

Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

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, 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.*

SENATE
Am ended 2nd Reading
May 11, 2010

HOUSE
3rd Reading Unam ended
April 14, 2010

HOUSE
Am ended 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 A VENDOR OR OTHER**
14 **ENTITY RECEIVES A PAYMENT FROM A STATE AGENCY IN ERROR OR IN**
15 **EXCESS OF THE LEGAL AMOUNT TO WHICH THE VENDOR OR OTHER ENTITY**
16 **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 A VENDOR OR OTHER ENTITY THAT IS MADE IN ERROR OR IS IN EXCESS OF
13 THE AMOUNT TO WHICH THE RECIPIENT IS ENTITLED, INCLUDING, BUT NOT
14 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. "STATE AGENCY" DOES NOT INCLUDE A STATE
4 INSTITUTION OF HIGHER EDUCATION.

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

9 (b) A CONTRACT WITH A CONSULTANT ENTERED INTO AS REQUIRED
10 BY PARAGRAPH (a) OF THIS SUBSECTION (3) SHALL:

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

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

25 (III) REQUIRE ANY DATA OR INFORMATION DETERMINED BY THE
26 STATE AGENCY BEING AUDITED TO BE CONFIDENTIAL TO BE SECURELY
27 TRANSMITTED AND MAINTAINED BY THE CONSULTANT IN ACCORDANCE

1 WITH THE SECURITY POLICIES, STANDARDS, AND GUIDELINES ESTABLISHED
2 BY THE STATE CHIEF INFORMATION SECURITY OFFICER OR THE STATE CHIEF
3 INFORMATION OFFICER PURSUANT TO SECTION 24-37.5-403.

4 (III) REQUIRE ANY DATA OR INFORMATION DETERMINED BY THE
5 STATE AGENCY BEING AUDITED TO BE CONFIDENTIAL TO BE SECURELY
6 TRANSMITTED AND MAINTAINED BY THE CONSULTANT IN ACCORDANCE
7 WITH THE SECURITY POLICIES, STANDARDS, AND GUIDELINES ESTABLISHED
8 BY THE STATE CHIEF INFORMATION SECURITY OFFICER OR THE STATE CHIEF
9 INFORMATION OFFICER PURSUANT TO SECTION 24-37.5-403.

10 (c) NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY
11 AND EXCEPT TO THE EXTENT PROHIBITED BY FEDERAL LAW OR
12 REGULATIONS OR BY AN AGREEMENT BETWEEN THE STATE OR A STATE
13 AGENCY AND THE FEDERAL GOVERNMENT, THE GOVERNMENT OF ANOTHER
14 STATE, OR AN AGENCY OR OTHER GOVERNMENT ENTITY OF ANOTHER
15 STATE, THE STATE CONTROLLER OR A STATE AGENCY BEING SUBJECTED TO
16 A RECOVERY AUDIT, AND ANY CONTRACTOR OR VENDOR THAT HAS A
17 CONTRACT WITH SUCH A STATE AGENCY, SHALL PROVIDE A CONSULTANT
18 ACTING UNDER A CONTRACT REQUIRED BY PARAGRAPH (a) OF THIS
19 SUBSECTION (3) WITH ANY CONFIDENTIAL INFORMATION IN THE CUSTODY
20 OF THE STATE CONTROLLER, THE STATE AGENCY, OR THE CONTRACTOR OR
21 VENDOR THAT IS NECESSARY FOR THE PERFORMANCE OF THE RECOVERY
22 AUDIT. A CONSULTANT ACTING UNDER SUCH A CONTRACT, OR ANY
23 EMPLOYEE OR AGENT OF THE CONSULTANT, IS SUBJECT TO ALL
24 PROHIBITIONS AGAINST THE DISCLOSURE OF CONFIDENTIAL INFORMATION
25 OBTAINED FROM THE STATE OR THE CONTRACTOR OR VENDOR IN
26 CONNECTION WITH THE CONTRACT THAT APPLY TO THE STATE
27 CONTROLLER, THE APPLICABLE STATE AGENCY, THE CONTRACTOR OR

1 VENDOR, OR AN EMPLOYEE THEREOF AND TO ALL CIVIL OR CRIMINAL
2 PENALTIES THAT APPLY TO A VIOLATION OF ANY SUCH PROHIBITION.

3 (4)(a) THE STATE CONTROLLER SHALL REQUIRE RECOVERY AUDITS
4 TO BE PERFORMED ON THE PAYMENTS TO VENDORS AND OTHER ENTITIES
5 MADE BY ALL STATE AGENCIES; EXCEPT THAT THE STATE CONTROLLER
6 MAY, SUBJECT TO THE REVIEW PROVIDED FOR IN PARAGRAPH (b) OF THIS
7 SUBSECTION (4), EXEMPT A STATE AGENCY FROM THE RECOVERY AUDITS
8 OTHERWISE REQUIRED BY THIS SECTION IF THE STATE CONTROLLER
9 DETERMINES THAT SUBJECTING THE STATE AGENCY TO A RECOVERY AUDIT
10 IS NOT LIKELY TO YIELD SIGNIFICANT NET BENEFITS TO THE STATE OR THAT
11 THE STATE AGENCY IS ALREADY SUBJECTED TO RECOVERY AUDITS UNDER
12 ANY FEDERAL LAW OR REGULATION OR STATE LAW, RULE, OR POLICY. THE
13 STATE CONTROLLER MAY PROMULGATE RULES IN ACCORDANCE WITH THE
14 PROVISIONS OF ARTICLE 4 OF THIS TITLE TO ESTABLISH ADDITIONAL
15 SPECIFIC CRITERIA FOR EXEMPTING STATE AGENCIES FROM RECOVERY
16 AUDITS. EACH STATE AGENCY FOR WHICH RECOVERY AUDITS ARE
17 REQUIRED SHALL PROVIDE THE RECOVERY AUDIT CONSULTANT WITH ALL
18 INFORMATION AND COOPERATION DESIRABLE OR NECESSARY FOR
19 PERFORMANCE OF THE RECOVERY AUDITS.

20 (b) THE STATE CONTROLLER SHALL PROVIDE THE STATE AUDITOR
21 AND THE LEGISLATIVE AUDIT AND JOINT BUDGET COMMITTEES WITH A
22 REPORT BY MARCH 1, 2011, THAT DETAILS ANY EXEMPTIONS FROM
23 RECOVERY AUDITS PROPOSED TO BE ALLOWED BY THE STATE CONTROLLER.
24 THE LEGISLATIVE AUDIT AND JOINT BUDGET COMMITTEES MAY VETO ANY
25 EXEMPTION FROM RECOVERY AUDITS PROPOSED BY THE STATE
26 CONTROLLER BY MAJORITY VOTES OF THE MEMBERS OF EACH OF THE
27 COMMITTEES TAKEN BEFORE MAY 1, 2011.

1 (5) THE STATE CONTROLLER MAY RETAIN A PORTION OF THE NET
2 AMOUNT RECOVERED DUE TO A RECOVERY AUDIT IN ORDER TO DEFRAY
3 THE REASONABLE AND NECESSARY ADMINISTRATIVE COSTS, INCLUDING
4 REIMBURSEMENT PAID TO OTHER STATE AGENCIES REQUIRED BY THIS
5 SUBSECTION (5), INCURRED BY THE STATE CONTROLLER AND THE DIVISION
6 OF ACCOUNTS AND CONTROL IN CONTRACTING FOR AND PROVIDING
7 OVERSIGHT OF THE RECOVERY AUDIT OR ANY ADDITIONAL COSTS
8 INCURRED BY ANY OTHER STATE AGENCY IN RELATION TO THE
9 PERFORMANCE OF THE RECOVERY AUDITS REQUIRED BY THIS SECTION.
10 THE STATE CONTROLLER SHALL REIMBURSE ANY STATE AGENCY THAT
11 INCURS ADDITIONAL COSTS IN RELATION TO THE RECOVERY AUDITS FOR
12 SUCH COSTS FROM THE PORTION OF ANY AMOUNTS RECOVERED FROM
13 RECOVERY AUDITS THAT THE STATE CONTROLLER RETAINS.

14 (6) (a) THE STATE CONTROLLER SHALL PROVIDE COPIES,
15 INCLUDING ELECTRONIC COPIES, OF ANY REPORTS RECEIVED FROM A
16 CONSULTANT PERFORMING RECOVERY AUDITS PURSUANT TO THIS SECTION
17 TO:

- 18 (I) THE GOVERNOR;
- 19 (II) THE STATE AUDITOR; AND
- 20 (III) THE LEGISLATIVE AUDIT AND JOINT BUDGET COMMITTEES OF
21 THE GENERAL ASSEMBLY.

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

26 (c) NOT LATER THAN JUNE 30, 2012, THE STATE CONTROLLER
27 SHALL ISSUE A REPORT TO THE GENERAL ASSEMBLY SUMMARIZING THE

1 CONTENTS OF ALL REPORTS RECEIVED FROM CONSULTANTS THAT
2 PERFORMED RECOVERY AUDITS CONTRACTED FOR PURSUANT TO THIS
3 SECTION. THE REPORT SHALL ALSO BE POSTED ON THE WEB SITE OF THE
4 STATE CONTROLLER.

5 (7) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO LIMIT THE
6 AUTHORITY OF A GOVERNING BOARD OF A STATE INSTITUTION OF HIGHER
7 EDUCATION TO CONTRACT FOR A RECOVERY AUDIT FOR THE INSTITUTION
8 IT GOVERNS.

9 **SECTION 2. Appropriation.** (1) In addition to any other
10 appropriation, there is hereby appropriated, out of any moneys in the
11 general fund not otherwise appropriated, to the department of personnel
12 and administration, for allocation to the division of accounts and control
13 - controller, office of the state controller, for personal services, for the
14 fiscal year beginning July 1, 2010, the sum of one hundred fourteen
15 thousand one hundred ninety-four dollars (\$114,194) and 1.8 FTE, or so
16 much thereof as may be necessary, for the implementation of this act.

17 (2) In addition to any other appropriation, there is hereby
18 appropriated, out of any moneys in the general fund not otherwise
19 appropriated, to the department of personnel and administration, for
20 allocation to the division of accounts and control - controller, office of the
21 state controller, for operating expenses, for the fiscal year beginning July
22 1, 2010, the sum of eighteen thousand five hundred twenty-two dollars
23 (\$18,522), or so much thereof as may be necessary, for the
24 implementation of this act.

25 (3) In addition to any other appropriation, there is hereby
26 appropriated, out of any moneys in the general fund not otherwise
27 appropriated, to the department of personnel and administration, for

1 allocation to the executive director's office, department administration,
2 for legal services, for the fiscal year beginning July 1, 2010, the sum of
3 two thousand dollars (\$2,000), or so much thereof as may be necessary,
4 for the implementation of this act.

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

12 (5) In addition to any other appropriation, there is hereby
13 appropriated to the department of law, for the fiscal year beginning July
14 1, 2010, the sum of two thousand dollars (\$2,000), or so much thereof as
15 may be necessary, for the provision of legal services to the department of
16 personnel and administration related to the implementation of this act.
17 Said sum shall be from reappropriated funds received from the
18 department of personnel and administration out of the appropriation made
19 in subsection (3) of this section.

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

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

27 (2) Notwithstanding the provisions of subsection (1) of this

1 section, this act shall only take effect if:

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

4 (b) The final fiscal estimate for House Bill 10-1338, as determined
5 from the appropriations enacted in said bill, shows a net reduction in the
6 amount of general fund revenues appropriated for the state fiscal year
7 2010-11, that is equal to or greater than the amount of general fund
8 appropriations made for the implementation of this act for the state fiscal
9 year 2010-11; and

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

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