The Virgin Islands Consortium

Bryan Will Announce Tonight Plan to Restore 8 Percent Pay Cut of Gov't Employees (Update)

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Updated at 5:37 a.m., Tues. Jan., 26: *As reported by the Consortium, Governor Bryan announced a plan to restore to gov't employees the 8 percent cut that was enacted during the Governor John P. de Jongh administration.*

Original Story: Governor Albert Bryan will announce tonight legislation being forwarded to the Senate that would restore to gov't employees the 8 percent cut that was enacted during the Governor John P. de Jongh administration.

The announcement will be made tonight during Mr. Bryan's third State of the Territory Address, a copy of which was obtained by the Consortium.

The 8 percent cut was announced by Mr. de Jongh in 2011 and affected all government employees who made $26,000 or more. The cut was in response to the Great Recession, which significantly affected the government's finances, reads the SoTA document. The pay cut affected 5,221 employees who are owed $37.8 million, Mr. Bryan will say tonight.

Mr. Bryan said the funds would be repaid to gov't employees through excise tax dollars, a funding source that has been halted for two years by the District Court. The annual tax haul is estimated to be $40 million, and the governor is hopeful that the administration will soon be able to resume collection.

"If we are granted authorization to resume collection of excise taxes by the courts, we will be able to retire the full obligation within one calendar year," Mr. Bryan will say tonight, according to the State of the Territory Address document. "The previous measures passed to address this issue would only start to make payments towards the debt in 2022 and will take 20 years to retire it. The people have waited long enough! As such, I am pleased to announce tonight, that we will be committing to the entire payment of the 8% pay cut with the excise taxes collected this and next fiscal year. We have forwarded the effectuating legislation to this body for approval and urge its support."

Mr. Bryan told the Consortium late December that the government must wait for a ruling by District Court Judge Robert Molloy before levying the excise tax on importers.

"We have to go back to the court in February and until we get a decision from Judge Molloy we cannot" levy excise taxes on items imported, Mr. Bryan said.

A ruling by the Third Circuit Court of Appeals on Oct. 7 in the Reefco Services Inc. v Government of the Virgin Islands landmark case, restored the GVI's ability to once again collect excise taxes, though the government has to first prove that rules and regulations the GVI said it implemented in February 2019 were actually being followed. District Court Judge Robert Molloy earlier this month upheld the Third Circuit's ruling, opining that the local government must first prove that the excise tax is being levied not only on importers, but local manufacturers as well.

2016 Appeals Court Ruling on 8 Percent Cut

Declaring that “the government is not entitled to impair its contracts at will,” the U.S. Court of Appeals for the 3rd Circuit ruled in November, 2016 that a the 8 percent cut was unconstitutional.

A three-judge panel of the Philadelphia-based Court of Appeals held that the Virgin Islands Economic Stability Act passed in 2011, violated the U.S. Constitution’s contract clause because it was intended to override the terms of valid collective bargaining agreements between the Virgin Islands government and the St. Croix Federation of Teachers, as well as other unions, including the United Steelworkers.

“This ruling makes it clear that the government cannot just break our contracts,” Rosa Soto-Thomas, president of the St. Croix Federation of Teachers, which is an affiliate of the American Federation of Teachers, said at the time. “The court’s decision should serve as a deterrent to any future attempts by the Virgin Islands Legislature or governor to adopt laws that override our members’ collective bargaining rights.”

Following the ruling, former Governor Kenneth Mapp promised to restore the pay cut through a five-year economic growth sin tax plan, with the payments being released over the course of two years, according to the former governor. Mr. Mapp's promise was not fulfilled, however, as the governor lost his reelection bid in 2018.