

Not Ready For Primetime: Gittens Pulls Bills On Ethics & Conflict Of Interest For Further Work

Acting Attorney General Ian Clement warns of confusion and overextension in Bill 35-228 and Bill 35-227, suggests collaboration for effective implementation

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“This bill creates confusion where there should be none,” said Ian Clement, acting Attorney General of the Virgin Islands. He was speaking to members of the Senate Committee on Rules & Judiciary on Thursday, assessing Bill 35-228 – one of two measures introduced in an attempt to address ethics and conflict of interest issues within the territory’s government.

?Sponsored by Senator Kenneth Gittens and co-sponsored by Senators Diane Capeheart, Franklin Johnson, Novelle Francis and Marvin Blyden, Bill 35-228 and its companion Bill 35-227 aim to establish the Commission of Ethics & Conflicts of Interest (CECI), empowering it to [enforce](#)

ethics and conflict of interest laws in the territory.

While testifiers all agreed that such efforts were long overdue, several had concerns about the language of the legislation and its move to sidestep already-established mechanisms to do this work.

“This is a much needed action for the U.S. Virgin Islands,” testified Gwen-Marie Moolenar, president of the League of Women Voters of the Virgin Islands. She described the history of ethics reform efforts, starting with a code established in 1961 by then-governor Ralph Paiewonsky. An attempt at legislating around the issue was made in 2017 by former senator Sean Malone, Dr. Moolenar reminded, but “that was held in committee and essentially stifled over the years.”

Julie Smith Todman, head of the Office of the Territorial Public Defender, said that the office “wholeheartedly supports a new emphasis on ethics and governance and new tools to guide that practice.”?

However, according to Mr. Clement, the language of the two companion bills upends a system that is already in place and strips authority from the Attorney General’s office while burdening it with the requirement to support without limit the new commission that will be created. With Mr. Gittens acknowledging that the initial \$500,000 appropriation to fund CECI would not be sufficient, Mr. Clement said he feared “that any shortages in the commission staffing and funding will be visited upon the Department of Justice, since it serves as the only backstop for the Commission.”

VIDOJ is understaffed as it is, Mr. Clement said, but the open-ended language in the ethics bill would require the agency to further overextend itself if the would-be commission required it to. “I suggest that some limiting language be placed on the Attorney General’s assistance to this Commission,” he said. Mr. Clement also recommended that the Office of the Inspector General be recruited to support the Commission as well. “Many ethics violations do not only include conflicts of interest from a legal perspective, but also from a financial component may be involved. Inspector General’s office already employs the staff and has the expertise to make financial examinations,” he explained, noting that this is what happens in several states already.

Regarding Bill 35-0228 specifically, Mr. Clement was more forceful in his opposition. “I cannot support Bill 35-0228 as written and assert that this bill requires major revision,” he declared. Not only does the measure shift responsibility for enforcement of ethics and conflict of interest laws from the Attorney General to the Commission, it also “abrogates the duties of the white collar and public corruption section of the Department of Justice, which has been specifically established by Title Three of the Virgin Islands code, section 118.” According to Mr. Clement, the changes would create “confusion where there should be none....I cannot object strongly enough to the change in the law.”

Instead, “I suggest that the bill be amended to allow the commission to refer cases to the Attorney General for criminal prosecution,” Mr. Clement suggested, noting that this was the practice in several states, including Maine, South Carolina, Massachusetts, Washington, Mississippi, and others. Instead of limiting the powers of the Attorney General and the Public Corruption Unit, “these bills should seek the cooperation of the Commission, the Attorney General and the Inspector General to investigate criminal ethics violation,” Mr. Clement argued.

Patricia Lynn Prior, director of the VIDOJ’s white collar crime and public corruption unit, said that funding and staffing shortages are her main obstacles to pursuing ethics matters. “As of today,

the white collar crime unit consists of myself...and one attorney who works part time for me in St. Thomas. We both additionally carry full criminal caseloads that are not white-collar related. So our unit is not particularly well positioned at this point to do the investigations,” she admitted. However, when those investigations are carried out by other VIDOJ units or by the police or other law enforcement agency, her unit is more than prepared to prosecute the matter. “We certainly do take these conflicts of interest cases very seriously. We just don't get them referred to us very often,” Ms. Pryor stated.

With Mr. Clement noting that the Attorney General’s Office did not confer or collaborate on the language of the draft legislation with the office of Mr. Gittens, testifiers suggested that more discussion between the two offices would be helpful. Senator Marise James, herself an attorney, said that some work on the language of the draft bill was indeed necessary. “When I initially looked at it, there were a lot of things that jumped out at me when I conducted a legal analysis,” she said. “As I heard the testimony, it further confirmed for me,” she continued. “There are times when well-intentioned bills don't do what we want them to do because of the language and the words that matter,” Ms. James added even as she nevertheless praised her colleagues for their initiative in bringing the measures forward. “You’re doing the right thing. This is what needs to be done,” she said.?

Ultimately, while griping about the failure of the executive branch to proactively reach out to discuss their concerns with the draft legislation, Mr. Gittens decided to hold the two companion bills in committee until necessary amendments can be made to resolve the issues raised during Thursday’s discussion.