

By: Keffer

H.B. No. 2044

A BILL TO BE ENTITLED

AN ACT

relating to a qui tam action on certain contracts for information about property recoverable by the state.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter B, Chapter 403, Government Code, is amended by adding Section 403.0197 to read as follows:

Sec. 403.0197. QUI TAM ACTION ON CONTRACT. (a) If a contract executed under Section 403.0195 does not result in the state filing suit or taking other action to recover on the claim that is the subject of the contract before the expiration of five years after the date on which the contract is executed, the contracting person may file a civil action on the claim that is the subject of the contract. An action brought under this section is a qui tam action on behalf of both the contracting person and the state and must be brought in the name of the person and the state.

(b) A person bringing an action under this section shall serve a copy of the petition and a written disclosure of substantially all material evidence and information the person possesses on the attorney general in compliance with the Texas Rules of Civil Procedure.

(c) The petition shall be filed in camera and, except as provided by Subsection (e) or (f), shall remain under seal until at least the 180th day after the date the petition is filed or the date on which the state elects to intervene, whichever is earlier. The

1 petition may not be served on the defendant until the court orders
2 service on the defendant.

3 (d) The state may elect to intervene and proceed with the
4 action not later than the 180th day after the date the attorney
5 general receives the petition and the material evidence and
6 information.

7 (e) At the time the state intervenes, the attorney general
8 may file a motion with the court requesting that the petition remain
9 under seal for an extended period.

10 (f) The state may, for good cause shown, move the court to
11 extend the 180-day deadline under Subsection (c) or (d). A motion
12 under this subsection may be supported by affidavits or other
13 submissions in camera.

14 (g) An action under this section may be dismissed before the
15 end of the period during which the petition remains under seal only
16 if the court and the attorney general consent in writing to the
17 dismissal and state their reasons for consenting.

18 (h) A defendant is not required to file in accordance with
19 the Texas Rules of Civil Procedure an answer to a petition filed
20 under this section until the petition is unsealed and served on the
21 defendant.

22 (i) Not later than the last day of the period prescribed by
23 Subsection (d) or an extension of that period as provided by
24 Subsection (e) or (f), the state shall:

25 (1) proceed with the action; or

26 (2) notify the court that the state declines to take
27 over the action.

1 (j) If the state declines to take over the action, the
2 person bringing the action may proceed without the state's
3 participation. On request by the state, the state is entitled to be
4 served with copies of all pleadings filed in the action and be
5 provided at the state's expense with copies of all deposition
6 transcripts. If the person bringing the action proceeds without
7 the state's participation, the court, without limiting the status
8 and right of that person, may permit the state to intervene at a
9 later date on a showing of good cause.

10 (k) If the state proceeds with the action, the state has the
11 primary responsibility for prosecuting the action and is not bound
12 by an act of the person bringing the action. The person bringing
13 the action has the right to continue as a party to the action,
14 subject to the limitations in this section.

15 (l) The state may dismiss the action notwithstanding the
16 objections of the person bringing the action if:

17 (1) the attorney general notifies the person that the
18 state has filed a motion to dismiss; and

19 (2) the court provides the person with an opportunity
20 for a hearing on the motion.

21 (m) The state may settle the action with the defendant
22 notwithstanding the objections of the person bringing the action if
23 the court determines, after a hearing, that the proposed settlement
24 is fair, adequate, and reasonable under all the circumstances. On a
25 showing of good cause, the hearing may be held in camera.

26 (n) On a showing by the state that unrestricted
27 participation during the course of the litigation by the person

1 bringing the action would interfere with or unduly delay the
2 state's prosecution of the case, or would be repetitious,
3 irrelevant, or for purposes of harassment, the court may impose
4 limitations on the person's participation, including:

5 (1) limiting the number of witnesses the person may
6 call;

7 (2) limiting the length of the testimony of witnesses
8 called by the person;

9 (3) limiting the person's cross-examination of
10 witnesses; or

11 (4) otherwise limiting the participation by the person
12 in the litigation.

13 (o) On a showing by the defendant that unrestricted
14 participation during the course of the litigation by the person
15 bringing the action would be for purposes of harassment or would
16 cause the defendant undue burden or unnecessary expense, the court
17 may limit the participation by the person in the litigation.

18 (p) A person bringing an action under this section may
19 recover an amount not greater than five percent of the amount of the
20 revenue or the value of the other property that the state recovers
21 as a result of the person bringing the action.

22 (q) This section does not apply to an unlawful act described
23 by Section 36.002, Human Resources Code, relating to Medicaid
24 fraud.

25 SECTION 2. The change in law made by this Act applies to a
26 contract executed under Section 403.0195, Government Code, without
27 regard to whether the contract was executed before, on, or after the

1 effective date of this Act.

2 SECTION 3. This Act takes effect immediately if it receives
3 a vote of two-thirds of all the members elected to each house, as
4 provided by Section 39, Article III, Texas Constitution. If this
5 Act does not receive the vote necessary for immediate effect, this
6 Act takes effect September 1, 2009.