

FISCAL NOTE
Requested by Legislative Council
01/21/2019

Bill/Resolution No.: HB 1455

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2017-2019 Biennium		2019-2021 Biennium		2021-2023 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues			\$0	\$0	\$0	\$0
Expenditures			\$604,109	\$0	\$579,569	\$0
Appropriations			\$604,109	\$0	\$579,569	\$0

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2017-2019 Biennium	2019-2021 Biennium	2021-2023 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill provides for judicial remedies for whistle blowers. The bill also provides for the Office of Attorney General to investigate violations and for this Office or local attorneys to litigate such violations.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 1 of the bill provides for the Office of Attorney General to investigate violations and for this Office or local attorneys to litigate such violations.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

Any revenues to be collected with this bill are unknown.

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

At a minimum, this bill will require the addition of an assistant attorney general and a criminal investigator. The 2019-21 biennium estimated expenditures are salaries (\$433,690), operating (\$136,419) and a vehicle for the criminal investigator (\$34,000). For the 2021-23 biennium these costs are anticipated to be salaries (\$453,891) and operating (\$125,678).

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

At a minimum, this bill will require the addition of an assistant attorney general and a criminal investigator. The 2019-21 biennium estimated expenditures are salaries (\$433,690), operating (\$136,419) and a vehicle for the criminal investigator (\$34,000). For the 2021-23 biennium these costs are anticipated to be salaries (\$453,891) and operating (\$125,678).

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Date Prepared: 01/23/2019

2019 HOUSE JUDICIARY COMMITTEE

HB 1455

2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee Prairie Room, State Capitol

HB 1455
1/28/2019
31538

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk: DeLores D. Shimek by Donna Whetham

Explanation or reason for introduction of bill/resolution:

Relating to the creation of a judicial remedy in a qui tam action; and to provide for a report.

Minutes:

1

Chairman Koppelman: Opened the hearing on HB 1455.

Rep. M. Nelson: Introduced HB 1455. (Attachment #1) Read the testimony and went through the bill and fiscal note. (1:35-14:53)

Chairman K. Koppelman: Do you dispute the fiscal note and the Attorney General's Office that the bill provides for them to investigate violations?

Rep. M. Nelson: He has the responsibility to investigate now, it does not free him from any investigating. Unless there is a lot of fraud cases out there that he doesn't think he is catching. I think two full time investigators is may be excessive. If there is that much fraud occurring this really is a good thing. The state isn't paying for the litigation unless it wants to. And it can reveal rather significant frauds that are taking place. I don't expect that many cases come to light.

Chairman K. Koppelman: I think your point is the Attorney Generals' office is bound to investigate issues that come to its attention. However, this would open flood gates for whoever wants to file lawsuits for whatever purpose. I think the Attorney Generals' office would feel constitutionally responsible to look at that if someone else would file a lawsuit under that statute. What problem is the bill trying to solve that you have identified in North Dakota?

Rep. M. Nelson: The problem this is aimed at is unknown fraud. How do you not know about, I don't know?

Chairman K. Koppelman: What is the shortcoming in our current system if a citizen of North Dakota discovered fraud and reported it to the appropriate authorities, is there nothing being done?

Rep. M. Nelson: No, this is an incentive. It is quite common where a whistle blower loses his job, is ostracized and takes personal risk in coming forward at no gain to himself. This is the civil end of things not the criminal end of things. It is to provide incentive. If you look nationally the federal government collects \$3-\$4 billion annually through this type of lawsuits. So this happens federally. This is to provide an incentive and compensation for the whistle blower to bring forward this information.

Chairman K. Koppelman: Do you know how many states have this on the books?

Rep. M. Nelson: About 20.

Chairman K. Koppelman: Are you trying to undo the sovereign unity?

Rep. M. Nelson: No, it is a general feature of the whistle blower laws. It is different enough that if someone would bring a suit against the state. This type of lawsuit doesn't work in a government. 20:54

Rep. Paur: This has to all agencies and all things correct? The NCSL says many states have civil false claims act focusing on Medicaid fraud but few have modeled their statute under federal FDA which is kind of where you are headed. The federal government seems to rely on what they call Medicaid fraud control units within the Attorney Generals offices. There were two states that didn't have it and one was North Dakota and Idaho. If they don't have one, I haven't checked to see if they have adopted one since. To use this for Medicaid fraud may be viable. Would you agree with that?

Rep. M. Nelson: This would certainly cover Medicaid fraud and does not preclude or interfere with the state having its own regulatory people. If something is known by the state that would actually be precluded from a qui tam lawsuit. function under Medicaid with or without a Medicaid fraud unit. This is something that would function under Medicaid fraud with or without a Medicaid fraud unit.

Rep. Paur: Many states do have Medicaid units targeted toward Medicaid not toward the whole system. This might be a nice fit for Medicaid fraud and just restrict it to that.

Rep. M. Nelson: Yes, I don't know if we should restrict it to Medicaid fraud because it would already cover that. There could be other fraud this would cover.

Rep. Jones: I don't like this idea. There is a premise here that people will not come forward if they know of the fraud unless they are paid to do it. Two things that corrupt people is avarice and greed. To give someone 50% of a settlement on something that is this big will open the flood gate of false accusations. I would call this a snitch bill and I don't like it.

Rep. M. Nelson: No one gets 50%, I think 35% is the maximum. If you bring forth allegations, you don't get anything until you hire counsel and you have to take the risk of proving that case of fraud. If the state takes over the case you are down to 10%. There is a payment for knowing of wrong doing. We see that in our society. This is going over on to

the civil side. You cannot just make allegations because that just doesn't meet the requirements. .

Rep. McWilliams: Has there been a case where a law firm is trying to go after somebody and to look for these cases as a means of revenue?

Rep. M. Nelson: I do know in this day of advertising, there are firms that advertise on these cases. I don't know.

Chairman K. Koppelman: Any further Support? Opposition? Neutral testimony? Seeing none.

Vice Chairman Karls: Motion for Do Not Pass on HB 1455.

Rep. Jones: Seconded.

Chairman K. Koppelman: Any further discussion?

Rep. Vetter: I am not sure what this does or fixes?

Chairman K. Koppelman: It is an incentive to tell on someone and if there is lawsuit and a finding that there is wrongdoing you would get a piece of the recovery. I am surprised there is no testimony in support of this bill. I think it may create trouble in the law by the fiscal note. Seeing no further discussion.

Roll call vote: on a Do Not pass on HB 1455. Yes 12 No 1 Absent 1.

Motion carries.

Rep. Jones: Will carry the bill.

Chairman K. Koppelman: If this bill would have passed we would have to have rereferred it to Appropriations, but since it is a do not pass it will not be rereferred.

Hearing closed.

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1455

House Judiciary Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☐ Do Pass ☒ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep. Karls Seconded By Rep. Jones

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman	X		Rep. Buffalo	X	
Vice Chairman Karls	X		Rep. Karla Rose Hanson		X
Rep. Becker	X				
Rep. Terry Jones	X				
Rep. Magrum	X				
Rep. McWilliams	X				
Rep. B. Paulson	X				
Rep. Paur	X				
Rep. Roers Jones	X				
Rep. Satrom	X				
Rep. Simons	A				
Rep. Vetter	X				

Total (Yes) 12 No 1

Absent 1

Floor Assignment Rep. Jones

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1455: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **DO NOT PASS** (12 YEAS, 1 NAYS, 1 ABSENT AND NOT VOTING). HB 1455 was placed on the Eleventh order on the calendar.

2019 TESTIMONY

HB 1455

Chairman Koppelman and members of the House Judiciary Committee

I am Representative Marvin Nelson, District 9

HB1455 Is creating the qui tam category of whistleblower laws for the State of North Dakota, it is modeled after New York's law.

Qui tam is short for *qui tam pro domino rege quam pro se ipso in hac parte sequitur*, meaning "[he] who sues in this matter for the king as well as for himself.

It means that people who know of fraud against the government can sue on behalf of the government and receive part of the settlement, assuming they win. Government itself is not sued under qui tam, you can't sue the king for the king.

Qui tam goes back to Roman times, an interesting example occurred in Anglo Saxon laws where the person who turned in a Sabbath breaker would receive half the forfeited property.

In the United States they were enacted after the Civil War, a time when fraud was rampant. Commonly called the Lincoln Act, the False Claims Act was a response to a situation where fraud was rampant and local authorities often did nothing or were themselves involved.

Today in addition to the federal government, many states have qui tam laws. It is reported that the Federal government has collected over \$40billion from qui tam cases. Most commonly they involve healthcare fraud or military spending fraud but occur in other areas as well.

A qui tam lawsuit is rather unique. The realtor files the court case, it is sealed and the government has a period of time to decide whether to intervein and take the case themselves. If the do so, the amount collected by the realtor is reduced because the risk to the realtor is also reduced.

The information cannot be public, that is you can't read the newspaper and run and files suit. And multiple suits are not allowed.

By their very nature, because the realtor is taking the risk of the cost of the lawsuit and because they are often unable to continue working in their industry, you don't see small qui tam cases. This is not someone cheated the city a couple thousand dollars type of lawsuits.

Let's go through the bill.

Section 1 is definitions, followed by what are considered violations and lays out the penalties. Note that cooperation reduces the penalties from 3 times actual damages to a maximum of 2 times and in both cases reasonable attorney fees.

This act also allows claims under tax fraud, that is the Title 57 referred to on page 4. Note that it is only for claim over \$350,000 when income is over a million, not Uncle Henry deducted a business trip to Hawaii when he didn't do business there.

#1
HB 1455
1-28-19
Pg 2.

Page 5, 2a spells out that it excludes government. Requires serving the AG and if a local government was defrauded the AG forwards the information to the local government.

Page 6,7 spells out if the AG decides to take the case.

Page 8 no one else can intervene.

Page 9 the state can move to dismiss.

Page 11, local government that participates gets costs if prevails.

Page 11 if the realtor planned or initiated the violation, the share received is reduced using the judgement of the court.

Page 12 gives reasons for dismissal

Page 13 government in no way liable, annual reports from the AG to legislative management, could be changed to every 2 years.

Page 13 remedies which is really protection to the whistleblower or any cooperating employee

Page 14 burden of proof (preponderance), statute of limitations (10 years), doesn't take away law enforcement duties and the AG may make rules necessary.

The Fiscal note: That is a bit of mystery to me since outside of sending a copy of the papers the AG is served with to a local government when the local government is supposedly defrauded and consulting with the Tax Commissioner for Tax fraud, everything is that the AG may, not the AG shall. So the bill requires almost nothing of the AG's office. Two full time people must mean the AG believes there is a lot of fraud taking place.