The Virgin Islands Consortium

Bill to Suspend Retirement Benefits of Government Workers Convicted of Public Corruption Held for Further Revisions

Sen. Kenneth Gittens' Public Corruption Act would allow courts to suspend retirement benefits after felony convictions involving abuse of public trust, but lawmakers held the bill as officials sought stronger safeguards on due process and proportionality.

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Following a spirited debate on Thursday, the Senate Committee on Rules and Judiciary voted to hold an amended version of Bill No. 36-0132 in committee while lawmakers and government officials work through additional concerns involving due process, proportionality, employee contributions and protections for dependents.

Sponsored by Sen. Kenneth Gittens, the measure would amend Title 3 of the Virgin Islands Code by establishing the “Public Corruption Act.” It would provide for the suspension of retirement benefits belonging to government officials and employees who are members of the Government Employees’ Retirement System following conviction of a felony involving a violation of the public trust, with those benefits potentially applied toward imprisonment costs and restitution.

Mr. Gittens said the principle behind the legislation is that “when someone is convicted of a felony for abusing the public's trust, that individual should not be permitted to financially benefit from the very public service that was misused, unless they've paid restitution.”

The bill considered Thursday was already a revised version of the measure. Mr. Gittens had previously withdrawn an earlier iteration after stakeholders, including the Division of Personnel and Office of the Attorney General, recommended changes intended to strengthen it. He subsequently introduced an amendment in the nature of a substitute that, among other changes, establishes a “comprehensive process following a final conviction, including civil proceedings initiated by the Attorney General, with the court determining the appropriate treatment of retirement benefits while preserving due process.”

Mr. Gittens also clarified that the legislation would extend beyond benefits administered by GERS. It would apply “also to pension or special retirement benefits paid directly by the government of the Virgin Islands through the Department of Finance, including statutory pensions,” he said.

Despite those revisions, stakeholders testifying Thursday agreed that additional work was necessary before the bill should advance. Division of Personnel Director Cindy Richardson expressed overall support for the proposal but urged Mr. Gittens to “further define the purpose and permissible scope of the retirement remedy, establish standards and a burden of proof governing forfeiture, require proportionality between the misconduct, resulting harm, and consequence imposed, distinguish temporary preservation from final forfeiture, establish filing and appeal procedures, address prospective application and employee contributions, and account for the different retirement status of affected members.”

The Office of the Attorney General likewise encouraged lawmakers to proceed with the substituted bill while recommending three additional changes. Chief Deputy Attorney General Ian Clement first requested language making clear that the legislation “applies to offenses committed on or after its effective date.” He also said revisions were needed to “reconcile the timeline” established in the measure, particularly during the period between conviction and the conclusion of any appeal.

To address that issue, Mr. Clement recommended allowing the Attorney General to “impose a short administrative hold, so that no lump-sum refund or new benefit is paid out before the court can act.” Following a hearing, he proposed that a court be permitted to enter an interim withholding order while an appeal remains pending, with the withheld money placed in an interest-bearing account. A final forfeiture order would take effect only once the conviction becomes final, while a successful appeal would result in the release of the withheld money and accrued interest.

Mr. Clement's third recommendation was that lawmakers "give the court a standard and protect innocent dependents," arguing that clearer standards would provide judges with the "authority it needs to enter orders that will survive appeal."

Aliya Felix-Blyden, legal counsel for the Division of Personnel, similarly raised concerns about safeguarding money contributed directly by government employees. "I do think it would be beneficial if we consider adding specific language that speaks about protecting contributions," she said.

The issue of proportionality between the underlying misconduct and the loss of retirement benefits surfaced repeatedly during Thursday's hearing. Mr. Clement warned that "a thirty-year employee who takes a bribe in her twenty-ninth year and loses the entire pension will argue disproportion."

The Government Employees' Retirement System also raised concerns about becoming involved in costly legal disputes arising from the legislation. "Litigation is arduous and expensive, and as a trust fund, the GERS must preserve resources for the exclusive benefit of its members," said Ishmael A. Meyers Jr., the system's in-house legal counsel.

Lawmakers generally agreed that the legislation's underlying objective had merit, but several said the punishment would have to be carefully structured. "The more we speak, the more angles we see that may need to be addressed, but the concept is an important one for us to discuss," Sen. Milton Potter said.

Mr. Potter said he had little sympathy for public corruption but considered proportionality an important issue. "I don't have a whole lot of sympathy, but I think the idea of it being proportional is really important," he said, noting that an individual could have already served a prison sentence and paid fines and restitution before facing an additional financial penalty through loss of retirement benefits, potentially resulting in the punishment being "compounded."

Sen. Alma Francis Heyliger raised similar questions about what would happen once restitution and other financial obligations had been satisfied. "What if all the restitution is paid? What happens if there's additional funding for the retirement? Do they get it back?" she asked.

Ms. Felix-Blyden reminded lawmakers that the legislation would not automatically strip a convicted employee of all retirement benefits. She said the measure does not create an "outright or automatic full loss of your pension," with the court instead determining the appropriate financial consequence on an individual basis.

Sen. Avery Lewis requested that an actuarial study be conducted to determine whether withholding or forfeiting retirement benefits under the legislation could affect GERS' finances. "[I am] totally against public corruption. So I understand what the bill sponsor is trying to achieve, but we just need to do it in a proper manner," he said. Mr. Lewis later declared that "we cannot no longer stand by and allow corruption."

Committee Chair Sen. Carla Joseph also supported establishing meaningful consequences for government officials and employees convicted of abusing the public trust. “I do feel that we got to put some teeth [in it] and to assure that people really appreciate and value their position…I do agree that there needs to be some type of penalty when people are caught violating it for embezzlement, fraud,” she said.

By the end of Thursday’s discussion, lawmakers and testifiers appeared broadly aligned on the bill’s intent but agreed that questions involving proportionality, due process, appeals, employee contributions, protections for dependents and potential impacts on GERS should be resolved before the legislation advances.

The Committee on Rules and Judiciary ultimately voted to hold Bill No. 36-0132. The measure will return to the committee at Ms. Joseph’s call after additional revisions are made.