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SENATE MEMORIAL 44

49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010

INTRODUCED BY

Timothy Z. Jennings

A MEMORIAL

REQUESTING ALL STATE AGENCIES AND BRANCHES OF GOVERNMENT TO ASSIST AND EXPEDITE THE RECOVERY OF STATE FUNDS PURSUANT TO THE FRAUD AGAINST TAXPAYERS ACT.

WHEREAS, in 2007, the legislature enacted the Fraud Against Taxpayers Act to provide swift and effective civil remedies whereby the state of New Mexico can recover damages if the state and state agencies have been the victim of fraud and false or fraudulent claims; and

WHEREAS, the purpose of the Fraud Against Taxpayers Act is to recover money for taxpayers and to put money back into the state treasury and other state agencies if the state has been damaged by fraudulent conduct; and

WHEREAS, the legislature enacted the Fraud Against Taxpayers Act to encourage and reward qui tam plaintiffs and

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1 counsel who are willing to undertake the risks and burdens of
2 attempting to recover money for the state of New Mexico; and

3 WHEREAS, sovereign immunity is not an obstacle to actions
4 under the Fraud Against Taxpayers Act because lawsuits under
5 the act are actions by and on behalf of the state, not against
6 the state, wherein the state as a sovereign entity is seeking
7 to recover damages; and

8 WHEREAS, the attorney general does not currently have the
9 resources to prosecute all qui tam cases, having only one staff
10 attorney to handle approximately one hundred twenty-five cases
11 pending under the federal and state qui tam statutes; and

12 WHEREAS, the state of New Mexico is facing a severe fiscal
13 crisis due to the current recession, which was caused in part
14 by abuses in the financial industry; and

15 WHEREAS, it is in the best interests of the state of New
16 Mexico to maximize its civil recoveries if the state and state
17 agencies have been victimized by violations of the Fraud
18 Against Taxpayers Act; and

19 WHEREAS, the state's ability to recover funds is
20 jeopardized if these cases are delayed; and

21 WHEREAS, it is in the interest of justice and of all
22 parties concerned that cases under the Fraud Against Taxpayers
23 Act be pursued and adjudicated as quickly as possible so that
24 the state can recover damages in appropriate cases and
25 defendants can be cleared of liability as quickly as possible

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1 if they have done nothing wrong; and

2 WHEREAS, legislation may be introduced during the 2011
3 session to expedite cases under the Fraud Against Taxpayers Act
4 on the civil docket, but such legislation is not germane in the
5 current session; and

6 WHEREAS, recoveries under the Fraud Against Taxpayers Act
7 are hampered if state agencies do not cooperate fully in
8 providing documents and evidence and testimony that might
9 support the state's efforts to recover money from persons
10 outside or inside state government who may have violated the
11 act; and

12 WHEREAS, public trust and confidence are undermined when
13 an agency fails to cooperate fully with efforts to recover
14 public money that an agency has lost;

15 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE
16 OF NEW MEXICO that all state agencies and branches of
17 government be requested to assist and expedite the recovery of
18 state funds pursuant to the Fraud Against Taxpayers Act and to
19 cooperate fully in providing documents and evidence and
20 testimony that might support the state's efforts to recover
21 money from persons who may have violated the Fraud Against
22 Taxpayers Act, whether such persons are outside or inside of
23 state government, and to expedite the adjudication of cases
24 under the Fraud Against Taxpayers Act so that defendants are
25 cleared of civil liability as soon as possible if they have not

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1 violated the act and defendants are held liable if they
2 violated the act; and

3 BE IT FURTHER RESOLVED that copies of this memorial be
4 transmitted to the governor, the attorney general, the chief
5 justice of the New Mexico supreme court, the state investment
6 council, the educational retirement board, the administrative
7 office of the courts, the risk management division of the
8 general services department and any other agency or person that
9 might support the state's effort to recover money under the
10 Fraud Against Taxpayers Act.