general, if such action would materially

adversely affect the rights of any lenders or registered owners of the Series 2020 Debts, and (v) not allow, permit or suffer to exist any prior lien, attachment or pledge (other than any liens and pledges authorized herein for the benefit of the lenders or registered owners of the Series 2020 Debts) of Gross Receipts Tax Collections.

(d) In furtherance of the pledge of, and limited statutory lien on, the Income Tax Collections authorized by this Act, the Government is hereby authorized and directed to covenant and agree for the benefit of the lenders or registered owners of the Series 2020 Debts that, for so long as the principal of or interest accrued on any Series 2020 Debts remain unpaid, the Government shall continue to (i) take all steps necessary to ensure the receipt and continued collection of Income Tax Collections, (ii) to the extent permitted by law, defend, preserve and protect such pledge and limited statutory lien and all rights of the lenders or registered owners of the Series 2020 Debts against all claims and demands of third parties, (iii) not impair, revoke, terminate or amend such pledge, lien and limited statutory lien in any way that materially adversely affects the rights of any lenders or registered owners of the Series 2020 Debts, (iv) not take any action that would, directly or indirectly, result in the repeal, rescission or termination of the Title 48, chapter 7, section 1397, of the United States Code (or any successor provision of federal law) or a reduction in collections of Income Tax Collections, if such action would materially adversely affect the rights of any lenders or registered owners of the Series 2020 Debts and (v) not allow, permit or suffer to exist any prior lien, attachment or pledge (other than any liens and pledges authorized herein for the benefit of the lenders or registered owners of the Series 2020 Debts) of Income Tax Collections.

€ Notwithstanding anything to the contrary herein, the Series 2020 Debts may be paid from the General Fund; provided that the Series 2020 Debts shall not be secured by a pledge of the full faith and credit of the Government of the Virgin Islands.

SECTION 5. Notwithstanding 3 V.I.C. § 177(b), relating to the annual audit of all government operations, upon the enactment of this Act and until two years therefrom:

(l) The Commissioner of the Department of Finance shall maintain a detailed accounting of all monies diverted from any source of public funds to assist the Government with its operating costs and all proceeds from the revenue anticipation note, including a description of the purpose for which the funds were used and the amount of funds used for the delineated purpose.

(2) The Commissioner of the Department of Finance shall submit a copy of the accounting records and detailed reports described herein to the Legislature at the end of every 2nd and 4th quarter, commencing on the fourth quarter of Fiscal Year 2020 and the second and fourth quarter of each fiscal year thereafter.

SECTION 6. The Government of the Virgin Islands, acting through the Commissioner of Finance or the Virgin Islands Public Finance Authority may:

(l) Negotiate the final terms of any borrowing authorized pursuant to this Act which may be procured pursuant to the terms of a multi-year credit facility;

(2) Execute and deliver all documents and agreements necessary or advisable in connection with any borrowing authorized herein; and

(3) Pay all expenses associated with the issuance of any Series 2020 Debts issued or incurred.

SECTION 7. (1) (a) To secure the full and timely payment of all principal and interest on the loans, revenue anticipation notes, or other evidence of indebtedness authorized under the Series 2020 Debts, in accordance with their respective terms, all Series 2020 Debts shall be secured by a limited statutory lien on all Real Property Tax Collections and may be enforced as provided in any agreement or instrument entered into with the lenders or registered owners of the Series 2020 Debts. Such limited statutory lien shall occur automatically and shall automatically attach and be perfected, valid and binding from issuance of the Series 2020 Debts, without any further act or agreement of any person. No instrument needs to be executed or delivered or recorded in any official record or in any government registry or office in order to perfect or continue such limited statutory lien or to establish or maintain the priority thereof. No commingling of the pledged Real Property Tax Collections with any property or other revenues of the Government, or any Government entity or any other person shall limit, defeat, impair or interfere with such limited statutory lien. The limited statutory lien shall be valid, binding, senior to, perfected and enforceable against all persons having claims of any kind in tort, contract or otherwise against the Government or its assets irrespective of whether such persons have notice of such lien.

(b) The Government is hereby authorized and directed to covenant and agree for the benefit of the lenders or registered owners of the Series 2020 Debts that, for so long as any Series 2020 Debts remain unpaid, in the event the Government discontinues the imposition of the Real Property Tax and substitutes another source of revenues in lieu thereof, the Government shall add or substitute such source of revenues to pledge as security for the payment of principal and interest on the Series 2020 Debts, which substitute revenues will be subject to the statutory lien created in section 7(1)(a).

(2) (a) To secure the full and timely payment of all principal and interest on the loans, revenue anticipation notes, or other evidence of indebtedness authorized under the Series 2020 Debts, in accordance with their respective terms, all Series 2020 Debts shall be secured by a limited statutory lien on all Gross Receipts Tax Collections and may be enforced as provided in any agreement or instrument entered into with the lenders or registered owners of the Series 2020 Debts. Such limited statutory lien shall occur automatically and shall automatically attach and be perfected, valid and binding from issuance of the Series 2020 Debts, without any further act or agreement of any person. No instrument needs to be executed or delivered or recorded in any official record or in any government registry or office in order to perfect or continue such limited statutory lien or to establish or maintain the priority thereof. No commingling of the pledged Gross Receipts Tax Collections with any property or other revenues of the Government, or any Government entity or any other person shall limit, defeat, impair or interfere with such limited statutory lien. The limited statutory lien shall be valid, binding, senior to, perfected and enforceable against all persons

having claims of any kind in tort, contract or otherwise against the Government or its assets irrespective of whether such persons have notice of such lien€. The statutory lien created on Gross Receipts Tax Collections by this section 7(2) is, and shall at all times be, for all purposes, subject and subordinate to the lien created by section 1(E) of Act 7951 (2016).

(b) The Government is hereby authorized and directed to covenant and agree for the. benefit of the lenders or registered owners of the Series 2020 Debts that for so long as any Series 2020 Debts remain unpaid, in the event the Government discontinues the imposition of the Gross Receipts Tax and substitutes another source of revenues in lieu thereof, the Government shall add or substitute such source of revenues to pledge as security for the payment of principal and interest on the Series 2020 Debts, which substitute revenues will be subject to the limited statutory lien created in section 7(2)(a) and to any agreement, lien or other imposition authorized by section 1(E) of Act 7951 (2016).

(3) To secure the full and timely payment of all principal and interest on the loans, revenue anticipation notes, or other evidence of indebtedness authorized under the Series 2020 Debts, in accordance with their respective terms, all Series 2020 Debts shall be secured by a limited statutory lien on all Income Tax Collections and may be enforced as provided in any agreement or instrument entered into with the lenders or registered owners of the Series 2020 Debts. Such limited statutory lien shall occur automatically and shall automatically attach and be perfected, valid and binding from issuance of the Series 2020 Debts, without any further act or agreement of any person. No instrument needs to be executed or delivered or recorded in any official record or in any government registry or office in order to perfect or continue such limited statutory lien or to establish or maintain the priority thereof. No commingling of the pledged Income Tax Collections with any property or other revenues of the Government, or any Government entity or any other person shall limit, defeat, impair or interfere with such limited statutory lien. The limited statutory lien shall be valid, binding, senior to, perfected and enforceable against all persons having claims of any kind in tort, contract or otherwise against the Government or its assets irrespective of whether such persons have notice of such lien.

(4) The Government is hereby authorized and directed to covenant and agree for the benefit of the lenders or registered owners of the Series 2020 Debts that, for so long as any Series 2020 Debts remain unpaid, the Government shall (i) defend, preserve and protect the limited statutory liens created in this section 7 against all claims and demands of third parties, and (ii) not revoke, terminate or amend any of such limited statutory liens in any way that materially adversely affects the rights of any the lenders or registered owners of the Series 2020 Debts.

SECTION 8. The Government of the Virgin Islands hereby waives its sovereign immunity, with certain limitations set out below, in any action or proceeding by the lenders or registered owners of the Series 2020 Debts: (a) to collect overdue principal and interest on the Series 2020 Debts, (b) to enforce the covenants and obligations of the Government set forth in the documents and agreements authorized under section 6(2); and (c) to enforce the limited statutory liens created in section 7; provided, however, that this limited waiver of sovereign immunity by the Government shall only apply to actions and proceedings

commenced and litigated in a Territorial court in and of the United States Virgin Islands; and provided, further, that this limited waiver of sovereign immunity by the Government shall expire upon payment in full of the principal of such loans, revenue anticipation notes, or other evidence of indebtedness, and interest accrued thereon.

SECTION 9. The authority for the Government to incur or issue loans, revenue anticipation notes, or other evidence of indebtedness under section 1, and the authority for the Governor to borrow monies secured by a pledged of Government funds under section 2, shall expire on September 30, 2020.

Thus passed by the Legislature of the Virgin Islands on _____, 2020.