



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SIXTH LEGISLATURE, 2012**

ON THE FOLLOWING MEASURE:

H.B. NO. 2468, H.D. 1, RELATING TO FALSE CLAIMS TO THE STATE.

BEFORE THE:

HOUSE COMMITTEE ON FINANCE

DATE: Thursday, February 23, 2012

TIME: 06:00 p.m.

LOCATION: State Capitol, Room 308

TESTIFIER(S): David M. Louie, Attorney General, or
Michael Parrish, Deputy Attorney General

Chair Oshiro and Members of the Committee:

The Department of the Attorney General strongly supports this bill, but objects to one recent amendment to the bill, which would render it unconstitutional.

The title of this bill is "Relating to False Claims to the State". The purpose of this bill is to bring Hawaii's State false claims law into conformance with the Federal False Claims Act.

The single subject expressed in the title of this bill relates only to false claims to the State, under part II of chapter 661, Hawaii Revised Statutes. This portion of the bill will ensure that Hawaii updates its law to comply with section 1909 of the Social Security Act, which was amended by the Fraud Enforcement and Recovery Act, the Federal False Claims Act, the Affordable Care Act, the Patient Protection and Affordable Care Act, and the Dodd-Frank Wall Street Reform and Consumer Protection Act. It will enable the State to continue to retain an additional ten percent of any civil recovery in cases involving federal programs. Hawaii must comply with the federal law changes by March 31, 2013.

Part I of this bill amends part X of chapter 46, Hawaii Revised Statutes, however, which covers false claims to a county, not the State. This amendment is objectionable because it causes the bill to embrace more than one subject in violation of section 14 of article III of the Constitution of the State of Hawaii, which provides in part: "Each law shall embrace but one subject, which shall be expressed in its title." This is clearly beyond the subject matter expressed in the bill, "False Claims to the State." Chapter 46 covers false claims to the County, which is not covered in the title of this bill.

The Department respectfully requests that the proposed amendments to chapter 661 be passed, and that the proposed amendments to chapter 46 be removed from the bill.

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Rep. Marcus R. Oshiro, Chair
Rep. Marilyn B. Lee, Vice Chair
House Committee on Finance
Hawai'i State House of Representatives
Honolulu, Hawai'i 96813

Re: HB 2468, HD1
Relating to False Claims to the State

DATE: Thursday, February 23, 2012
TIME: 6:00 P.M.
PLACE: Conference Room 308
State Capitol
415 South Beretania Street

Mr. Chair and Members of the Committee:

I am Tom Grande, an attorney in private practice, and am submitting testimony in favor of this measure.

Over the past thirteen years, I have litigated false claims act cases in Hawai'i and on the mainland, in both state and federal courts. In 2000, I worked closely with then Senator Coleen Hanabusa to draft the first Hawai'i False Claims Act.

As the Committee is aware, this statute brings Hawai'i into conformance with the federal false claims act. This is beneficial not only to ensure the continued flow of monies into the state for work on federal cases, but also ensures that federal and other state case law may be followed by our courts in interpreting our statute.

As the Committee is also aware, under the federal requirements, the state must enact the same minimum protections afforded by the federal statute, but may also impose greater protections.

I have several suggested revisions:

1) I suggest that current section 661-21(a) be amended to clarify that the statute allows for the recovery of consequential damages. Consequential damages are those that flow indirectly from an injury and have been held by some courts not to be recoverable under the federal false claims act.

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Rep. Marcus R. Oshiro, Chair
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House Committee on Finance
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For example, if a contractor knowingly delivers substandard automobile parts to the State, which causes engine failure, the contractor would be liable for the cost of parts, but not for the engine replacement.

As amended that section would read:

“shall be liable to the State for a civil penalty of not less than ~~[\$5,000]~~ \$5,500 and not more than ~~[\$10,000,]~~ \$11,000, plus three times the amount of all damages, including consequential damages, that the State sustains due to the act of that person.”

This amendment is based upon a provision of the New York False Claims Act.

2) As currently drafted, Section 9 of the bill states:

SECTION 5. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before the effective date of this Act.

I suggest that section 9 be deleted in its entirety. As drafted it could be misinterpreted to apply to contracts that were negotiated before its effective date, but for which false claims were submitted after its effective date. This provision was not contained in Act 126 (2000), which was the original False Claims Act statute.

3) I would suggest that the liberal construction provision contained in Act 126 (2000) be put in place of current Section 9 as follows:

SECTION 9. The provisions of this Act are not exclusive and are in addition to any other applicable law or remedy. This Act shall be liberally construed and applied to promote the public interest.

Omission of this liberal construction provision may lead courts to conclude that the legislature did not intend to apply the same interpretative standards to the False Claims Act amendments as those that are applied to the original statute.

Thank you very much. I would be happy to make myself available to the Committee to provide any further information that may help the Committee in its consideration of this very important measure.