

SENATE BILL REPORT

SB 5144

As of February 16, 2009

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

Brief Description: Regarding false claims against the government.

Sponsors: Senators Kline, Rockefeller and Pridemore.

Brief History:

Committee Activity: Judiciary: 2/13/09.

SENATE COMMITTEE ON JUDICIARY

Staff: Brandon Roché (786-7405)

Background: State and local governments make numerous payments to individuals and businesses in connection with governmental contracts, programs, and services. While a governmental entity can recover undeserved payments under tort or contract law, false claims for payment may go undiscovered. A private citizen is unable to initiate an action, on behalf of an injured state governmental entity, against another party submitting a false claim for payment. However, a private citizen may do so on behalf of the federal government under the federal False Claims Act.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Proposed Substitute): A person who knowingly presents, or assists in the presentation of, a false or fraudulent claim that results in losses to a state or local government entity of at least \$1,000 is liable for a civil penalty of:

- at least \$5,000;
- but not more than \$10,000;
- plus three times the damages, attorneys fees, and costs.

Under specified conditions, the court may reduce the damages by up to 25 percent if the wrongdoer cooperates with the investigation.

A private party may initiate an action on the governmental entity's behalf. If a civil action is brought by a private party, the governmental entity has the option to take control of the action. Public attorneys, or their designees, have an obligation to investigate any reasonable

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

allegations of false claims against the government. A statute of limitations requires all claims to be brought within ten years of the violation.

If the governmental entity chooses to take control of the action, the private party who initially brought the action is entitled to between 15 percent and 25 percent of the recovery, depending on the extent of the party's contribution to the action. If the governmental entity chooses not to proceed with the action, the private party who proceeds with the action is entitled to between 25 percent and 30 percent of the recovery. The remainder of the recovery, less costs and attorneys fees, is awarded to the governmental entity.

If a court dismisses an individual's claim for any reason, if summary judgment is awarded in favor of the defendant, or if the defendant prevails and the court finds the case was frivolous, the defendant is entitled to costs and attorneys fees.

Whistleblower protections are provided to employees who suffer workplace discrimination or reprisals because of their participation in a false claim action. If whistleblowers are discriminated against as a result of bringing or aiding a false claims suit, they are entitled to all relief necessary to remedy the discrimination.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO: Abe Lincoln instituted the first Qui Tam Acts. It has been the law of the federal government since then. It's not just the taxpayer who needs to be protected but the whistleblower as well. It makes sense to have these incentives and protections in there for them. The state's largest contested claim in history did not have the benefit of this act. It's important in this economy to protect the taxpayer. Without the Legislature getting directly involved on a case by case basis, there's no way to protect public works money. The important thing about having this act is to protect the employees. It is the employees inside that first know there's a fraud being committed. Whistleblowers in Washington do not currently have protections. Right now about half the states have some form of false claims act. California has had a lot of success. These cases are against people who take advantage of the taxpayer.

CON: The current remedies available to state and local governments are not inadequate. We believe this bill is unnecessary and is a solution looking for a problem. This bill will foster an adversarial relationship between government bodies and contractors. Contractors will either avoid bidding on a project or price the potential liability into their bids. This bill would cast a long and gloomy shadow over public works contracting and does not need to be done in these difficult times.

Statistics show that 90 percent of claims filed are Medicaid claims. We've done a feasibility study on the Federal Medical Assistance Percentages funds. We were initially interested in

getting that 10 percent but the study revealed that the state becomes a mere pass-through. Other directors around the country have said that the federal government endlessly changes the criteria so that states never match up and get the 10 percent offset. In one state an attorney charged \$100,000 to file the complaint. Some of the depositions alone can cost upwards of \$100,000. This does not benefit the state.

Persons Testifying: PRO: Larry Shannon, Washington Association for Justice; Mary Ruth Mann, John Tollefson, private attorneys.

CON: Douglas Roach, Ahlers & Quesman PLLC; Van Collins, Associated General Contractors; Cliff Webster, Washington Liability Reform Coalition; Dawn Cortez, Washington Attorney General Medicaid Fraud Control Unit; Tim Crandell, Office of the Attorney General of Washington.