

**Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 10-0680.02 Jason Gelender

HOUSE BILL 10-1176

HOUSE SPONSORSHIP

Vaad,

SENATE SPONSORSHIP

Mitchell,

House Committees

Finance
State, Veterans, & Military Affairs
Appropriations

Senate Committees

Finance
Appropriations

A BILL FOR AN ACT

101 **CONCERNING RECOVERY AUDITS FOR GOVERNMENT OVERPAYMENTS**
102 **OF TAX DOLLARS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

The bill adds a new part to the statutory provisions governing the office of state planning and budgeting (OSPB) that:

- ! Declares overpayments to individuals, vendors, and other entities to be a serious problem for certain government entities (other covered entities) and state agencies that can

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

HOUSE
3rd Reading Unamended
April 14, 2010

HOUSE
Amended 2nd Reading
April 13, 2010

be mitigated by requiring recovery audits of state agency or other covered entity expenditures designed to recover overpayments.

- ! Requires the director of OSPB to:
 - ! Contract with private contractors for recovery audits of state agency and other covered entity payments to individuals, vendors, and other entities for state agencies and other covered entities that expend more than \$25 million annually;
 - ! Promulgate rules necessary to implement the recovery audit program, including rules to set reasonable compensation as a percentage of the amount recovered from recovery audits for recovery audit contractors and, if deemed appropriate by the director, rules to provide cost-benefit criteria to exempt from the program state agencies and other covered entities that make relatively few or small payments to vendors;
 - ! Report to the legislative audit and joint budget committees by May 1 of each year regarding exemptions from recovery audits proposed to be allowed by the director for the next fiscal year so that the committees can have an opportunity to veto any such exemption;
 - ! Provide copies of all reports received from recovery audit contractors to the governor, the state auditor, and the legislative audit and joint budget committees within 7 days of receipt; and
 - ! No later than December 31 of each year, issue a report to the general assembly summarizing the contents of all recovery audit contractor reports received during the most recently completed fiscal year.
- ! Allows the director of OSPB to retain a portion of any amount recovered due to a recovery audit in order to defray the reasonable and necessary administrative costs incurred by OSPB in contracting for and providing oversight of the recovery audit.
- ! Requires the director of OSPB and a state agency or other covered entity subject to a recovery audit to provide to the auditing contractor confidential information necessary for the conduct of the audit to the extent not prohibited by federal law or regulation or an agreement with the federal government, the government of another state, or an agency of another state.

- ! Requires the auditing contractor to keep the information confidential or face any civil or criminal penalties that would apply to a breach of confidentiality by the state agency or other covered entity or its employees.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. Part 2 of article 30 of title 24, Colorado Revised**
3 **Statutes, is amended BY THE ADDITION OF A NEW SECTION to**
4 **read:**

5 **24-30-203.5. Recovery audits - legislative declaration -**
6 **definitions - contracting - reporting. (1) (a) THE GENERAL ASSEMBLY**
7 **HEREBY FINDS AND DECLARES THAT:**

8 **(I) OVERPAYMENTS ARE A SERIOUS PROBLEM FOR STATE AGENCIES**
9 **GIVEN THE MAGNITUDE AND COMPLEXITY OF STATE OPERATIONS;**

10 **(II) OVERPAYMENTS WASTE TAX DOLLARS AND DETRACT FROM**
11 **THE EFFICIENCY AND EFFECTIVENESS OF STATE AGENCY OPERATIONS BY**
12 **DIVERTING RESOURCES FROM THEIR INTENDED USES;**

13 **(III) AN OVERPAYMENT OCCURS WHEN AN INDIVIDUAL, VENDOR,**
14 **OR OTHER ENTITY RECEIVES A PAYMENT FROM A STATE AGENCY IN ERROR**
15 **OR IN EXCESS OF THE LEGAL AMOUNT TO WHICH THE INDIVIDUAL, VENDOR,**
16 **OR OTHER ENTITY IS ENTITLED.**

17 **(b) THE GENERAL ASSEMBLY FURTHER FINDS AND DECLARES THAT:**

18 **(I) RECOVERY AUDITS ARE A NATIONALLY RECOGNIZED BEST**
19 **PRACTICE FOR DISBURSEMENTS MANAGEMENT AND PROVIDE INSIGHT FOR**
20 **IMPROVING OPERATIONAL EFFICIENCY AND INTERNAL CONTROLS IN THE**
21 **DISBURSEMENT OF TAX DOLLARS;**

22 **(II) IN ORDER TO IMPROVE THE ECONOMY AND EFFICIENCY OF**
23 **STATE AGENCY OPERATIONS, IT IS NECESSARY, APPROPRIATE, AND IN THE**

1 BEST INTERESTS OF THE STATE TO REQUIRE THE STATE CONTROLLER TO
2 CONTRACT FOR RECOVERY AUDITS TO RECOUP OVERPAYMENTS BY STATE
3 AGENCIES OF STATE OR FEDERAL TAX DOLLARS; AND

4 (III) RECOVERY AUDITS WILL NOT COST THE STATE ANY MONEY
5 BECAUSE THE CONTRACTOR'S COSTS ARE DEDUCTED FROM ANY DOLLARS
6 RECOVERED, WHICH MAKES RECOVERY AUDITS SELF-FUNDING.

7 (2) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE
8 REQUIRES:

9 (a) "CONSULTANT" MEANS A PRIVATE CONTRACTOR THAT HAS
10 RECOVERY AUDIT EXPERTISE.

11 (b) "OVERPAYMENT" MEANS A PAYMENT BY A STATE AGENCY TO
12 AN INDIVIDUAL, VENDOR, OR OTHER ENTITY THAT IS MADE IN ERROR OR IS
13 IN EXCESS OF THE AMOUNT TO WHICH THE RECIPIENT IS ENTITLED,
14 INCLUDING, BUT NOT LIMITED TO:

15 (I) A PAYMENT TO A RECIPIENT WHO DOES NOT MEET APPLICABLE
16 ELIGIBILITY REQUIREMENTS FOR RECEIVING THE PAYMENT;

17 (II) A DUPLICATE PAYMENT;

18 (III) A PAYMENT RESULTING FROM AN INVOICE OR PRICING ERROR;

19 (IV) A PAYMENT RESULTING FROM A FAILURE TO APPLY AN
20 APPLICABLE DISCOUNT, REBATE, OR OTHER ALLOWANCE;

21 (V) A PAYMENT RESULTING FROM A FAILURE TO COMPLY WITH A
22 PURCHASING AGREEMENT; AND

23 (VI) A PAYMENT RESULTING FROM ANY OTHER INADVERTENT
24 ERROR.

25 (c) "RECOVERY AUDIT" MEANS A FINANCIAL MANAGEMENT
26 TECHNIQUE USED TO IDENTIFY OVERPAYMENTS MADE BY A STATE AGENCY
27 TO VENDORS AND OTHER ENTITIES IN CONNECTION WITH THE PAYMENT

1 ACTIVITIES OF THE STATE AGENCY.

2 (d) "STATE AGENCY" HAS THE SAME MEANING AS SET FORTH IN
3 SECTION 24-3-101.

4 (3) (a) ON OR BEFORE JANUARY 1, 2011, THE STATE CONTROLLER
5 SHALL CONTRACT WITH ONE OR MORE EXPERIENCED CONSULTANTS TO
6 CONDUCT RECOVERY AUDITS FOR THE 2007-08, 2008-09, AND 2009-10
7 FISCAL YEARS.

8 (b) A CONTRACT WITH A CONSULTANT ENTERED INTO AS REQUIRED
9 BY PARAGRAPH (a) OF THIS SUBSECTION (2) SHALL:

10 (I) PROVIDE FOR REASONABLE COMPENSATION FOR THE RECOVERY
11 AUDIT SERVICES PROVIDED UNDER THE CONTRACT, WHICH,
12 NOTWITHSTANDING ANY OTHER PROVISION OF LAW, SHALL INCLUDE
13 COMPENSATION DETERMINED BY THE APPLICATION OF A SPECIFIED
14 PERCENTAGE TO THE TOTAL AMOUNT COLLECTED BY THE CONSULTANT IN
15 THE COURSE OF THE CONSULTANT'S RECOVERY AUDIT AND RELATED
16 COLLECTION ACTIVITIES; AND

17 (II) SPECIFY LIMITATIONS ON THE SCOPE OF THE POWERS THAT
18 MAY BE EXERCISED BY THE CONSULTANT AND PROCEDURES TO BE
19 FOLLOWED BY THE CONSULTANT IN CONDUCTING RECOVERY AUDITS TO
20 THE EXTENT DEEMED NECESSARY AND APPROPRIATE BY THE STATE
21 CONTROLLER AND THE CONSULTANT TO ENSURE THAT THE DUE PROCESS
22 RIGHTS OF ANY PERSON FROM WHOM THE CONSULTANT SEEKS RECOVERY
23 OF AN OVERPAYMENT ARE ADEQUATELY PROTECTED.

24 (c) NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY
25 AND EXCEPT TO THE EXTENT PROHIBITED BY FEDERAL LAW OR
26 REGULATIONS OR BY AN AGREEMENT BETWEEN THE STATE OR A STATE
27 AGENCY AND THE FEDERAL GOVERNMENT, THE GOVERNMENT OF ANOTHER

1 STATE, OR AN AGENCY OR OTHER GOVERNMENT ENTITY OF ANOTHER
2 STATE, THE STATE CONTROLLER OR A STATE AGENCY BEING SUBJECTED TO
3 A RECOVERY AUDIT, AND ANY CONTRACTOR OR VENDOR THAT HAS A
4 CONTRACT WITH SUCH A STATE AGENCY, SHALL PROVIDE A CONSULTANT
5 ACTING UNDER A CONTRACT REQUIRED BY PARAGRAPH (a) OF THIS
6 SUBSECTION (3) WITH ANY CONFIDENTIAL INFORMATION IN THE CUSTODY
7 OF THE STATE CONTROLLER, THE STATE AGENCY, OR THE CONTRACTOR OR
8 VENDOR THAT IS NECESSARY FOR THE PERFORMANCE OF THE RECOVERY
9 AUDIT. A CONSULTANT ACTING UNDER SUCH A CONTRACT, OR ANY
10 EMPLOYEE OR AGENT OF THE CONSULTANT, IS SUBJECT TO ALL
11 PROHIBITIONS AGAINST THE DISCLOSURE OF CONFIDENTIAL INFORMATION
12 OBTAINED FROM THE STATE OR THE CONTRACTOR OR VENDOR IN
13 CONNECTION WITH THE CONTRACT THAT APPLY TO THE STATE
14 CONTROLLER, THE APPLICABLE STATE AGENCY, THE CONTRACTOR OR
15 VENDOR, OR AN EMPLOYEE THEREOF AND TO ALL CIVIL OR CRIMINAL
16 PENALTIES THAT APPLY TO A VIOLATION OF ANY SUCH PROHIBITION.

17 (4) (a) THE STATE CONTROLLER SHALL REQUIRE RECOVERY AUDITS
18 TO BE PERFORMED ON THE PAYMENTS TO INDIVIDUALS, VENDORS, AND
19 OTHER ENTITIES MADE BY ALL STATE AGENCIES; EXCEPT THAT THE STATE
20 CONTROLLER MAY, SUBJECT TO THE REVIEW PROVIDED FOR IN PARAGRAPH
21 (b) OF THIS SUBSECTION (4), EXEMPT A STATE AGENCY FROM THE
22 RECOVERY AUDITS OTHERWISE REQUIRED BY THIS SECTION IF THE STATE
23 CONTROLLER DETERMINES THAT SUBJECTING THE STATE AGENCY TO A
24 RECOVERY AUDIT IS NOT LIKELY TO YIELD SIGNIFICANT NET BENEFITS TO
25 THE STATE OR THAT THE STATE AGENCY IS ALREADY SUBJECTED TO
26 RECOVERY AUDITS UNDER ANY FEDERAL LAW OR REGULATION OR STATE
27 LAW, RULE, OR POLICY. THE STATE CONTROLLER MAY PROMULGATE

1 RULES IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE 4 OF THIS TITLE
2 TO ESTABLISH ADDITIONAL SPECIFIC CRITERIA FOR EXEMPTING STATE
3 AGENCIES FROM RECOVERY AUDITS. EACH STATE AGENCY FOR WHICH
4 RECOVERY AUDITS ARE REQUIRED SHALL PROVIDE THE RECOVERY AUDIT
5 CONSULTANT WITH ALL INFORMATION AND COOPERATION DESIRABLE OR
6 NECESSARY FOR PERFORMANCE OF THE RECOVERY AUDITS.

7 (b) THE STATE CONTROLLER SHALL PROVIDE THE STATE AUDITOR
8 AND THE LEGISLATIVE AUDIT AND JOINT BUDGET COMMITTEES WITH A
9 REPORT BY OCTOBER 1, 2010, THAT DETAILS ANY EXEMPTIONS FROM
10 RECOVERY AUDITS PROPOSED TO BE ALLOWED BY THE STATE CONTROLLER.
11 THE LEGISLATIVE AUDIT AND JOINT BUDGET COMMITTEES MAY VETO ANY
12 EXEMPTION FROM RECOVERY AUDITS PROPOSED BY THE STATE
13 CONTROLLER BY MAJORITY VOTES OF THE MEMBERS OF EACH OF THE
14 COMMITTEES TAKEN BEFORE DECEMBER 1, 2010.

15 (5) THE STATE CONTROLLER MAY RETAIN A PORTION OF THE NET
16 AMOUNT RECOVERED DUE TO A RECOVERY AUDIT IN ORDER TO DEFRAY
17 THE REASONABLE AND NECESSARY ADMINISTRATIVE COSTS, INCLUDING
18 REIMBURSEMENT PAID TO OTHER STATE AGENCIES REQUIRED BY THIS
19 SUBSECTION (5), INCURRED BY THE STATE CONTROLLER AND THE DIVISION
20 OF ACCOUNTS AND CONTROL IN CONTRACTING FOR AND PROVIDING
21 OVERSIGHT OF THE RECOVERY AUDIT OR ANY ADDITIONAL COSTS
22 INCURRED BY ANY OTHER STATE AGENCY IN RELATION TO THE
23 PERFORMANCE OF THE RECOVERY AUDITS REQUIRED BY THIS SECTION.
24 THE STATE CONTROLLER SHALL REIMBURSE ANY STATE AGENCY THAT
25 INCURS ADDITIONAL COSTS IN RELATION TO THE RECOVERY AUDITS FOR
26 SUCH COSTS FROM THE PORTION OF ANY AMOUNTS RECOVERED FROM
27 RECOVERY AUDITS THAT THE STATE CONTROLLER RETAINS.

1 (6) (a) THE STATE CONTROLLER SHALL PROVIDE COPIES,
2 INCLUDING ELECTRONIC COPIES, OF ANY REPORTS RECEIVED FROM A
3 CONSULTANT PERFORMING RECOVERY AUDITS PURSUANT TO THIS SECTION
4 TO:

- 5 (I) THE GOVERNOR;
6 (II) THE STATE AUDITOR; AND
7 (III) THE LEGISLATIVE AUDIT AND JOINT BUDGET COMMITTEES OF
8 THE GENERAL ASSEMBLY.

9 (b) THE STATE CONTROLLER SHALL PROVIDE THE COPIES OF
10 REPORTS REQUIRED BY PARAGRAPH (a) OF THIS SUBSECTION (6) NOT LATER
11 THAN THE SEVENTH BUSINESS DAY AFTER THE DATE THE STATE
12 CONTROLLER RECEIVES THE CONSULTANT'S REPORT.

13 (c) NOT LATER THAN DECEMBER 31, 2011, THE STATE
14 CONTROLLER SHALL ISSUE A REPORT TO THE GENERAL ASSEMBLY
15 SUMMARIZING THE CONTENTS OF ALL REPORTS RECEIVED FROM
16 CONSULTANTS THAT PERFORMED RECOVERY AUDITS CONTRACTED FOR
17 PURSUANT TO THIS SECTION. THE REPORT SHALL ALSO BE POSTED ON THE
18 WEB SITE OF THE STATE CONTROLLER.

19 **SECTION 2. Safety clause.** The general assembly hereby finds,
20 determines, and declares that this act is necessary for the immediate
21 preservation of the public peace, health, and safety.