



U.S. Virgin Islands Division
of **Personnel**

Testimony | Bill No. 36-0132

A pleasant good afternoon, Honorable Carla J. Joseph, Chairwoman of the Committee on Rules and Judiciary, members of the Committee, non-committee members, and the viewing and listening audience. My name is Cindy L. Richardson, Director of the Division of Personnel. I am accompanied by Legal Counsel Aliya Felix-Blyden.

The Division of Personnel (“DOP”) appreciates the opportunity to provide testimony on Bill No. 36-0132, the “Public Corruption Act.” DOP supports holding government employees and officials more accountable for abusing public office. The Amendment in the Nature of a Substitute significantly improves the original bill by creating a judicial process that provides notice, an opportunity to be heard, and court review, and by allowing the court to impose a range of consequences, including partial rather than complete forfeiture of retirement benefits. DOP supports this individualized approach but recommends additional clarification and safeguards before passage.

1. Clarify the Objective and Scope of the Retirement Remedy

The first question is what the Legislature intends the retirement provisions to accomplish. The substitute appears to combine several objectives: recovery of losses caused by public corruption, forfeiture of retirement benefits as an additional consequence of the offense, and use of retirement benefits to satisfy other financial obligations. The bill prioritizes restitution, criminal fines and penalties, child or family support, costs of imprisonment, and other lawful financial obligations.

These concepts should be distinguished. DOP supports making retirement benefits available, where legally appropriate, to satisfy losses and financial consequences attributable to public corruption. DOP also recognizes that forfeiture of some portion of a retirement benefit may serve as an additional consequence where an employee abuses the public trust. However, forfeiture of retirement benefits because of public corruption is different from attachment of an asset to satisfy an otherwise lawful financial obligation.

For example, DOP does not oppose lawful attachment of assets to satisfy valid child or family support obligations. The question is whether a public-corruption conviction should itself create broader access to retirement benefits for liabilities unrelated to the offense. If such attachment is already authorized under applicable law, this Act need not duplicate that remedy. If it is not, that represents a broader policy decision that should be clearly identified.

DOP therefore recommends that the Legislature clearly define the objectives of the retirement remedy and tailor the scope of the Act accordingly.

2. Preserve Judicial Discretion, but Establish Standards and Boundaries

The substitute appropriately allows the court to determine whether retirement benefits should be partially or completely forfeited, suspended, delayed, withheld, or redirected. DOP supports judicial discretion rather than automatic forfeiture.

However, the bill provides little guidance concerning how the court should exercise that discretion. DOP believes the retirement consequence should be proportionate to the misconduct and resulting harm and should recognize years of otherwise lawful public service.

Other jurisdictions provide useful guidance. New York requires courts to consider factors including the severity of the offense, monetary loss to the government, the relationship of the offense to the employee's public duties, degree of public trust associated with the position, years of public service without criminal conduct, proportionality of the forfeiture to the crime, and impact to innocent dependents. New Jersey similarly considers the nature and duration of the misconduct, culpability and personal gain, length and history of public service, and whether a proposed partial forfeiture would result in an excessive benefit or excessive forfeiture.

DOP recommends that the bill establish comparable factors appropriate for the Virgin Islands. Relevant considerations could include factors used in other jurisdictions as indicated above and be expanded to include appropriate considerations for this jurisdiction to include the employee's financial gain and other penalties imposed.

Consider an employee who honorably serves the Government for 30 years but engages in corrupt conduct during year 29. Accountability is warranted, but the court should have sufficient guidance to determine an appropriate and proportionate consequence.

The bill should also establish the Government's burden of proof. New York, for example, uses a clear-and-convincing-evidence standard in its pension-forfeiture proceeding. Hawaii uses preponderance of the evidence. The Legislature should consider establishing the appropriate standard rather than leave that question unresolved.

3. Distinguish Temporary Preservation from Final Forfeiture

The substitute requires the Attorney General to initiate the forfeiture action following a final conviction, but separately requires the Attorney General, upon conviction, to request the immediate withholding of retirement benefits from GERS and the Department of Finance.

DOP recommends distinguishing between preserving a retirement benefit while a conviction remains subject to review and permanently forfeiting or applying that benefit.

If there is a legitimate concern that retirement benefits may be distributed or dissipated while an appeal is pending, the Attorney General could be authorized to seek a temporary preservation order from the court. The court could determine whether withholding is necessary and, if so, direct GERS or Finance to preserve the appropriate benefit/contribution pending final disposition.

Other jurisdictions expressly address this interim period. Arizona, for example, suspends payments during an appeal and requires the retirement system to hold the affected assets in trust; if the conviction is reversed, the member's rights and benefits are restored.

The bill should also establish a definite period following final conviction within which the Attorney General must commence the forfeiture proceeding. This would protect the Government's ability to pursue forfeiture while preventing retirement rights from remaining indefinitely uncertain. Moreover, the statute should specify the applicable appeal process and provide for restoration of benefits if the underlying conviction or forfeiture order is reversed or vacated.

4. Address Prospective Application, Employee Contributions, and Different Member Statuses

The bill should expressly address prospective application. Virgin Islands case law has recognized pension benefits as deferred compensation and has recognized contractual interests associated with pension rights earned through public service. The substitute provides that government employees and officials are considered to have notice that retirement benefits may be subject to forfeiture. However, notice upon enactment does not necessarily resolve the legal status of retirement benefits already earned.

Other jurisdictions have addressed this directly. Hawaii, for example, identifies a specific statutory date before which accrued retirement benefits are not subject to its forfeiture provision and excludes felonies committed before the applicable effective date. Arizona similarly excludes retirement rights and benefits accrued before its law's effective date and felonies committed before that date.

DOP recommends a specific effective date and expressly state whether the forfeiture provisions apply only to qualifying offenses committed on or after that date and whether previously accrued retirement benefits, before that date are excluded from forfeiture. DOP defers to the Department of Justice regarding concerns of constitutional or contractual limitations on applying the legislation to previously earned retirement benefits.

The bill should also address the employee's own contributions. Arizona, for example, provides that even where a member forfeits all retirement rights and benefits under its statute, the member remains entitled to receive his or her own contributions plus applicable interest, less benefits previously received. Hawaii likewise structures its forfeiture provision to exclude the employee-contribution component from the amount subject to its pension penalty.

DOP recommends separately protecting the employee-contribution component from forfeiture as a penalty, without necessarily exempting those funds from an otherwise lawful restitution order, attachment, garnishment, or judgment.

The legislation should also account for the different status of affected GERS members. A retiree already receiving an annuity, an active employee who is vested but has not retired, and an active employee who is not yet vested do not possess identical retirement interests. The statute should be sufficiently clear for GERS and the court to determine what interest exists and how a court order applies to each.

5. Clearly Define the Forfeiture Proceeding

The substitute provides for a separate civil forfeiture action in the Superior Court following a final conviction. DOP believes a separate proceeding can provide an appropriate mechanism for determining the retirement consequence of a qualifying conviction.

The criminal proceeding determines guilt and imposes the criminal sentence, while the forfeiture proceeding addresses the separate question of whether, and to what extent, the individual's retirement interest should be affected. A separate proceeding also allows the court to consider pension-specific evidence, including the nature and value of the individual's retirement

interest, years of otherwise lawful public service, proportionality, and other factors established by the Legislature. New York uses a similar separate-action model, with a hearing, specified burden of proof, proportionality factors, written findings, and appellate review.

If the Legislature retains this structure, DOP recommends that the procedure be more fully defined. The bill should establish the time within which the Attorney General must bring the action following final conviction; the Government's burden of proof; the factors governing the court's exercise of discretion; the information GERS must provide concerning the member's retirement interest; the treatment of benefits while the action or appeal is pending; the appellate process; and restoration of benefits where appropriate.

DOP also recommends consolidating duplicative provisions in the substitute, particularly those governing conviction, withholding, notice, and the Attorney General's responsibilities, so that the triggering event and procedure are stated once and consistently.

Recommendation

The Division of Personnel supports the objective of Bill No. 36-0132 and recognizes that the substitute establishes a substantially more balanced process than the original bill. DOP particularly supports individualized judicial review and the availability of partial rather than automatic complete forfeiture.

Before passage, DOP recommends that the Legislature further define the purpose and permissible scope of the retirement remedy; establish standards and a burden of proof governing forfeiture; require proportionality between the misconduct, resulting harm, and consequence imposed; distinguish temporary preservation from final forfeiture; establish filing and appeal procedures; address prospective application and employee contributions; and account for the different retirement status of affected members.

These safeguards would preserve the Government's ability to recover losses and impose meaningful consequences for abuse of the public trust while also recognizing that retirement benefits may represent compensation earned through many years of otherwise lawful public service.

Thank you for the opportunity to provide testimony on this matter. Legal Counsel Aliya Felix-Blyden and I are ready to address any questions and/or concerns.