

# SENATE BILL REPORT

## ESSB 5439

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As Passed Senate, March 17, 1999

**Title:** An act relating to false claims against the government.

**Brief Description:** Enacting the Washington state false claims act.

**Sponsors:** Senate Committee on Judiciary (originally sponsored by Senators Kline, Heavey, Roach and Costa).

**Brief History:**

**Committee Activity:** Judiciary: 2/15/99, 3/1/99 [DPS].  
Passed Senate, 3/17/99, 48-0.

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### SENATE COMMITTEE ON JUDICIARY

**Majority Report:** That Substitute Senate Bill No. 5439 be substituted therefor, and the substitute bill do pass.

Signed by Senators Heavey, Chair; Kline, Vice Chair; Costa, Goings, Haugen, Roach and Thibaudeau.

**Staff:** Aldo Melchiori (786-7439)

**Background:** State and local governments make innumerable payments to individuals and businesses in connection with government contracts, programs, and services. Sometimes those payments are made in reliance on incorrect or intentionally misleading information furnished by the other parties involved.

While a governmental entity can, in theory, recover undeserved payments under tort or contract law, or as restitution ordered in a criminal action, false claims for payment can be difficult to detect.

Under current state law, a private citizen is unable to initiate an action based upon a false claim on behalf of an injured state governmental entity. In contrast, a private citizen may bring such an action on behalf of the federal government under the federal False Claims Act.

**Summary of Bill:** A claimant who knowingly presents or assists in presenting a false claim that results in losses to a state or local governmental entity of at least \$1,000 is liable for a civil penalty and actual damages. Under certain conditions, the court may reduce the damages if the wrongdoer cooperates with the investigation. A defense is provided where the claimant reasonably relied upon the advice or rules of the governmental entity or of the person who acts as counsel to the governmental entity.

A civil action may be brought either by a public attorney for the governmental entity that has sustained losses as a result of a false claim or by a person (which is defined as an individual, firm, corporation, association, etc.) who may initiate an action on behalf of a governmental

entity. If the civil action is brought by a person, the governmental entity has the option to take control of the action.

Procedures are established for the conduct of a false claims action jointly by the governmental entity and the person, if the governmental entity chooses to participate, and individually by the person if the governmental entity chooses not to participate. In either event, all the essential elements of a cause of action for fraud must be proved by clear, cogent and convincing evidence.

A person who brings a false claims action may receive up to 30 percent of the amount recovered by the governmental entity, depending upon the person's degree of involvement in the action. If the wrongdoer is found guilty of submitting a false claim and pays in installments, the person will be paid in full before the governmental entity collects payment.

Specifically exempt from the provisions of this act are fraudulent claims for health care services filed with the Department of Labor and Industries and with the Department of Social and Health Services. State officers and state employees are also exempt from liability because these claims can be brought against them under the Ethics in Public Service Act.

Remedies are provided to employees who suffer workplace discrimination or reprisals because of participation in a false claims action.

**Appropriation:** None.

**Fiscal Note:** Requested on February 12, 1999.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** Most fraud against the government is undetected. This bill would allow the state of Washington to recoup monies paid for false claims and would have a significant deterrent effect on persons filing false claims. The federal government has recouped over \$100,000,000 by use of the federal counterpart to this bill. This bill should save state taxpayers over \$10,000,000 each year. Persons in the private sector often see patterns of abuse; this bill provides a mechanism for them to prosecute those filing false claims.

**Testimony Against:** Threshold for a claim is far below that required for fraud. In the construction industry, an outsider could see wrongdoing for things that are merely standard practice in the industry and the construction company would have to respond to each and every lawsuit. Also, there are no punitive damages in contract rights cases and this bill would provide for triple damages making the potential exposure of construction companies huge, especially if there were a particularly zealous public attorney. Additionally, the requirement to pay attorneys' fees and costs to government attorneys is one-sided and provides an incentive for them to bring lawsuits that are just a step above frivolous. Responding to these suits could drive many small businesses out of business just from the costs of defending the suit alone.

**Testified:** PRO: Jeffrey Needle, Esq; Thomas Nicol; Mark Erickson, Association of Washington Cities (with concerns); Larry Shannon, Washington State Trial Lawyers Association; Tom McBride, Washington Association of Prosecuting Attorneys (with

concerns); Michael Shaw, Washington Association of Counties (with concerns); Lisa Thatcher, Washington State Hospital Association (proposed substitute); Gary Smith, IBA (with concerns); Cliff Webster, Washington State Medical Association (proposed substitute); David Michener, Washington State Dental Association (proposed substitute); CON: Duke Schaub, Association of General Contractors of Washington; John Riper, Association of General Contractors of Washington; Clif Finch, Association of Washington Business; Carolyn Legmer, NFIB; Steve Lindstrom, AAP.