

**PRESENTATION OF ACTING ATTORNEY GENERAL
IAN S.A. CLEMENT
THIRTY-FIFTH LEGISLATURE OF THE VIRGIN ISLANDS
COMMITTEE ON HOMELAND SECURITY, JUSTICE, AND PUBLIC
SAFETY
May 14, 2024**

Good morning, Chairman Gittens, Committee on Homeland Security, Justice and Public Safety members, legislative staff, and the viewing and listening audience.

My name is Ian S.A. Clement, and I am the Acting Attorney General of the Virgin Islands. I am honored to be invited to provide a few remarks regarding Bill No. 35-0248, as proposed by Senator Alma Francis Heyliger. Bill No. 35-0248 seeks to petition the United States Congress to amend the Revised Organic Act of 1954 to authorize the people of the Virgin Islands to elect the territory's Attorney General.

The Attorney General is a state or territory's chief legal advisor to government agencies, the legislature, and the chief law enforcement officer.¹ The Attorney General is often also the head of the state or territory's justice department. This is the case in the Virgin Islands, where the Office of the Attorney General sits within the Department of Justice.

Although the role of the Attorney General can vary from one state or territory to another based on statutory requirements, Attorneys General typically issue formal

¹ https://en.wikipedia.org/wiki/State_attorney_general, last viewed May 8, 2024

opinions to government agencies, propose legislation, enforce environmental laws, represent the state or territory in local and federal court, handle criminal appeals, institute civil lawsuits on behalf of the jurisdiction, operate victim compensation programs, and act “as public advocates in areas such as child support enforcement, consumer protections, antitrust and utility regulation.”²

The qualifications for Attorney General vary by jurisdiction and include minimum age, residency, citizenship, voting status, and education requirements. Of these established qualifications:

1. Thirty-five states have an age requirement, with 18 being the lowest and 31 being the highest minimum age.
2. Forty-three states require the Attorney General to be a state resident, with some states specifying a minimum length of time as a resident. The shortest residency requirement is 30 days, and the longest is seven years.
3. Forty states require the Attorney General to be a United States citizen, with some states specifying a minimum time as a citizen.
4. Thirty states require the Attorney General to be a qualified voter.

² <https://www.naag.org/attorneys-general/what-attorneys-general-do/>, last viewed May 9, 2024

5. Twenty states do not require the Attorney General to have a law degree or a valid license to practice law.

The popular election is the most common way of selecting an Attorney General, with 43 states, the District of Columbia, and two territories – Guam and the Northern Mariana Islands – choosing this method. Attorneys General who are elected mostly serve a four-year term; only the elected Attorney General in Vermont serves a two-year term.

The Governor appoints the Attorney General in five states and three territories, including American Samoa, Puerto Rico, and the Virgin Islands. In Tennessee, the Tennessee Supreme Court appoints the Attorney General for an eight-year term, while the Maine Legislature elects that state's Attorney General to a two-year term.

Some jurisdictions have term limits restricting the number of terms a person may serve as Attorney General. States that enforce term limits often limit terms to two consecutive or a maximum of two. Maine allows its elected Attorney General to serve four two-year terms. Alternatively, Virginia's constitution provides that "there shall be no term limit on the terms of the Attorney General."³ There are no term limits for Attorneys General appointed by the Governor.

³ See Va. Const. art. V, § 15

Currently, the Governor has “general supervision and control of all the departments, bureaus, agencies, and other instrumentalities of the executive branch of the government of the Virgin Islands,” including the Attorney General.⁴ Additionally, “He shall appoint, and may remove, all officers and employees of the executive branch of the government of the Virgin Islands, except as otherwise provided in this or any other Act of Congress, or under the laws of the Virgin Islands.”⁵

Nineteen states plus the District of Columbia permit the recall of elected state officials.⁶ A recall is a political device “that allows citizens to remove and replace a public official before the official’s term of office ends.”⁷ Recalls generally start with a petition, circulated to collect the required number of signatures before it is submitted to election officials for verification, and end with an election. The recall election can be held simultaneously with the election for a successor or separately. In some states, a successor is appointed after a recall election, not elected.

Recall elections are one method for removing an elected Attorney General; impeachment is another. Impeachment is a legal process “through which the legislature may bring charges and hold a trial with a penalty including removal from

⁴ Revised Organic Act of 1954 § 11

⁵ *Id.*

⁶ <https://www.ncsl.org/elections-and-campaigns/recall-of-state-officials>, last viewed May 10, 2024

⁷ *Id.*

office.”⁸ Although the impeachment process varies by jurisdiction, it follows the bifurcated federal model. The first step involves a formal accusation and investigation. If misconduct is found, articles of impeachment are developed and voted on. If affirmed, the second stage of impeachment begins with the formal consideration of charges. The second phase of the impeachment process resembles a trial with both sides presenting evidence. Once arguments are concluded, a second vote is held to determine whether the party is guilty of the charges.

That said, the following should be considered as you evaluate and vote on proposed Bill No. 35-0248: first, I would consider increasing the number of years a candidate for Attorney General is admitted to practice law in the Virgin Islands from three to 10. The ten-year requirement would help ensure Attorney General candidates are intimately aware of the intricacies of our laws, which are unique due to the territory's rich history and identity.

Second, I would consider the length of time an individual must be a resident of the Virgin Islands before running for the position of Attorney General. While three years is in line with the minimum residency for those seeking election to the Legislature of the Virgin Islands, increasing the residency requirement would help ensure the elected Attorney General has a thorough understanding of the territory's

⁸ https://en.wikipedia.org/wiki/Impeachment_by_state_and_territorial_governments_of_the_United_States, last viewed May 10, 2024

laws. Though, I would not recommend requiring that the candidate's residency immediately precede their election.

Third, I would consider adding a provision allowing the Attorney General to be removed for cause, whether by recall or impeachment. The removal for cause provision would allow an elected Attorney General to be removed from their position due to a violation of law or policy only. The removal for cause provision would also allow the Attorney General to remain independent from the influence of others. A process for replacing a deceased or incapacitated Attorney General should be instituted. This process could be similar to the process used for removing an Attorney General for misconduct.

Finally, if Bill No. 35-0248 moves forward, I also would consider adding the following provisions:

1. No election for the Attorney General shall occur before November 2026, provided that Congress approves the measure and the Revised Organic Act is amended to allow for such an election.
2. The final Governor-appointed Attorney General shall remain in the position until an election occurs and the Attorney General Elect is sworn into office.
3. That elections for the Attorney General shall occur in even-numbered years.

The decision to petition the United States Congress to amend the Revised Organic Act of 1954 to authorize the people of the Virgin Islands to elect the territory's Attorney General is a policy decision, not a legal one. Ultimately, the Attorney General represents the interests of the territory. Arguments can be made both for and against electing the Attorney General. For example, if elected, the Attorney General would be able to solicit funds from people and businesses, creating a potential conflict of interest in deciding which cases to pursue or not. Thus, their independence would be affected in another way. On the other hand, the appointment process allows for thoughtful consideration in selecting and vetting candidates.

With that, I want to thank the Committee for the invitation to testify on Bill No. 35-0248. This concludes my formal remarks and I remain available for any questions the members may have.