

1 SB409
2 132823-3
3 By Senator Marsh
4 RFD: Rules
5 First Read: 14-APR-11

1 SB409

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4 ENROLLED, An Act,

5 Relating to the Department of Examiners of Public
6 Accounts; to authorize the Chief Examiner to enter into
7 contracts for recovery audits to recover overpayments of state
8 funds; and to provide for the appropriation of funds
9 recovered.

10 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

11 Section 1. As used in this act, the following words
12 have the following meanings:

13 (1) CHIEF EXAMINER. The Chief Examiner of Public
14 Accounts.

15 (2) OVERPAYMENT. Any payment of in excess of amounts
16 due and includes failure to meet eligibility requirements,
17 failure to identify third party liability where applicable,
18 any payment for an ineligible good or service, any payment for
19 a good or service not received, duplicate payments, invoice
20 and pricing errors, failure to apply discounts, rebates or
21 other allowances, failure to comply with contracts or
22 purchasing agreements, or both, failure to provide adequate
23 documentation or necessary signatures, or both, on documents,
24 or any other inadvertent error resulting on overpayment.

1 (3) RECOVERY AUDIT. A financial management technique
2 used to identify overpayments made by a state agency with
3 respect to individuals, vendors, service providers, and other
4 entities in connection with a payment activity.

5 (4) RECOVERY AUDITOR. A private contractor with
6 recovery audit expertise.

7 (5) STATE AGENCY. A department, office, board,
8 authority, commission, bureau, division, institution, state
9 institution of higher education of this state, or any other
10 state entity that makes payments of state funds.

11 Section 2. The Chief Examiner may contract with
12 recovery auditors to conduct recovery audits of payments made
13 by state agencies to individuals, vendors, service providers,
14 and other entities. Any audit conducted pursuant to this
15 section of any payment made by a state agency to an electric
16 utility regulated by the Public Service Commission is limited
17 to the three-year period following the date of the payment to
18 be audited. Any contract shall be entered into in accordance
19 with the purchasing provisions of the State of Alabama. The
20 contracts may provide for reasonable compensation for services
21 provided under the contract, including compensation determined
22 by the application of a specified percentage of the total
23 amount recovered because of the recovery auditor's audit
24 activities. In no event shall the compensation to a recovery
25 auditor exceed 15 percent of the amount recovered because of

1 the recovery auditor's audit activities. A recovery audit of a
2 payment may not be made within 90 days of the date of the
3 payment. No payment shall be due a recovery auditor from any
4 payment identified as an overpayment until the overpayment has
5 been recovered and credited to the special fund established in
6 this act.

7 Section 3. (a) A state agency whose payments are
8 being audited under a recovery contract pursuant to this
9 section shall provide a recovery auditor with any payment
10 related information as determined by the Chief Examiner,
11 including any confidential information, that is necessary for
12 the performance of the audit or the recovery audit of an
13 overpayment, to the extent the agency is not prohibited from
14 sharing the information under an agreement with another state
15 or federal government.

16 (b) A recovery audit shall be complementary to any
17 other financial management process and shall not supplant any
18 existing or future state audit or program integrity activity
19 by a state agency.

20 (c) A recovery auditor acting under a contract
21 authorized by this section, and each employee or agent of the
22 recovery auditor, is subject to all prohibitions against the
23 disclosure of confidential information obtained from the state
24 in connection with the contract that apply to any official or
25 employee of the applicable state agency. A recovery auditor

1 acting under a contract authorized by this section or an
2 employee or agent of the recovery auditor who discloses
3 confidential information in violation of a prohibition made
4 applicable to the recovery auditor under this section is
5 subject to prosecution by the Attorney General in any court
6 within this state.

7 Section 4. Recovery audits shall be performed on
8 payments to individuals, vendors, service providers, and other
9 entities made by each state agency as determined by the Chief
10 Examiner. Notwithstanding the foregoing, the recovery audits
11 provided for in this act shall not be performed on any entity,
12 vendor, or service provider that is subject to audits under
13 the federally mandated Recovery Audit Contractor Program
14 adopted by the Alabama Medicaid Agency under Section 1902(a)
15 (42) of the Social Security Act, as amended.

16 Section 5. (a) A special fund is established within
17 the State Treasury for the deposit of all funds generated from
18 recovery audits conducted pursuant to this act after payment
19 of any percentages due under the contract to perform the
20 audit. Amounts due a federal agency by a state agency as a
21 result of a recovery audit shall be disbursed from the fund
22 after certification by the agency of the amount due and
23 verification of the amount by the Chief Examiner. Any amounts
24 recovered that were appropriated for funds constitutionally
25 earmarked shall be appropriated in accordance with law. Any

1 amounts remaining in the fund shall be subject to expenditure
2 for any lawful purpose through appropriation by the
3 Legislature.

4 (b) A state agency shall compute the amount of
5 federal money due to be returned to the federal government
6 from any federal money that is recovered through a recovery
7 audit conducted under this act. The state agency shall compute
8 the amount due in accordance with the rules of the federal
9 program through which the agency received the federal money.

10 Section 6. Recovery audit reports shall be public
11 records and released by the Department of Examiners of Public
12 Accounts in accordance with normal report release procedures.
13 Copies shall be available in electronic form on the
14 department's website.

15 Section 7. If the entity audited by the recovery
16 auditor disagrees with the results or report of the recovery
17 audit, the entity may request arbitration of the dispute
18 pursuant to Division 1 of Article 1 of Chapter 6, Title 6,
19 Code of Alabama 1975. The compensation of the arbitrators and
20 the cost of the arbitration shall be paid by the entity
21 audited and the recovery auditor in amounts that are in
22 proportion to the ruling of the arbitrators regarding the
23 correctness of the recovery auditor's report on an
24 overpayment.

1 Section 8. All laws or parts of laws which conflict
2 with this act are repealed.

3 Section 9. This act shall become effective
4 immediately following its passage and approval by the
5 Governor, or its otherwise becoming law.

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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB409

Senate 27-APR-11

I hereby certify that the within Act originated in and passed the Senate.

Senate 02-JUN-11

I hereby certify that the within Act originated in and passed the Senate, as amended by Conference Committee Report.

Patrick Harris
Secretary

House of Representatives

Passed: 02-JUN-11, as amended

House of Representatives

Passed: 09-JUN-2011, as amended by Conference Committee Report.

By: Senator Marsh