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Bryan Submits Legislation for Use of Excise Tax Revenues to Repay 8 Percent Retro Wages to Government Employees

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Aerial view of business port with shore crane loading container in container ship in import/export and business logistics with crane and shipping cargo By. INTERNATIONAL CONCEPTS/123RF/VI CONSORTIUM

Government House announced Thursday that Governor Albert Bryan has forwarded to the 34th Legislature proposed legislation that would enable the Government of the Virgin Islands to use Excise Tax revenue to repay government employees the 8 percent reduction in salaries effected by the Virgin Islands Economic Stability Act of 2011 (VIESA), Act No. 7621, during the former Governor John P. de Jongh administration.

According to the release, governor's proposed legislation, dated June 9, 2021 would begin repayment of the 8 percent retro in Fiscal Year 2021 and continue into FY 2022 until each VIESA-affected employee is paid a share of the funds in the VIESA Compensation Excise Tax Account established by the legislation, as determined by the discretion of the governor.

A VIESA-affected employee's right to receive payments under the proposed bill will terminate at such time as the employee's repayment amount balance is zero, stated the release.

"As I stated in the State of the Territory Address in January and have proposed in the Biennial Budget of FY 2022-2023, I intend to make payment as directed by the ruling in the cases of United Steel Paper and Forestry Rubber Manufacturing Allied Industrial and Service Workers International Union AFL-CIO-CLC v. Government of the Virgin Islands, No. 14-4357, and St. Croix Federation AFT Local 1826 v. Governor of the Virgin Islands, No. 14-4358, and make whole all employees who suffered salary reductions under application of the VIESA," Governor Bryan wrote in his transmittal letter to Senate President Donna Frett-Gregory, according to Gov't House.

"This includes all employees in the unions that challenged the action and those that were not union members but affected by the application of the Act," Mr. Bryan wrote.

The annual excise tax haul for the local government is estimated to be \$40 million, though the figure fluctuates. That source of revenue was eliminated when the District Court of the Virgin Islands in November 2018 [ordered the GVI to halt the collection of excises taxes](#), ruling that the local government was in contravention of the Dormant Commerce Clause. In simple terms, the Dormant Commerce Clause means because Congress has been given power over interstate commerce, states cannot discriminate against interstate commerce nor can they unduly burden interstate commerce, even in the absence of federal legislation regulating the activity.

Government House said Thursday the repayment of the 8 percent retro wages is just one of a number of elements in Mr. Bryan's proposed biennial Executive Budget, which also includes \$110 million for income tax refunds; pay raises for government employees in both 2022 and 2023; funding for more than 1,200 government jobs in FY 2022; more than \$15 million to be placed in the Rainy-Day Fund across both fiscal years; creation of the Office of Gun Violence Prevention and the Office of Health Information Exchange within the Office of the Governor; and Development of a Virgin Islands Territorial Park System.

Mr. Bryan's two-year \$2.9 billion budget proposal has [hit a dead wall](#), however, as lawmakers have rejected the proposal on the grounds of unconstitutionality and bad timing.

During a recent budget overview hearing, Office of Management and Budget Director Jenifer O'Neal said legislation was passed that allowed for a two-year budget. However Senator Kurt Vialet, who chairs the Committee on Finance, said the law had since been repealed. "So before this body we don't have any enabling legislation that has been passed to be able to have a two-year budget cycle... There is currently no enabling legislation that has been passed by this body that would allow us to pass a two-year budget," he said.

Additionally, Mr. Vialet expressed reservation with approving a two-year budget when the territory, he said, is still on unstable footing relative to its core financial dynamics — even as it is experiencing a surge in economic activity as the economy reopens from Covid-induced lockdowns and from federal dollars tied to disaster relief.

“We are concerned about the times we are in,” he said. “Things are looking good for the Virgin Islands but we are in a time of flux because we are still in the middle of a pandemic. The cruise ship industry still hasn’t resumed on the island of St. Thomas; we have environmental issues with Limetree; and we as a Senate really believe that we need to closely monitor the economic situation of the Virgin Islands and our ability to spend the disaster recovery funds and to have access to the American Rescue Act before, as a body, we can be able to consider a two-year cycle.”

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