



Legislation Text

File #: Int 0630-2005, **Version:** *

Int. No. 630

By Council Members Yassky, The Speaker (Council Member Miller), Perkins, Moskowitz, Clarke, Koppell, Liu, Nelson, Recchia Jr., Stewart, Weprin, Gennaro and Brewer

A Local Law to amend the administrative code of the city of New York, in relation to creating civil penalties and a private right of action for false or fraudulent claims.

Be it enacted by the Council as follows:

Section 1. Legislative findings and intent. The city of New York engages in annual disbursements of billions of dollars in public funds through one of the largest budgets in the United States, and is, therefore, desirous of preventing the payment of fraudulent claims by the city at taxpayers' expense. Compensation by the city of claims that are false or fraudulent has a considerable impact upon the city's treasury through the loss of untold amounts of public dollars.

The federal false claims act provides an excellent model for combating fraud by government contractors and other parties. Since the federal false claims act was substantially amended in 1986, the federal government has recovered billions of dollars under the act. Additionally, a number of states have enacted civil false claims statutes of their own in order to impede fraud in state programs and to protect state treasuries.

The Council therefore finds that the city of New York should enact legislation modeled on the federal false claims act, to enhance the city's ability to recover monetary damages from parties who file fraudulent claims for payment of city funds and to recover the substantial costs that are incurred in protecting the taxpayers against such fraud.

§2. Title 7 of the administrative code of the city of New York is hereby amended by adding a new chapter 8 to read as follows:

CHAPTER 8

NEW YORK CITY FALSE CLAIMS ACT

§7-801. Short title.

§7-802. Definitions.

§7-803. False claims.

§7-804. Civil actions for false claims.

§7-805. Remedies of employees.

§7-806. Limitation of actions; burden of proof.

§7-807. Other law enforcement authority and duties.

§7-808. Annual report

§7-809. Comptroller.

§7-810. Regulations.

§7-801. Short title. This chapter shall be known as the "New York city false claims act."

§7-802. Definitions. For purposes of this chapter, the following terms shall mean:

1. "City" means the city of New York, and any city agency, department, division or bureau, and any board, committee, institution, agency of government, local development corporation or public benefit corporation, the majority of whose members are appointed by city officials.

2. "Civil enforcement action" means a legal action brought pursuant to section 7-804 of this chapter for the commission of any act or acts described in subdivision b of section 7-803 of this chapter.

3. "Claim" means any request or demand, whether under a contract or otherwise, for money or property which is made to any employee, officer, or agent of the city, or to any contractor, grantee or other recipient, if the city provides the money or property which is requested or demanded or will reimburse such contractor, grantee or other recipient for the money or property which is requested or demanded. "Claim" also encompasses any record or statement used in presenting an obligation to pay or transmit money or property either directly or indirectly to the city.

4. "False claim" means any claim, or information relating to a claim, which is false or fraudulent.

5. "Knowing" and "knowingly" mean that with respect to information, a person: (i) has actual knowledge of the falsity of the information, or (ii) acts in deliberate ignorance of the truth or falsity of the information, or (iii) acts in reckless disregard of the truth or falsity of the information. Proof of specific intent to defraud is not required.

6. “Person” means any natural person, corporation, partnership, firm, organization, association or other legal entity or individual, other than the city.

7. “State” means the state of New York and any state department, agency, board, bureau, division, commission, committee, public benefit corporation, public authority, council, office or other governmental or proprietary function for the state.

§7-803. False claims. a. Any person who:

1. knowingly presents, or causes to be presented, to any city officer or employee, a false claim for payment or approval by the city;

2. knowingly makes, uses, or causes to be made or used, a false record or statement to get a false claim paid or approved by the city;

3. conspires to defraud the city by getting a false claim allowed or paid by the city;

4. has possession, custody, or control of property or money used, or to be used, directly or indirectly, by the city and, intending to defraud the city or willfully conceal the property or money, delivers, or causes to be delivered, less property or money than the amount for which the person receives a certificate or receipt;

5. is authorized to make or deliver a document certifying receipt of property used, or to be used, directly or indirectly, by the city and, intending to defraud the city, makes or delivers the receipt without completely knowing that the information on the receipt is true;

6. knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the city knowing that such officer or employee lawfully may not sell or pledge the property; or

7. knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid, or decrease, directly or indirectly, an obligation to pay or transmit money or property to the city;

shall be liable to the city for three times the amount of damages which the city sustains because of the act or acts of such person, and a civil penalty of between five thousand and fifteen thousand dollars for each violation of this section, except that any party to a civil enforcement action commenced may request the court to assess, and the court may agree to so assess, not more than two times the amount of damages sustained because of the act or acts of such person if all of the following circumstances are found:

(i) The person committing the violation of section 7-803 of this chapter had furnished all information known to such person about such act or acts to (a) the commissioner of investigation or (b) the corporation counsel or a city agency head, who shall refer such information to the commissioner of investigation, and has furnished such information within thirty days of the date on which such person first obtained the information;

(ii). such person fully cooperated with any government investigation of such violation; and

(iii). at the time such person furnished information about the violation, no criminal or civil action or proceeding, 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.

b. A person who violates this section shall also be liable for the costs, expenses and attorneys' fees of a civil enforcement action and for the cost of the city's investigation.

§7-804. Civil actions for false claims. a. If the corporation counsel finds that a person has violated or is violating the provisions of section 7-803 of this chapter, he or she may institute a civil enforcement action against that person in any court of competent jurisdiction.

b. 1. Any person may submit a proposed civil complaint to the city alleging violations of section 7-803. Proposed civil complaints shall be signed and verified and shall include all material evidence and information possessed by such person in support of the allegations in such proposed civil complaints. The city shall diligently investigate all such proposed civil complaints. The city may request such additional information as it deems necessary from the person submitting a proposed civil complaint.

2. The corporation counsel and the commissioner of investigation shall promulgate rules establishing a protocol detailing the procedures by which the city will address proposed civil complaints after they have been submitted, which protocol shall include the requirement that within one hundred eighty days of receipt of a proposed civil complaint, the city shall, in writing, notify the person who submitted the proposed civil complaint that the corporation counsel:

(i) intends to commence a civil enforcement action based on the facts alleged in the proposed civil complaint against one or more of the defendants named in the proposed civil complaint, in which case he or she shall commence such action within ninety days of such notification, provided that if the corporation counsel determines that a delay in commencing such action is warranted, he or she may delay such commencement, upon notice to the person who submitted the proposed civil complaint, for an additional ninety days at which time he or she shall commence such action;

(ii) designates the person or, if the person is not an attorney, the attorney of such person, as a special assistant corporation counsel for purposes of filing a civil enforcement action against one or more of the defendants named in the proposed civil complaint;

or

(iii) declines to commence a civil enforcement action or designate such person to commence a civil enforcement action in which case the corporation counsel shall state in the notification its reason for doing so.

3. The corporation counsel shall commence a civil enforcement action or designate the person who submitted the proposed

civil complaint or, if the person is not an attorney, his or her attorney, to commence a civil enforcement action unless:

(i) the proposed civil complaint is barred for the reasons set forth in subdivision d of this section;

(ii) the corporation counsel has determined that the proposed civil complaint is based upon an interpretation of law or regulation which if adopted, would result in significant cost to the city;

(iii) the corporation counsel has determined that commencing a civil enforcement action would interfere with a contractual relationship between the city and an entity providing goods or services which would significantly interfere with the provision of important goods or services, or would jeopardize the health and safety of the public; or

(iv) the corporation counsel has determined that the complaint, if filed in a court of competent jurisdiction, would be dismissed for failure to state a claim upon which relief may be based.

c. If the commissioner of investigation determines that a civil enforcement action may interfere with or jeopardize an investigation by a governmental agency, then the corporation counsel may decline to commence a civil enforcement action based on a proposed civil complaint or to designate the person who submitted such proposed civil complaint to commence such action, provided that the corporation counsel notifies the person who submitted the proposed civil complaint of such determination within ninety days of receipt by the city of such proposed civil complaint and every one hundred eighty days thereafter until such time as the commissioner of investigation determines that such civil enforcement action would no longer interfere with or jeopardize a governmental investigation, at which time the corporation counsel shall provide to the person who submitted the proposed complaint the notification required in paragraph two of subdivision b of this section. The determination by the commissioner of investigation shall be final.

d. Certain actions barred. This section shall not apply to claims, records, or statements made pursuant to federal, state or local tax law nor to any proposed civil complaints:

1. based upon one or more false claims with a cumulative value of less than twenty five thousand dollars;

2. based upon allegations or transactions which are the subject of any pending criminal or civil action or proceeding, including a civil enforcement action, or an administrative action in which the city is already a party;

3. derived from public disclosure of allegations or transactions in a criminal, civil or administrative hearing, in a legislative or administrative report, hearing, audit or investigation, or upon allegations or transactions disclosed by the news media and likely to be seen by the city officials responsible for addressing false claims, unless the person who submitted the proposed complaint is the primary source of the information;

4. based upon information discovered by an employee of the city, state or federal government in the course of his or her

employment unless: (i) such employee first reported such information to the department of investigation; and (ii) the city failed to act on the information within six months of its receipt by the department of investigation; or

5. against the federal government, the state of New York, the city or any officer or employee acting within the scope of his or her employment.

e. Nothing herein shall be construed as authorizing anyone other than the corporation counsel and a person or attorney authorized pursuant to this chapter to commence a civil enforcement action to represent the city of New York in legal proceedings.

f. Pending and related actions. 1. No person, other than the corporation counsel, may intervene or bring a related action based upon the facts underlying a civil enforcement action, unless such other person has first obtained the permission of the corporation counsel to intervene or to bring such related action.

2. Regardless of whether the corporation counsel has commenced a civil enforcement action or another party has been designated to do so, the city may elect to pursue any alternate action with respect to the presentation of false claims, provided that the person who submitted the proposed civil complaint upon which such alternate action is based, if any, shall be entitled to the same percentage share of any cash proceeds recovered by the city as such person would have been entitled to if such alternate action was a civil enforcement action.

g. Rights of the parties. 1. If the corporation counsel elects to commence a civil enforcement action, then the city shall have the sole authority for prosecuting, and, subject to the approval of the comptroller, settling the action and may move to dismiss the action, or may settle the action notwithstanding the objections of the person who submitted the proposed civil complaint upon which such civil enforcement action is based.

2. If a person who submitted a proposed complaint or his or her attorney has been designated to commence a civil enforcement action, then the corporation counsel and such authorized person or attorney shall share authority for prosecuting the case. However, the corporation counsel may move to dismiss the action notwithstanding the objection of the person who submitted the proposed civil complaint provided such person has been served with an appropriate motion and the court has provided such person with an opportunity to be heard. The corporation counsel may also, subject to the approval of the comptroller, settle the action notwithstanding the objection of the person who submitted the proposed civil complaint if the court determines after providing such person with an opportunity to be heard, that the proposed settlement is fair, adequate, and reasonable.

3. The corporation counsel may apply to the court for and the court may issue an order restricting the participation of a person designated to commence a civil enforcement action in such litigation notwithstanding the objections of such person if the court determines, after providing such person an opportunity to be heard, that such person's unrestricted participation during the course of

the litigation would interfere with or unduly delay the prosecution of the case, or would be repetitious or irrelevant, or upon a showing by the defendant that such person's unrestricted participation during the course of the litigation would be for purposes of harassment or would cause the defendant undue burden. Such restrictions may include, but need not be limited to: (i) limiting the number of witnesses such person may call, (ii) limiting the length of the testimony of such witnesses, (iii) limiting such person's cross-examination of witnesses, or (iv) otherwise limiting such person's participation in the litigation.

4. The corporation counsel may apply to the court for a stay of any civil enforcement action if it will interfere with any investigation or prosecution of a criminal matter arising out of the same facts.

h. Under no circumstances shall the city be bound by an act of a person designated to commence a civil enforcement action.

i. Awards from proceeds. 1. If the corporation counsel has elected to commence a civil enforcement action based on a proposed civil complaint, then the person or persons who submitted such proposed civil complaint collectively shall be entitled to receive between ten and twenty-five percent of the proceeds recovered in such civil enforcement action or in settlement of such action.

2. If a person, or such person's attorney has been designated to commence a civil enforcement action based on such person's proposed civil complaint, then such person shall be entitled to receive between fifteen and thirty percent of the proceeds recovered in such civil enforcement action or in settlement of such action.

3. The court shall determine the share of the proceeds to which a person submitting a proposed complaint is entitled, and may take into account the following factors:

(i) the extent to which the person who submitted the proposed civil complaint contributed to the prosecution of the action, either in time, effort or finances;

(ii) whether the civil enforcement action was based primarily on information provided by the person who submitted the proposed civil complaint, rather than information derived from public sources such as allegations or transactions in a criminal, civil or administrative hearing, in a legislative or administrative report, hearing, audit or investigation, or from the news media;

(iii) any unreasonable delay by such person in submitting the proposed civil complaint;

(iv) the extent to which the allegations involve a significant safety issue;

(v) whether the person who submitted the proposed civil complaint that formed the basis of the civil enforcement action initiated the violation of section 7-803 of this chapter alleged in such action, in which case the percentage share of the proceeds of the action that such person would otherwise receive under this section may be reduced below the minimum percentages set forth in paragraphs one and two of this subdivision, taking into account the role of such person in advancing the case to litigation and any

relevant circumstances including those pertaining to the violation;

(vi) whether the person who submitted the proposed civil complaint that formed the basis of the civil enforcement action has been charged with criminal conduct arising from his or her role in the alleged violation of section 7-803 of this chapter, in which case such person shall not receive any share of the proceeds of the action if convicted on such charges; and

(vii) fundamental fairness and any other factors the corporation counsel and the court deem appropriate.

j. Costs, expenses and attorneys' fees. 1. In any civil enforcement action commenced pursuant to this chapter, the corporation counsel, or a person designated to commence such civil enforcement action, if applicable, may apply for an amount of reasonable expenses, plus reasonable attorneys' fees, plus costs. Costs and expenses shall include costs incurred by the department of investigation in investigating the false claim and prosecuting conduct relating thereto. All such expenses, attorneys' fees and costs shall be awarded directly against the defendant and shall not be charged from the proceeds, but shall only be awarded if the city prevails in the action

2. In a civil enforcement action commenced by a designated person or a such person's attorney the defendant may apply for an amount of reasonable expenses, plus reasonable attorneys' fees, plus costs and the court may award such expenses, attorneys' fees and costs if it determines that such civil enforcement action was frivolous. All such expenses, attorneys' fees and costs shall be awarded directly against the person or person's attorney that commenced the action.

k. The city shall not be liable for any expenses, attorneys' fees or costs that a person or a person's attorney incurs in submitting a proposed civil complaint or commencing or litigating a civil enforcement action pursuant to this section.

§7-805. Remedies of employees. a. 1. Any officer or employee of the city of New York who believes that he or she has been the subject of an adverse personnel action, as such term is defined in paragraph one of subdivision a of section 12-113 of the administrative code of the city of New York; or

(2) any officer or employee of the city or state of New York, who believes that he or she has been the subject of a retaliatory action, as defined by section seventy-five-b of the civil service law; or

(3) any non-public employee who believes that he or she has been the subject of a retaliatory action by his or her employer, as defined by section seven hundred forty of the labor law because of lawful acts of such employee in furtherance of a civil enforcement action brought under this section, including the investigation, initiation, testimony, or assistance in connection with, a civil enforcement action commenced or to be commenced under this section, shall be entitled to all relief necessary to make the employee whole. Such relief shall include but not be limited to: (i) an injunction to restrain continued discrimination, (ii) reinstatement to the position such employee would have had but for the discrimination or to an equivalent position, (iii) reinstatement

of full fringe benefits and seniority rights, (iv) payment of two times back pay, plus interest, and (v) compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees.

b. An employee described in subdivision a of this section may bring an action in any court of competent jurisdiction for the relief provided in this section.

§7-806. Limitation of actions; burden of proof. a. A civil enforcement action shall be commenced no later than the latest following date: (i) six years after the date on which the violation of section 7-803 is committed, or (ii) three years after the date when facts material to the right of action are known or reasonably should have been known by the corporation counsel or the department of investigation, not to exceed ten years after the date on which the violation is committed.

b. In any civil enforcement action, all essential elements of the cause of action, including damages, shall be proven by a preponderance of the evidence.

§7-807. Other law enforcement authority and duties. This chapter shall not be construed as: (i) affecting the authority, or relieving the duty, of any federal, state or local law enforcement agency to investigate and prosecute suspected violations of law, (ii) preventing or prohibiting a person from voluntarily disclosing any information concerning a violation of section 7-803 to any such law enforcement agency, (iii) limiting any of the powers granted to the city, elsewhere in this chapter or under other laws, to investigate possible violations of this chapter and take actions against wrongdoers, or (iv) diminishing in any way the responsibility of city employees to report any wrongdoing to the commissioner of investigation pursuant to any executive order or statute.

§ 7-808. Annual report. Not later than March first of each year following the year of enactment, the corporation counsel shall transmit to the mayor and the speaker of the council a report setting forth, with respect to the prior calendar year, the following information:

1. The number of proposed civil complaints submitted pursuant to section 7-804;

2. The number of proposed civil complaints resulting in the corporation counsel commencing a civil enforcement action based upon such submission;

3. The number of proposed civil complaints resulting in the corporation counsel designating the person, or such person's attorney, to act as a special assistant corporation counsel for purposes of commencing a civil enforcement action;

4. The disposition of each civil enforcement action filed, including

(i) whether the case was based on a proposed civil complaint; and

(ii) the monetary value of the award or settlement in each action commenced by the person who submitted a proposed civil complaint to the city; and

(iii) the monetary value of any award or settlement in each action commenced by the city.

5. The number of proposed civil complaints under review by the city and pending a determination by the corporation counsel as to the commencement of a civil enforcement action;

6. The number of proposed civil complaints for which the corporation counsel determined not to commence a civil enforcement action and a statistical summary of the reasons for such determinations.

7. Any other information related to proposed civil complaints submitted pursuant to section 7-804 which the corporation counsel deems appropriate.

§7-809. Comptroller. Nothing in the local law that added this chapter is intended to modify, supersede or in any way diminish the powers granted to the comptroller pursuant to section ninety-three of the charter to settle and adjust all claims for the city.

§7-810. Regulations. The corporation counsel and the commissioner of investigation shall promulgate such rules as are necessary to effectuate the purposes of this chapter.

§3. Severability. If any provision of this local law is adjudged by any court of competent jurisdiction to be invalid, such judgment will not affect, impair or invalidate the remainder thereof, but will be confined in its operation to the provision thereof directly involved in the controversy in which such judgment was rendered.

§4. This local law shall take effect 90 days after it shall have been enacted into law, shall apply to claims filed or presented prior to, on or after such date, and shall remain in effect until the first day of June, 2012 when it shall be deemed repealed; provided, however, that such expiration date shall not apply to any civil enforcement action brought pursuant to section 7-804 of the administrative code of the city of New York that was commenced prior to such date but has not by such date reached a final disposition.