

HOUSE BILL REPORT

HB 2845

As Reported By House Committee On:

Vendor Contracting & Services
Law & Justice
Appropriations

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

Brief Description: Enacting the Washington state false claims act.

Sponsors: Representatives Constantine, Clements, Dickerson, Ogden and Anderson.

Brief History:

Committee Activity:

Vendor Contracting & Services: 2/3/98 [DP];

Law & Justice: 2/6/98 [DPS];

Appropriations: 2/7/98 [DP2S(w/o sub LJ)].

HOUSE SELECT COMMITTEE ON VENDOR CONTRACTING & SERVICES

Majority Report: Do Pass. Signed by 7 members: Representatives Clements, Chairman; Backlund; Delvin; Dickerson; Gardner; Gombosky and Parlette.

Staff: Josh Weiss (786-7292).

Background: With the exception of those remedies found under unconsolidated subject-matter oriented civil fraud laws, and the common law of torts, state law does not currently provide a civil remedy for false claims made against the government. In addition, there are no provisions allowing individuals to bring a civil false claim action on behalf of the government.

The federal government passed a false claims act in 1863. Since its amendment in 1986, it has been used extensively to recover significant amounts of federal money.

Summary of Bill: Mirroring the federal False Claims Act, HB 2845 would encourage the reporting, investigation, and prosecution of false claims made against state government. Any person who knowingly causes a false claim to be presented to a governmental entity which causes over \$1,000 worth of damage (a "wrongful act"), may be liable for a civil penalty of \$5,000 to \$10,000, treble damages, and costs. A false claim is any request or demand for money or property made to the government, whether

the state or a local political subdivision, that contains or is based upon a materially incorrect fact, statement, representation, or record.

Authorized attorneys of the state are required to investigate wrongful acts, and may bring a civil suit where a person committed a wrongful act. An individual may bring a suit on behalf of the government, and is allowed to recover between 15 to 30 percent of a court award. A governmental entity may elect to intervene in a suit brought by an individual, but is not required to do so. An individual who initiates a civil action, or aids in an investigation of a false claim is given "whistleblower" protection as under RCW 49.60.

Appropriation: None.

Fiscal Note: Requested on January 28, 1998.

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

Testimony For: The result of the federal False Claims Act has been positive, allowing the recovery of millions of dollars. About 14 states, including California, have enacted legislation similar to the federal False Claims Act, while the Washington government has no such protection. The bill is a substantive step to take a bite out of fraud against the government. The bill has been redrafted several times to take into account the comments of the Office of the Attorney General. The federal law, while aimed at defense contractor fraud, has had major impacts on health care fraud and consumer protection. The bill is an important step in protecting the individuals who have the information, and are faced with difficult choices when considering whether to risk their livelihood by becoming a whistleblower.

Testimony Neutral (with concerns): The experience under the federal law has been that individuals with information about false claims don't act on the information, until there is potential for a greater monetary reward. Awarding a fixed amount instead of a percentage of the total award would avoid individuals withholding information. The Office of the Attorney General should be funded to staff new investigators and attorneys to deal with the claims. While the recovery under the federal act has been great, it has mostly come from defense fraud, making it difficult to estimate potential state recovery. In addition, 60 days is not enough time for the government to investigate the claim while the complaint is sealed.

Testimony Against: None.

Testified: Senator Kline and Representative Constantine. David Walsh and Elaine Rose on behalf of the Washington State Attorney General (with concerns). Larry Shannon on behalf of the Washington State Trial Lawyers Association; and A. Alene Anderson on behalf of the Government Accountability Program (pro).

HOUSE COMMITTEE ON LAW & JUSTICE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Sheahan, Chairman; McDonald, Vice Chairman; Sterk, Vice Chairman; Costa, Ranking Minority Member; Constantine, Assistant Ranking Minority Member; Carrell; Cody; Kenney; Lambert; Lantz; Mulliken; Robertson and Sherstad.

Staff: Josh Weiss (786-7292).

Summary of Recommendation of Committee on Law & Justice Compared to Recommendation of Committee on Vendor Contracting & Services: Three amendments suggested by the attorney general have been incorporated into the substitute, as well as a clarifying amendment. The first amendment increases the amount of time that the government has to determine whether it will intervene in a suit brought by an individual. Originally, the government had 60 days, and is now given 90 days. The second amendment reduces the potential amount an individual may receive when the government does intervene into a suit. Previously the individual could receive 15 to 25 percent, which is now reduced to 10 to 15 percent. The third amendment allows the court to limit an individual's recovery when that individual has delayed in reporting evidence of a false claim. A final amendment resolves ambiguity, and is a technical amendment.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: The result of the federal False Claims Act has been positive, allowing the recovery of millions of dollars. About 14 states, including California, have enacted legislation similar to the federal False Claims Act, while the Washington government has no such protection. The bill is a substantive step to take a bite out of fraud against the government. The bill has been redrafted several times to take into account the comments of the Office of the Attorney General. The federal law, while aimed at defense contractor fraud, has had major impacts on health care fraud and consumer protection. The bill is an important step in protecting the individuals who have the information, and are faced with difficult choices when considering whether to risk their livelihood by becoming a whistleblower. The experience under the federal law has been that individuals with information about false claims don't act on the information, until there is potential for a greater monetary reward. Awarding a fixed amount instead of a percentage of the total award would avoid individuals withholding information. The

Office of the Attorney General should be funded to staff new investigators and attorneys to deal with the claims. While the recovery under the federal act has been great, it has mostly come from defense fraud, making it difficult to estimate potential state recovery. In addition, 60 days is not enough time for the government to investigate the claim while the complaint is sealed. (Original Bill). This bill is modeled on the Federal False Claims Act, originally passed in 1863 by President Lincoln to target wartime fraud during the Civil War. The federal law has had enormous success in reducing government contractor fraud and has recovered large amounts of public money. The bill will help reduce taxpayer "ripoffs", and incorporates the concerns of the attorney general. (Proposed Substitute Bill)

Testimony Against: None.

Testified: Senator Kline and Representative Constantine, prime sponsor. David Walsh and Elaine Rose on behalf of the Washington State Attorney General (pro, with concerns). Larry Shannon on behalf of the Washington State Trial Lawyers Association; and A. Alene Anderson on behalf of the Government Accountability Program (pro). (Original Bill) Representative Constantine, prime sponsor. (Proposed Substitute Bill)

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 30 members: Representatives Huff, Chairman; Alexander, Vice Chairman; Clements, Vice Chairman; Wensman, Vice Chairman; H. Sommers, Ranking Minority Member; Doumit, Assistant Ranking Minority Member; Gombosky, Assistant Ranking Minority Member; Benson; Carlson; Chopp; Cody; Cooke; Crouse; Grant; Keiser; Kenney; Kessler; Lambert; Linville; Lisk; Mastin; McMorris; Parlette; Poulsen; Regala; D. Schmidt; Sehlin; Sheahan; Talcott and Tokuda.

Staff: Deborah Frazier (786-7152).

Summary of Recommendation of Committee on Appropriations Compared to Recommendation of Committee on Law & Justice: A technical amendment was added to correct terminology.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: None.

Testimony Against: None.

Testified: None.