

BILL NO. 33-0096

Thirty-Third Legislature of the Virgin Islands

June 12, 2019

An Act repealing title 33, chapter 115, subchapter IV of the Virgin Islands Code and replacing it with a new subchapter IV creating the Virgin Islands Government Prompt Payment Act

PROPOSED BY: Senator Allison L. DeGazon

1 **WHEREAS**, the small business sector of the Territory is struggling to operate during these
2 austere times;

3 **WHEREAS**, the small business sector generates significant revenue for the general fund;

4 **WHEREAS**, public funds are identified for expenditure prior to the procurement of goods
5 and services needed by any department, agency, semi-autonomous, or autonomous entity of the
6 Virgin Islands government;

7 **WHEREAS**, once funds are encumbered, they are dedicated to pay for goods and services
8 rendered;

9 **WHEREAS**, the local government should prioritize these payments to small businesses to
10 keep them operating;

11 **WHEREAS**, the timely payment for services rendered by the small business entities to the
12 local government would aid in keeping small businesses open;

1 **WHEREAS**, various sectors of small business have folded due to the high cost of utilities;

2 **WHEREAS**, the small business sector remains the backbone of the Territory's economy;

3 and

4 **WHEREAS**, small businesses need timely payments for services rendered to the local
5 government; Now, Therefore;

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

7 **SECTION 1.** Title 33, subtitle 3, chapter 115, of the Virgin Islands Code is amended by
8 repealing subchapter IV and replacing it with a new subchapter IV to read as follows:

9 **“§ 3281. Short title**

10 This subchapter shall be known and may be cited as the “Virgin Islands Government
11 Prompt Payment Act of 2019”.

12 **§ 3282. Definitions**

13 As used in this subchapter, unless the context clearly requires otherwise:

14 (1) “Agent” means commissioner, director, manager, supervisor, project architect,
15 project engineer, or any agency or person acting on behalf of a local government entity.

16 (2) “Contractor” or “provider of construction services” means any person who contracts
17 directly with a local governmental entity to provide construction services.

18 (3) “Construction services” means all labor, services, and materials provided in
19 connection with the construction, alteration, repair, demolition, reconstruction, or any other
20 improvements to real property.

21 (4) “Local governmental entity” means the executive, legislative and judicial branches,
22 semi-autonomous entities, agencies, or any office, board, bureau, commission, department,
23 branch, division, or institution thereof.

(5) "Payment request" means a request for payment for construction services which conforms with any statutory requirements and with all requirements specified by the local governmental entity to which the request is submitted.

(6) "Proper invoice" means an invoice which conforms with all statutory requirements and with all requirement that have been specified by the local governmental entity to which the invoice is submitted.

(7) "Purchase" means the purchase of goods, services, or construction services, the purchase or lease of personal property, or the lease of real property by a local governmental entity.

(8) "Vendor" means any person or business that sells goods or services, sells or leases personal property, or leases real property directly to a local governmental entity. The term includes any person who provides waste hauling services to residents or businesses pursuant to a contract with a local government entity or local regulation.

§ 3283. Timely payment for non-construction services

The time at which payment is due by a local government entity for a purchase, other than construction services, shall be calculated from:

(1) The date on which a proper invoice is received by the chief disbursement officer of the local governmental entity after approval, if required; or

(2) If a proper invoice is not received by the local governmental entity, the date:

(A) on which delivery of personal property is accepted by the local governmental entity;

(B) on which services are completed;

(C) on which the rental period begins; or

(D) on which the local governmental entity and vendor agree in a contract that provides dates relative to payment period, whichever date is latest.

§ 3284. Timely payment for purchases of construction services

(a) The time at which payment is due by a local governmental entity for the purchase of construction services shall be determined as follows:

(1) If an agent must approve the payment request or invoice prior to the payment request or invoice being submitted to the local governmental entity, payment is due twenty-five (25) business days after the date on which the payment request or invoice is stamped as received as provided in section 3285(a).

(2) If an agent need not approved the payment request or invoice within twenty (20) business days after the date on which the payment request or invoice is stamped as received as provided in section 3285(a).

(b) The local governmental entity may reject the payment request or invoice within twenty (20) business days after the date on which the payment request or invoice is stamped as received as provided in section 3285(a). The rejection must be in writing and must specify the deficiency in the payment request or invoice, and the action necessary to make the payment request or invoice paper.

(c) If a payment request or an invoice is rejected under subsection (b) of this section, and the contractor submits a corrected payment request or invoice, which corrects the deficiency specified in writing by the local governmental entity, the corrected payment request or invoice must be paid or rejected on later of:

(1) Ten (10) business days after the date the corrected payment request or invoice is stamped as received as provided, I section 3285(a); or

(2) If the governing body is required by law to approve or reject the corrected payment request or invoice, the first business day after the next regularly scheduled meeting of the governing body held after the corrected payment request or invoice is stamped as received as provided in section 3285(a).

(d) If a dispute between the local governmental entity and the contractor cannot be resolved by the procedure in subsection (c) of this section, the dispute must be resolved in accordance with the dispute resolution procedure prescribed procedure, the dispute must be resolved in any applicable ordinance. In the absence of a prescribed procedure, the dispute must be resolved by the procedure specified in section 3285(b).

(e) If a local governmental entity disputes a portion of a payment request or an invoice, the undisputed portion shall be paid timely, in accordance with section 3285(b).

(f) When a contractor receives payment from a local governmental entity for labor, services, or materials, furnished by subcontractors and suppliers hired by the contractor, the contractor shall remit payment due those subcontractors and suppliers within ten (10) days after the contractor's receipt of payment. When a subcontractor receives payment from a contractor for labor, services, or materials furnished by subcontractors and supplies hired by the subcontractor, the subcontractor shall remit payment due to those subcontractors and suppliers within seven (7) days after the subcontractor's receipt of payment from the local governmental entity. Nothing herein shall prohibit a contractor or subcontractor from disputing, pursuant to the terms of the relevant contract, all or any portion of a payment alleged to be due to another party if the contractor or subcontractor notifies the party whose payment is disputed, in writing, of the amount in dispute and the actions required to cure the dispute. The contractor or subcontractor must pay all undisputed amounts due within the time limits imposed by this section.

§3285. Procedures for calculation of payment due dates

(a) Each local governmental entity shall establish procedures whereby each payment request or invoice received by the local governmental entity is marked as received on the date on which it is delivered to an agent or employee of the local governmental entity, or of a facility or office of the local governmental entity.

(b) The payment due date for a local governmental entity for the purchase of goods or services other than construction services is forty-five (45) days after the date specified in section 3283. The payment due date for the purchase of construction services is specified in section 3284.

(c) If the terms under which a purchase is made allow for partial deliveries and a payment request or proper invoice is submitted for a partial delivery, the time for payment for the partial delivery must be calculated from the time of the partial delivery and the submission of the payment request or invoice in the same manner as provided in section 3283, or section 3284.

(d) All payments, other than payments for construction services, due from a local governmental entity and not made within the time specified by this section, shall bear interest from thirty (3) days after the due date at the rate of one percent (1%) per month on the unpaid balance. The vendor must invoice the local governmental entity for any interest accrued in order to receive the interest payment. Any overdue period of less than one (1) month shall be considered as one (1) month when computing interest. Unpaid interest shall be compounded monthly. For the purposes of this section, the term "one (1) month" means a period beginning on any day of one month and ending on the same day of the following month.

§3286. Mandatory interest

No contract between a local governmental entity and a vendor, or a provider of construction services shall prohibit the collection of late payment interest charges allowable under this subchapter.

§3287. Improper payment request or invoice; resolution of disputes

1 (a) In any case in which an improper payment request or invoice is submitted by a
2 vendor, the local governmental entity shall, within ten (10) days after the improper payment
3 request or invoice is received, notify the vendor that the payment request or invoice is improper
4 and indicate what corrective action on the part of the vendor is needed to make the payment request
5 or invoice proper.

6 (b) In the event a dispute occurs between a vendor and a local governmental entity
7 concerning payment of a payment request or an invoice, such disagreement shall be determined
8 by the local governmental entity as provided in this section. Each local governmental entity shall
9 establish a dispute resolution procedure to be followed by the local governmental entity in cases
10 of such disputes. Such procedure shall provide that proceedings to resolve the dispute shall be
11 commenced not later than forty-five (45) days after the date on which the payment request or
12 proper invoice was received by the local governmental entity, and shall be concluded by final
13 decision of the local governmental entity not later than sixty (60) days after the date on which
14 the payment request or proper invoice was received by the local governmental entity. Such
15 procedures shall not constitute an administrative proceeding which prohibits a court from
16 deciding de novo any action arising out of the dispute. If the dispute is resolved in favor of the
17 vendor, then interest shall begin to accrue as of the original date the payment became due.

18 (c) In an action to recover amounts due under this subchapter, the court shall award court
19 costs and reasonable attorney's fees, including fees incurred through any appeal, to the prevailing
20 party if the court finds that the non-prevailing party withheld any portion of the payment that is
21 the subject of the action without any reasonable basis in law or fact to dispute the prevailing
22 party's claim to those amounts.

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1 **§3288. Payment by federal funds**

2 A local governmental entity which intends to pay for a purchase with federal funds shall
3 not make such purchase without reasonable assurance that federal funds to cover the cost thereof
4 will be received. Where payment or the time of payment is contingent on receipt of federal funds
5 or federal approval, any contract and any solicitation to bid shall clearly state such contingency.

6 **§3289. Report of interest**

7 If the total amount of interest paid during the preceding fiscal year exceeds \$250, each local
8 governmental entity shall, during December of each year, report to the Bureau of Internal
9 Revenue the number of interest payments made by it during the preceding fiscal year and the
10 total amount of such payments made under this part.

11 **§3290. Public Bid Disclosure**

12 (a) Bidding documents or other requests for proposals issued for bids by a local
13 governmental entity, or any public contract entered into between a local governmental entity and
14 a contractor, shall disclose each permit or fee which the contractor will have to pay before or
15 during construction and shall include the dollar amount, or the percentage method, or the unit
16 method, of all permits or fees which may be required by the local government as a part of the
17 contract. If the request for proposal does not require the response to include a final fixed price,
18 the local governmental entity is not required to disclose any fees or assessments in the request
19 for proposal. The local governmental entity shall make the disclosures required in this section at
20 least (10) ten days prior to requiring the contractor to submit a final fixed price for the project.
21 Any of the local governmental entity's permits or fees, which are not disclosed in the bidding
22 documents, request for proposal, or a contract between a local government and a contractor, shall
23 not be assessed or collected after the contract is let.

(b) No local government entity shall halt construction under any public contract or delay completion of the contract in order to collect any permits or fees, which were not provided for or specified in the bidding documents, request for proposal, or the contract.

(c) This section does not require disclosure in the bidding documents of any permits or fees imposed because of a change order or a modification to the contract. The local government shall disclose all permits or fees imposed because of a change order or a modification to the contract prior to the date the contractor is required to submit a price for the change order or modification.”

Bill Summary

This Bill amends title 31, chapter 115, subchapter IV of the Virgin Islands Code by repealing and replacing it with a new subchapter IV establishing the Virgin Islands Government Prompt Payment Act. The new subchapter is divided into ten sections. Section 3281 lists the short title and citation of the Act. Section 328 defines terms as used in the subchapter. Section 3283 provides details for timely payment for non-construction services. Section 3284 provides details for timely payment for purchases of construction services. Section 3285 provides procedures for calculation of payment due dates. Section 3286 outlines details and guidelines for mandatory interest for late payments. Section 3287 establishes procedures for resolution of disputes. Section 3288 explains how the subchapter affects payment by federal funds. Section 3289 mandates reporting on interest paid for late payments. Finally, section 3290 creates the public bid disclosure procedure.

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