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## State and Local Government Contractors in Georgia Face False Claims Act Liability Formerly Seen Only on Federal Jobs

Effective July 1, 2012, Georgia's new Taxpayer Protection False Claims Act (Act) applies to contractors from any industry doing business with Georgia state or local governments. The Act creates a framework for false claims liability in Georgia.

On April 16, 2012, Governor Nathan Deal signed the Act into law. Prompted by the federal government's directive to strengthen the Georgia Medicaid False Claims Act, the Georgia General Assembly passed the Act in part to "comprehensively address the submission of false claims to the state . . . and local governments" and to "provide for liability to this state for certain false claims" including a "civil action for false claims submitted to this state or to local governments." H.B. 822, 151st Gen. Assem., Reg. Sess., *to be codified at* O.C.G.A. § 23-3-120, *et seq.* Much like its federal counterpart, the Act creates potential liability for any entity that contracts with the state or local governments. This includes entities acting as construction contractors, subcontractors, and suppliers. The Act provides penalties of not less than \$5,500 and not more than \$11,000 for each false claim, plus three times the amount of any damage to the state or local government and all costs, reasonable expenses, and attorneys' fees incurred by the state or local government in prosecuting a civil action under the Act. *Id.* § 23-3-121(a); *cf.* 31 U.S.C. § 3729(a).

### A False Claim

Mirroring the federal False Claims Act, the Act imposes liability on "[a]ny person, firm, or other legal entity" for:

- Knowingly presenting (or causing to be presented) a false or fraudulent claim for payment or approval;
- Knowingly making or using (or causing to be made or used) a false record or statement material to a false or fraudulent claim; and
- Knowingly delivering (or causing to be delivered) less than the full amount of money to be used by the state or local government.

O.C.G.A. § 23-3-121; *cf.* 31 U.S.C. § 3729(a).<sup>1</sup> "Knowingly" does not require a specific intent to defraud; however, the claimant must have "[a]ctual knowledge of the information" or act in "deliberate ignorance of" or "reckless disregard for" the truth of the information. O.C.G.A. § 23-3-120(2)(A)-(C). A "claim" is defined broadly as "any request or demand, whether under a contract or otherwise, for money or property." *Id.* § 23-3-120(1). The request or demand must be presented to an employee or other agent of the state or local government or made to a contractor, grantee, or other recipient of government funds.<sup>2</sup>

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<sup>1</sup> The Act also imposes liability on any entity that conspires to commit a violation of the Act, any entity that makes or delivers a receipt without completely knowing that the information on the receipt is true and with the intent to defraud the state or local government, any entity that knowingly makes or causes to be made a false record or statement material to an obligation to pay money to the state or local government, and any entity that knowingly conceals or knowingly and improperly avoids an obligation to pay money to the state or local government. O.C.G.A. § 23-3-121(5)-(7).

<sup>2</sup> The Act makes exceptions for claims for money that the state or local government has paid to an individual as compensation for government employment and income subsidies. O.C.G.A. § 23-3-120(1).

“Local government” is likewise defined broadly and includes:

any Georgia counties, municipal corporation, consolidated government, authority, board of education or other local public board, body, or commission, town, school district, board of cooperative educational services, local public benefit corporation, hospital authority, taxing authority, or other political subdivision of the state or of such local government, including MARTA.

*Id.* § 23-3-120(3). Firms contracting with virtually any branch of state or local government are subject to potential liability under the Act for knowingly submitting a false claim. The Act addresses “good-faith” mistakes by capping damages at two times the amount of the actual damages. This reduction on damages applies when the contractor provides the state or local government with “all information known to such person” about the fraudulent claim within 30 days of obtaining the information and cooperates with any government investigation before legal action (criminal, civil, or administrative) is commenced. *Id.* § 23-3-121(b).

### State Investigative Authority

The Act vests authority in the Attorney General to investigate suspected and alleged violations of the Act and to prosecute civil actions for violations of the Act. *Id.* § 23-3-122(a). The Attorney General may delegate investigations and prosecutions to local district attorneys or other appropriate local government officials, including the ability to issue civil investigatory demands for the production of documentary material, for answers to written interrogatories, for oral testimony, or for any combination thereof. *Id.* § 23-3-125(b)(1).

### Private Actions

Private individuals may bring whistleblower actions under the Act “upon written approval by the Attorney General.” *Id.* § 23-3-122(a). Specific claims, records, or statements need not be identified by the plaintiff if “the facts alleged in the complaint, if ultimately proven true, would provide a reasonable indication” that a false claim “likely . . . occurred.” *Id.* § 23-3-123(c). Documents and information submitted by private plaintiffs are subject to privilege and protection from public disclosure. If the state or local government decides to conduct the action, then, based on the extent to which the information provided by the private individual was used in the prosecution, the individual may receive up to 25% of the proceeds of the action. *Id.* § 23-3-122(h)(1).



*If you have any questions about this Legal Alert, please feel free to contact any of the attorneys listed below or the Sutherland attorney with whom you regularly work.*

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