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As GERS Bleeds Money, Attorney General Advises O.M.B. to Withhold Payments, Board Administrator Says, Further Straining Dying Pension System

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Government Employees' Retirement System board members revealed during a Thursday board meeting that the government has failed to make full payments to the system through agreements mandated by law. According to G.E.R.S. Administrator Austin Nibbs, the Bryan administration has not made full payments in two instances, even as those payments were codified by V.I. statutes.

The first is a \$10 million remittance to G.E.R.S., [per Act 8244](#), and the second, [per Act 8383](#) is an obligation to remit to G.E.R.S. 50 percent of excess revenues realized by the government of the Virgin Islands during the current fiscal year, which ends on Sept. 30, 2021.

According to Senator Dwayne DeGraff, chief sponsor of the excess revenues measure, during a February 16, 2021 Committee on Finance meeting, Office of Management and Budget Director Jenifer O'Neal indicated that the G.V.I. had collected \$885.8 million, which was about \$10.8 million more than the anticipated revenues projected for FY2020. As per the law, G.E.R.S. should have collected \$5.4 million of the excess funds, but according to the beleaguered retirement system, whose demise is hastily approaching, none of the aforementioned sum had been paid.

Mr. Nibbs said that on March 2 he wrote to Ms. O'Neal, and Acting Commissioner of Finance, Clarina Modeste-Elliot informing them that G.E.R.S. had only received \$9 million from the \$10 million allocation through Act 8244.

In total, and aside from the \$63 million [G.E.R.S. has sued the local government to recoup](#), the pension system said it is owed recent employer contributions of \$11 million — \$10 million from the Internal Revenue Matching Fund (IRMF), and the \$1 million owed from 2020. This is without accounting for the excess funds that are supposed to be remitted to G.E.R.S. from the realized G.V.I. surplus.

The nonpayments come as G.E.R.S continues to bleed money. The pension system said it collected \$13 million in February from current pension system members, but expended \$24 million in payments to retirees. From Sept. 2020 to date, the pension system has expended \$119 million and collected \$70 million, leading to a \$49 million deficit. G.E.R.S. continues to draw down from its portfolio to make payments, but funds are drying up and issues like the government's nonpayments exacerbate the problem, the pension system said.

According to Mr. Nibbs, Ms. O'Neal stated in her response that she was advised by Attorney General Denise George that the funds would not be released due to ongoing litigation filed by G.E.R.S., which is suing the government for \$63 Million.

Relative to the \$11 million in missing employer contributions — \$10 million of which is from the IRMF — Ms. O'Neal responded to Mr. Nibbs by stating that there was no appropriation to the G.E.R.S. in the 2021 budget from the IRMF, a response Mr. Nibbs said he was investigating, and has asked his contact in the Legislature to examine the budget. The administrator said he went on O.M.B.'s website to glean more information, but the budget on that site, he stated, was not detailed.

"She's saying that there's no \$10 million due in 2021 because there was no appropriation from the Internal Revenue Matching Fund, so there's more research that has to be done on that," Mr. Nibbs said.

Earlier, on March 1, Mr. Nibbs had written to Ms. Modeste-Elliot relative to Act No. 8383. In response, Ms. Modeste-Elliot said she would be looking into the matter, though Mr. Nibbs as of Thursday had not heard back.

Board Member Andre Dorsey suggested that the board take legal action. Furthermore, since it was the attorney general who advised O.M.B. not to remit payment, Mr. Dorsey suggested involving the U.S. Inspector General. "We have to trumpet what's going on at this point," he said.

Mr. Nibbs recommended a sit-down with a sub-committee and legal counsel before that process begins, contending that the U.S. Inspector General's Office would not get involved. He also suggested a meeting with Governor Albert Bryan before legal action, a suggestion Board Chairman Nellon Bowry agreed with.

Mr. Dorsey said a meeting with the governor would be a waste of time. “These directives didn’t come from one person he appointed, it came from two,” Mr. Dorsey said, referring to individuals appointed by Mr. Bryan.

Legal Counsel Pedro Williams said he did not believe the U.S. Inspector General or the U.S Attorney's Office would have any jurisdiction over the matter.

During the Chairperson’s Report, Mr. Bowry read a letter he wrote to Mr. Bryan that addresses the need to appoint more board members as there are four members serving whose terms have expired. There are three current trustees on the board whose terms have not expired, which would not be enough for a voting quorum without the members who are serving past their terms. According to local statute, board members whose terms have expired can continue serving, if they so choose, until their replacements have been selected.

It was also discussed that the public would be invited to the next zoom meeting to participate and provide feedback, however the board had not finalized the details of how that would happen.