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Deadline Looms as Senate Delays Governor's \$150M Line of Credit for WAPA Payment, Disaster Recovery

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Bryan administration representatives before the Senate on April 5, 2023 during a special session called by the governor to consider a \$150 million line of credit for the GVI. By. V.I. LEGISLATURE

Initially published on April 5, 5:50pm, and updated once with more details of what transpired in the session.

Lawmakers in the 35th Legislature during a special session Wednesday voted to hold Governor Albert Bryan's \$150 million line of credit legislation until their next regular meeting, dealing a blow to the governor and his team as Mr. Bryan attempts to secure funding to payout Vitrol on the behalf of WAPA.

The Senate's decision risks a deadline of April 14 — next Friday — to pay Vitol the first \$45 million, according to administration officials. However, senators were wary of approving outright the entire \$150 million requested by the administration.

All twelve senators present voted to hold the measure, in a motion brought by Senator Kenneth Gittens. Lawmakers criticized WAPA and the executive branch for holding negotiations without the knowledge of the Senate, even as the authority knew it lacked the funds to execute the deal with Vitol, and that it would need to engage the Senate for the funding.

Senators were also displeased that the territory's recovery projects were mixed with the WAPA "bailout," and suggested that they would be more willing to support the recovery portion had it been standalone.

Convened at the behest of Governor Albert Bryan Jr., Wednesday's legislative session was to consider Bill No 35-0070, which would authorize the governor to "utilize monies from public funds of the Virgin Islands to create working capital to provide funds for any purpose for which the government is authorized to use and expend monies including but not limited to current expenses, capital expenditures, and discharge of any obligations of the government for the next three fiscal years beginning 2023." The draft legislation also provides for the issuance of a "line of credit in the maximum amount of \$150 million" as well as tax anticipation notes, all to provide funding for authorized governmental operations.

Testimony from the combined government team, read into the record by Office of Management and Budget Director Jenifer O'Neal, was that the establishment of the line of credit was of urgent necessity, primarily because of the looming \$45 million dollar payment due next week. The payment, due April 14, is the first of a \$145 million negotiated settlement that would reportedly dispose of the contract between the feuding parties, transfer ownership of the propane infrastructure built and managed by Vitol to WAPA, and once and for all put an end to the ongoing nightmare of the massive debt that had been accrued.

From the outset, senators' concerns ran along four distinct lines: whether the legislation as written usurped their authority to control the public purse, why the process for approval seemed so rushed, how the line of credit would be supported, and skepticism about almost every aspect of WAPA's access to the proposed credit facility.

"I don't operate well with a shotgun to my head...they gonna pull the trigger on me every day," said Senator Franklin Johnson, echoing the sentiment of several of his colleagues, who said they felt rushed and pressured into a decision to what they saw as a "bailout" of WAPA with insufficient mechanisms to ensure accountability for and transparency into what transpired in that debacle of a deal.

"I don't feel like I have ample enough time and information to make an informed decision," said Senator Alma Francis-Heyliger several times. She and her colleagues referred more than once to the negotiations between WAPA and Vitol, to which the executive has been parties, as ongoing for months, while she and several senators only received details of the settlement in a meeting with Governor Bryan on Tuesday night. Senator Novelle Francis referred to the existence of a document relating to the negotiations dated February 13, as evidence of how far back discussions had begun. Sen. Gittens accused the executive branch of sending this bill in at the last minute in an attempt to try to place the blame on the Legislature for any snag in the process.

"Fool me once, shame on you. Fool me twice, shame on me. But based on what I'm seeing here and this discussion, this is simply another bailout for WAPA that is going to sit or rest on the

backs of the ratepayers,” Mr. Gittens said, referring to previous promises that interventions would result in rate reductions, none of which have come true.

He also blasted the executive branch for their intractability and hostility towards legislative attempts to bring more effective oversight to WAPA’s operations. Mr. Gittens referenced [the current legal battle](#) over attempts to reform the utility company’s governing board, and that a unanimous resolution to provide funds to the Inspector General’s Office for a deep dive into WAPA was vetoed by the governor. That measure died when the previous legislature expired before they could vote to override that veto, but Mr. Gittens vowed to reintroduce the resolution in this iteration of the Senate.

Senators were also unsatisfied with the response to their questions about how WAPA could ascertain whether Vitol’s monetary claims were accurate and justified. The negotiated settlement was based on the value of the final amended contract that was signed between the parties, plus all fees and penalties that have accrued as a result of late and missed payments. All told, said WAPA Chief Financial Officer Jacob Lewis, that amounted to \$280 million, meaning that the \$145 million settlement figure would represent a bargain at 47.5 percent off the cost if WAPA were to maintain the contract to its conclusion.

However, Mr. Lewis admitted that the figures were being negotiated just based on the amounts listed in the contract; WAPA had done nothing to ascertain whether the contract had been executed as it was detailed on paper. Despite this, both Mr. Lewis and Attorney Kye Walker, general counsel to the Public Finance Authority (PFA) argued that the settlement was a good compromise.

“This is a negotiated settlement that would resolve the relationship, allow for the transfer of the assets...and put an end to the issues between Vitol and the authority, and take away the risk of the fuel supply interruptions,” said the WAPA CFO. “

“We are buying ourselves out. This is exactly what the community has been asking for, this is exactly what this body has been asking for,” Ms. Walker emphasized.

Testifiers tried to reassure lawmakers that the \$45 million planned allocation was just bridge financing to help WAPA meet its deadline, which CEO Andrew Smith said they had little power to influence. The plan is to apply for federal grants to fund the entire \$145 buyout settlement. Upon receipt of those dollars, the \$45 million accessed from the proposed line of credit would have been repaid. According to Adrienne Williams-Octalien, director of the Office of Disaster Recovery, a stipulation that WAPA would repay the money to the government of the Virgin Islands (GVI) would be written into all grant applications to federal partners.

Nevertheless, senators remained nonplussed. “I don’t have no faith in WAPA that they will be able to pay us back,” remarked Mr. Gittens, noting the utility company’s track record of outstanding debts to vendors. Mr. Lewis admitted that prior to a payment in December 2022 following Vitol’s suspension of propane deliveries, the last time that vendor received a payment for infrastructure costs was May 2021. The contractual obligation of \$2.6 million a month, he said, was just too onerous a cost for WAPA to bear.

Ms. O’Neal, the OMB director, said that WAPA had not yet responded to her request for information on how they would survive after the government subsidy of \$5.1 million a month from American Rescue Plan Act funds ends in June. In response to Mr. Smith’s offer to send across a slide deck or spreadsheet showing cash management projections, Senator Donna Frett-Gregory snapped. “I’m not interested in your spreadsheet, I’m not interested in your slideshow,”

she said, demanding an actionable plan as to how WAPA would be able to find its way to financial stability in the summer months and beyond.

WAPA's seeming lack of incentive to change profligate and lax spending practices highlighted in [a damning report from the Inspector General](#) was demonstrated to have continued through to the new management team. Under questioning from Mr. Gittens, Mr. Smith admitted that Josh Jones, who was hired as director of safety last year [amid criticism](#) from the Legislature, had been paid over \$31,000 in relocation expenses, almost five times over the cap of \$6500 as outlined in WAPA policy. Later on in the session, Senate President Novelle Francis got Mr. Smith to acknowledge that not only were Mr. Jones's relocation expenses reimbursed at well over the prescribed rate, but his wife was also given employment by the utility as a part time recruiter.

"Y'all don't ever stop, meson," Mr. Francis reacted, visibly annoyed. Senator Marvin Blyden concurred. "I blame the board...that's wrong, totally," he opined.

In the end, it was the skepticism, mistrust and anger over how the WAPA contract and buyout settlement with Vitol has been handled that led the Senate to vote unanimously by all who were present during Wednesday's session to hold the bill on the floor until April 14 – the same day the \$45 million payment is supposed to go out under the terms of the settlement. The draft legislation required significant amendments, the senators concurred, if it were to be acceptable to the body.

In a statement issued by Government House shortly after the end of the session, Governor Bryan said he was concerned that the delay "may have negative implications for WAPA's ability to deliver efficient and effective services to the ratepayers and the government's ability to move forward key recovery projects in a timely manner."

Nonetheless, Mr. Bryan said he was looking forward to continuing to work with the Legislature to find a mutually agreeable path forward.