The Virgin Islands Consortium

$27 Million SGVI Deal Faces Monopoly Questions Over VLT Exclusivity as Wednesday Vote Nears

Bill 36-0313 would shift major racetrack construction and operating costs from the government to SGVI while granting tax concessions and VLT exclusivity in St. Thomas-St. John. Lawmakers are expected to take a final vote on the full package Wednesday.

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The 36th Legislature is headed toward a Wednesday vote on a sweeping horse-racing and gaming package that would require Southland Gaming of the Virgin Islands to invest at least $27 million in the territory's racetracks while granting the company franchise rights at both facilities, tax concessions, expanded authority to operate Video Lottery Terminals on St. Croix and effective exclusivity over electronic gaming devices in the St.

Thomas-St. John District.

Lawmakers spent approximately 10 hours Monday examining Bill 36-0313 and its interlocking agreements, repeatedly returning to a central question: whether the construction, racing commitments and financial relief offered by SGVI constitute a fair exchange for the gaming rights and protections the company would receive.

The measure amends Titles 32 and 33 of the Virgin Islands Code, dealing with Sports and Parks and Taxation and Finance, respectively. It approves separate franchise agreements covering the Clinton E. Phipps Racetrack on St. Thomas and Randall “Doc” James Racetrack on St. Croix, while also approving a Third Amendment to the Video Lottery Services Agreement between the Government of the Virgin Islands and SGVI.

Under the package, SGVI would develop the St. Croix racetrack at its own expense and serve as promoter at the St. Thomas facility for a minimum of five years. The agreements also provide substantial tax concessions, including exemptions from excise taxes on construction materials and services and reduced gross-receipts-tax obligations for certain entertainment activities.

Among the most consequential provisions is SGVI’s position in the St. Thomas-St. John electronic gaming market.

Michele Baker, legal counsel for the Office of the Governor, explained that if casinos or other electronic gaming venues are authorized in that district in the future, the devices “must be supplied by SGVI as the government's contractor, and SGVI will be compensated.”

At the Clinton E. Phipps Racetrack, SGVI would be permitted to operate VLTs for a 20-year term. On St. Croix, the legislation would authorize SGVI to operate VLTs at the Randall “Doc” James Racetrack, requiring changes to existing law governing gaming on the island. As currently written, Virgin Islands law permits slot machines at casino hotels.

The economic argument for the package was pressed by the Office of the Governor, SGVI and the Department of Sports, Parks and Recreation, whose representatives said the alternative would leave the government responsible for millions of dollars in additional racetrack construction and operating expenses.

DSPR Commissioner Vincent Roberts said the “proposed agreement offers a path to preserve horse racing while significantly reducing the long-term financial burden” on the government.

The Legislature has already reprogrammed $5 million for DSPR to undertake work at the Doc James Racetrack, but Mr. Roberts said “approximately $15 million is still needed to complete the facility.” An additional $1 million would be required to “adequately staff, maintain, and operate” the St. Croix track.

On St. Thomas, Mr. Roberts said DSPR would require another $2.5 million to sustain operations, provide dedicated personnel and acquire essential equipment for the Clinton E. Phipps Racetrack.

That, he told senators, is the “fiscal reality that must be considered” if the agreement is rejected.

If Bill 36-0313 passes, DSPR would be required to transfer any remaining unspent racetrack funding in its possession to SGVI.

$27 Million Investment and Construction Deadlines

A central component of the government’s case is SGVI’s commitment to invest a minimum of $27 million of its own money. The package contemplates reconstruction and development of the Doc James Racetrack, additional improvements at Clinton E. Phipps, and two additional gaming “entertainment centers” in Havensight and Red Hook on St. Thomas.

The legislation says those centers are intended to “draw on additional tourism dollars.”

Kevin Williams, chief of staff in the Office of the Governor, told senators the agreement would “drive economic revitalization” and is “key to finally reviving Virgin Islands horse racing Territory-wide.”

Of the minimum $27 million commitment, $25 million would go directly toward facility construction, according to Mr. Williams. SGVI would also be required to provide a $12 million performance bond.

The company would have eight months after execution of the agreement to complete the running surface and 36 months to finish full construction.

Mr. Williams said SGVI would serve as promoter of both racetracks “for a minimum of five years, with a total franchise term of eight years.” The package also includes a “guaranteed purse obligation for twenty years.”

SGVI would pay a $5,000 annual license fee and another $5,000 annual franchise fee, along with $125,000 each year to the V.I. Racing Commission to support regulatory operations.

The agreement “provides exemptions from excise and gross receipts taxes for racetrack-related activities to spur development during the construction and racing-operating phases,” Mr. Williams said, while requiring a “graduated payment structure equal to 25 percent to 50 percent of the gross receipts tax for entertainment events.”

He characterized the overall arrangement as a “balanced tax and revenue sharing framework.”

Under that framework, VLT taxes in the St. Thomas-St. John District would be capped at 34 percent, while the racino revenue share payable to the Government of the Virgin Islands would be 25 percent. Mr. Williams said the Horsemen Association would receive 10 percent of VLT revenue generated by on-track gaming.

Addressing concerns over exclusivity, Mr. Williams said SGVI’s exclusivity period for VLT operations is “extended only for eight additional years to align directly with the term of the contract.”

Required Race Days and Purses

The franchise agreements also establish racing requirements for both islands.

On St. Thomas, SGVI would be required to hold at least eight race days annually, with a "minimum purse of $100,000 per race day," along with scholarship and charitable-donation obligations.

St. Croix would be required to host 12 race days each year, with "robust purse commitments ranging from $800,000 to $1.6 million during the initial years of the agreements." Scholarship and charitable requirements would apply there as well.

Mr. Williams urged lawmakers not to delay.

The "cost of rebuilding the St. Croix facility will only increase if we delay," he said.

Ms. Baker similarly pressed lawmakers to consider the package as a whole rather than separating its individual components. She said SGVI has agreed to construct and operate the racetrack "in exchange for the extension and adjustment to the video lottery service agreement parameters, and for the franchise rights granted at both racetracks."

That exchange became one of the defining issues during Monday's hearing.

"The true question before this body is not whether the proposal is perfect, but whether we are prepared to let this opportunity pass us by," Ms. Baker said.

She urged lawmakers to "approve this package of legislation in full, and to do so without substantive modification that would disturb the delicate interdependencies among the three instruments."

Southland Says Temporary Arrangement Cannot Continue

SGVI Chief Executive Officer Shaine Gaspard told lawmakers that the company's willingness to make the investment must also be viewed against its experience operating races at Clinton E. Phipps.

SGVI has promoted 12 races there, he said, "every one of them without a franchise agreement, and every one of them had a financial loss."

The company "cannot continue as a temporary promoter," Mr. Gaspard told lawmakers.

SGVI has informed the government that "we will not volunteer to run any additional races beyond Labor Day races," he said. The company currently operates as a temporary promoter; Bill 36-0313 would establish franchise arrangements for both racing districts.

Casino Regulator Raises Concerns

Not every testifier supported every element of the package.

Acting Casino Control Commission Chair and Chief Executive Officer Carolyn Hermon-Percell raised concerns that VLTs would "not be subject to the jurisdiction of the Commission."

The Casino Control Commission serves as the licensing and regulatory authority for the territory’s casino industry. Ms. Hermon-Percell argued that aspects of the proposed arrangement do not align with several existing provisions of Title 32. Bill 36-0313, however, proposes changes to that title that would broaden the scope of SGVI’s authorized operations.

The discussion subsequently moved to whether the combination of rights provided to SGVI creates the appearance of a monopoly.

At the request of Senator Franklin Johnson, the Legislature’s legal counsel confirmed that the Virgin Islands has an anti-monopoly law that “prohibits establishing, maintaining, using, or attempting to acquire monopoly power over a substantial part of trade or commerce in the Virgin Islands.”

Lawmakers also debated which gaming model provides the greater financial return to the government. Senator Alma Francis Heyliger weighed the competing gaming operations, while Senator Angel Bolques said he had concluded that the VLT model was more beneficial.

Senator Carla Joseph signaled support for the legislation based in part on the support expressed by the territory’s horsemen.

James Questions Value of Exclusivity

For Senator Marise James, however, the exclusivity granted to SGVI remained a significant concern.

“My question is not whether Southland Gaming should make money. My question is how did you determine how much was enough,” she stated.

Sen. James challenged assertions that the executive branch had negotiated the package thoroughly and questioned why no independent valuation had been conducted to determine the worth of the exclusivity rights being offered to SGVI.

Referring to those rights as an asset belonging to the government, she asserted that officials “didn't think that that was an asset that you should negotiate for them to buy.”

“It's almost as if it's a done deal for us sitting in here, and I can't accept that. I surely can't,” Sen. James said.

The debate leaves lawmakers weighing two competing considerations ahead of Wednesday’s expected vote: the prospect of shifting tens of millions of dollars in racetrack development and operating obligations away from the government, and the value of the gaming rights, tax concessions and exclusivity SGVI would receive in return.

The 36th Legislature is expected to vote on Bill 36-0313 on Wednesday.