

HB

425

FISCAL NOTE

Bill Version: HB 425

(H) Publish Date: 2/28/00

**STATE OF ALASKA
2000 LEGISLATIVE SESSION**

BILL

Revision Date/Time (Note if correction) _____ Dept. Affected All
 Title "An Act relating to misrepresentation and false claims made against the state or a municipality; and providing for an effective date." BRU Centralized Administrative Services
 Component Purchasing
 Sponsor Rules Committee
 Requester Governor Component No. 60

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2000) cost: 0.0

POSITIONS

Full-time	N/A					
Part-time	N/A					
Temporary	N/A					

ANALYSIS: (Attach a separate page if necessary)

This bill would amend AS 36.30.687(a) to make individuals liable to the state for false claims as provided by AS 37.10.090.

There is no fiscal impact.

Prepared by: Marsha Hubbard, Director Phone 465-5687
 Division General Services Date/Time _____
 Approved by Commissioner Robert Poe Jr. Date 1/25/00
 Agency Department of Administration

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FISCAL NOTE

Bill version: HB 425

(H) Publish Date: 2/28/00

**STATE OF ALASKA
2000 LEGISLATIVE SESSION**

Revision Date/Time (Note if correction)	Dept. Affected	Law
Title <u>"... relating to misrepresentation and false</u>	BRU	Civil Division
<u>claims made against the state or municipality; ..."</u>	Component	Commercial
Sponsor <u>Rules Committee</u>		Governmental Affairs
Requester <u>Governor</u>	Component No.	<u>2211, 2207</u>

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*****	*****	*****	*****	*****	*****

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()	*****	*****	*****	*****	*****	*****
-------------------------------	-------	-------	-------	-------	-------	-------

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	*****	*****	*****	*****	*****	*****

Estimate of any current year (FY2000) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill would provide general statutory authority for the civil prosecution of a person who makes a false claim for, or a misrepresentation regarding, money or property against the state or a municipality. It would allow for damages of up to three times the amount suffered, a civil penalty, and court costs and attorneys fees from persons who make a representation or false claim against the state or a municipality. The new law would not apply to any controversy that involves less than \$500 and would not apply to unemployment claims, workers' compensation claims, state tax claims, public assistance claims, or temporary assistance claims.

Any potential fiscal impact or revenues resulting from passage of this legislation will be dependent on the number and magnitude of new prosecutions undertaken by the state.

Prepared by: <u>Joan M. Kasson</u> <i>Joan M. Kasson</i>	Phone <u>465-5370</u>
Division <u>Attorney General's Office</u>	Date/Time <u>1/24/00, 9:47 AM</u>
Approved by <u>Commissioner</u> <i>Kirk</i> <u>Bruce M. Botelho, Attorney General</u>	Date <u>1/24/00</u>
Agency <u>Department of Law</u>	

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
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 8, 2000

SUBJECT: CSHB 425(CRA) on misrepresentations and false claims to the state
(Work Order No. 21-GH2029\D)

TO: Representative John Harris, Co-Chair
House Community and Regional Affairs Committee
Attn: John Manly

FROM:  Theresa Bannister
Legislative Counsel

This memo accompanies the bill described above. Since this bill did not originate in this office, the bill was generally reviewed while making the changes requested by the committee. The following comments are brought to your attention.

1. Title. The title appears to need some revision to satisfy the constitutional expression requirement. Currently it does not appear to cover the acts described under proposed AS 37.10.090(a)(6). It also does not appear to cover fully the former version of AS 37.10.090 that is being repealed and reenacted or AS 37.10.100, which is being repealed (and which was related to the former version of AS 37.10.090).

2. Court rule changes. The bill may be interpreted to make court rule changes that need to be disclosed in the title and in the text of the bill itself. Proposed AS 37.10.094(a) requires the attorney general to serve a copy of the complaint on the municipality and does not indicate whether the municipality must be made a party to the action or is being given the copy for informational purposes only. If the municipality is not required to be a party, these provisions appear to change Rule 5(a) of the Alaska Rules of Civil Procedure, which only requires that service be made on the parties.

Proposed AS 37.10.094(b) requires that the municipality serve a copy of the complaint on the attorney general and requires the attorney general to notify the municipality in 60 days whether the attorney general will conduct the action. Once again, if the attorney general is not a party at the outset, there may be a court rule change here. On the other hand, if (b) is interpreted to make the attorney general a party by the act of service, then the 60-day requirement may be interpreted to change the civil rules that provide for an answer to the complaint and do not provide for this type of notification.

3. Use of "violation." The use of "violation" in proposed AS 37.10.090, 37.10.092, and 37.10.094 does not appear to be an appropriate reference word for the acts covered by

Representative John Harris

March 8, 2000

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AS 37.10.090(a) of that section. The acts are not described as "violations" in (a) and, in addition, "violation" can be a technical term for the least serious of criminal offenses. It would be a good idea to use another descriptive term or phrase.

4. Drafting style. In addition to the above, there are some drafting style changes that need to be made.

Since the bill has passed out of your committee, you may wish to pass this memo along to the next committee of referral so that it can consider these issues.

If I may be of further assistance, please advise.

TLB:glc
00-115.glc

Attachment

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

March 6, 2000

The Honorable John Harris, Co-Chair
House Community and Regional Affairs Committee
State Capitol
Juneau, Alaska 99801

Re: HB 425

Dear Representative Harris:

Thank you for scheduling a hearing for HB 425 "An Act relating to misrepresentation and false claims made against a state or a municipality."

The Department of Law requested the governor to introduce this bill to provide clear penalties and strong incentives to prosecute persons who would present false claims for money or property to the state or a municipality. Existing state law contains authority for the attorney general to file suit to collect money of the state or a municipality that is "illegally paid or . . . diverted for an illegal purpose, or paid to a person not authorized by law to receive them." AS 37.10.090. The foregoing statute predates statehood and is in need of updating so that state and municipalities are well equipped to prosecute persons who would obtain money or other public property through fraud or misrepresentation.

We became impressed with the need for the law changes offered in this bill during the course of our investigation of the potential claim against the Bank of America. Our attention was initially directed to the Bank of America by the City of San Francisco. The city, the State of California, and hundreds of other municipalities were engaged in litigation filed by the State of California under what is commonly called the "false claims statute." The bank was alleged to have failed to pay the California government entities substantial amounts of unclaimed debt service payments held in trust for bondholders. The case presented great difficulties of proof because the bond accounting systems of the bank are largely incapable of tracing the unclaimed money held in trust.

It is strongly believed by counsel to the City of San Francisco and the California Attorney General's office that the threat of treble damages under the false claims statute was the principal motivation for the bank's willingness to settle the case short of litigation.

TONY KNOWLES, GOVERNOR

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JUNEAU, ALASKA 99811-0300
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We recommend that the public finance code would be improved by the addition of a statute similar to the California false claims statute (Cal. Government Code sec. 12652) which is the model we used in drafting this bill. Similar laws are on the books in many other states and the federal government.

A brief summary of the bill is set out below:

Section 1: This section provides that contract claims against the state will be covered by the false claims penalties in case of fraud or misrepresentation by the claimant.

Section 2: Creates civil liability for

- a. presentment of a false claim to a state or municipal officer;
- b. uses a false record or statement to obtain payment from the state or a municipality;
- c. conspires to defraud by getting a false claim allowed or paid;
- d. as a custodian of public money or property, delivers less of that money or property to the state or municipality than it is entitled by law;
- e. makes a false receipt for state or municipal property;
- f. knowingly buys or receives state or municipal property from someone who lawfully may not sell or pledge the property;
- g. makes a false record to conceal, avoid, or decrease an obligation to pay or transmit property to the state or a municipality;
- h. fails to disclose the existence of a false claim once the person knows it is false, if the person stands to benefit from the claim.

Establishes the following penalties:

- a. Treble damages,
- b. a civil penalty of up to \$10,000 for each fraudulent act; and
- c. Rule 82 attorney fees and costs.

Establishes the following incentives: damages can be reduced to double the loss incurred by the state, and civil penalties waived, if

- a. the person presenting the false claim reports that fact within 30 days after learning of the falsity of the claim;
- b. the person cooperates with investigation; and
- c. no civil or criminal proceedings had been started at the time that the person began cooperating with the investigation.

Certain claims are not covered. The false claims penalties do not apply to amounts less than \$500 or to certain claims presented under

- a. the unemployment insurance statutes
- b. Worker's compensation statutes
- c. state revenue and tax code, including permanent fund dividends;
- d. public assistance under AS 47.25
- e. Alaska Temporary Assistance Program

Section 3. Establishes a statute of limitations: six years from discovery, 10 years after commission of fraudulent act.

Establishes the following burden of proof: proof must be by a preponderance of the evidence (51%); proof of a criminal conviction for false statements or fraud stops the defendant from denying the elements of making a false claim in a civil action.

Establishes authority to prosecute: attorney general has power to investigate claims involving state property and the municipal attorney has the power to investigate claims involving municipal property. If the investigation involves a mixture of state and municipal property, notification must be made to the other government involved. Attorney general may proceed with the case or tender it to the municipality.

Section 4. Repeals: repeals the limitation period applicable to contract claims which would now be covered by the period specified in this bill; and

repeals a provision which specifies how the costs of actions to recover state or municipal property are handled.

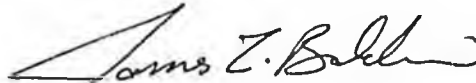
Hon. John Harris
Re: HB 425

March 6, 2000
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Again, thank you for hearing this bill. We will appear at the hearing and offer whatever assistance the committee considers appropriate.

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By: 
James L. Baldwin
Assistant Attorney General

JLB:jn

HB 425

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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

2/25/00

The Honorable Brian Porter
Speaker of the House
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

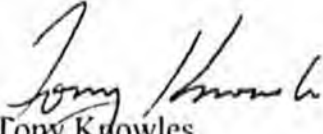
Dear Speaker Porter:

This bill I transmit today would fill a gap in our statutory law by providing general authority for the civil prosecution of a person who makes a false claim for, or a misrepresentation regarding, money or property against the state or a municipality. The public needs some way of ensuring that persons who seek to recover money or property from the state or a municipality are doing so in good faith. The most effective means of doing this is to provide for clear consequences for unlawful conduct. This bill would allow for a civil penalty of damages up to three times the amount suffered and court costs and attorneys fees from persons who make a misrepresentation or false claim against the state or a municipality.

The bill would provide incentives to cooperate in the prosecution of a misrepresentation or false claim. Also, the bill would apply only to matters involving at least \$500 and would not apply to unemployment, workers' compensation, state tax, public assistance, or temporary assistance claims. These programs have specific authority elsewhere in statute providing for the prosecution of false claims. The bill also provides procedures for circumstances in which both state and municipal money or property are involved and sets a limitation period of 10 years after which suits for misrepresentations and false claims are barred.

Nearly all states and the federal government have false claims statutes. It is time that Alaska had similar authority to protect the public treasury from wrongful claims.

Sincerely,


Tony Knowles
Governor

STATE OF ALASKA

TONY KNOWLES, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

P.O. BOX 110300
JUNEAU, ALASKA 99811-0300
PHONE: (907)465-3600
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February 29, 2000

The Honorable John Harris, Chair
Committee on Community and Regional Affairs
Alaska House of Representatives
State Capitol, Room 110
Juneau, Alaska 99811

Dear Representative Harris:

House Bill 425 – “An Act relating to misrepresentation and false claims made against the state or a municipality” was recently referred to your committee. I am writing today to ask that you schedule this bill for a hearing at the earliest possible opportunity.

House Bill 425 will give the public a way of ensuring that persons who seek to recover money or property from the state or a municipality are doing so in good faith. The most effective means of doing this is to provide for clear consequences for unlawful conduct. This bill would allow for such consequences and would also provide incentives to cooperate in the prosecution of a misrepresentation or false claim.

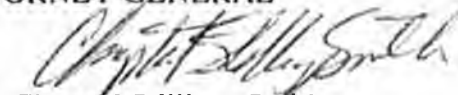
Nearly all states and the federal government have false claims statutes. This bill will give Alaska similar authority to protect the public treasury from wrongful claims. I hope your committee will consider the HB 425 in the near future.

Thank you in advance for your assistance.

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By:



Chrystal Stillings Smith
Legislative Liaison

CSS:rew

cc: Pat Pourchot, Office of the Governor
Jim Baldwin, Department of Law
Deborah Behr, Department of Law