

ACT NO. 87 17

BILL NO. 35-0050

THIRTY-FIFTH LEGISLATURE OF THE VIRGIN ISLANDS

Regular Session

2023

An Act amending the Virgin Islands Code, title 3, chapter 7, by designating the existing provisions as subchapter I and adding a subchapter II establishing the Bureau of School Construction and Maintenance within the Virgin Islands Department of Education for budgetary purposes; amending title 33, chapter 111, section 3092a, changing the Education Maintenance Fund to the School Construction, Maintenance and Capital Fund; and appropriating \$2,000,000 and \$5,500,000 from the Virgin Islands Education Initiative Fund to the School Construction, Maintenance and Capital Fund and for other related purposes

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WHEREAS the physical state of public schools in the Territory has been deteriorating for more than two decades due to inconsistent maintenance and limited resources;

WHEREAS, some schools in the Territory have experienced preventable structural failures, resulting in injuries and the closure of entire school buildings;

WHEREAS, it is imperative that students, teachers, and support staff be provided with safe, clean, and secure school facilities that support a nurturing and learning environment;

WHEREAS, it is important that the school facilities be economical, efficient, and modernized;

WHEREAS, the primary focus of the Commissioner of the Department of Education and the District Superintendents should be on student learning and academic achievement, and not on school construction and maintenance;

WHEREAS, to achieve this objective, the Legislature of the Virgin Islands will establish the Bureau of School Construction and Maintenance within the Department of Education with the responsibility to construct and maintain public schools and other educational facilities;

WHEREAS, one of the first tasks of the Bureau of School Construction and Maintenance will be to draft a 20-year Master School Construction, Maintenance and Capital Plan;

WHEREAS, the Master School Construction, Maintenance and Capital Plan will be critical, strategic, long-term planning documents to guide the long-term construction of schools and the maintenance of school facilities and grounds;

WHEREAS, primary objective of a Master Construction, Maintenance and Capital Plan is to design, construct, and maintain safe, environmentally sound, modernized, technologically advanced public schools in a cost-effective manner, to achieve the highest standard of excellence in safety, quality, and integrity; and

WHEREAS, Master School Construction, Maintenance and Capital Plan will:

- (1) identify the Territory's needs and provide recommendations to achieve those needs;
- (2) allow the Territory to pursue the long-term construction and maintenance goals of the Territory, even as personnel change; and
- (3) determine the use, development, and maintenance of school facilities within the Territory; Now, Therefore,

Be it enacted by the Legislature of the Virgin Islands:

SECTION 1. Title 3 Virgin Islands Code, chapter 7 is amended by designating the existing provisions of the chapter as subchapter I and adding a subchapter II that reads as follows:

"Subchapter II. Bureau of School Construction and Maintenance

§ 101. Establishment; duties and responsibilities of the Bureau of School Construction and Maintenance

(a) There is established within the Department of Education, for budgetary purposes only, the Bureau of School Construction and Maintenance. The Bureau shall acquire, establish, operate, develop, repair, maintain, renovate, improve, upgrade, inspect, modernize, manage, and construct all public educational facilities, including, schools, educational centers, facilities, and other structures that will be used for or occupied by students, faculty, staff, and administration under the jurisdiction of the Virgin Islands Department of Education or its successor department or agency. The mandate of the Bureau is to create affordable, sustainable, and energy-efficient public schools, buildings, facilities, and grounds throughout the Territory for a safe, secure, and comfortable environment for learning and administration.

(b) The Bureau is responsible for:

(1) Identification, planning, development, budgeting, and execution of projects associated with the maintenance, repairs, and construction of all public educational facilities and grounds;

(2) Acquisition of property for the construction of schools and determining which schools will no longer be used as schools in conjunction with the Commissioner of the Department of Education and the Commissioner of the Department of Property and Procurement;

(3) Construction of new buildings and the renovation of existing buildings, to include maintaining the structural integrity of the buildings;

(4) Preventative and emergency maintenance and repair for the daily operations of public educational facilities and grounds, but preventive, emergency repair or repair for the daily operations of the school which require school closures must be conducted in consultation with the Commissioner of Education;

(5) Equipment and fixtures permanently affixed to buildings to include energy management systems;

(6) Improvements to the buildings to meet new health and safety requirements, reduce environment risks, and improve energy efficiency;

(7) Improvements to buildings to meet changes in educational, technological, and social needs; and

(8) The development of Master School Construction, Maintenance and Capital Plan.

(c) The Bureau may not issue negotiable bonds or notes or other instruments of debt, unless otherwise specifically authorized by law.

§ 102. Executive Director of the Bureau

(a) The Bureau is managed by:

(1) an Executive Director, appointed by the Governor, who must be either an architect or engineer licensed in the Virgin Island; an individual with seven or more years' experience in construction, capital project management, or maintenance management;

(2) an Assistant Director of School Construction, who is an architect or engineer licensed in the Virgin Islands; and

(3) an Assistant Director of School Maintenance, who has experience in building or construction maintenance.

(b) The Executive Director shall:

- (1) report to the Governor and work at the pleasure of the Governor;
- (2) work closely with the Commissioner of Education and the Superintendent from each district to determine the current and future needs of public educational facilities;
- (3) provide annual status reports by April 30 of each year to the Governor, the Commissioner of Education, the Board of Education, and the Legislature, regarding the maintenance and construction projects of school buildings, facilities and grounds; the financial status of the Bureau; recommendations on policies and regulations; and other information required by the Governor or Legislature;
- (4) perform the administrative functions of the Bureau, including the hiring and retention of technical and support staff, either permanently or temporarily, or by contract or otherwise, and determine their qualifications, duties, tenure, and compensation, to include the Assistant Director of School Construction, Assistant Director of School Maintenance, Chief Financial Officer, the Chief Engineer; the Chief Operations Officer and the Chief Legal Counsel;
- (5) present the Bureau's annual budget to the Legislature;
- (6) engage in public-private development partnerships;
- (7) direct the expenditure of capital and operating funds, monies received from the School Construction, Maintenance and Capital Fund and any other funding source; and
- (8) solicit proposals for and award financing to public-public and public-private partnerships for the:
 - (A) purchasing of a school site and improvements to those site;
 - (B) constructing or purchasing of buildings to be used as schools;
 - (C) completing or partially furnishing and equipping of schools; and
 - (D) repairing and renovating school buildings;
- (9) approve and authorize decisions at every stage pertaining to the infrastructure of public schools and other public educational building, facilities, and grounds, including maintenance, repair, renovation, modernization, planning, design, procurement, and construction;

(10) contract with any agency, department, semiautonomous agency, autonomous agency or instrumentality of the Government of the Virgin Islands or federal government for services the Bureau may request, including professional and technical assistance by planning experts, engineers, architects and any other staff; for the use of the premises, personnel or equipment; access to data necessary to develop reasonable student-population projections; and access to building permits and construction data;

(11) enter and execute contracts and all other instruments necessary or convenient for the exercise of its functions, powers, and duties;

(12) accept any gifts, grants, or other financial aid in any form from the federal government or any agency or instrumentality of the federal government, from the Virgin Islands Government or any agency or instrumentality the Government, or from any other source, for any purposes specified in this subchapter, and the Bureau shall comply with, subject to the provisions of this subchapter, the terms and conditions of the loan or grant;

(13) collect data necessary to develop reasonable student-population projections; and access to building permits and construction data;

(14) adopt policies, regulations, and procedures governing the procurement of goods, materials, and services; and

(15) perform all things necessary or convenient to carry out and exercise the powers granted under this subchapter.

(c) The Executive Director serves as a liaison between the Office of the Governor, the Department of Education, the Department of Public Works, the Department of Planning and Natural Resources, the Board of Education, and any other government entity or instrumentality for all matters relating to the statutory purpose of the Bureau.

(d) The Executive Director shall evaluate solicited proposals based on adherence to the Master School Construction, Maintenance and Capital Plan and determine whether the proposals:

(1) are appropriately designed for educational and school-based programs, support services, and extracurricular activities;

(2) include well-designed physical systems and components that promote learning, culture, safety, energy efficiency, and effective structural resistance to hurricane and seismic events;

(3) create connections to the surrounding community and support for community activities; and

(4) are cost-effective to build, operate, repair, and maintain the facilities.

(e) To perform the duties and responsibilities granted in this subchapter, the Executive Director may procure goods and services and enter into contracts for architectural, construction, engineering and maintenance-related projects not to exceed \$1,000,000 without the need to comply with title 31 Virgin Islands Code, chapter 23. But the Executive Director shall comply with title 31 Virgin Islands Code, chapter 23 to procure goods and services of more than \$1,000,000. The Department of Education acting through its superintendents or principals in consultation with the Bureau of School Construction and Maintenance may expend not more than \$1,000 of available funds of the Department of Education for minor, emergency, school maintenance repairs.

§103. Master School Construction, Maintenance and Capital Plan; Review Panel

(a) There is established a Master Construction, Maintenance and Capital Plan Review Panel ("Review Panel"), who shall review and approve the Master School Construction, Maintenance and Capital Plan. The Review Panel consists of the Commissioner of the Department of Education, the St. Croix Insular Superintendent, the St. Thomas/St. John Insular Superintendent, and the members of the Virgin Islands Board of Education School Plants and Facilities Committee or its successor. A quorum consists of six members, with one being an Insular Superintendent.

(b) The Executive Director shall prepare an initial 20-year Master School Construction, Maintenance and Capital Plan and submit it to the School Construction and Maintenance Review Panel for its evaluation and approval.

(c) The initial Master School Construction, Maintenance and Capital Plan must include information regarding current and future needs for student housing, quality of the existing facilities, facilities renovation, facilities expansion requirements, or new construction required to support the Territory's educational and programmatic goals and a complete territory-wide inventory of all schools, whether in use or not in use. The Plan must also include accurate projections regarding enrollment and careful determination of school site location and capacity and must be flexible, implementable and must address the need to provide capacity for projected student enrollment.

(d) The Review Panel shall convene not later than 45 days after receipt of the Master Construction, Maintenance and Capital Plan to evaluate and approve the Plan. Failure to convene within the 45-day time-period or to otherwise vote on the Master Construction, Maintenance and Capital Plan, constitutes approval by the Review Panel.

(e) After approval of the initial Plan, the Executive Director shall update the Plan every five years and submit it to the Review Panel for review and approval.

SECTION 2. (a) Not later than 90 days after the effective date of this act, the Bureau of School Construction and Maintenance shall promulgate regulations necessary to effectuate its statutory purpose.

(b) Not later than 120 days after the effective date of this act, the Department of Education's maintenance and engineering division, including all personnel and the portion of the Department of Education's budget allocated for these purposes, must be transferred under the jurisdiction of the Bureau of School Construction and Maintenance. Employees are transferred to the Bureau without impairment of seniority and without reduction in compensation, and without loss of accrued rights to holidays, sick or annual leave or any other benefits notwithstanding any changes in job titles or duties. All employees transferred to the Bureau continue to be covered by and subject to the Government Employees' Retirement System and the Workers' Compensation Act.

(c) Not later than 180 days after the effective date of this act, the Bureau of School Construction and Maintenance shall present the initial Master School Construction, Maintenance and Capital Plan to the Legislature of the Virgin Islands. At this presentation, the Bureau shall also advise the Legislature of the status of the Bureau.

SECTION 3. Title 17 Virgin Islands Code, chapter 5, section 60d is amended by striking subsection (b) in its entirety.

SECTION 4. Title 20 Virgin Islands Code, chapter 38, section 425, subsection (d) is amended by striking "Education Maintenance Fund" and inserting "Bureau of School Construction, Maintenance and Capital Fund" and by striking subsections (e), (f), (g), and (h).

SECTION 5. Title 33 Virgin Islands Code, chapter 111 is amended in section 3092a as follows:

(1) by changing the name of the fund from the "Education Maintenance Fund" to the "School Construction, Maintenance and Capital Fund";

(2) In subsection (a), by striking "Education Maintenance Fund" and inserting "School Construction, Maintenance and Capital Fund" and at the end of the second sentence, by inserting ", and 100 percent of the proceeds generated from the leasing of properties that were previously used as schools, or such other percentage of the leasing proceeds as the Commissioner of Property and Procurement and the Director may negotiate. The Commissioner of the Department of Property and Procurement, along with the Director of the Bureau, may negotiate the percentage of business income from the lease of a property that was previously used as a school to be deposited into the Fund."

(3) In subsection (c) in the first sentence by inserting "from this Fund must be used exclusively to support the activities of the Bureau of School Construction and Maintenance as established pursuant to title 3 Virgin Islands Code, chapter 7, subchapter II and" after "Monies" and by striking "Commissioner of Education" and inserting "the Executive Director of the Bureau of School Construction and Maintenance".

SECTION 6. (a) Notwithstanding 33 V.I.C. § 3093(c), the sum of \$2,000,000 is appropriated from the Virgin Islands Education Initiative Fund to the School Construction,

Maintenance and Capital Fund, 33 V.I.C. § 3092a, in the fiscal year ending September 30, 2023, to assist in readying the Bureau of School Construction and Maintenance to fulfill its statutory purpose.

(b) The sum appropriated in this section remains available until expended.

SECTION 7. The sum of \$5,500,000 is appropriated from the Virgin Islands Education Initiative Fund to the School Construction, Maintenance and Capital Fund in the fiscal year ending September 30, 2023, to begin repairs, maintenance and modernization of public schools throughout the territory not slated for rebuild by federal funds.

SECTION 8. Every fiscal year, the Legislature of the Virgin Islands shall appropriate not less than \$5,000,000 to the School Construction, Maintenance and Capital Fund for the repairs, maintenance, modernization, and overall upkeep of public schools in the Territory.

SECTION 9. Title 17 Virgin Islands Code, chapter 3, section 24 is amended in the following instances:

(a) Subsection (a) is amended:

(1) in paragraph (1) by striking “, facilities”, striking “school guidance division,” and inserting “curricula and instruction,”; and


(2) by striking paragraphs (2) and (3) in their entirety.


(b) Subsections (b) and (c) are stricken.

Thus passed by the Legislature of the Virgin Islands on April 14, 2023.

Witness our Hands and Seal of the Legislature of the Virgin Islands this 18th Day of April, A.D., 2023.




Novelle E. Francis, Jr.
President


Carla J. Joseph
Secretary



Bill No. 35-0050 is hereby approved.

**Witness my hand and the Seal of the Government of
the United States Virgin Islands at Charlotte Amalie,
St. Thomas, This 25th day of April, 2023 A.D.**

A stylized blue ink signature of Albert Bryan Jr.

**Albert Bryan Jr.
Governor**