

Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

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

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. Legislative declaration.** (1) The general assembly
3 hereby finds and declares that:

4 (a) Overpayments are a serious problem for certain government
5 entities, and especially for state agencies given the magnitude and
6 complexity of state operations;

7 (b) Overpayments waste tax dollars and detract from the
8 efficiency and effectiveness of governmental operations by diverting
9 resources from their intended uses;

10 (c) An overpayment occurs when an individual, vendor, or other
11 entity receives a payment from a state agency or another government
12 entity in error or in excess of the legal amount to which the individual,
13 vendor, or other entity is entitled.

14 (2) The general assembly further finds and declares that:

15 (a) Recovery audits are a nationally recognized best practice for
16 disbursements management and provide insight for improving operational
17 efficiency and internal controls in the disbursement of tax dollars;

18 (b) In order to improve the economy and efficiency of government
19 operations, it is necessary, appropriate, and in the best interests of the
20 state:

21 (I) To require the state controller to contract for recovery audits
22 to recoup overpayments by state executive and judicial branch agencies
23 or certain other government entities of state or federal tax dollars; and

1 (II) To require the state auditor to contract for recovery audits to
2 recoup overpayments by state legislative branch agencies of state or
3 federal tax dollars.

4 (c) Recovery audits will not cost the state any money because the
5 contractor's costs are deducted from any dollars recovered, which makes
6 recovery audits self-funding.

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

10 **24-30-203.5. Recovery audits - definitions - contracting -**
11 **covered entities - reporting.** (1) AS USED IN THIS SECTION, UNLESS THE
12 CONTEXT OTHERWISE REQUIRES:

13 (a) "CONSULTANT" MEANS A PRIVATE CONTRACTOR WITH
14 RECOVERY AUDIT EXPERTISE.

15 (b) "OTHER COVERED ENTITY" MEANS A SCHOOL DISTRICT, AS
16 DEFINED IN SECTION 22-30-103 (13), C.R.S., A SPECIAL PURPOSE
17 AUTHORITY SPECIFICALLY IDENTIFIED IN SECTION 24-77-102 (15) (b), OR
18 A SPECIAL STATUTORY DISTRICT CREATED, EXISTING, AND OPERATING
19 PURSUANT TO ARTICLES 8 TO 15 OF TITLE 32, C.R.S.

20 (c) "OVERPAYMENT" MEANS A PAYMENT, INCLUDING THE
21 PAYMENT OF BENEFITS SUCH AS, BUT NOT LIMITED TO, UNEMPLOYMENT
22 COMPENSATION OR WORKERS' COMPENSATION BENEFITS, BY A STATE
23 AGENCY OR OTHER COVERED ENTITY TO AN INDIVIDUAL, VENDOR, OR
24 OTHER ENTITY THAT IS MADE IN ERROR OR IS IN EXCESS OF THE AMOUNT
25 TO WHICH THE RECIPIENT IS ENTITLED, INCLUDING:

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

- 1 (II) A DUPLICATE PAYMENT;
- 2 (III) A PAYMENT RESULTING FROM AN INVOICE OR PRICING ERROR;
- 3 (IV) A PAYMENT RESULTING FROM A FAILURE TO APPLY AN
- 4 APPLICABLE DISCOUNT, REBATE, OR OTHER ALLOWANCE;
- 5 (V) A PAYMENT RESULTING FROM A FAILURE TO COMPLY WITH A
- 6 PURCHASING AGREEMENT; AND
- 7 (VI) A PAYMENT RESULTING FROM ANY OTHER INADVERTENT
- 8 ERROR.

9 (d) "RECOVERY AUDIT" MEANS A FINANCIAL MANAGEMENT

10 TECHNIQUE USED TO IDENTIFY OVERPAYMENTS MADE BY A STATE AGENCY

11 OR OTHER COVERED ENTITY TO INDIVIDUALS, VENDORS, AND OTHER

12 ENTITIES IN CONNECTION WITH THE PAYMENT ACTIVITIES OF THE STATE

13 AGENCY OR OTHER COVERED ENTITY.

14 (e) "STATE AGENCY" MEANS AN AGENCY, AS DEFINED IN SECTION

15 24-3-101, A GOVERNMENTAL UNIT OF THE JUDICIAL BRANCH OF STATE

16 GOVERNMENT, OR A STATE-SUPPORTED INSTITUTION OF HIGHER

17 EDUCATION.

18 (2) (a) THE STATE CONTROLLER SHALL CONTRACT WITH ONE OR

19 MORE CONSULTANTS TO CONDUCT RECOVERY AUDITS.

20 (b) A CONTRACT WITH A CONSULTANT ENTERED INTO AS REQUIRED

21 BY PARAGRAPH (a) OF THIS SUBSECTION (2):

22 (I) SHALL PROVIDE FOR REASONABLE COMPENSATION FOR THE

23 RECOVERY AUDIT SERVICES PROVIDED UNDER THE CONTRACT, INCLUDING

24 COMPENSATION DETERMINED BY THE APPLICATION OF A SPECIFIED

25 PERCENTAGE TO THE TOTAL AMOUNT COLLECTED BY THE CONSULTANT IN

26 THE COURSE OF THE CONSULTANT'S RECOVERY AUDIT AND RELATED

27 COLLECTION ACTIVITIES;

1 (II) SHALL REQUIRE THE CONSULTANT TO PROVIDE WRITTEN
2 NOTIFICATION TO ANY PERSON WHO HAS BEEN FOUND BY THE CONSULTANT
3 TO HAVE RECEIVED ONE OR MORE OVERPAYMENTS THAT RECOVERY OF
4 THE OVERPAYMENT IS BEING SOUGHT. THE NOTIFICATION SHALL SPECIFY:

5 (A) THE NATURE AND AMOUNT OF THE OVERPAYMENT, INCLUDING
6 THE NAME OF THE STATE AGENCY THAT MADE THE OVERPAYMENT OR
7 OVERPAYMENTS;

8 (B) THE TOTAL AMOUNT OF RECOVERY SOUGHT;

9 (C) THE LEGAL AUTHORITY UNDER WHICH RECOVERY OF THE
10 OVERPAYMENT IS BEING SOUGHT;

11 (D) A DEADLINE AT LEAST THIRTY DAYS AFTER THE DATE THE
12 NOTIFICATION IS SENT BY WHICH THE PERSON MAY CONTACT THE
13 CONSULTANT BEFORE THE CONSULTANT PURSUES A JUDICIAL ACTION TO
14 RECOVER THE OVERPAYMENT; AND

15 (E) THE IDENTITY AND CONTACT INFORMATION FOR THE
16 CONSULTANT SO THAT THE PERSON CAN EFFICIENTLY REPAY THE AMOUNT
17 OF THE OVERPAYMENT, PROTEST THE CONCLUSION THAT ONE OR MORE
18 OVERPAYMENTS HAS BEEN MADE, OR NEGOTIATE REPAYMENT TERMS
19 BEFORE THE CONSULTANT FILES A JUDICIAL ACTION TO RECOVER THE
20 OVERPAYMENT OR OVERPAYMENTS. IF PERMITTED BY THE CONTRACT,
21 AND SUBJECT TO SUCH LIMITATIONS AS ARE SPECIFIED IN THE CONTRACT,
22 THE CONSULTANT MAY NEGOTIATE A RECOVERY AMOUNT FROM ANY
23 PERSON THAT IS LESS THAN THE FULL AMOUNT OF THE OVERPAYMENT
24 RECEIVED BY THE PERSON;

25 (III) MAY PERMIT OR REQUIRE THE CONSULTANT TO PURSUE A
26 JUDICIAL ACTION IN A COURT INSIDE OR OUTSIDE THIS STATE TO RECOVER
27 AN OVERPAYMENT; AND

1 (IV) TO ALLOW TIME FOR THE PERFORMANCE OF EXISTING
2 PAYMENT AUDITING PROCEDURES, MAY NOT ALLOW A RECOVERY AUDIT
3 OF A PAYMENT DURING THE NINETY-DAY PERIOD AFTER THE DATE THE
4 PAYMENT WAS MADE.

5 (c) NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY
6 AND EXCEPT TO THE EXTENT PROHIBITED BY FEDERAL LAW OR
7 REGULATIONS OR BY AN AGREEMENT BETWEEN THE STATE OR A STATE
8 AGENCY OR OTHER COVERED ENTITY AND THE FEDERAL GOVERNMENT,
9 THE GOVERNMENT OF ANOTHER STATE, OR AN AGENCY OR OTHER
10 GOVERNMENT ENTITY OF ANOTHER STATE, THE STATE CONTROLLER OR A
11 STATE AGENCY OR OTHER COVERED ENTITY BEING SUBJECTED TO A
12 RECOVERY AUDIT, AND ANY CONTRACTOR OR VENDOR THAT HAS A
13 CONTRACT WITH SUCH A STATE AGENCY OR OTHER COVERED ENTITY,
14 SHALL PROVIDE A CONSULTANT ACTING UNDER A CONTRACT REQUIRED BY
15 PARAGRAPH (a) OF THIS SUBSECTION (2) WITH ANY CONFIDENTIAL
16 INFORMATION IN THE CUSTODY OF THE STATE CONTROLLER, THE STATE
17 AGENCY, THE OTHER COVERED ENTITY, OR THE CONTRACTOR OR VENDOR
18 THAT IS NECESSARY FOR THE PERFORMANCE OF THE RECOVERY AUDIT. A
19 CONSULTANT ACTING UNDER SUCH A CONTRACT, OR ANY EMPLOYEE OR
20 AGENT OF THE CONSULTANT, IS SUBJECT TO ALL PROHIBITIONS AGAINST
21 THE DISCLOSURE OF CONFIDENTIAL INFORMATION OBTAINED FROM THE
22 STATE, THE OTHER COVERED ENTITY, OR THE CONTRACTOR OR VENDOR IN
23 CONNECTION WITH THE CONTRACT THAT APPLY TO THE STATE
24 CONTROLLER, THE APPLICABLE STATE AGENCY OR OTHER COVERED
25 ENTITY, THE CONTRACTOR OR VENDOR, OR AN EMPLOYEE THEREOF AND TO
26 ALL CIVIL OR CRIMINAL PENALTIES THAT APPLY TO A VIOLATION OF ANY
27 SUCH PROHIBITION.

1 (3) (a) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (b) OF
2 THIS SUBSECTION (3), THE STATE CONTROLLER SHALL REQUIRE RECOVERY
3 AUDITS TO BE PERFORMED ON THE PAYMENTS TO INDIVIDUALS, VENDORS,
4 AND OTHER ENTITIES MADE BY A STATE AGENCY OR OTHER COVERED
5 ENTITY THAT HAS TOTAL EXPENDITURES DURING A STATE FISCAL YEAR OF
6 MORE THAN TWENTY-FIVE MILLION DOLLARS. THE STATE CONTROLLER
7 SHALL ALSO REQUIRE RECOVERY AUDITS FOR ANY STATE AGENCY OR
8 OTHER COVERED ENTITY THAT RECEIVES AN AUDIT FINDING BY THE STATE
9 AUDITOR FOR INTERNAL CONTROL WEAKNESSES CONCERNING PAYMENTS
10 AND CONTRACTS. EACH STATE AGENCY OR OTHER COVERED ENTITY FOR
11 WHICH RECOVERY AUDITS ARE REQUIRED SHALL PROVIDE THE RECOVERY
12 AUDIT CONSULTANT WITH ALL INFORMATION NECESSARY FOR THE
13 RECOVERY AUDITS.

14 (b) (I) THE STATE CONTROLLER MAY EXEMPT FROM THE RECOVERY
15 AUDITS OTHERWISE REQUIRED BY PARAGRAPH (a) OF THIS SUBSECTION (3)
16 A STATE AGENCY OR OTHER COVERED ENTITY OR THAT HAS A LOW
17 PROPORTION OF ITS TOTAL EXPENDITURES MADE TO INDIVIDUALS,
18 VENDORS, AND OTHER ENTITIES OR THAT IS OTHERWISE REQUIRED TO BE
19 SUBJECTED TO RECOVERY AUDITS UNDER ANY FEDERAL LAW OR
20 REGULATION OR STATE LAW, RULE, OR POLICY, INCLUDING BUT NOT
21 LIMITED TO THE DEPARTMENTS OF EDUCATION, HIGHER EDUCATION,
22 HEALTH CARE POLICY AND FINANCING, HUMAN SERVICES, AND
23 TRANSPORTATION AND THE GOVERNOR'S OFFICE OF INFORMATION
24 TECHNOLOGY. THE STATE CONTROLLER SHALL MAKE ANY SUCH
25 EXEMPTION IN ACCORDANCE WITH CRITERIA ADOPTED BY RULES
26 PROMULGATED BY THE STATE CONTROLLER PURSUANT TO THE PROVISIONS
27 OF ARTICLE 4 OF THIS TITLE AFTER CONSIDERATION OF THE LIKELY COSTS

1 AND BENEFITS OF PERFORMING RECOVERY AUDITS FOR SUCH AGENCIES OR
2 OTHER COVERED ENTITIES THAT ARE OTHERWISE REQUIRED TO BE
3 SUBJECTED TO RECOVERY AUDITS UNDER ANY FEDERAL LAW OR
4 REGULATION OR STATE LAW, RULE, OR POLICY OR THAT MAKE RELATIVELY
5 FEW OR SMALL PAYMENTS TO VENDORS.

6 (II) THE STATE CONTROLLER SHALL PROVIDE THE STATE AUDITOR
7 AND THE LEGISLATIVE AUDIT AND JOINT BUDGET COMMITTEES WITH A
8 REPORT BY MAY 1 OF EACH YEAR THAT DETAILS ANY EXEMPTIONS FROM
9 RECOVERY AUDITS PROPOSED TO BE ALLOWED BY THE STATE CONTROLLER
10 FOR THE NEXT FISCAL YEAR.

11 (III) THE LEGISLATIVE AUDIT AND JOINT BUDGET COMMITTEES
12 MAY VETO ANY EXEMPTION FROM RECOVERY AUDITS PROPOSED BY THE
13 STATE CONTROLLER FOR A FISCAL YEAR BY MAJORITY VOTES OF THE
14 MEMBERS OF EACH OF THE COMMITTEES TAKEN BEFORE THE START OF THE
15 FISCAL YEAR.

16 (4) THE STATE CONTROLLER SHALL ADOPT RULES FOR
17 REASONABLE COMPENSATION FOR SERVICES PROVIDED UNDER RECOVERY
18 AUDIT CONTRACTS BASED ON THE APPLICATION OF A SPECIFIED
19 PERCENTAGE TO THE TOTAL AMOUNT RECOVERED DUE TO A CONSULTANT'S
20 RECOVERY AUDIT ACTIVITIES. THE STATE CONTROLLER MAY ALSO RETAIN
21 A PORTION OF ANY AMOUNT RECOVERED DUE TO A RECOVERY AUDIT IN
22 ORDER TO DEFRAY THE REASONABLE AND NECESSARY ADMINISTRATIVE
23 COSTS INCURRED BY THE STATE CONTROLLER AND THE DIVISION OF
24 ACCOUNTS AND CONTROL IN CONTRACTING FOR AND PROVIDING
25 OVERSIGHT OF THE RECOVERY AUDIT OR ANY ADDITIONAL COSTS
26 INCURRED BY ANY OTHER STATE AGENCY IN RELATION TO THE RECOVERY
27 AUDITS REQUIRED BY THIS SECTION. THE STATE CONTROLLER SHALL

1 REIMBURSE ANY STATE AGENCY THAT INCURS ADDITIONAL COSTS IN
2 RELATION TO RECOVERY AUDITS FOR SUCH COSTS FROM THE PORTION OF
3 ANY AMOUNTS RECOVERED FROM RECOVERY AUDITS THAT THE STATE
4 CONTROLLER RETAINS.

5 (5) A STATE AGENCY OR OTHER COVERED ENTITY SHALL EXPEND
6 OR SHALL RETURN TO THE FEDERAL GOVERNMENT ANY FEDERAL MONEY
7 THAT IS RECOVERED THROUGH A RECOVERY AUDIT CONDUCTED UNDER
8 THIS SECTION. THE STATE AGENCY OR OTHER COVERED ENTITY SHALL
9 EXPEND OR RETURN THE FEDERAL MONEY IN ACCORDANCE WITH THE LAWS
10 AND REGULATIONS GOVERNING THE FEDERAL PROGRAM THROUGH WHICH
11 THE AGENCY OR OTHER COVERED ENTITY RECEIVED THE FEDERAL MONEY.

12 (6) (a) THE STATE CONTROLLER SHALL PROVIDE COPIES,
13 INCLUDING ELECTRONIC FORM COPIES, OF ANY REPORTS RECEIVED FROM
14 A CONSULTANT CONTRACTING WITH A STATE AGENCY OR OTHER COVERED
15 ENTITY TO PERFORM RECOVERY AUDITS PURSUANT TO THIS SECTION TO:

16 (I) THE GOVERNOR;

17 (II) THE STATE AUDITOR; AND

18 (III) THE LEGISLATIVE AUDIT AND JOINT BUDGET COMMITTEES OF
19 THE GENERAL ASSEMBLY.

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

24 (c) NOT LATER THAN DECEMBER 31 OF EACH YEAR, THE STATE
25 CONTROLLER SHALL ISSUE A REPORT TO THE GENERAL ASSEMBLY
26 SUMMARIZING THE CONTENTS OF ALL REPORTS RECEIVED FROM
27 CONSULTANTS PURSUANT TO THIS SECTION DURING THE PAST FISCAL YEAR.

1 THIS REPORT SHALL ALSO BE POSTED ON THE WEB SITE OF THE STATE
2 CONTROLLER.

3 (7) THE STATE CONTROLLER SHALL ADOPT RULES PROMULGATED
4 IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION TO THE EXTENT
5 NECESSARY TO IMPLEMENT THIS SECTION IN A TIMELY MANNER SO THAT
6 THE STATE CONTROLLER MAY BEGIN CONTRACTING WITH CONSULTANTS
7 FOR RECOVERY AUDITS NOT LATER THAN JANUARY 1, 2011.

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

11 **2-3-120. Legislative branch recovery audits - definitions -**
12 **contracting - reporting.** (1) AS USED IN THIS SECTION, UNLESS THE
13 CONTEXT OTHERWISE REQUIRES:

14 (a) "CONSULTANT" MEANS A PRIVATE CONTRACTOR WITH
15 RECOVERY AUDIT EXPERTISE.

16 (b) "OVERPAYMENT" MEANS A PAYMENT, INCLUDING THE
17 PAYMENT OF BENEFITS SUCH AS, BUT NOT LIMITED TO, UNEMPLOYMENT
18 COMPENSATION OR WORKERS' COMPENSATION BENEFITS, BY A STATE
19 AGENCY TO AN INDIVIDUAL, VENDOR, OR OTHER ENTITY THAT IS MADE IN
20 ERROR OR IS IN EXCESS OF THE AMOUNT TO WHICH THE RECIPIENT IS
21 ENTITLED INCLUDING:

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

24 (II) A DUPLICATE PAYMENT;

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

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

1 (V) A PAYMENT RESULTING FROM A FAILURE TO COMPLY WITH A
2 PURCHASING AGREEMENT; AND

3 (VI) A PAYMENT RESULTING FROM ANY OTHER INADVERTENT
4 ERROR.

5 (c) "RECOVERY AUDIT" MEANS A FINANCIAL MANAGEMENT
6 TECHNIQUE USED TO IDENTIFY OVERPAYMENTS MADE BY A STATE AGENCY
7 TO INDIVIDUALS, VENDORS, AND OTHER ENTITIES IN CONNECTION WITH
8 THE PAYMENT ACTIVITIES OF THE STATE AGENCY.

9 (d) "STATE AGENCY" MEANS THE GENERAL ASSEMBLY OR A STAFF
10 AGENCY OF THE GENERAL ASSEMBLY.

11 (2) (a) THE STATE AUDITOR SHALL CONTRACT WITH ONE OR MORE
12 CONSULTANTS TO CONDUCT RECOVERY AUDITS.

13 (b) A CONTRACT WITH A CONSULTANT ENTERED INTO AS REQUIRED
14 BY PARAGRAPH (a) OF THIS SUBSECTION (2):

15 (I) SHALL PROVIDE FOR REASONABLE COMPENSATION FOR THE
16 RECOVERY AUDIT SERVICES PROVIDED UNDER THE CONTRACT, INCLUDING
17 COMPENSATION DETERMINED BY THE APPLICATION OF A SPECIFIED
18 PERCENTAGE TO THE TOTAL AMOUNT COLLECTED BY THE CONSULTANT IN
19 THE COURSE OF THE CONSULTANT'S RECOVERY AUDIT AND RELATED
20 COLLECTION ACTIVITIES;

21 (II) SHALL REQUIRE THE CONSULTANT TO PROVIDE WRITTEN
22 NOTIFICATION TO ANY PERSON WHO HAS BEEN FOUND BY THE CONSULTANT
23 TO HAVE RECEIVED ONE OR MORE OVERPAYMENTS THAT RECOVERY OF
24 THE OVERPAYMENT IS BEING SOUGHT. THE NOTIFICATION SHALL SPECIFY:

25 (A) THE NATURE AND AMOUNT OF THE OVERPAYMENT, INCLUDING
26 THE NAME OF THE STATE AGENCY THAT MADE THE OVERPAYMENT OR
27 OVERPAYMENTS;

1 (B) THE TOTAL AMOUNT OF RECOVERY SOUGHT;

2 (C) THE LEGAL AUTHORITY UNDER WHICH RECOVERY OF THE
3 OVERPAYMENT IS BEING SOUGHT;

4 (D) A DEADLINE AT LEAST THIRTY DAYS AFTER THE DATE THE
5 NOTIFICATION IS SENT BY WHICH THE PERSON MAY CONTACT THE
6 CONSULTANT BEFORE THE CONSULTANT PURSUES A JUDICIAL ACTION TO
7 RECOVER THE OVERPAYMENT; AND

8 (E) THE IDENTITY AND CONTACT INFORMATION FOR THE
9 CONSULTANT SO THAT THE PERSON CAN EFFICIENTLY REPAY THE AMOUNT
10 OF THE OVERPAYMENT, PROTEST THE CONCLUSION THAT ONE OR MORE
11 OVERPAYMENTS HAS BEEN MADE, OR NEGOTIATE REPAYMENT TERMS
12 BEFORE THE CONSULTANT FILES A JUDICIAL ACTION TO RECOVER THE
13 OVERPAYMENT. IF PERMITTED BY THE CONTRACT, AND SUBJECT TO SUCH
14 LIMITATIONS AS ARE SPECIFIED IN THE CONTRACT, THE CONSULTANT MAY
15 NEGOTIATE A RECOVERY AMOUNT FROM ANY PERSON THAT IS LESS THAN
16 THE FULL AMOUNT OF THE OVERPAYMENT RECEIVED BY THE PERSON.

17 (III) MAY PERMIT OR REQUIRE THE CONSULTANT TO PURSUE A
18 JUDICIAL ACTION IN A COURT INSIDE OR OUTSIDE THIS STATE TO RECOVER
19 AN OVERPAYMENT; AND

20 (IV) TO ALLOW TIME FOR THE PERFORMANCE OF EXISTING
21 PAYMENT AUDITING PROCEDURES, MAY NOT ALLOW A RECOVERY AUDIT
22 OF A PAYMENT DURING THE NINETY-DAY PERIOD AFTER THE DATE THE
23 PAYMENT WAS MADE.

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

18 (3) (a) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (b) OF
19 THIS SUBSECTION (3), THE STATE AUDITOR SHALL REQUIRE RECOVERY
20 AUDITS TO BE PERFORMED ON THE PAYMENTS TO INDIVIDUALS, VENDORS,
21 AND OTHER ENTITIES MADE BY A STATE AGENCY. THE STATE AUDITOR
22 SHALL ALSO REQUIRE RECOVERY AUDITS FOR ANY STATE AGENCY THAT
23 RECEIVES AN AUDIT FINDING BY THE STATE AUDITOR FOR INTERNAL
24 CONTROL WEAKNESSES CONCERNING PAYMENTS AND CONTRACTS. EACH
25 STATE AGENCY FOR WHICH RECOVERY AUDITS ARE REQUIRED SHALL
26 PROVIDE THE RECOVERY AUDIT CONSULTANT WITH ALL INFORMATION
27 NECESSARY FOR THE RECOVERY AUDITS.

1 (b) (I) THE STATE AUDITOR MAY EXEMPT FROM THE RECOVERY
2 AUDITS OTHERWISE REQUIRED BY PARAGRAPH (a) OF THIS SUBSECTION (3)
3 A STATE AGENCY THAT IS OTHERWISE REQUIRED TO BE SUBJECTED TO
4 RECOVERY AUDITS UNDER ANY FEDERAL LAW OR REGULATION OR STATE
5 LAW, RULE, OR POLICY OR THAT HAS A LOW PROPORTION OF ITS TOTAL
6 EXPENDITURES MADE TO INDIVIDUALS, VENDORS, AND OTHER ENTITIES.
7 THE STATE AUDITOR SHALL MAKE ANY SUCH EXEMPTION IN ACCORDANCE
8 WITH CRITERIA ADOPTED BY RULES PROMULGATED BY THE STATE AUDITOR
9 PURSUANT TO THE PROVISIONS OF ARTICLE 4 OF TITLE 24, C.R.S., AFTER
10 CONSIDERATION OF THE LIKELY COSTS AND BENEFITS OF PERFORMING
11 RECOVERY AUDITS FOR SUCH AGENCIES THAT ARE OTHERWISE REQUIRED
12 TO BE SUBJECTED TO RECOVERY AUDITS UNDER ANY FEDERAL LAW OR
13 REGULATION OR STATE LAW, RULE, OR POLICY OR THAT MAKE RELATIVELY
14 FEW OR SMALL PAYMENTS TO VENDORS.

15 (II) THE STATE AUDITOR SHALL PROVIDE THE LEGISLATIVE AUDIT
16 AND JOINT BUDGET COMMITTEES WITH A REPORT BY MAY 1 OF EACH YEAR
17 THAT DETAILS ANY EXEMPTIONS FROM RECOVERY AUDITS PROPOSED TO
18 BE ALLOWED BY THE STATE AUDITOR FOR THE NEXT FISCAL YEAR.

19 (III) THE LEGISLATIVE AUDIT AND JOINT BUDGET COMMITTEES
20 MAY VETO ANY EXEMPTION FROM RECOVERY AUDITS PROPOSED BY THE
21 STATE AUDITOR FOR A FISCAL YEAR BY MAJORITY VOTES OF THE MEMBERS
22 OF EACH OF THE COMMITTEES TAKEN BEFORE THE START OF THE FISCAL
23 YEAR.

24 (4) THE STATE AUDITOR SHALL ESTABLISH REASONABLE
25 COMPENSATION FOR SERVICES PROVIDED UNDER RECOVERY AUDIT
26 CONTRACTS BASED ON THE APPLICATION OF A SPECIFIED PERCENTAGE TO
27 THE TOTAL AMOUNT RECOVERED DUE TO A CONSULTANT'S RECOVERY

1 AUDIT ACTIVITIES. THE STATE AUDITOR MAY ALSO RETAIN A PORTION OF
2 ANY AMOUNT RECOVERED DUE TO A RECOVERY AUDIT IN ORDER TO
3 DEFRAY THE REASONABLE AND NECESSARY ADMINISTRATIVE COSTS
4 INCURRED BY THE STATE AUDITOR IN CONTRACTING FOR AND PROVIDING
5 OVERSIGHT OF THE RECOVERY AUDIT OR ANY ADDITIONAL COSTS
6 INCURRED BY ANY OTHER STATE AGENCY IN RELATION TO THE RECOVERY
7 AUDITS REQUIRED BY THIS SECTION. THE STATE AUDITOR SHALL
8 REIMBURSE ANY STATE AGENCY THAT INCURS ADDITIONAL COSTS IN
9 RELATION TO RECOVERY AUDITS FOR SUCH COSTS FROM THE PORTION OF
10 ANY AMOUNTS RECOVERED FROM RECOVERY AUDITS THAT THE STATE
11 AUDITOR RETAINS.

12 (5) A STATE AGENCY OR OTHER COVERED ENTITY SHALL EXPEND
13 OR SHALL RETURN TO THE FEDERAL GOVERNMENT ANY FEDERAL MONEY
14 THAT IS RECOVERED THROUGH A RECOVERY AUDIT CONDUCTED UNDER
15 THIS SECTION. THE STATE AGENCY OR OTHER COVERED ENTITY SHALL
16 EXPEND OR RETURN THE FEDERAL MONEY IN ACCORDANCE WITH THE LAWS
17 AND REGULATIONS GOVERNING THE FEDERAL PROGRAM THROUGH WHICH
18 THE AGENCY OR OTHER COVERED ENTITY RECEIVED THE FEDERAL MONEY.

19 (6) (a) THE STATE AUDITOR SHALL PROVIDE COPIES, INCLUDING
20 ELECTRONIC FORM COPIES, OF ANY REPORTS RECEIVED FROM A
21 CONSULTANT CONTRACTING WITH A STATE AGENCY OR OTHER COVERED
22 ENTITY TO PERFORM RECOVERY AUDITS PURSUANT TO THIS SECTION TO
23 THE LEGISLATIVE AUDIT AND JOINT BUDGET COMMITTEES OF THE GENERAL
24 ASSEMBLY.

25 (b) THE STATE AUDITOR SHALL PROVIDE THE COPIES OF REPORTS
26 REQUIRED BY PARAGRAPH (a) OF THIS SUBSECTION (6) NOT LATER THAN
27 THE SEVENTH BUSINESS DAY AFTER THE DATE THE STATE AUDITOR

1 RECEIVES THE CONSULTANT'S REPORT.

2 (c) NOT LATER THAN DECEMBER 31 OF EACH YEAR, THE STATE
3 AUDITOR SHALL ISSUE A REPORT TO THE GENERAL ASSEMBLY
4 SUMMARIZING THE CONTENTS OF ALL REPORTS RECEIVED FROM
5 CONSULTANTS PURSUANT TO THIS SECTION DURING THE PAST FISCAL YEAR.
6 THIS REPORT SHALL ALSO BE POSTED ON THE WEB SITE OF THE STATE
7 AUDITOR.

8 (7) THE STATE AUDITOR SHALL BEGIN CONTRACTING WITH
9 CONSULTANTS FOR RECOVERY AUDITS NO LATER THAN JANUARY 1, 2011.

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