

Regular Session, 2012

HOUSE BILL NO. 501

BY REPRESENTATIVE LEGER

CIVIL/ACTIONS: Provides for qui tam actions in cases of misuse of public funds

1 AN ACT

2 To enact Chapter 22-B of Title 39 of the Louisiana Revises Statutes of 1950, to be
3 comprised of R.S. 39:2166 through 2166.8, relative to actions and qui tam actions;
4 to authorize actions and qui tam actions for certain matters related to the misuse of
5 public funds; to provide definitions, terms, procedures, conditions, and requirements;
6 to provide relative to damages and awards; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. Chapter 22-B of Title 39 of the Louisiana Revises Statutes of 1950,
9 comprised of R.S. 39:2166 through 2166.8, is hereby enacted to read as follows:

10 CHAPTER 22-B. MISUSE OF PUBLIC FUNDS

11 §2166. Short title

12 This Chapter shall be known and may be cited as the "Misuse of Public Funds
13 Law".

14 §2166.1. Definitions

15 As used in this Chapter, the following terms shall have the following
16 meanings:

17 (1) "Claim" means any request or demand, whether under a contract or
18 otherwise, for money or property which is made to any employee, officer, or agent
19 of the state or a local government or to any contractor, grantee, or other recipient, if
20 the state or a local government provides any portion of the money or property which

1 is requested or demanded or will reimburse such contractor, grantee, or other
2 recipient for any portion of the money or property which is requested or demanded.

3 (2) "False claim" means any claim which is, either in whole or part,
4 fraudulent, fictitious, untrue, or misleading.

5 (3) "Knowing" or "knowingly" means that, with respect to a claim or
6 information relating to a claim, a person:

7 (a) Has actual knowledge of such claim or information.

8 (b) Acts in deliberate ignorance of the truth or falsity of such claim or
9 information.

10 (c) Acts in reckless disregard of the truth or falsity of such claim or
11 information, regardless of whether there is specific proof of intent to defraud.

12 (4) "Original source" means a person who has direct and independent
13 knowledge of the information on which allegations are based and who has
14 voluntarily provided the information to a unit of state or local government before
15 filing an action under this Chapter based on the information.

16 (5) "Person" means any natural person, partnership, corporation, association,
17 or other legal entity or individual, other than a unit of state or local government.

18 §2166.2. Civil actions and procedures

19 A. The chief legal officer of a unit of state or local government may
20 investigate violations pursuant to this Chapter and, upon reasonable belief that a
21 person has violated or is in violation of this Chapter, may bring a qui tam action on
22 behalf of the people of the state of Louisiana or on behalf of a local government
23 against such person.

24 B. Any person may bring a qui tam action for a violation of this Chapter on
25 behalf of the people of the state of Louisiana or on behalf of a local government, in
26 accordance with the following procedures:

27 (1) A copy of the complaint and written disclosure of substantially all
28 material evidence and information the person possesses shall be provided to each
29 governmental unit affected by the civil action within thirty days after the complaint

1 is filed. The complaint shall remain under seal for at least sixty days, unless
2 otherwise ordered by the court, and may not be served on the defendant until the
3 court so orders. An affected governmental unit may elect to supersede or intervene
4 and proceed with the action, to take no action, or to take joint action with other
5 governmental units that may have sustained damages, and shall do so within sixty
6 days after it receives both the complaint and the material evidence and information.
7 The chief legal officer of a unit of state or local government may, for good cause
8 shown and supported by affidavits or other submissions, move the court for
9 extensions of the time during which the complaint remains under seal.

10 (2) Prior to the expiration of the sixty-day period or any extensions obtained
11 pursuant to Paragraph (1) of this Subsection, the chief legal officer of a governmental
12 unit shall notify the court of the intent to:

13 (i) File a complaint against the defendant on behalf of the people of the state
14 of Louisiana or a local government, and thereby be substituted as the plaintiff in the
15 action and convert the action in all respects from a qui tam action brought by a
16 private person into a governmental enforcement action by a chief legal officer
17 pursuant to Paragraph (1) of this Subsection.

18 (ii) Intervene in such action, as of right, so as to aid and assist the plaintiff
19 in the action.

20 (iii) Decline to participate in the action.

21 (3) When a chief legal officer notifies the court that it intends to file a
22 complaint against the defendant and thereby be substituted as the plaintiff in the
23 action, such complaint shall be filed within thirty days after the notification to the
24 court.

25 (4) When a chief legal officer notifies the court that it intends to intervene
26 in the action, then such motion for intervention shall be filed within thirty days after
27 the notification to the court.

28 (5) When the chief legal officer of an affected governmental unit declines
29 to participate in the action, the qui tam action may proceed subject to judicial review.

1 C. When a chief legal officer decides to participate in a qui tam action, the
2 court shall order that the qui tam complaint be unsealed and served at the time of the
3 filing of the complaint or intervention motion by the unit of state or local
4 government. After the complaint is unsealed, or if a complaint is filed by a chief
5 legal officer pursuant to Paragraph (1) of this Subsection, the defendant shall be
6 served with the complaint and summons. A copy of any complaint which alleges
7 that damages were sustained by a unit of state or local government shall also be
8 served on other governmental units that may have suffered damages. The defendant
9 shall respond to the summons and complaint within thirty days.

10 D. When a person brings a qui tam action pursuant to this Section, no person
11 other than a chief legal officer may intervene or bring a related civil action based
12 upon the facts underlying the pending action, unless such other person has first
13 obtained the permission of a chief legal officer to intervene or to bring such related
14 action. Nothing in this Section may be deemed to deny any person the right, upon
15 leave of court, to file briefs amicus curiae.

16 E.(1) Each legal representative in the qui tam action represents only the
17 interests of its client. When a chief legal officer supercedes or intervenes in an
18 action, the governmental unit has exclusive responsibility for prosecuting the action.
19 When more than one governmental unit supercedes or intervenes in an action, the
20 governmental units have joint responsibility for prosecuting the action. Under no
21 circumstances shall a unit of state or a local government be bound by an act of the
22 person bringing the original action. Such person may continue as a party to the
23 action, subject to the limitations set forth in Paragraph (2) of this Subsection. Under
24 no circumstances shall one governmental unit be bound by the act of another
25 governmental unit that supercedes or intervenes in an action involving damages to
26 both governmental units. When no governmental unit supercedes or intervenes in
27 the qui tam action, the qui tam plaintiff is responsible for prosecuting the action,
28 subject to a chief legal officer's right to supercede or intervene at a later date upon
29 a showing of good cause.

1 (2)(i) A governmental unit may move to dismiss the action, notwithstanding
2 the objections of the person initiating the action. The person shall be served with the
3 motion to dismiss, and the court shall provide the person with an opportunity to be
4 heard on the motion.

5 (ii) A governmental unit may settle the action with the defendant,
6 notwithstanding the objections of the person initiating the action, if the court
7 determines, after the person initiating the action has had an opportunity to be heard,
8 that the proposed settlement is fair, adequate, and reasonable with respect to all
9 parties. Upon a showing of good cause, such opportunity to be heard may be held
10 in camera.

11 (iii) Upon a showing by a chief legal officer that the original plaintiff's
12 unrestricted participation during the course of the litigation would interfere with or
13 unduly delay the prosecution of the case, or upon a showing by the defendant that the
14 original qui tam plaintiff's unrestricted participation during the course of the
15 litigation would be for purposes of harassment, the court may impose limitations on
16 the original plaintiff's participation in the case, such as:

17 (a) Limiting the number of witnesses the person may call.

18 (b) Limiting the length of the testimony of such witnesses.

19 (c) Limiting the person's cross-examination of witnesses.

20 (d) Otherwise limiting the person's participation in the litigation.

21 (3) Notwithstanding any other provision of law and whether or not a chief
22 legal officer elects to supercede or intervene in a qui tam action, a chief legal officer
23 may pursue any remedy available with respect to the criminal or civil prosecution of
24 the presentation of false claims, including any administrative proceeding to
25 determine a civil monetary penalty, or may refer the matter to other departments of
26 state or local government with jurisdiction over the claim. If any such alternate civil
27 remedy is pursued in another proceeding, the person initiating the qui tam action has
28 the same rights in such alternate civil proceeding as such person would have if the
29 action had continued under this Section.

1 (4) Notwithstanding any other provision of law and whether or not a chief
2 legal officer elects to supercede or intervene in a qui tam action, upon a showing by
3 the governmental unit that certain actions of discovery by the person initiating the
4 action would interfere with the governmental unit's investigation or prosecution of
5 a criminal or civil matter arising out of the same facts, the court may stay such
6 discovery for a period of not more than sixty days. The court may extend the period
7 of such stay upon a further showing that the governmental unit has pursued the
8 criminal or civil investigation or proceedings with reasonable diligence and that any
9 proposed discovery in the civil action will interfere with the ongoing criminal or civil
10 investigation or proceedings.

11 §2166.3. False or fraudulent claim liability

12 The court may assess liability against a person who does any of the
13 following:

14 (1) Knowingly presents or causes to be presented to any employee, officer,
15 or agent of the state or a local government, a false or fraudulent claim for payment
16 or approval.

17 (2) Knowingly makes, uses, or causes to be made or used a false record or
18 statement to get a false or fraudulent claim paid or approved by the state or a local
19 government.

20 (3) Conspires to defraud the state or a local government by getting a false or
21 fraudulent claim allowed or paid.

22 (4) Has possession, custody, or control of property or money used or to be
23 used by the state or a local government and, intending to defraud the state or a local
24 government or willfully to conceal the property or money, delivers or causes to be
25 delivered less property or money than the amount for which the person receives
26 certificate or receipt.

27 (5) Is authorized to make or deliver a document certifying receipt of property
28 used or to be used by the state or a local government and, intending to defraud the

1 state or a local government, makes or delivers the receipt knowing that information
2 on the receipt is not true.

3 (6) Buys or receives as a pledge of an obligation or debt public property
4 from an officer or employee of the state or a local government, knowing that the
5 officer or employee lawfully may not sell or pledge the property.

6 (7) Knowingly makes, uses, or causes to be made or used a false record or
7 statement to conceal, avoid, or decrease an obligation to pay or transmit money or
8 property to the state or a local government.

9 §2166.4. Civil monetary penalty and recovery

10 A. Upon finding of liability, the court may order the person to pay:

11 (1) To the state, a civil penalty of not less than five thousand dollars and not
12 more than ten thousand dollars, plus three times the amount of damages which the
13 state sustains because of the act of that person.

14 (2) To any local government, three times the amount of damages sustained
15 by such local government because of the act of that person.

16 B. The court may waive recovery, except for actual damages, if the court
17 finds that:

18 (1) The person committing the violation of this Section furnished all
19 information known to such person about the violation to those officials responsible
20 for investigating false claims violations on behalf of the governmental unit that
21 sustained damages, within thirty days after the date on which such person first
22 obtained the information.

23 (2) The person fully cooperated with any government investigation of such
24 violation.

25 (3) At the time the person furnished information about the violation, no
26 criminal prosecution, civil action, or administrative action had commenced with
27 respect to such violation, and the person did not have actual knowledge of the
28 existence of an investigation into such violation.

1 C. A person who violates the provisions of this Section shall also be liable
2 for attorney fees and costs of a civil action brought to recover any such penalty or
3 damages.

4 §2166.5. Recovery awarded to qui tam plaintiff

5 A. When a chief legal officer supercedes or intervenes in the qui tam action,
6 the person or persons who initiated the qui tam action may receive collectively
7 between fifteen and twenty-five percent of the proceeds recovered in the action or
8 in settlement of the action. The court shall determine the percentage of the proceeds
9 to which a person commencing a qui tam civil action is entitled by considering the
10 extent to which the plaintiff substantially contributed to the prosecution of the action.
11 When the court finds that an action was based primarily on public disclosures of
12 information relating to allegations or transactions in a criminal, civil, or
13 administrative hearing, in a legislative or administrative report, hearing, audit, or
14 investigation prepared by the state or by one of its local governmental units, or from
15 the news media, the court may only award sums if the person or persons bringing the
16 action is an original source of the information.

17 B. When a chief legal officer does not supercede or intervene in the action,
18 the person or persons who initiated the qui tam action may receive between
19 twenty-five and thirty percent of the proceeds recovered in the action or settlement
20 of the action. The court shall determine the percentage of the proceeds to which a
21 person commencing a qui tam action is entitled by considering the extent to which
22 the plaintiff substantially contributed to the prosecution of the action.

23 C. In any action brought pursuant to this Chapter, the court shall determine
24 the percentage of the proceeds to which a unit of state or local government is entitled
25 in accordance with R.S. 39:2166.4 by considering the extent of the governmental
26 unit's interest and the role of the governmental unit in prosecution of the action.

27 D. With the exception of a court award of costs, expenses, or attorney fees,
28 any payment to a person pursuant to this Section shall be made from the proceeds.

1 E. In any action brought pursuant to this Chapter, the court may award an
2 amount for reasonable expenses that the court finds to have been necessarily
3 incurred, plus reasonable attorney fees, and costs. All such expenses, fees, and costs
4 shall be awarded directly against the defendant and shall not be charged from the
5 proceeds, but may only be awarded if the governmental unit or the qui tam action
6 plaintiff prevails in whole or in part in the action.

7 F. When the court finds that the qui tam action was brought by a person who
8 planned or initiated the violation of this Chapter upon which the action was brought,
9 then the court may reduce the share of the proceeds that person would otherwise be
10 entitled to receive, taking into account the role of such person in advancing the case
11 to litigation and any relevant circumstances pertaining to the violation. When the
12 person bringing the qui tam action is convicted of criminal conduct arising from a
13 role in the violation of this Chapter, that person shall be dismissed from the qui tam
14 action and shall not receive any share of the proceeds of the action. Such dismissal
15 does not prejudice the right of a chief legal officer to supercede or intervene in such
16 action and to prosecute the same on behalf of a unit of state or local government.

17 G. No governmental unit shall be liable for any expenses that any person
18 incurs in bringing a qui tam action pursuant to this Chapter.

19 §2166.6. Limitation of actions

20 A civil action provided by this Chapter shall be commenced no later than six
21 years after the date on which the violation of this Chapter is committed or not more
22 than three years after the date when facts material to the right of action are known
23 or reasonably should have been known by the official of the unit of state or local
24 government charged with responsibility to act in the circumstances, whichever
25 occurs later. An action provided by this Chapter shall commence by the filing of the
26 complaint.

27 §2166.7. Whistleblower protection and cause of action

28 A. An employee who is discharged, demoted, suspended, threatened,
29 harassed, or in any other manner discriminated against in the terms and conditions

1 of employment by a public or private employer because of lawful acts done by the
 2 employee on behalf of the employer or others in furtherance of an action brought
 3 pursuant to this Chapter, including investigating, initiating, testifying, or assisting
 4 in an action filed or to be filed under this Chapter, is entitled to all relief necessary
 5 to make the employee whole. Such relief may include but is not limited to:

6 (1) An injunction to restrain continued discrimination.

7 (2) Reinstatement to the position the employee would have had but for the
 8 discrimination or to an equivalent position.

9 (3) Reinstatement of full employment benefits and seniority rights.

10 (4) Payment of two times back pay, plus interest.

11 (5) Compensation for any special damages sustained as a result of the
 12 discrimination, including litigation costs and reasonable attorney fees.

13 B. An employee described in this Section may bring an action in the
 14 appropriate court for relief.

15 §2166.8. Regulations

16 The chief legal officer of a unit of state or local government may adopt rules
 17 and regulations as necessary to effectuate the purposes of this Chapter.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Leger

HB No. 501

Abstract: Creates the "Misuse of Public Funds Law". Prohibits false or fraudulent claims in relation to obtaining money or property from public funds and authorizes civil actions by the chief legal officer or by persons to recover amounts obtained in violation of the "Misuse of Public Funds Law".

Proposed law provides for the "Misuse of Public Funds Law".

Proposed law defines "claim", "false claim", "knowing" or "knowingly", "original source", and "person".

Proposed law authorizes the chief legal officer of a unit of state or local government to investigate violations of the Misuse of Public Funds Law upon reasonable belief that a person has violated or is in violation of the law, and provides that he may bring a qui tam action on behalf of the people of the state of La. or on behalf of a local government.

Proposed law authorizes any person to bring a qui tam action for a violation of the Misuse of Public Funds Law on behalf of the people of the state of La. or on behalf of a local government, and sets forth the procedures for bringing such an action, including providing copies of all evidence to each governmental unit within 30 days of filing the complaint.

Proposed law provides that the complaint the complaint shall remain under seal for at least 60 days, and may not be served on the defendant until the court so orders, but also provides that an affected governmental unit may elect to supercede or intervene and proceed with the action, to take no action, or to take joint action with other governmental units.

Proposed law provides that an affected governmental unit shall elect to supercede, intervene, or take other action within 60 days after it receives both the complaint and the material evidence and information, and provides additional procedures for proceeding with the action.

Proposed law requires the court to unseal the complaint when a chief legal officer decides to participate in a qui tam action, and provides that if a complaint is filed by a chief legal officer, the defendant shall be served with the complaint and summons, and the defendant shall respond to the summons and complaint within 30 days.

Proposed law prohibits anyone other than the chief legal officer from intervening in the qui tam action unless the chief legal officer gives such permission.

Proposed law provides additional procedures for dismissal and settlement of the action.

Proposed law provides for limiting the participation of the original plaintiff upon a showing that the original plaintiff's unrestricted participation would interfere with or unduly delay the prosecution of the case, or upon a showing by the defendant that the original qui tam plaintiff's unrestricted participation during the course of the litigation would be for purposes of harassment.

Proposed law provides for factors by which the court may assess liability against a person in violation of proposed law.

Proposed law provides that, upon a finding of liability, the court may order the person to pay to the state a civil penalty of not less than \$5,000 and not more than \$10,000, plus three times the amount of damages which the state sustained, and may order the person to pay to any local government three times the amount of damages sustained by such local government.

Proposed law authorizes the court to waive recovery, except for actual damages, if the court finds that:

- (1) The person committing the violation furnished all information known to such person about the violation to those officials responsible for investigating false claims violations on behalf of the governmental unit that sustained damages, within 30 days after the date on which such person first obtained the information.
- (2) The person fully cooperated with any government investigation of such violation.
- (3) At the time the person furnished information about the violation, no criminal prosecution, civil action, or administrative action had commenced with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into such violation.

Provides that a person who violates proposed law is also liable for attorney fees and costs of a civil action brought to recover any such penalty or damages.

Proposed law provides that when a chief legal officer supercedes or intervenes in the qui tam action, then the person who initiated the qui tam action may receive collectively between 15% and 25% of the proceeds recovered in the action or in settlement of the action, and provides that the court shall determine the percentage awarded.

Proposed law provides that when a chief legal officer does not supercede or intervene in the action, then the person who initiated the qui tam action may receive between 25% and 30% of the proceeds recovered in the action or settlement of the action, and provides that the court shall determine the percentage awarded.

Proposed law provides that the court may award an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorney fees, and costs.

Proposed law provides that when the court finds that the qui tam action was brought by a person who planned or initiated the violation upon which the action was brought, then the court may reduce the share of the proceeds that person would otherwise be entitled to receive, taking into account the role of such person in advancing the case to litigation and any relevant circumstances pertaining to the violation.

Proposed law provides that when the person bringing the qui tam action is convicted of criminal conduct arising from a role in the violation, that person shall be dismissed from the qui tam action and shall not receive any share of the proceeds of the action.

Provides that no governmental unit is liable for any expenses that any person incurs in bringing a qui tam action under proposed law.

Provides that a civil action under proposed law shall be commenced no later than six years after the date on which the violation is committed or not more than three years after the date when facts material to the right of action are known or reasonably should have been known by the official of the unit of state or local government charged with responsibility to act in the circumstances, whichever occurs later.

Proposed law provides that an employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by a public or private employer because of lawful acts done by the employee on behalf of the employer or others in furtherance of an action brought under proposed law, is entitled to all relief necessary to make the employee whole.

Proposed law provides that relief necessary to make the employee whole includes:

- (1) An injunction to restrain continued discrimination.
- (2) Reinstatement to the position the employee would have had but for the discrimination or to an equivalent position.
- (3) Reinstatement of employment benefits and seniority rights.
- (4) Payment of two times back pay, plus interest.
- (5) Compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorney fees.

Provides that the chief legal officer of a unit of state or local government may adopt rules and regulations as necessary to effectuate the purposes of proposed law.

(Adds R.S. 39:2166-2166.8)