

JAN 22 2007

A BILL FOR AN ACT

RELATING TO THE DEPARTMENT OF THE ATTORNEY GENERAL.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature enacted the state false claims
2 act to establish a procedure for restitution of money taken from
3 the State by fraud and to create a chilling effect to discourage
4 fraud from occurring in the first place. As the chief law
5 enforcement officer in the State, the attorney general may bring
6 an action for false claims or may intervene and assume primary
7 responsibility for prosecuting an action brought by a person in
8 the name of the State. In order to accomplish this
9 responsibility, the attorney general must investigate and
10 litigate cases that are often document intensive and require the
11 services of expert witnesses, accountants, investigators, and
12 support staff. The attorney general does not have sufficient
13 resources to divert to these cases to vigorously fight fraud
14 against the government. The purpose of this Act is to establish
15 a trust fund that will provide sufficient resources for the
16 attorney general to enforce the false claims statutes. Such a
17 trust fund will yield direct benefits to the public and protect

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1 the health, safety, and welfare of the people of the State of
2 Hawaii.

3 SECTION 2. Chapter 28, Hawaii Revised Statutes, is amended
4 by adding to part I a new section to be appropriately designated
5 and to read as follows:

6 "§28- False claims trust fund. (a) There is
7 established in the state treasury the false claims trust fund,
8 into which shall be deposited:

9 (1) Thirty-three per cent of the proceeds of any action or
10 settlement by the attorney general pursuant to section
11 661-22, except where the deposit is inconsistent with
12 the court order or settlement agreement relating to
13 the amount; and

14 (2) Appropriations made by the legislature for deposit
15 into the trust fund.

16 (b) The false claims trust fund shall be administered by
17 the department of the attorney general and shall be used for
18 expenditures relating to the enforcement of false claims and qui
19 tam actions pursuant to section 661-22, including but not
20 limited to expenditures for staff, experts, training, equipment,
21 and facilitating participation in multi-state false claim
22 actions.

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1 (c) All unencumbered and unexpended moneys in excess of
2 \$1,000,000 remaining on balance in the false claim trust fund at
3 the close of June 30 of each year shall lapse to the credit of
4 the general fund.

5 (d) The department of the attorney general shall submit a
6 report to the legislature no later than twenty days prior to the
7 convening of each regular session to provide an accounting of
8 the receipts and expenditures of the fund."

9 SECTION 3. Section 661-22, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "~~+~~§661-22~~+~~ Civil actions for false claims. The
12 attorney general shall investigate any violation under section
13 661-21. If the attorney general finds that a person has
14 violated or is violating section 661-21, the attorney general
15 may bring a civil action under this section. If the attorney
16 general initiates an action or assumes control of an action
17 initiated by a private person pursuant to section 661-25, the
18 attorney general shall receive a fixed thirty-three per cent of
19 the proceeds of the action or settlement of the claim, which
20 shall be used to support the attorney general's ongoing
21 investigation and prosecution of false claims.

1 For purposes of this section, "proceeds of the action"
2 includes civil penalties as well as damages."

3 SECTION 4. Section 661-27, Hawaii Revised Statutes, is
4 amended by amending subsection (a) to read as follows:

5 "(a) If the State proceeds with an action brought by a
6 person under section 661-25, the person shall receive at least
7 fifteen per cent but not more than twenty-five per cent of the
8 proceeds of the action or settlement of the claim, depending
9 upon the extent to which the person substantially contributed to
10 the prosecution of the action. Where the action is one that the
11 court finds to be based primarily on disclosures of specific
12 information, other than information provided by the person
13 bringing the action, relating to allegations or transactions in
14 a criminal, civil, or administrative hearing, in a legislative
15 or administrative report, hearing, audit, or investigation, or
16 from the news media, the court may award sums as it considers
17 appropriate, but in no case more than ten per cent of the
18 proceeds, taking into account the significance of the
19 information and the role of the person bringing the action in
20 advancing the case to litigation. Any payment to a person under
21 this subsection shall be made from the proceeds. [+]The[+]
22 person shall also receive an amount for reasonable expenses that

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1 the court finds to have been necessarily incurred, plus
 2 reasonable attorneys' fees and costs. All reasonable expenses,
 3 fees, and costs shall be awarded against the defendant. All
 4 such reasonable expenses, fees, and costs of the person bringing
 5 the action shall be awarded against the defendant separately
 6 from the proceeds of the action or settlement of the claim."

7 SECTION 5. There is appropriated out of the false claims
 8 trust fund the sum of \$1,000,000 or so much there of as may be
 9 necessary, for fiscal year 2007-2008 to carry out the purposes
 10 of this Act.

11 The sum appropriated shall be expended by the department of
 12 the attorney general.

13 SECTION 6. Statutory material to be repealed is bracketed
 14 and stricken. New statutory material is underscored.

15 SECTION 7. This Act shall take effect on July 1, 2007.

16
 17 INTRODUCED BY: _____
 18 BY REQUEST

JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO THE DEPARTMENT OF THE ATTORNEY GENERAL.

PURPOSE: To provide the Attorney General with 33 percent of the proceeds or settlement from a false claim prosecution where the Attorney General initiates or assumes control of the action in order to provide funds to develop the requisite expertise and resources to actively pursue civil fraud perpetrated against the state. Providing the Attorney General with the resources to actively monitor state vendors should improve the public's trust in government spending.

MEANS: Add a new section to part I of chapter 28 and amend sections 661-22 and 661-27(a), Hawaii Revised Statutes.

JUSTIFICATION: Funds are not available to investigate or initiate major civil false claims on behalf of the State. To prosecute such civil actions, the Attorney General must divert current resources from pending caseloads or hire special deputies on a contingent fee or hourly basis. There are currently eleven states and the District of Columbia that have enacted general false claims statutes and seven of those states provide for attorneys' fees for the state. California, Nevada, and Tennessee award the attorney general thirty-three percent of the proceeds or settlement.

Impact on the public: The public would benefit because the state would develop the requisite expertise and have the resources to actively pursue civil fraud against the state. This pursuit will improve the public's trust in government spending.

Impact on the department and other agencies:

The department would benefit from this fund because it would provide the resources to investigate and initiate false claims perpetrated against the State. It would also provide staff and resources to become proficient in proactive actions. Other agencies would benefit because the Department of the Attorney General would have the resources to pursue their claims and recoup losses from fraud. The State would also benefit from the additional revenue that could be obtained from damage awards from false claims actions.

GENERAL FUND: No funding is required. The general fund would benefit whenever the trust fund exceeds \$1,000,000.

OTHER FUNDS: \$1,000,000.

PPBS PROGRAM DESIGNATION: ATG-100.

OTHER AFFECTED AGENCIES: Potentially all state departments and agencies.

EFFECTIVE DATE: July 1, 2007.