

PRESENTATION OF DEPUTY ATTORNEY GENERAL
IAN S.A. CLEMENT
THIRTY-FIFTH LEGISLATURE OF THE VIRGIN ISLANDS
COMMITTEE ON RULES & JUDICIARY
JULY 18, 2024

Good morning, Chairperson Capehart, Committee on Rules & Judiciary members, legislative staff, and the viewing and listening audience.

My name is Ian S.A. Clement, and I am the Deputy Attorney General for St. Thomas and St. John and presently Acting Attorney General of the Virgin Islands. I am honored to be invited to provide a few remarks regarding Bill No. 35-227 on behalf of Attorney Nominee General Gordon C. Rhea, as proposed by Senator Kenneth L. Gittens, Franklin D. Johnson, and Marvin A. Blyden. Bill No. 35-227, a crucial legislative proposal, seeks to establish the Virgin Islands Commission of Ethics and Conflicts of Interest. This Bill provides for the appointment, eligibility, term of office, compensation for commission members, and hiring professional and support staff.

The Bill proposes that the present text of 3 V.I.C. § 1108 be repealed and replaced with the language of the Bill.¹ Our review of the proposed Bill shows that

¹ Currently 3 V.I.C. § 1108 states:

Any person who knowingly violates a provision of this chapter shall be guilty of a public offense and upon conviction thereof shall be punished by imprisonment for not less than one year nor more than five years; or by a fine of not more than \$5,000 or a sum equal to any direct monetary gain derived in connection with such violation, whichever is greater; or both such fine and imprisonment.

it satisfies Virgin Islands law about commissioner eligibility, filling vacancies on boards, the terms of commissioners, and the composition of the Board.² The proposed Bill permits the Board to hire staff much like other provisions under Virgin Islands law, such as the Board of Education,³ Board of Dental Examiners,⁴ Board of Medical Examiners,⁵ and the Territorial Public Defender Administration Board.⁶

Nationally, the establishment of ethics commissions or committees is a growing trend. As of March 22, 2024, 392 ethics bills were introduced in the U.S. in 2023, including at least one in all 50 states. Of these, 72 measures were enacted across 31 states. The proposed Bill No. 35-227 aligns with this trend, reassuring that it aligns with the principles of good governance embraced nationwide.

That said, the Department of Justice has some reservations about the Bill's composition. Bill 35-227 requires the Attorney General to "make available to the Commission such personnel, facilities, and other assistance as the Commission may request to assist in the performance of its duties." That is a quote from proposed subsection (j). The Bill states in proposed subsection (i) that "the Commission shall

3 V.I.C. § 1108.

² See 3 V.I.C. § 65 *et. seq.*

³ See 17 V.I.C. § 21

⁴ See 27 V.I.C. § 63

⁵ See 27 V.I.C. § 3

⁶ See 5 V.I.C. § 3520

employ an executive director; a chief legal counsel and other professional staff as are necessary to carry out its duties pursuant to this chapter.” Bill 35-227 specifies in proposed subsection (j) that “the Commission shall also cause at least two investigators, one legal secretary, and two support staff to be hired by the executive director.” I grant that the staffing detailed in proposed subsection (j) represents minimums—the Commission must employ sufficient staff to carry out its duties. But when viewed in comparison to the rights and duties of the Commission as detailed in proposed Bill 35-228 and its proposed funding, I am concerned that any shortages in the Commission’s staffing and funding will be visited upon the Department of Justice, since it serves as the only backstop for the Commission.

The Department of Justice is understaffed. For example, the Solicitor General Division, tasked with advising the Territory’s boards and commissions, is down to five staff members, including the Solicitor General, an Assistant Attorney General, and three support staff, from its peak of 12 people years ago. Based on the open-ended language of the Bill, it appears that the Department of Justice would be required to make up for any shortfalls of the Commission if the executive director so requested. In addition, the Department of Justice would have to provide office space and other supplies and equipment if requested by the executive director. The Bill does not specify if the Commission’s investigators are to be peace officers and

who will be responsible for training the investigators and support staff. Bill 35-227 permits the Commission to obtain the service of experts and consultants as necessary to carry out its duties. But if the Commission lacks the funding to hire a forensic accountant, for example, may the executive director demand the Attorney General provide a forensic accountant. Thus, I suggest that some limiting language be placed on the Attorney General's assistance to the Commission.

I would also suggest including the Office of the Inspector General in providing aid. Many ethics violations not only include conflicts of interest from a legal perspective but also a financial component may be involved. The Inspector General's office already employs the staff, and has the expertise to make financial examinations. Other states employ the aid of their Inspector General. For example, Indiana requires its Inspector General to provide the assistance that Bill 35-227 asks of the Attorney General.⁷ Also, Maine's ethics regime permits its Commission to request the aid of its Attorney General, Secretary of State, and Office of the State Auditor.⁸ Illinois law splits the ethics function of its executive branch among five independent Offices of the Inspector General, one each for the Governor, the Attorney General, the Secretary of State, the Comptroller, and the Treasurer.⁹ Illinois

⁷ See Ind. Code Ann. § 4-2-6-2.

⁸ See Me. Rev. Stat. tit. 1, § 1006.

⁹ See 5 Ill. Comp. Stat. Ann. 430/20-10.

also has a separate Office of the Legislative Inspector General to examine ethics violations.¹⁰

I do not suggest that Illinois' complicated ethics scheme is right for the Virgin Islands. But a multi-agency, multi-discipline approach would be more cost-efficient and effective in creating synergies between the agencies to combat ethics violations in the Virgin Islands. This Bill is an important step in the right direction toward good governance for the Virgin Islands, and its implementation could lead to significant improvements. The Department of Justice welcomes the legislation with the above caveats.

I thank the Committee for the invitation to testify on Bill No. 35-227. I greatly appreciate your consideration of my remarks. This concludes my formal remarks, and I remain available for any members' questions.

¹⁰ See 5 Ill. Comp. Stat. Ann. 430/25-10.