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AN ACT

RELATING TO FRAUD AGAINST TAXPAYERS; CLARIFYING THAT THE
FRAUD AGAINST TAXPAYERS ACT APPLIES TO POLITICAL SUBDIVISIONS
AND CHARTER SCHOOLS AS WELL AS THE STATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 44-9-2 NMSA 1978 (being Laws 2007,
Chapter 40, Section 2) is amended to read:

"44-9-2. DEFINITIONS.--As used in the Fraud Against
Taxpayers Act:

A. "claim" means a request or demand for money,
property or services when all or a portion of the money,
property or services requested or demanded issues from or is
provided or reimbursed by the state or a political
subdivision;

B. "employer" includes an individual, corporation,
firm, association, business, partnership, organization,
trust, charter school and the state and any of its agencies,
institutions or political subdivisions;

C. "knowingly" means that a person, with respect
to information, acts:

(1) with actual knowledge of the truth or
falsity of the information;

(2) in deliberate ignorance of the truth or
falsity of the information; or

1 (3) in reckless disregard of the truth or
2 falsity of the information;

3 D. "person" means an individual, corporation,
4 firm, association, organization, trust, business,
5 partnership, limited liability company, joint venture or any
6 legal or commercial entity;

7 E. "political subdivision" means a political
8 subdivision of the state or a charter school; and

9 F. "state" means the state of New Mexico or any of
10 its branches, agencies, departments, boards, commissions,
11 officers, institutions or instrumentalities, including the
12 New Mexico finance authority, the New Mexico mortgage finance
13 authority and the New Mexico lottery authority."

14 SECTION 2. Section 44-9-3 NMSA 1978 (being Laws 2007,
15 Chapter 40, Section 3) is amended to read:

16 "44-9-3. FALSE CLAIMS--LIABILITY--PENALTIES--
17 EXCEPTION.--

18 A. A person shall not:

19 (1) knowingly present, or cause to be
20 presented, to an employee, officer or agent of the state or a
21 political subdivision or to a contractor, grantee or other
22 recipient of state or political subdivision funds a false or
23 fraudulent claim for payment or approval;

24 (2) knowingly make or use, or cause to be
25 made or used, a false, misleading or fraudulent record or

1 statement to obtain or support the approval of or the payment
2 on a false or fraudulent claim;

3 (3) conspire to defraud the state or a
4 political subdivision by obtaining approval or payment on a
5 false or fraudulent claim;

6 (4) conspire to make, use or cause to be
7 made or used, a false, misleading or fraudulent record or
8 statement to conceal, avoid or decrease an obligation to pay
9 or transmit money or property to the state or a political
10 subdivision;

11 (5) when in possession, custody or control
12 of property or money used or to be used by the state or a
13 political subdivision, knowingly deliver or cause to be
14 delivered less property or money than the amount indicated on
15 a certificate or receipt;

16 (6) when authorized to make or deliver a
17 document certifying receipt of property used or to be used by
18 the state or a political subdivision, knowingly make or
19 deliver a receipt that falsely represents a material
20 characteristic of the property;

21 (7) knowingly buy, or receive as a pledge of
22 an obligation or debt, public property from any person that
23 may not lawfully sell or pledge the property;

24 (8) knowingly make or use, or cause to be
25 made or used, a false, misleading or fraudulent record or

1 statement to conceal, avoid or decrease an obligation to pay
2 or transmit money or property to the state or a political
3 subdivision; or

4 (9) as a beneficiary of an inadvertent
5 submission of a false claim and having subsequently
6 discovered the falsity of the claim, fail to disclose the
7 false claim to the state or political subdivision within a
8 reasonable time after discovery.

9 B. Proof of specific intent to defraud is not
10 required for a violation of Subsection A of this section.

11 C. A person who violates Subsection A of this
12 section shall be liable for:

13 (1) three times the amount of damages
14 sustained by the state or political subdivision because of
15 the violation;

16 (2) a civil penalty of not less than five
17 thousand dollars (\$5,000) and not more than ten thousand
18 dollars (\$10,000) for each violation;

19 (3) the costs of a civil action brought to
20 recover damages or penalties; and

21 (4) reasonable attorney fees, including the
22 fees of the attorney general, state agency or political
23 subdivision counsel.

24 D. A court may assess not less than two times the
25 amount of damages sustained by the state or a political

1 subdivision if the court finds all of the following:

2 (1) the person committing the violation
3 furnished the attorney general or political subdivision with
4 all information known to that person about the violation
5 within thirty days after the date on which the person first
6 obtained the information;

7 (2) at the time that the person furnished
8 the attorney general or political subdivision with
9 information about the violation, a criminal prosecution,
10 civil action or administrative action had not been commenced
11 with respect to the violation, and the person did not have
12 actual knowledge of the existence of an investigation into
13 the violation; and

14 (3) the person fully cooperated with any
15 investigation by the attorney general or political
16 subdivision.

17 E. This section does not apply to claims, records
18 or statements made pursuant to the provisions of Chapter 7
19 NMSA 1978."

20 SECTION 3. Section 44-9-4 NMSA 1978 (being Laws 2007,
21 Chapter 40, Section 4) is amended to read:

22 "44-9-4. INVESTIGATION BY THE ATTORNEY GENERAL--
23 DELEGATION--CIVIL ACTION.--

24 A. The attorney general shall diligently
25 investigate suspected violations of Section 44-9-3 NMSA 1978,

1 and if the attorney general finds that a person has violated
2 or is violating that section, the attorney general may bring
3 a civil action against that person pursuant to the Fraud
4 Against Taxpayers Act.

5 B. The attorney general may in appropriate cases
6 delegate the authority to investigate or to bring a civil
7 action to the state agency or political subdivision to which
8 a false claim was made, and when this occurs, the state
9 agency or political subdivision shall have every power
10 conferred upon the attorney general pursuant to the Fraud
11 Against Taxpayers Act. If the attorney general has delegated
12 authority to a state agency or political subdivision, all
13 references to the attorney general in the Fraud Against
14 Taxpayers Act shall apply to the delegee."

15 SECTION 4. Section 44-9-5 NMSA 1978 (being Laws 2007,
16 Chapter 40, Section 5) is amended to read:

17 "44-9-5. CIVIL ACTION BY QUI TAM PLAINTIFF--STATE OR
18 POLITICAL SUBDIVISION MAY INTERVENE.--

19 A. A person may bring a civil action for a
20 violation of Section 44-9-3 NMSA 1978 on behalf of the person
21 and the state or political subdivision. The action shall be
22 brought in the name of the state or political subdivision.
23 The person bringing the action shall be referred to as the
24 qui tam plaintiff. Once filed, the action may be dismissed
25 only with the written consent of the court, taking into

1 account the best interest of the parties involved and the
2 public purposes behind the Fraud Against Taxpayers Act.

3 B. A complaint filed by a qui tam plaintiff shall
4 be filed in camera in district court and shall remain under
5 seal for at least sixty days. No service shall be made on a
6 defendant and no response is required from a defendant until
7 the seal has been lifted and the complaint served pursuant to
8 the rules of civil procedure.

9 C. On the same day as the complaint is filed, the
10 qui tam plaintiff shall serve the attorney general, and the
11 political subdivision, if applicable, with a copy of the
12 complaint and written disclosure of substantially all
13 material evidence and information the qui tam plaintiff
14 possesses. The attorney general on behalf of the state or
15 the political subdivision, or the political subdivision on
16 its own behalf, may intervene and proceed with the action
17 within sixty days after receiving the complaint and the
18 material evidence and information. Upon a showing of good
19 cause and reasonable diligence in the state's or political
20 subdivision's investigation, the state or political
21 subdivision may move the court for an extension of time
22 during which the complaint shall remain under seal.

23 D. Before the expiration of the sixty-day period
24 or any extensions of time granted by the court, the attorney
25 general or political subdivision shall notify the court that

1 the state or the political subdivision:

2 (1) intends to intervene and proceed with
3 the action; in which case, the seal shall be lifted and the
4 action shall be conducted by the attorney general on behalf
5 of the state or the political subdivision, or the political
6 subdivision shall conduct the action on its own behalf; or

7 (2) declines to take over the action; in
8 which case the seal shall be lifted and the qui tam plaintiff
9 may proceed with the action.

10 E. When a person brings an action pursuant to this
11 section, no person other than the attorney general on behalf
12 of the state or a political subdivision, or a political
13 subdivision on its own behalf, may intervene or bring a
14 related action based on the facts underlying the pending
15 action."

16 SECTION 5. Section 44-9-6 NMSA 1978 (being Laws 2007,
17 Chapter 40, Section 6) is amended to read:

18 "44-9-6. RIGHTS OF THE QUI TAM PLAINTIFF AND THE STATE
19 OR POLITICAL SUBDIVISION.--

20 A. If the state or political subdivision proceeds
21 with the action, it shall have the primary responsibility of
22 prosecuting the action and shall not be bound by an act of
23 the qui tam plaintiff. The qui tam plaintiff shall have the
24 right to continue as a party to the action, subject to the
25 limitations of this section.

1 B. The state or political subdivision may seek to
2 dismiss the action for good cause notwithstanding the
3 objections of the qui tam plaintiff if the qui tam plaintiff
4 has been notified of the filing of the motion and the court
5 has provided the qui tam plaintiff with an opportunity to
6 oppose the motion and to present evidence at a hearing.

7 C. The state or political subdivision may settle
8 the action with the defendant notwithstanding any objection
9 by the qui tam plaintiff if the court determines, after a
10 hearing providing the qui tam plaintiff an opportunity to
11 present evidence, that the proposed settlement is fair,
12 adequate and reasonable under all of the circumstances.

13 D. Upon a showing by the state or political
14 subdivision that unrestricted participation during the course
15 of the litigation by the qui tam plaintiff would interfere
16 with or unduly delay the prosecution of the case, or would be
17 repetitious, irrelevant or for the purpose of harassment, the
18 court may, in its discretion, impose limitations on the qui
19 tam plaintiff's participation, such as:

20 (1) limiting the number of witnesses the qui
21 tam plaintiff may call;

22 (2) limiting the length of testimony of such
23 witnesses;

24 (3) limiting the qui tam plaintiff's cross
25 examination of witnesses; or

1 (4) otherwise limiting the qui tam
2 plaintiff's participation in the litigation.

3 E. Upon a showing by a defendant that unrestricted
4 participation during the course of litigation by the qui tam
5 plaintiff would be for purposes of harassment or would cause
6 the defendant undue burden or unnecessary expense, the court
7 may limit the participation by the qui tam plaintiff in the
8 litigation.

9 F. If the state or political subdivision elects
10 not to proceed with the action, the qui tam plaintiff shall
11 have the right to conduct the action. If the attorney
12 general or political subdivision so requests, the qui tam
13 plaintiff shall serve the attorney general or political
14 subdivision with copies of all pleadings filed in the action
15 and all deposition transcripts in the case, at the state's or
16 political subdivision's expense. When the qui tam plaintiff
17 proceeds with the action, the court, without limiting the
18 status and rights of the qui tam plaintiff, may permit the
19 attorney general or political subdivision to intervene at a
20 later date upon a showing of good cause.

21 G. Whether or not the state or political
22 subdivision proceeds with the action, upon a showing by the
23 attorney general on behalf of the state or political
24 subdivision, or a political subdivision on its own behalf,
25 that certain actions of discovery by the qui tam plaintiff

1 would interfere with an investigation or prosecution of a
2 criminal or civil matter arising out of the same facts, the
3 court may stay such discovery for a period of not more than
4 sixty days. The showing by the state or political
5 subdivision shall be conducted in camera. The court may
6 extend the sixty-day period upon a further showing in camera
7 that the state or political subdivision has pursued the
8 criminal or civil investigation or proceeding with reasonable
9 diligence and any proposed discovery in the civil action will
10 interfere with the ongoing criminal or civil investigation or
11 proceeding.

12 H. Notwithstanding the provisions of Section
13 44-9-5 NMSA 1978, the attorney general or political
14 subdivision may elect to pursue the state's or political
15 subdivision's claim through any alternate remedy available,
16 including an administrative proceeding to determine a civil
17 money penalty. If an alternate remedy is pursued, the qui
18 tam plaintiff shall have the same rights in such a proceeding
19 as the qui tam plaintiff would have had if the action had
20 continued pursuant to this section. A finding of fact or
21 conclusion of law made in the other proceeding that has
22 become final shall be conclusive on all parties to an action
23 under the Fraud Against Taxpayers Act. For purposes of this
24 subsection, a finding or conclusion is final if it has been
25 finally determined on appeal to the appropriate court, if all

1 time for filing an appeal with respect to the finding or
2 conclusion has expired or if the finding or conclusion is not
3 subject to judicial review."

4 SECTION 6. Section 44-9-7 NMSA 1978 (being Laws 2007,
5 Chapter 40, Section 7) is amended to read:

6 "44-9-7. AWARDS TO QUI TAM PLAINTIFF AND THE STATE OR
7 POLITICAL SUBDIVISION.--

8 A. Except as otherwise provided in this section,
9 if the state or a political subdivision proceeds with an
10 action brought by a qui tam plaintiff and the state or
11 political subdivision prevails in the action, the qui tam
12 plaintiff shall receive:

13 (1) at least fifteen percent but not more
14 than twenty-five percent of the proceeds of the action or
15 settlement, depending upon the extent to which the qui tam
16 plaintiff substantially contributed to the prosecution of the
17 action; or

18 (2) no more than ten percent of the proceeds
19 of the action or settlement if the court finds that the
20 action was based primarily on disclosures of specific
21 information, not provided by the qui tam plaintiff, relating
22 to allegations or transactions in a criminal, civil,
23 administrative or legislative hearing, proceeding, report,
24 audit or investigation or from the news media, taking into
25 account the significance of the information and the role of

1 the qui tam plaintiff in advancing the case to litigation.
2 However, if the attorney general or political subdivision
3 determines and certifies in writing that the qui tam
4 plaintiff provided a significant contribution in advancing
5 the case, then the qui tam plaintiff shall receive the share
6 of proceeds set forth in Paragraph (1) of this subsection.

7 B. If the state or political subdivision does not
8 proceed with an action brought by a qui tam plaintiff and the
9 state or political subdivision prevails in the action, the
10 qui tam plaintiff shall receive an amount that is not less
11 than twenty-five percent or more than thirty percent of the
12 proceeds of the action or settlement, as the court deems
13 reasonable for collecting the civil penalty and damages.

14 C. Whether or not the state or political
15 subdivision proceeds with an action brought by a qui tam
16 plaintiff:

17 (1) if the court finds that the action was
18 brought by a person that planned or initiated the violation
19 of Section 44-9-3 NMSA 1978 upon which the action was based,
20 the court may reduce the share of the proceeds that the
21 person would otherwise receive under Subsection A or B of
22 this section, taking into account the role of the person as
23 the qui tam plaintiff in advancing the case to litigation and
24 any relevant circumstances pertaining to the violation; or

25 (2) if the person bringing the action is

1 convicted of criminal conduct arising from that person's role
2 in the violation of Section 44-9-3 NMSA 1978 upon which the
3 action was based, that person shall be dismissed from the
4 civil action and shall not receive a share of the proceeds.
5 The dismissal shall not prejudice the right of the state or
6 political subdivision to continue the action.

7 D. Any award to a qui tam plaintiff shall be paid
8 out of the proceeds of the action or settlement, if any. The
9 qui tam plaintiff shall also receive an amount for reasonable
10 expenses incurred in the action plus reasonable attorney fees
11 that shall be paid by the defendant.

12 E. The state or political subdivision is entitled
13 to all proceeds collected in an action or settlement not
14 awarded to a qui tam plaintiff. The state or political
15 subdivision is also entitled to reasonable expenses incurred
16 in the action plus reasonable attorney fees, including the
17 fees of the attorney general or state agency counsel or
18 counsel employed by the political subdivision that shall be
19 paid by the defendant.

20 F. Proceeds and penalties collected by the state
21 or political subdivision shall be deposited as follows:

22 (1) proceeds in the amount of the false
23 claim paid and attorney fees and costs shall be returned to
24 the fund or funds from which the money, property or services
25 came;

1 (2) civil penalties shall be deposited in
2 the current school fund pursuant to Article 12, Section 4 of
3 the constitution of New Mexico;

4 (3) except as provided in Paragraph (4) of
5 this subsection, all remaining proceeds shall be deposited as
6 follows:

7 (a) one-half into a fund for the use of
8 the attorney general in furtherance of the obligations
9 imposed upon that office by the Fraud Against Taxpayers Act;
10 and

11 (b) one-half into the general fund; or

12 (4) remaining proceeds collected by counties
13 or municipalities as political subdivisions acting on their
14 own behalf shall be disposed of in accordance with the
15 direction of the governing body of the county or
16 municipality."

17 SECTION 7. Section 44-9-8 NMSA 1978 (being Laws 2007,
18 Chapter 40, Section 8) is amended to read:

19 "44-9-8. AWARD OF ATTORNEY FEES AND COSTS TO
20 DEFENDANT.--If the state or political subdivision does not
21 proceed with the action and the qui tam plaintiff conducts
22 the action, the court may award a defendant reasonable
23 attorney fees and costs if the defendant prevails and the
24 court finds the action clearly frivolous, clearly vexatious
25 or brought primarily for the purpose of harassment."

1 SECTION 8. Section 44-9-9 NMSA 1978 (being Laws 2007,
2 Chapter 40, Section 9) is amended to read:

3 "44-9-9. CERTAIN ACTIONS BARRED.--

4 A. No court shall have jurisdiction over an action
5 brought pursuant to Section 44-9-5 NMSA 1978 by a present or
6 former employee of the state or political subdivision unless
7 the employee, during employment with the state or political
8 subdivision and in good faith, exhausted existing internal
9 procedures for reporting false claims and the state or
10 political subdivision failed to act on the information
11 provided within a reasonable period of time.

12 B. No court shall have jurisdiction over an action
13 brought pursuant to Section 44-9-5 NMSA 1978 against an
14 elected or appointed state official, a member of the state
15 legislature or a member of the judiciary if the action is
16 based on evidence or information known to the state agency to
17 which the false claim was made or to the attorney general
18 when the action was filed.

19 C. Unless the attorney general or political
20 subdivision determines and certifies in writing that the
21 action is in the interest of the state or political
22 subdivision, no court shall have jurisdiction over an action
23 brought pursuant to Section 44-9-5 NMSA 1978 when that action
24 is based on allegations or transactions that are the subject
25 of a criminal, civil or administrative proceeding in which

1 the state or political subdivision is a party.

2 D. Upon motion of the attorney general or
3 political subdivision, a court may, in its discretion,
4 dismiss an action brought pursuant to Section 44-9-5 NMSA
5 1978 if the elements of the alleged false or fraudulent claim
6 have been publicly disclosed in the news media or in a
7 publicly disseminated governmental report at the time the
8 complaint is filed."

9 SECTION 9. Section 44-9-10 NMSA 1978 (being Laws 2007,
10 Chapter 40, Section 10) is amended to read:

11 "44-9-10. STATE OR POLITICAL SUBDIVISION NOT LIABLE.--
12 The state or political subdivision shall not be liable for
13 expenses or fees that a qui tam plaintiff may incur in
14 investigating or bringing an action pursuant to the Fraud
15 Against Taxpayers Act."

16 SECTION 10. Section 44-9-12 NMSA 1978 (being Laws 2007,
17 Chapter 40, Section 12) is amended to read:

18 "44-9-12. LIMITATION OF ACTIONS--ESTOPPEL--STANDARD OF
19 PROOF.--

20 A. A civil action pursuant to the Fraud Against
21 Taxpayers Act may be brought at any time. A civil action
22 pursuant to the Fraud Against Taxpayers Act may be brought
23 for conduct that occurred prior to the effective date of that
24 act, but not for conduct that occurred prior to July 1, 1987.

25 B. Notwithstanding any other provision of law, a

1 final judgment rendered in a criminal proceeding charging
2 fraud or false statement, whether upon a guilty verdict after
3 trial or upon a plea of guilty or nolo contendere, shall
4 estop the defendant from denying the essential elements of a
5 fraud against taxpayers action where the criminal proceeding
6 concerns the same transaction that is the subject of the
7 fraud against taxpayers action.

8 C. In an action brought pursuant to the Fraud
9 Against Taxpayers Act, the state or political subdivision or
10 the qui tam plaintiff shall be required to prove all essential
11 elements of the cause of action, including damages, by a
12 preponderance of the evidence." _____

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