

HEB

145

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February 26, 2001

The Honorable Carl Morgan, Co-Chair
The Honorable Kevin Meyer, Co-Chair
House Committee on Community and Regional Affairs
State Capitol
Juneau, Alaska 99801

Re: **HB 145 - "An Act making a civil remedy available to the state or a municipality against persons who make false claims for, or certain misrepresentations regarding, state or municipal money or other property."**

Dear Representatives Morgan and Meyer:

I am writing to request that you schedule a Community and Regional Affairs Committee hearing on HB 145 - "An Act making a civil remedy available to the state or a municipality against persons who make false claims for, or certain misrepresentations regarding, state or municipal money or other property."

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. This 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.

Department of Law attorneys 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

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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.

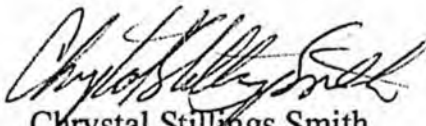
It is strongly believed by counsel to the City of San Francisco and the California Attorney General's office that the threat of treble damages under the false claims statute was the principal motivation for the bank's willingness to settle the case short of litigation.

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 HB 145. Similar laws are on the books in many other states and the federal government.

Attached for your information is a summary of the provisions of HB 145. If you would like more information, please let me know.

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL


By: Chrystal Stillings Smith
Legislative Liaison

Enclosure

Cc: Mike Abbott, Legislative Director, Office of the Governor
Jim Baldwin, Assistant Attorney General
Deborah Behr, Legislation and Regulations Attorney

HB 145 - An Act making a civil remedy available to the state or a municipality against persons who make false claims for, or certain misrepresentations regarding, state or municipal money or other property; and providing for an effective date."

- ◆ Will 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" it. The statute that allows this, AS 37.10.090, 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.
- ◆ California has a statute similar to that proposed in HB 145. It was used in a case brought by the City of San Francisco, the State of California, and hundreds of other municipalities against the Bank of America. 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.
- ◆ Alaska's public finance code would be improved by the addition of a statute similar to the California false claims statute, which is the model used in drafting HB 145. Similar laws are on the books in many other states and the federal government.

A summary of provisions of HB 145 is attached.

Summary of HB 145

Section 1: 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. presenting a false claim to a state or municipal officer;
- b. using a false record or statement to obtain payment from the state or a municipality;
- c. conspiring to defraud by getting a false claim allowed or paid;
- d. when acting as a custodian of public money or property, delivering less of that money or property to the state or municipality than it is entitled to by law;
- e. making a false receipt for state or municipal property;
- f. knowingly buying or receiving state or municipal property from someone who lawfully may not sell or pledge the property;
- g. making a false record to conceal, avoid, or decrease an obligation to pay or transmit property to the state or a municipality;
- h. failing 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:

- a. damages can be reduced to double the loss incurred by the state, and civil penalties waived, if
 - the person presenting the false claim reports that fact within 30 days after learning of the falsity of the claim;
 - the person cooperates with investigation; and

- 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
- d. 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. Provides definitions of terms used in statute.

Section 5. Repeals:

- limitation period applicable to contract claims which would now be covered by the period specified in this bill; and
- a provision which specifies how the costs of actions to recover state or municipal property are handled.

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: _____
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
 Title "An Act making a civil remedy available to the state BRU Civil Division
... against persons who make false claims for, or certain ..." Component Commercial
 Sponsor Rules Committee Governmental Affairs
 Requester Governor Component No. 2211, 2207

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
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)

FUND SOURCE	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
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 (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

POSITIONS

Full-time	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill provides 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.

Passage of this legislation is not anticipated to have a fiscal impact on the Department of Law. Current law already allows the attorney general to file suit to recover funds illegally paid out by the state or a municipality. This legislation will serve to improve the state's negotiating position in those cases the department would undertake anyway by providing a heavier penalty - the threat of treble damages.

Prepared by: Joan M. Kasson Phone 465-5370
 Division Attorney General's Office Date/Time 2/20/01 4:30 PM
 Approved by: Kathryn Daughhete for Bruce M. Botelho, Attorney General Date 2/20/01
 Agency Department of Law

For distribution information, call the Governor's Legislative Office