

HB

145

Adopted

Conceptual Amendment #1

Page 4, line 14-15

delete "Ornolo contendere"

Adopted

Conceptual Amendment #2

Page 4, line 17-18

delete "This subsection.... July 1, 2001."

Moved by
Benkowitz
Adopted

Conceptual Amendment #3

Page 3, line 7-8

delete "of this section to an amount
not less than two times the amount of
the damages sustained"

TONY KNOWLES
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

HB145
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February 22, 2001

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 make demands on the public treasury by seeking 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 clear consequences for unlawful conduct. This bill would allow for a civil penalty of up to three times the amount suffered as well as court costs and attorney 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, or to permanent fund dividend applications. These programs have specific authority elsewhere in statute providing for the prosecution of false claims.

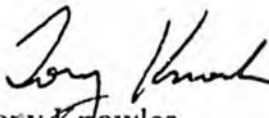
The bill requires the attorney general to investigate misrepresentations and false claims against the state and requires the prosecuting authority for a municipality to investigate misrepresentations and false claims against the municipality. It also provides procedures for circumstances in which both 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.

HB145

The Honorable Brian Porter
February 22, 2001
Page 2

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 and fraudulent claims.

Sincerely,


Tony Knowles
Governor

HB 145

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: HB 145
(H) Publish Date: 2/23/01

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)

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						
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 Daughhelee for Bruce M. Botelho, Attorney General Date 2/20/01
Agency Department of Law

For distribution information, call the Governor's Legislative Office

STATE OF ALASKA

TONY KNOWLES, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

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March 22, 2001

The Honorable Norm Rokeberg, Chair
House Judiciary Committee
State Capitol
Juneau, Alaska 99801

MAR 23 2001

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 Representative Rokeberg:

I am writing to request that you schedule a Judiciary 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 that the governor 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 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.

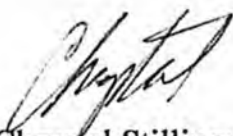
It is strongly believed by counsel to the City of San Francisco and the California Attorney General's office that the threat of treble damages under the false claims statute was the principal motivation for the bank's willingness to settle the case short of litigation.

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.

Sec. 36.30.687. Misrepresentations and fraudulent claims.

(a) A person who makes or uses in support of a contract claim under this chapter, a misrepresentation, or who practices or attempts to practice a fraud, at any stage of proceedings relating to a procurement or contract controversy under this chapter

(1) forfeits all claims relating to that procurement or contract; and

(2) is liable to the state for reimbursement of all sums paid on the claim, for all costs attributable to review of the claim, and for a civil penalty equal to the amount by which the claim is misrepresented.

(b) The procurement officer, commissioner or court shall make specific findings of misrepresentation, attempted fraud, or fraud before declaring a forfeiture under (a)(1) of this section.

(c) Suits to recover costs and penalties under (a)(2) of this section must be commenced within six years after the discovery of the misrepresentation, fraud, or attempted fraud.

(d) A person who in a matter relating to a procurement or a contract controversy or claim under this chapter makes a misrepresentation to the state through a trick, scheme, or device is guilty of a class C felony.

(e) In this section, "misrepresentation" means a false or misleading statement of material fact, or conduct intended to deceive or mislead concerning material fact, whether it succeeds in deceiving or misleading.

(§ 2 ch 106 SLA 1986)

Sec. 37.10.100. Costs of action and disposition of amount recovered.

(a) The necessary and reasonable costs of the suit and of the additional counsel shall be advanced by the state, and a sum recovered in the suit shall be deposited in the state treasury.

(b) However if the sum recovered belongs to a city, school district, or municipal government, the sum shall be transferred to it, less sums advanced by the state in the suit, and not already repaid to it. The Department of Administration may pay to the city, school district, or municipal corporation the sums belonging to it, upon warrants drawn as provided by law. The warrants must be based upon vouchers approved by the attorney general.

(§ 12-5-2 ACLA 1949)
