



NEW YORK STATE SENATOR

Eric T. Schneiderman

Senator Eric. T. Schneiderman Shepherds Historic Anti-Fraud Taxpayer Protection Measure Through Legislature

ERIC T. SCHNEIDERMAN July 1, 2010

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Schneiderman's leadership in cracking down on fraud is heralded by whistleblowers, local governments, school boards, labor, and taxpayer advocates

Makes New York's Anti-Fraud Whistle-Blower Law Strongest in Nation

New York's legislature passed Senator Schneiderman's **Fraud, Enforcement & Recovery Act** ("FERA"), an historic bill to strengthen the state's powerful False Claims Act.

The New York False Claims Act, passed in 2007 and modeled after the then-existing United States False Claims Act, is New York's most powerful tool to fight fraud against the government, especially fraud by corrupt contractors. The law allows the Attorney General, a local government, or a whistleblower to bring a legal action against any party who makes or uses a false or fraudulent claim, record or statement to obtain government funds. Guilty parties must pay triple damages plus mandatory civil penalties.

Since its passage in 2007, the law has helped the State recover hundreds of millions of dollars. However, many of the terms of the False Claims Act have recently been misinterpreted by federal courts — including the Supreme Court — to create loopholes that make it harder for law enforcement and whistleblowers to fight fraud. To address these loopholes and court

decisions, President Barack Obama recently signed a series of amendments to the United States False Claims Act, heralded by anti-fraud groups and, among others, the New York Times.

In March, [Senator Schneiderman](#) introduced the first bill in the legislature to adopt the Obama amendments into the New York False Claims Act. Indeed, Senator Schneiderman's bill went even further than those amendments in cracking down on corrupt contractors and protecting whistleblowers in significant ways.

The stronger provisions — a “false claims act on steroids” — include the following:

- Enacting triple damages and mandatory civil penalties for tax fraud;
- Creating the first-in-the-nation state program to allow whistle-blowers to go after millionaire tax cheats that defraud the state of over \$350,000. This provision is aimed at illegal off-shore tax shelters;
- Fixing a flaw in the New York State False Claims act so that corrupt contractors that defraud local governments must pay local governments triple damages plus civil penalties — instead of just triple damages. This will encourage local governments to use the False Claims Act to recover funds and keep property taxes low;
- Establishing anti-blacklisting protections against whistleblowers, so company “y” can not refuse to hire a qualified worker because he or she reported company “x” for fraud;
- Clarification that whistleblowers who use the freedom of information act are not barred from suing a contractor for fraud because he or she created a public disclosure of information; and

- The first-in-the-nation ban on employers from suing employees who provide evidence of fraud to law enforcement in a False Claims Act case.

Here's what leading voices are saying about Schneiderman's anti-fraud, taxpayer protection bill:

Jeb White, acting Executive Director of [Taxpayers Against Fraud](#), a national public interest organization dedicated to combating fraud against federal, state, and local governments said, "With this latest round of amendments [to the False Claims Act], New York has the strongest set of fraud fighting tools in the nation. We are extremely pleased that, thanks to Eric Schneiderman's leadership, New York will now be able to recover millions of dollars that might otherwise have slipped through liability loopholes. In addition, New York should be eligible for millions of new Medicaid dollars thanks to incentives offered under federal legislation. With this strengthened law, New York will also be able to recover millions of dollars stolen by tax cheats. Because New York is a major financial center, we think the state will be a bellwether for the nation in the arena of tax recovery. Without a doubt, the New York law will be used as a cat's-paw to illuminate national tax fraud cases that have tentacles in New York."

Harry Markopolos, author of "No One Would Listen," and original whistle-blower in the Bernie Madoff Scandal said, "I congratulate Senator Schneiderman for his leadership in passing the New York Fraud, Enforcement and Recovery Act. This legislation sends a powerful deterrent message to government contractors to think twice before they try to rip off taxpayers. Passing this bill empowers and protects employees who go out of their way to safeguard the state's budget from fiscal predators that would otherwise get away with contract fraud. We cannot afford to enrich white collar fraudsters nor can we offer them any

safe haven from detection and prosecution. I applaud Senator Schneiderman for his dedication that led to the passage of this bill. I am glad to see that New York is taking the lead in exceeding the federal standards in this important area."

Denis Hughes, President of the [New York State AFL-CIO](#), referring to the fact that Senator Schneiderman's bill will enhance the ability of workers to enforce prevailing and minimum wage laws, said, "The NYS AFL-CIO applauds Senator Schneiderman for passing this bill. Any tool we can use to help workers get the pay that they are lawfully entitled to is worth fighting for."

Russ Haven, Legislative Counsel for [NYPIRG](#), said, "The New York Public Interest Research Group (NYPIRG) applauds Senator Schneiderman for his leadership in passing the Fraud Enforcement and Recovery Act. This will be an important tool for citizens seeking to root out public corruption in contractor fraud. Most important, it will correct the injustices worked by the courts on the similar federal law, which prevented cases developed through the use of the Freedom of Information Law (FOIL) from going forward. Now it is up to Governor Paterson to sign this legislation into law."

Stephen J. Acquario, executive director of the [New York State Association of Counties](#) (NYSAC) said, "Counties commend Senator Schneiderman and the members of the New York State Senate for providing this incentive for local governments to protect taxpayers against corruption. The legislation enables 'whistle blowers' to bring claims against individuals who try to defraud counties. We must be vigilant at all times to protect the public and prevent fraud and abuse at all levels of government."

Lori Mithen, Counsel for the [Association of Towns of the State of New York](#) said, "The

Association of Towns of the State of New York supports Senator Schneiderman's efforts to increase penalties for contractors that rip off local governments through the filing of false claims, and to increase the ability and incentive for local governments to protect taxpayers against corrupt contractors. In a time of tight budgets and concern about property taxes, we cannot be vigilant enough to protect local taxpayers from fraud and abuse."

Florence Johnson, Buffalo Board of Education and President of NYSSBA said, "On behalf of the school districts of New York State, NYSSBA is grateful to Senator Schneiderman for his dedication in this effort to allow school districts and other local governments to deter fraudulent practices and to recover civil penalties for fraudulent acts committed against our schools. This legislation strengthens provisions protecting school districts against acts of fraud in the making of false claims and provides appropriate civil penalties to encourage prosecution of fraud. Public funds must be protected, particularly in times of financial distress and our public schools are grateful for this additional means of ensuring the appropriate use of public money entrusted to us for the education of our state's children."

Thomas D. Thacher II, former Inspector General of the New York City School Construction Authority and current President and CEO of Thacher Associates LLC said, "As the former Inspector General of the New York City School Construction Authority, I completely support Senator Schneiderman's Fraud, Enforcement and Recovery Act. It would provide New York State with a powerful and needed tool for exposing and prosecuting those who steal public dollars. Without question, it represents state of the art legislation for fighting fraud against taxpayer dollars. I know first-hand that successfully fighting school construction fraud leads to safer school buildings as well as saving tax dollars. Senator Schneiderman's bill, by further empowering whistleblowers to pursue citizen initiated cases, will step up that fight not only in the school construction area, but in all areas of fraud against state taxpayer

funds. It is a great step forward in improving the False Claims Act to protect all our state public works projects from fraud and corruption.”

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This month Senator Schneiderman reintroduced his bill along with Assembly Speaker Shelley Silver. The bill Wednesday passed both houses unanimously. Of over 24 states that have adopted False Claims Act, Senator Schneiderman’s bill would, if signed, create the most powerful False Claims Act in the country.

In accordance with the now-amended Federal False Claims Act, Senator Schneiderman’s bill would, among other things:

- Ensure that subcontractors that receive government funds continue to be liable under the False Claims Act for defrauding the state (as they have been since 1863 when Abraham Lincoln passed the original False Claims Act to address civil war era contracting fraud);
- Expand liability for conspiracies to defraud taxpayers;
- Crack down on those who defraud the government by using a false record or statement to avoid paying an obligation to the government;
- Protect and reward whistleblowers that provide useful information to law enforcement, even if they do not know the full extent of the fraudulent scheme;
- Expand protections against whistle-blowers from retaliation by employers.

In addition to cracking down on government fraud and corruption, by adopting these amendments, Senator Schneiderman helped ensure that the federal government does not penalize the state with a loss of Medicaid Funds for having a False Claims Act weaker than

the federal government.