

**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**

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**HOUSE SPONSORSHIP**

**Vaad,**

**SENATE SPONSORSHIP**

**Mitchell,**

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**House Committees**

Finance  
State, Veterans, & Military Affairs  
Appropriations

**Senate Committees**

Finance  
Appropriations

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**A BILL FOR AN ACT**

101 **CONCERNING RECOVERY AUDITS FOR GOVERNMENT OVERPAYMENTS**  
102 **OF TAX DOLLARS, AND MAKING AN APPROPRIATION THEREFOR.**

**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.

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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. Appropriation.** (1) In addition to any other  
20          appropriation, there is hereby appropriated, out of any moneys in the  
21          general fund not otherwise appropriated, to the department of personnel  
22          and administration, for allocation to the division of accounts and control  
23          - controller, office of the state controller, for personal services, for the  
24          fiscal year beginning July 1, 2010, the sum of one hundred fourteen  
25          thousand one hundred ninety-four dollars (\$114,194) and 1.8 FTE, or so  
26          much thereof as may be necessary, for the implementation of this act.

27          (2) In addition to any other appropriation, there is hereby



1 appropriated, out of any moneys in the general fund not otherwise  
2 appropriated, to the department of personnel and administration, for  
3 allocation to the division of accounts and control - controller, office of the  
4 state controller, for operating expenses, for the fiscal year beginning July  
5 1, 2010, the sum of eighteen thousand five hundred twenty-two dollars  
6 (\$18,522), or so much thereof as may be necessary, for the  
7 implementation of this act.

8 (3) In addition to any other appropriation, there is hereby  
9 appropriated, out of any moneys in the general fund not otherwise  
10 appropriated, to the department of personnel and administration, for  
11 allocation to the executive director's office, department administration,  
12 for legal services, for the fiscal year beginning July 1, 2010, the sum of  
13 two thousand dollars (\$2,000), or so much thereof as may be necessary,  
14 for the implementation of this act.

15 (4) In addition to any other appropriation, there is hereby  
16 appropriated, out of any moneys in the general fund not otherwise  
17 appropriated, to the department of local affairs, for allocation to the  
18 division of local governments, field services, for program costs, for the  
19 fiscal year beginning July 1, 2010, the sum of twenty-six thousand nine  
20 hundred twenty-seven dollars (\$26,927) and 0.3 FTE, or so much thereof  
21 as may be necessary, for the implementation of this act.

22 (5) In addition to any other appropriation, there is hereby  
23 appropriated to the department of law, for the fiscal year beginning July  
24 1, 2010, the sum of two thousand dollars (\$2,000), or so much thereof as  
25 may be necessary, for the provision of legal services to the department of  
26 personnel and administration related to the implementation of this act.  
27 Said sum shall be from reappropriated funds received from the

1 department of personnel and administration out of the appropriation made  
2 in subsection (3) of this section.

3 (6) It is the intent of the general assembly that the general fund  
4 appropriations in subsections (1), (2), (3), and (4) of this section shall be  
5 derived from savings generated from the implementation of the  
6 provisions of House Bill 10-1338, as enacted during the Second Regular  
7 Session of the Sixty-seventh General Assembly.

8 **SECTION 3. Effective date.** (1) This act shall take effect upon  
9 passage.

10 (2) Notwithstanding the provisions of subsection (1) of this  
11 section, this act shall only take effect if:

12 (a) House Bill 10-1338 is enacted at the Second Regular Session  
13 of the Sixty-seventh General Assembly and becomes law; and

14 (b) The final fiscal estimate for House Bill 10-1338, as determined  
15 from the appropriations enacted in said bill, shows a net reduction in the  
16 amount of general fund revenues appropriated for the state fiscal year  
17 2010-11, that is equal to or greater than the amount of general fund  
18 appropriations made for the implementation of this act for the state fiscal  
19 year 2010-11; and

20 (c) The staff director of the joint budget committee files written  
21 notice with the revisor of statutes no later than July 15, 2010, that the  
22 requirement set forth in paragraph (b) of this subsection (2) has been met.

23 **SECTION 4. Safety clause.** The general assembly hereby finds,  
24 determines, and declares that this act is necessary for the immediate  
25 preservation of the public peace, health, and safety.