

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** PCB CJCP 09-01 Florida False Claims Act

**SPONSOR(S):** Civil Justice & Courts Policy Committee

**TIED BILLS:** **IDEN./SIM. BILLS:**

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	<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
Orig. Comm.:	Civil Justice & Courts Policy Committee	8 Y, 0 N	De La Paz	De La Paz
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**SUMMARY ANALYSIS**

The Florida False Claims Act authorizes civil actions by individuals and the state against persons who file false claims for payment or approval with a state agency.

This bill makes the following changes to the Florida False Claims Act:

- Removes statutory language that requires the court to award attorneys' fees and costs to a prevailing defendant against the person bringing an action under this act (this person is sometimes referred to as a "relator") when the department does not proceed with the action.
- Provides that if the department does not proceed with an action under the Florida False Claims Act the court may award the defendant its reasonable attorneys' fees and expenses if the defendant prevails in the action and the court finds that the claim of the person bringing the action was clearly frivolous, clearly vexatious, or brought primarily for purpose of harassment..

The bill has a positive fiscal impact on state government revenues. The bill does not appear to have a fiscal impact on local governments.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

The Florida False Claims Act<sup>1</sup> authorizes civil actions by individuals and the state against persons who file false claims for payment or approval with a state agency. The Florida False Claims Act is modeled after the Federal False Claims Act.

In Florida, the Florida False Claims Act has often been used to combat Medicaid fraud. An action under the Florida False Claims Act can be brought by the state itself or by private entities on behalf of the state. Actions brought by private entities on behalf of the state are called "qui tam" actions.

The Deficit Reduction Act ("DRA") of 2005 created a financial incentive for states to enact false claims acts that establish liability to the state for the submission of false or fraudulent claims to the state's Medicaid Program. The financial incentives were created in § 6031 of the DRA which enacted section 1909(b) of the Social Security Act ("SSA"). 42 U.S.C. § 1396(b). If a state's false claims act meets the requirements enumerated under § 1909(b) of the SSA, it would be entitled to an increase of 10 percentage points in the state medical assistance percentage with respect to any amounts recovered under a state action brought under such a law. In order to receive the additional 10 percentage points under the SSA, the state must meet the following requirements:

1. Establish liability to the state for false or fraudulent claims described in the False Claims Act ("FCA") with respect to any expenditures related to State Medicaid plans described in § 1903(a) of SSA;
2. Contain provisions that are at least as effective in rewarding and facilitating *qui tam* actions for false or fraudulent claims as those described in the FCA;
3. Contain a requirement for filing an action under seal for 60 days with review by the state attorney general; and,
4. Contain a civil penalty that is not less than the amount of the civil penalty authorized under the FCA.

The Florida False Claims Act currently meets most of the requirements that would entitle Florida to the financial incentives provided for in the DRA. First, Florida has established liability to the state for false or fraudulent claims. Second, the Florida False Claims Act contains a requirement that an action must

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<sup>1</sup> Sections 68.081-68.09, F.S.

be filed under seal for 60 days, and finally Florida's False Claims Act provides for civil penalties that are equal to the civil penalties authorized under the Federal False Claims Act.

In a letter issued on July 24, 2008, the Office of Inspector General of the United States Department of Health & Human Services ("HHS") informed the Office of Attorney General that Florida was not DRA complaint because the Florida False Claims Act does not contain provisions that are at least as effective in rewarding and facilitating qui tam actions for false and fraudulent claims as those described in the Federal False Claims Act, 31 U.S.C. § 3729.

The July letter states:

The Federal False Claims Act provides, that where the government does not proceed with the action, the court may award the defendant reasonable attorneys' fees and expenses if the defendant prevails in the action and the court finds that the relator's claim was clearly frivolous, clearly vexatious, or brought primarily for purpose of harassment. See 31 U.S.C. § 3730(d) (4). In contrast, the Florida False Claims Act provides that, where the state does not proceed with the action, the court shall award the defendant reasonable attorney's fees and costs against the relator if the defendant is the prevailing party. See Fla. Stat. § 68.086(3).<sup>2</sup> Based on this provision, the Florida False Claims Act is not at least as effective in rewarding and facilitating qui tam actions as the Federal False Claims Act. (emphasis added)

This bill makes the Florida False Claims Act more effective in rewarding and facilitating qui tam actions by amending the expenses and attorneys' fees provision of the act. The current provision may deter individuals from filing qui tam actions because the act requires a court to award attorneys fees and expenses to a prevailing defendant without regard for the merits of the relator's action. In addition, if the Florida False Claims Act is amended and determined to be DRA compliant, Florida will receive the financial incentives provided by the DRA.

### **Current Situation**

If the Department of Legal Affairs does not proceed with an action under this act and the defendant is the prevailing party, the court shall award the defendant reasonable attorney's fees and costs against the person bringing the action.<sup>2</sup>

### **Proposed Changes**

This bill amends the expenses and attorney's fees provision of the Florida False Claims Act, s. 68.086(3), F.S., to provide that if the department does not proceed with the action, the court may award the defendant reasonable attorneys' fees and expenses if the defendant prevails in the action *and* the court finds that the claim of the person bringing the action was clearly frivolous, clearly vexatious, or brought primarily for purpose of harassment.

#### **B. SECTION DIRECTORY:**

Section 1. Amends 68.086, F.S. relating to expenses, attorney's fees and costs.

Section 2. Provides and effective date.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

##### **1. Revenues:**

See Fiscal Comments.

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<sup>2</sup> Section 68.086(3), F.S.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

This bill will have a positive impact on state government revenues by making the Florida False Claims Act more effective in rewarding and facilitating qui tam actions. In addition, this amendment addresses the issue HHS raised when finding Florida's False Claims Act is not in compliance with the DRA. If Florida is DRA compliant it will be entitled to the financial incentives provided by the DRA. The DRA incentives would increase Florida's share of Medicaid funds recovered pursuant to the Florida False Claims Act. Florida's share of Medicaid recoveries is determined by the percentage of Medicaid costs paid by the state. Specifically, the DRA incentives would provide Florida with an additional ten percent of Medicaid recoveries obtained pursuant to the act without requiring an increase in funding to the Florida Medicaid program.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES