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FISCAL IMPACT REPORT

ORIGINAL DATE 03/11/09

SPONSOR HJC LAST UPDATED _____ HB 847/HJCS

SHORT TITLE Fraud Against Taxpayers Attorney Fees & Info SB _____

ANALYST Ortiz

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
NFI	NFI		

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB2
Conflicts with SB622

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

No Responses Received From

State Treasure's Office (STO)

SUMMARY

Synopsis of Bill

The House Judiciary Committee substitute to House Bill 847 amends the Fraud Against Taxpayers Act to give the attorney general the ability to recover attorney fees and costs from proceeds of awards from qui tam civil actions filed pursuant to this act. This bill also enacts a new section of the Act that gives the attorney general the authority to issue a civil investigative demand prior to the initiation of a civil proceeding for material that the attorney general believes to be relevant to the subject matter of an investigation of a probable violation of the Act.

Below is AOC's section by section summary of the bill.

Section 2: Makes technical changes to the citation of the Fraud Against Taxpayers Act in Section 44-9-7 (C). Adds language to Section 44-9-7 (E), which provides that proceeds not awarded to a qui tam plaintiff are to be distributed, in the first level of priority, to the fund or funds from which the money, property or services came in the amount of the false claim paid plus attorney fees and costs. The new language adds the category of the attorney general's

attorney fees and costs where the attorney general's office has handled the case. After civil penalties are deposited in the current school fund, the amendment provides that the next level of priority for any remaining proceeds is one-half into a fund for the use of the office of the attorney general to provide staffing for cases arising pursuant to the Fraud Against Taxpayers Act, and one-half into the general fund.

Section 3. Makes technical changes to the citation of the Fraud Against Taxpayers Act in Section 44-9-9. Amends Section 44-9-9(D) (barred actions) which provides that pursuant to a motion by the attorney general, a court can dismiss an action under the Fraud Against Taxpayers Act if the elements of the alleged false or fraudulent claim have been publicly disclosed. The substitute tightens the language of the original bill which added other ways in which the claim can be "publicly disclosed." The new language adds disclosure in a "federal or state criminal, civil or public administrative proceeding," to the original statute's "in the news media or in a publicly disseminated governmental report at the time the complaint is filed." However, the substitute provides that such disclosure does not trigger the dismissal option for the court if the person bringing the action is an original source of the information on which the action is brought; "original source" means an individual who has direct and independent knowledge of such information.

Section 4. Enacts a new section of the Fraud Against Taxpayers Act that gives the attorney general the authority to issue a civil investigative demand prior to the initiation of a civil proceeding for material that the attorney general believes to be relevant to the subject matter of an investigation of a probable violation of the Fraud Against Taxpayers Act. The demand of the attorney general shall not be a matter of public record and shall not be published by the attorney general except by court order. The new section states certain basic requirements for the content and timing of such demands, and also requires that a demand shall not: (1) contain any requirement that would be unreasonable or improper if contained in a subpoena duces tecum issued by a court; (2) require the disclosure of any documentary material that would be privileged or for any other reason would not be required by a subpoena duces tecum issued by a court of this state; or (3) require the removal of any documentary material from the custody of the person upon whom the demand is served except in accordance with the remaining provisions, which detail service and production requirements.

Substitute Paragraph F provides that except as provided in paragraph G, no documentary material (or copies) produced pursuant to a civil investigative demand shall be produced for inspection or copying by anyone other than an authorized employee of the attorney general, nor shall the contents thereof be disclosed to anyone other than an authorized employee of the attorney general. Paragraph G provides that such documentary material may be produced for inspection or copying: (1) to other state attorneys' general for the purposes of investigation into the particular action in which the civil investigation demand was served; (2) to federal, state and other law enforcement agencies; or (3) to the qui tam plaintiff. Paragraph H provides that the person served with such a demand may file a petition to set aside or modify the demand or extend the return date in district court. Under Paragraph I, the attorney general can file in district court to enforce the demand, and the court can punish the failure to follow a resulting order as contempt.

PERFORMANCE IMPLICATIONS

According to the AGO, HB847 would help it comply with the existing requirements of the Act by directing funds received as a result of AGO participation in a suit under the Act would go to fund AGO investigation and participation in suits brought under the Act, helping the AGO comply with the requirements already imposed on it by the Act. HB847 could also help provide staff investigate and prosecute claims brought under the Act.

CONFLICT

Conflicts with SB622. Both bills tighten the requirements for a qui tam plaintiff to be “an original source” when filing an action when public disclosure has occurred. *However, Administrative Office of the Courts explains that SB622 removes the discretion of a court to dismiss cases under circumstances (making dismissal mandatory), while HB847 preserves it.* SB622 eliminates the ability of the attorney general to delegate the investigation or the bringing of a civil action to another state agency (HB847 preserves that ability), and also removes the ability of the attorney general to recover reasonable expenses and attorney fees (attorney fees are removed in general as a part of awards). HB847 strengthens the ability of the attorney general to recover costs and attorney fees.

Relates to HB2. The HAFC recommendation includes \$81.4 thousand from the general fund and 1 FTE for Qui Tam, a provision of the Fraud Against Taxpayers Act that allows private citizens to file a lawsuit in the name of the state government charging fraud by government contractors and others who receive or use government funds and share in any money recovered. The AG is charged with diligently investigating and intervening in suspected violations of the law and as of January 2009 had approximately 93 potential cases.

EO/mt:svb