



# Allegheny County Council

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## Legislation Details (With Text)

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**Title:** An Ordinance of the County of Allegheny, Commonwealth of Pennsylvania, amending Division 4 of the Allegheny County Code of Ordinances, entitled "Finances," Chapter 485, entitled "False Claims," to provide for clarity regarding the applicability of this Chapter to actions involving the misuse of County resources for political purposes.

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**Attachments:**

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An Ordinance of the County of Allegheny, Commonwealth of Pennsylvania, amending Division 4 of the Allegheny County Code of Ordinances, entitled "Finances," Chapter 485, entitled "False Claims," to provide for clarity regarding the applicability of this Chapter to actions involving the misuse of County resources for political purposes.

**Whereas**, in light of decreasing federal and state funding due to budgetary cuts at both levels of government, Allegheny County followed the example of numerous jurisdictions throughout the Commonwealth of Pennsylvania and United States, and enacted false claims legislation in 2011; and

**Whereas**, stated in brief, the County's false claim ordinance authorizes the payment of a portion of any recovery against individuals or entities that defraud the County government to any individual(s) who discover the fraud and make it known to the County in a fashion that leads to the appropriate legal action(s) to recover the lost revenue can be commenced; and

**Whereas**, in 2011, it was the judgment of Council that the enactment of a false claims ordinance within Allegheny County constituted a measured and well-reasoned means of establishing an additional protection for the taxpayers of the County from the loss of revenues to unscrupulous individuals or other entities, making the County government both more efficient and effective; and

**Whereas**, it was further the judgment of Council that recovering a portion of revenues that would otherwise be lost entirely to fraudulent practices is a practice that will inure to the benefit of the County itself and its residents and taxpayers; and

**Whereas**, these determinations have become even more relevant as the County continues to endeavor to find efficiencies throughout its operations, and it is accordingly the desire of Council to amend the County's false claims ordinance to expressly include additional provisions relating to the misuse of County resources for political purposes;

*The Council of the County of Allegheny hereby enacts as follows:*

**SECTION 1 Amendment of the Code.**

The Allegheny County Code of Ordinances Chapter 485, entitled “False Claims,” is hereby amended as follows:

**Chapter 485**

**False Claims**

**§ 485-1. Definitions.**

For the purposes of this Chapter, the following words shall have the definitions described herein, unless context clearly indicates that such definition was not intended:

- A. “Claim” shall mean any request or demand, whether under a contract or otherwise, for money or property, or financial assistance which is made to any employee, officer or agent of the County or to any contractor, grantee or other recipient of money or property, if the County provides any portion of the money or property which is requested or demanded, or will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded.
- B. “Contractor” shall mean a person who enters into a contact with the County or any owner, officer, director, employee or agent of such person, any subcontractor of such person or any person acting in concert or conspiring with such person, but not including any person who is a county official or employee or was a county official or employee at the time of the alleged conduct.
- C. “County” shall mean the County of Allegheny or any agencies or instrumentalities thereof.
- D. “False Claim” shall mean a claim, or information relating to a claim, which is false or fraudulent, or a claim or information relating to a claim which constitutes a Misuse of County Resources, as defined under the terms of this Article.
- E. “Investigation” shall mean an inquiry conducted for the purpose of ascertaining whether any person is or has been engaged in a violation of this Chapter.
- F. “Knowing” shall mean acting with actual knowledge of the information, in deliberate ignorance of the truth or falsity of the information, or in reckless disregard of the truth or falsity of the information. For the purposes of this Chapter, no proof of specific intent to defraud shall be required to establish a violation.
- G. “Misuse of County Resources” shall mean:
  - 1. Any expenditure of County funds on conduct forbidden under the terms of §5-1013.09.N. of the Administrative Code of Allegheny County, regardless of whether a complaint regarding such misuse has been filed with the Allegheny County Ethics Commission; or

2. Any expenditure of County funds relating to direct or indirect solicitation or acceptance of services by a County elected official if both:
  - a. Such services are offered or provided in connection with a political campaign or for any partisan political purpose; and
  - b. The entity offering or providing such services is a party to any in-force services contract with Allegheny County.

GH. “Proceeds” shall mean the treble damages and fines as provided in §485-2, but shall not include attorneys’ fees and costs.

### **§485-2. Prohibited Conduct.**

- A. Any person who commits any of the following prohibited acts shall be liable to the County for three (3) times the amount of damages which the County sustains because of such action, and shall be liable for attorneys’ fees and costs for any civil action brought to recover such damages and penalties:
  - (1) Knowingly presents or causes to be presented to an officer or employee of the County a false claim for payment or approval;
  - (2) Knowingly makes, uses or causes to be made or used a false record or statement material to a false or fraudulent claim;
  - (3) Conspires to commit a violation of subparagraph (1), (2), (4), (5), (6) or (7);
  - (4) Has possession, custody or control of property or money used or to be used by the County and, intending to defraud the County or willfully to conceal the property, delivers or causes to be delivered less property 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 by the County and, intending to defraud the County, 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 County 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 an obligation to pay or transmit money or property to the County.
- B. The court may assess less than three (3) times the amount of damages sustained by the County because of the act of any individual if the court determines that such individual has fully cooperated with any government investigation of the violation, but in no circumstance may the court assess less than the full amount of the damages sustained by the County.

### **§ 485-3. Civil Actions for False Claims.**

- A. Actions by the County Solicitor. If the County Solicitor determines that a person has violated or is violating the provisions of Section §485-2, he or she may institute a civil action against that person in a court of competent jurisdiction.
- B. Actions by Private Persons.
- (1) Any person may submit a proposed civil complaint, alleging violations of this Chapter, to the County Solicitor or to such other officer of the County whom the Chief Executive designates to investigate such complaints. The proposed civil complaint shall be signed and verified and shall include all material evidence and information possessed by such person in support of the allegations in the complaint. The County Solicitor or the officer designated by the Chief Executive under this Chapter is authorized to investigate all such complaints and may request any additional information from the person who submitted the proposed civil complaint, in order to investigate the allegations set forth therein.
  - (2) The County Solicitor may elect to intervene and proceed with the action within sixty (60) days after receiving both the complaint and the material evidence and information. The County Solicitor may extend the time for the investigation by an additional sixty (60) days upon provision of written notice to the person who submitted the complaint.
  - (3) Before the expiration of the sixty day period or any extension thereof, the County Solicitor shall.
    - (a) Bring a civil action, based upon the facts alleged in such complaint, against one or more of the defendants named therein, in which case the action shall be conducted by the County Solicitor; or
    - (b) Notify the person that submitted the complaint that the County declines to take over the action, in which case the person submitting the case shall have the right to file and conduct the action.
    - (c) If the County Solicitor elects not to proceed with the action and so requests, he or she shall be served with copies of all pleadings filed in the action and shall be supplied with copies of all deposition transcripts at the County's expense. When a person proceeds with the action, the court, without limiting the status and rights of the person initiating the action, may nevertheless permit the County to intervene at a later date upon a showing of good cause.
- C. Certain Actions Barred. This Chapter 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 ten thousand (10,000) dollars. If, however, any false claim relates to the Misuse of County Resources, the terms of this Chapter shall apply regardless of the cumulative value of such false claim(s).
  - (2) Publicly Disclosed Information.

- (a) The court shall dismiss an action or claim under this Section unless opposed by the County, if substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed:
    - (i) In a criminal, civil, or administrative hearing, in which the County or any agent thereof is a party; or
    - (ii) In a legislative or administrative report, hearing, audit, or investigation; or
    - (iii) From the news media.
  - (b) For the purposes of this Paragraph, “original source” shall mean an individual who either:
    - (i) Prior to a public disclosure under Section C(A)(2) has voluntarily disclosed to the County the information on which allegations or transactions and a claim are based; or
    - (ii) Who has knowledge that is independent of and materially adds to the publicly disclosed allegations or transactions, and who has voluntarily provided the information to the County before filing an action pursuant to the terms of this Chapter.
  - (3) Based upon information discovered by an employee of the County, state or federal government in the course of his or her employment unless:
    - (a) Such employee first reported the information to the County; and
    - (b) The County failed to act on the information within six months of its receipt of the information; or
  - (4) Against the federal government, the Commonwealth of Pennsylvania, the County or any officer or employee of those governmental entities acting within the scope of his or her employment. Notwithstanding the inapplicability of this Chapter to such cases, the County Solicitor is not precluded from otherwise filing an action in such cases.
- D. Nothing herein shall be construed as authorizing anyone, other than the County Solicitor or a person or attorney designated pursuant to this Chapter, to commence a civil action to represent the County under this Chapter.
- E. Related Actions. Regardless of whether the County Solicitor has commenced a civil action or another party has been designated to do so, the County Solicitor may elect to pursue any alternative action with respect to the presentation of false claims, provided that, if the alternative action is based upon a proposed civil complaint submitted by any person, such person shall be entitled to the same percentage share of any cash proceeds recovered by the County to which that person would have been entitled if the alternative action were a civil action.

F. Rights of the Parties.

- (1) If the County Solicitor elects to commence a civil action, then the County Solicitor shall have sole authority for prosecuting and settling the action and may move to dismiss or may settle the action, notwithstanding the objections of the person who submitted the proposed civil complaint upon which such civil action is based. The County Solicitor may, in his or her discretion, file the complaint under seal and maintain its confidentiality for a period of time as deemed necessary by the Solicitor and permitted by the court.
- (2) If a person who submitted a proposed civil complaint or his or her attorney is conducting a civil action pursuant to the terms of this Chapter, then the person or attorney, as the case may be, may conduct the action in the name of the County. The County Solicitor may require such person conducting the action to file the complaint under seal, as determined by the Solicitor. Such person may seek to impose fines and penalties under this Code, as well as treble damages, attorneys' fees and costs. However, the County Solicitor shall have sole authority to move to dismiss the action, notwithstanding the objection of such person, provided such person has had an opportunity to be heard. The County Solicitor has sole authority to settle the action, and may do so notwithstanding the objection of the person who submitted the proposed civil complaint, if after providing such person with an opportunity to be heard, the court approves the settlement.
- (3) The court may issue an order restricting the participation of a person conducting a civil action under this Chapter, 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.
- (4) The court may issue a stay of any civil action brought under this Chapter if the action will interfere with any investigation or prosecution of a criminal matter arising out of the same facts or for any other reason the court deems appropriate.

G. Award from Proceeds.

- (1) If the County Solicitor has elected to commence a civil action based on a proposed civil complaint, then the person or persons who submitted the complaint collectively shall be entitled to receive at least ten (10) and no more than twenty-five (25) percent of the proceeds recovered by the County in the civil action or in settlement of such action.
- (2) If a person or persons commence a civil action, then such person or persons collectively shall be entitled to receive at least fifteen (15) and no more than thirty (30) percent of the proceeds recovered by the County in the civil action or in settlement of such action.
- (3) In determining the share of the proceeds to which a person submitting a proposed civil complaint is entitled, the court may consider the following factors:
  - (a) The extent to which such person contributed to the prosecution of the action, either in time, effort or finances;

- (b) Any unreasonable delay by such person in submitting the proposed civil complaint;
- (c) The extent to which the allegations involve a significant safety issue;
- (d) Whether the person has been charged with criminal conduct arising from his or her role in the alleged violation of this Chapter, in which case such person shall not receive any share of the proceeds of the action if convicted on the charges; and
- (e) Fundamental fairness and any other factors the court deems appropriate.

I. Attorneys' Fees and Costs.

- (1) In the event the County prevails in a civil action, commenced pursuant to this Chapter, the County Solicitor or the person designated to commence such action shall receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.
- (2) The County 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 action pursuant to this Chapter.

**§485-4. Retaliatory Action Prohibited.**

- A. No person shall discharge, demote, suspend, threaten, harass or in any other manner discriminate against an employee in the terms and conditions of employment because of lawful acts done by the employee in furtherance of an action under this Chapter, including investigation for, initiation of, testimony for, or other assistance in an action filed or to be filed under this Chapter.
- B. Any employee who is found to have suffered retaliatory action as defined in this section shall be entitled to all relief necessary to make the employee whole. Such relief shall include reinstatement with the same seniority status such employee would have had but for the discrimination, two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees.

**§485-5. Court Rules.**

Any rules adopted by the court that differ from the procedures set forth in this Chapter shall supersede the procedures set forth herein.

**§485-6. False Claims Procedure.**

In any action brought pursuant to the terms of this Chapter, the County or the person acting on behalf of the County hereunder shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

***SECTION 2. Effective Date.***

The provisions of this Ordinance shall become effective immediately upon the date of final approval.

***SECTION 3. Severability. If any provision of this Ordinance shall be determined to be unlawful, invalid, void or unenforceable, then that provision shall be considered severable from the remaining provisions of this Ordinance which shall be in full force and effect.***

***SECTION 4. Repealer. Any Resolution or Ordinance or part thereof conflicting with the provisions of this Ordinance is hereby repealed so far as the same affects this Ordinance.***