

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

ORIGINAL DATE 2/12/07
 LAST UPDATED 2/19/07 HB 770/HHGACS

SPONSOR Cervantes

SHORT TITLE Fraud Against Taxpayers SB _____

ANALYST Wilson

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY07	FY08	FY09		
	\$0.1	\$0.1	Recurring	General Fund

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY07	FY08	FY09	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$0.1	\$0.1	\$0.1	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Higher Education Department (HED)

State Department of Transportation (DOT)

SUMMARY

Synopsis of Bill

The House Health & Government Affairs Committee substitute for House Bill 770 enacts the enacts the "Fraud Against Taxpayers Act," providing for a private civil action on behalf of the state and in the name of the state, against a person who makes a false claim for payment by or who conspires to or actually defrauds the state or its agents.

This bill defines terms used in the Act, including the following:

- A claim is a request or demand for money, property or services when all or a portion of

the money, property or services requested or demanded issues from or is provided by a state agency.

- A person is an individual, corporation, firm, association, organization, trust, business, partnership, limited liability company, joint venture or any legal or commercial entity;
- A state is the state of New Mexico or any of its branches, agencies, departments, boards, commissions, officers, institutions or instrumentalities, including the New Mexico finance authority, the New Mexico mortgage finance authority and the New Mexico lottery authority.

HB 770/HHGACS provides that a person who violates the Act shall be liable for:

- (1) three times the amount of damages sustained by a state agency because of the violation;
- (2) a civil penalty of from \$5,000 up to and including \$10,000 for each violation;
- (3) the costs of a civil action brought to recover damages or penalties; and
- (4) reasonable attorney fees, including fees for state agency counsel.

The Act provides that a court may assess not less than two times the amount of damages sustained by the state if the court finds that three specific circumstances exist. The Act does not apply to claims, records or statements made pursuant to Chapter 7 NMSA 1978, relating to taxation.

The bill requires investigations of suspected violations of the Act by the Attorney General (AG), who may bring a civil action against a violator pursuant to the Act. The Act provides for delegation of authority to investigate or to bring a civil action from the AG to the state agency to which a false claim was made.

The bill provides for the bringing of a civil action by a qui tam plaintiff for violation of the Act on behalf of the person and the state, brought in the name of the state. Once filed, the action may be dismissed only with the written consent of the court, taking into account the best interest of the parties involved and the public purposes behind the Act. . The AG on behalf of the state may intervene and proceed with the action with 60 days after receiving the complaint, evidence and information. .

The bill: provides for awards to the qui tam plaintiff and the state when the state prevails in an action, when the state proceeds and when the plaintiff proceeds alone. The court may reduce the plaintiff's share of proceeds if the court finds that the action was brought by a person that planned or initiated the violation of the Act upon which the action was based.

If the state does not proceed with the action and the qui tam plaintiff does, the court may award a defendant reasonable attorney fees and costs if the defendant prevails and the court finds the action clearly frivolous, clearly vexatious or brought primarily for purposes of harassment.

An employer may not interfere with an employee's participation in an action under the Act, nor may an employer retaliate or discriminate in any way against an employee who discloses information in furthering an action under the Act. If an employer does retaliate or discriminate, the employer shall be liable to the employee for all relief necessary to make the employee whole, two times the amount of back pay with interest on the back pay, compensation for any special

damage sustained and, if appropriate, punitive damages. Additionally, an employer shall be required to pay the litigation costs and reasonable attorney fees of the employee.

A civil action pursuant to the Act may be brought for conduct that occurred prior to the effective date of the Act, but not for conduct that occurred prior to July 1, 1987.

The effective date of the Act is July 1, 2007.

FISCAL IMPLICATIONS

State agencies could be reimbursed for the money spent to pay false claims and for the attorneys' fees and costs for recovering this money.

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary will be proportional to the enforcement of this law and civil actions commenced under the Act. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

SIGNIFICANT ISSUES

Currently, someone who submits a false claim to a state agency has nothing to fear because there is no disadvantage in doing so. This leaves the State in the position of treating all claims in the same manner because no mechanism exists to pursue a person for filing a false claim.

The bill will provide a mechanism for the AG to file a lawsuit against a false claimant and, if successful, to receive reimbursement for a false claim that has been paid, as well as the attorney's fees and costs to recover this amount. This, in turn, will provide a financial incentive for a person not to submit a false claim.

The bill also provides a financial incentive for private parties who know a false claim has been submitted to come forward. This will allow the State to receive previously unknown information about a false claim so that it could use the mechanism provided by this bill to take action against a false claimant.

DOT notes that to combat the problem of false claims in their own jurisdictions, the Federal Government and twelve other states - California, Delaware, the District of Columbia, Florida, Hawaii, Illinois, Indiana, Massachusetts, Montana, Nevada, Tennessee, and Virginia - have passed acts which provide for the recovery of damages and penalties from a false claimant. In their legislation, both the Federal Government and these twelve states also provide a financial incentive for a private party who knows a false claim has been submitted to come forward. Thus, HB 770/HHGACS will be consistent with legislation previously passed by the Federal Government and the 12 states listed above.

HED states that the Act protects them from students who might falsify records for payment, illegally claim residency or submit false requests for student financial aid. This Act will place the State of New Mexico in line with Federal Financial Aid guidelines. Federal Financial Aid forms state, if you purposely give false or misleading information, you may be fined \$20,000, sent to prison, or both.

ADMINISTRATIVE IMPLICATIONS

The AG will have an increased case load.

OTHER SUBSTANTIVE ISSUES

The AOC provided the following:

“Qui tam” is an abbreviation of the Latin phrase “qui tam pro domino rege quam pro se ipso in hoc parte sequitur,” meaning “he who [sues] for the king as well as for himself.” A "qui tam" action is a lawsuit under a statute, which gives to the plaintiff bringing the action a part of the penalty recovered and the balance to the state. The plaintiff describes himself as suing for the state as well as for himself.

In an action brought under the Act, the state agency or the qui tam plaintiff is required to prove all elements, including damages, by a preponderance of the evidence.

DW/nt