

SENATE BILL REPORT

SB 5144

As of March 22, 2010

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, 1/15/10.

SENATE COMMITTEE ON JUDICIARY

Staff: Kim Johnson (786-7472)

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, in theory, 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. At least 21 other states have a state version of the false claims act.

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

Summary of Bill (Proposed Substitute): A person who knowingly presents a false or fraudulent claim for payment to the government is liable to the government for a civil penalty between \$5,000 and \$10,000 plus three times the amount of damages the government sustains. Government entities include all state and local government bodies.

Either the Attorney General (AG) or a private party may bring a civil action for such a violation on behalf of any government entity. The AG must only investigate a violation, bring an action, or participate in an action if there are funds appropriated for this purpose.

A private party bringing the action, if successful, must be awarded between 25 to 30 percent of the proceeds of the action or settlement. The private party is also entitled to receive

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reimbursement of reasonable expenses and attorneys' fees from the defendant. The remainder of the proceeds must be distributed to the government entity that was harmed and the state general fund.

The AG must review all offers of settlement when a private party is conducting the action, and the private party must reimburse the AG for any costs associated with review and approval of offers of settlement, regardless of the outcome of the action. The private party may recover these costs from the defendant if the private party is successful in the action.

If the AG brings the action and is successful, the private party must be awarded between 15 and 25 percent of the proceeds. The private party must also be reimbursed for reasonable expenses and attorney's fees by the defendant. The AG is also entitled to be reimbursed for reasonable expenses and attorneys fees by the defendant.

Remedies are provided to employees who suffer workplace discrimination or reprisals because of participation in a false claims action. Jurisdiction, discovery rules, and other procedures are specified for false claims actions.

Appropriation: None.

Fiscal Note: Requested on January 12, 2010.

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: The Federal government has recouped billions of dollars from this statute at the federal level. Twenty-six other states have passed false claims acts almost identical to the bill before you. The potential for fraud is nothing less than enormous. This bill is not limited to Medicaid and everyone should remember that. California has recovered millions of non-Medicaid related fraud against the state. The state of Washington is going to be spending billions of dollars in construction alone over the next couple of years, and the potential for fraud is enormous. Why would we not want to give the tools to recover these funds that would otherwise disappear?

CON: A couple of years ago I tasked my team to look into whether it would make sense for Washington to adopt a state false claims act. The feasibility study results indicated that the state would actually lose money if we adopted a state false claims act. The bill was drafted as a pass through from the people who steal the money to the realtor and the realtor's attorney. We have found that because the state does not have qui tam provisions the realtors do not have access to the state monies that flow to Washington as a result of federal actions. This bill would give them access to those funds and the state would therefore lose at least 15 percent of the funds we are currently receiving. The federal government has a stranglehold on all of the good cases. This bill does not provide funding for the AG's office to do the work necessary to meet the workload projected that the bill would cause. The Department of Social and Health Services (DSHS) would also have a large workload increase as a result of the state adopting a false claims' act and the bill does not address the impact to the agency. We are comfortable that we already have the requisite tools at our disposal to see that the

state monies are returned to the state without adopting this legislation. The AGO could get behind the bill if the AGO was fully funded and if the AGO was the only attorneys bringing the lawsuits.

My experience in representing a construction company in California is that the false claims legislation is used as a tool against the construction companies. There was not one claim that my clients submitted to the state that was not met with a threat of filing a false claims act suit against the company. They wave the club over you and use the act as an excuse to bargain in bad faith. So what happens, the contractors have priced this type of behavior into the bids, which will raise all construction projects for state and local governments in Washington. Risk is priced, it is just the way the system will work with the addition of this legislation. Any additional funds that you believe will be realized to the state as a result of this legislation will be eaten away at the increase in costs. Where are the examples of non-Medicaid fraud in Washington? All the Washington contracts include fraud review/audit provisions and associated penalties. This bill still has the Mike M. Johnson problem.

Persons Testifying: PRO: Jeffrey Needle, Washington Employment Lawyers Association, Washington State Association for Justice.

CON: Heide Robbins Brown, DSHS; Tim Crandell, Dawn Cortez, Office of the Attorney General; Douglas Roach, Ahlera and Gressway PLLC; Tim Layton, Washington State Medical Association.