

s/AWCJR

**AMENDMENT IN THE NATURE OF A SUBSTITUTE TO BILL NO. 36-0132
Offered by Senator Kenneth L. Gittens**

Bill No. 36-0132 is amended by striking the language after the enabling clause and inserting the following:

SECTION 1. Title 3 Virgin Islands Code, chapters 27 and 28A are amended by adding a section 724a and 770c, respectively:

§ _____ Public corruption; withholding and application of retirement benefits

(a) This section may be cited as the “Public Corruption Act.”

(b) For purposes of this section, the following terms and phrases have the following meanings:

(1) “Convicted” means a finding of guilt by a court of competent jurisdiction following trial, plea of guilty, or plea of *nolo contendere*.

(2) “Final conviction” means a conviction:

(A) for which the time to appeal has expired without an appeal being filed; or

(B) that has been affirmed following completion of the appellate process.

(3) “Government employee” means any individual employed by the Government of the Virgin Islands or any autonomous or semi-autonomous agency of the Government of the Virgin Islands.

(4) “Government official” means any elected or appointed officer of the Government of the Virgin Islands who is a member of the Government Employees

Retirement System, including senators, commissioners, deputy commissioners, assistant deputy commissioners, judges, magistrates, directors, assistant directors, and the appointed heads of government departments, agencies, instrumentalities, boards, or commissions; and any official who may draw a pension from the Government of the Virgin Islands, including the governor and lieutenant governor.

(5) “Offense involving a breach of public trust” means any felony offense committed by a public employee or public official that involves the misuse, abuse, or violation of the authority, duties, or responsibilities of public office for personal gain or to benefit another person, or that otherwise undermines the integrity of public service. The term includes offenses involving bribery, corruption, fraud, embezzlement, theft of public funds, official misconduct, obstruction of justice, conspiracy to commit such offenses, or any other criminal conduct in which the individual's government employment, office, authority, or access derived from the position facilitated or was used to commit or conceal the offense, including but not limited to offenses under title 14 Virgin Islands Code, chapters 11, 15, 19, 21, 22, 25, 27, 29, 30, 35, 37, 39, 41, 44, 45, 55, 57, 59, 69, 75, 77, 83, 89, 93, 105, 110, and 117, or any felony offense under federal law involving bribery, fraud, theft, embezzlement, corruption, abuse of official position, or similar misconduct.

(6) “Retirement benefits” means any pension, annuity, contribution, accumulated benefit, deferred compensation, or other retirement payment administered through the Government Employees Retirement System or otherwise paid directly by the Government of the Virgin Islands, including statutory pensions provided to former governors and lieutenant governors.

(7) “Forfeiture or deferment of benefits” means the partial or complete loss, suspension, delay, withholding, or redirection of any retirement benefit, pension, annuity, or other retirement payment that would otherwise be payable to a public

employee or public official as a result of government service, as ordered by a court following a final conviction for an offense involving a breach of the public trust. Such action may include the permanent forfeiture of benefits, the temporary deferment of payments, or the withholding or application of benefits for purposes authorized by law.

(8) “Cost of imprisonment” means expenses incurred by the Government of the Virgin Islands for the incarceration of an individual, including housing, food, medical care, supervision, and related correctional expenses.

(9) “Restitution” means compensation ordered by a court to reimburse victims or the Government for losses resulting from criminal conduct.

(c)(1) All employees and officials of the Government of the Virgin Islands are considered to have notice that any retirement benefits, statutory pension benefits, annuities, or other retirement payments accrued or payable as a result of service with the Government of the Virgin Islands are subject to forfeiture, deferment, withholding, or other lawful application upon conviction of an offense involving a breach of the public trust under the Public Corruption Act.

(2) The notice described in subsection (c)(1) applies to all retirement benefits administered by the Government Employees Retirement System of the Virgin Islands, as well as any pension or retirement benefit paid directly by the Government of the Virgin Islands, including statutory pensions established by law.

(d)(1) Following a final conviction for an offense involving a breach of the public trust, the Attorney General of the Virgin Islands shall initiate a forfeiture action in the Superior Court of the Virgin Islands seeking a ruling on whether retirement benefits must be forfeited, deferred, withheld, or otherwise applied.

(2) The convicted individual must be provided written notice of the forfeiture action and must be afforded an opportunity to appear, be heard, and present evidence

regarding the proposed forfeiture, deferment, withholding, or other authorized application of the retirement benefits.

(3) After consideration of the petition and any response or evidence presented by the convicted individual, the court shall issue a ruling indicating whether the convicted individual's retirement benefits must be forfeited, deferred, withheld, or otherwise applied, and shall direct the way the benefits must be administered or applied.

(e) Notwithstanding any provision of title 3 Virgin Islands Code §§ 701-741:

(1) any employee or official of the Government of the Virgin Islands who is convicted of a felony offense involving a breach of the public trust is subject to the forfeiture, deferment, withholding, or other lawful application of any retirement benefits accrued because of government service connected to the offense, as determined by the court.

(2) the forfeiture, deferment, withholding, or application described in this section applies to all retirement benefits and accumulated contributions attributable to the individual's government service, including employee contributions and employer contributions held or administered by the Government Employees Retirement System of the Virgin Islands, as well as any retirement benefit, pension, or annuity otherwise payable directly by the Government of the Virgin Islands, including statutory pensions.

(3) this subsection applies when:

(A) the offense occurred while the individual was employed by or serving as an official of the Government of the Virgin Islands; and

(B) the offense directly relates to, arises from, or involves the misuse or abuse of the individual's official duties, authority, or position.

(f)(1) Upon conviction of an offense whether the conviction occurs in the Superior Court of the Virgin Islands, the District Court of the Virgin Islands, or any other court of

competent jurisdiction, the Attorney General of the Virgin Islands shall provide written notice of the conviction to the Government Employees Retirement System and the Department of Finance and shall request the immediate withholding of the individual's retirement benefits.

(2) The notification requirement applies regardless of whether the criminal prosecution occurred in a territorial or federal court, and the Attorney General of the Virgin Islands is responsible for ensuring that the appropriate territorial agencies are notified.

(g) Retirement benefits withheld must be applied in the following order of priority unless otherwise ordered by the court:

(1) restitution ordered by the court to victims or to the Government of the Virgin Islands;

(2) court-ordered financial obligations, including fines, fees, penalties, or assessments imposed as part of the criminal judgment;

(3) child support or family support obligations, including arrears owed, regardless of whether the obligations were included in the criminal sentence but otherwise enforceable by law;

(4) costs of imprisonment, as determined by the Virgin Islands Bureau of Corrections for the period of incarceration;

(5) other lawful financial obligations imposed by a court or recognized by law.

(h)(1) If retirement contributions remain after satisfaction of all obligations listed in subsection (g):

(i) if the individual is incarcerated, the monthly or bi-weekly pension payments must be deposited into the Correctional Facilities Repair and Renovation Fund established under title 33 V.I.C. § 3075; or

(ii) if the individual is not incarcerated, all restitution and any court-ordered obligations must be paid in full utilizing the pension benefits or applied to the unfunded liability of the Government Employees Retirement System.

(2) A convicted individual may not receive retirement benefits derived from service connected to the criminal conduct unless all obligations under this section have been fully satisfied.

(i)(1) The Attorney General of the Virgin Islands shall notify the Government Employees Retirement System and the Department of Finance not later than ten days after conviction and shall initiate any proceedings required to implement the forfeiture and application of benefits.

(2) A convicted individual may challenge the withholding determination not later than thirty days after notification. The challenge must occur within the civil forfeiture proceeding and benefits must remain withheld during the pendency of the proceeding or any appeal.

(3) The GERS may periodically review withheld funds to ensure proper application toward restitution, imprisonment costs, and other obligations.

(j) The GERS shall submit an annual report to the President of the Legislature of the Virgin Islands detailing:

- (1) the number of cases involving benefit withholding;
- (2) amounts applied to restitution;
- (3) funds used to offset incarceration costs; and
- (4) balances transferred to government funds.

(k) The Inspector General of the Virgin Islands shall conduct a biennial audit to ensure compliance with this section and the proper disposition of withheld retirement benefits.