

Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

REREVISED

*This Version Includes All Amendments
Adopted 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
3rd Reading Unamended
May 12, 2010

SENATE
Amended 2nd Reading
May 11, 2010

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

24 (4) (a) THE STATE CONTROLLER SHALL REQUIRE RECOVERY AUDITS
25 TO BE PERFORMED ON THE PAYMENTS TO VENDORS AND OTHER ENTITIES
26 MADE BY ALL STATE AGENCIES; EXCEPT THAT THE STATE CONTROLLER
27 MAY, SUBJECT TO THE REVIEW PROVIDED FOR IN PARAGRAPH (b) OF THIS

1 SUBSECTION (4), EXEMPT A STATE AGENCY FROM THE RECOVERY AUDITS
2 OTHERWISE REQUIRED BY THIS SECTION IF THE STATE CONTROLLER
3 DETERMINES THAT SUBJECTING THE STATE AGENCY TO A RECOVERY AUDIT
4 IS NOT LIKELY TO YIELD SIGNIFICANT NET BENEFITS TO THE STATE OR THAT
5 THE STATE AGENCY IS ALREADY SUBJECTED TO RECOVERY AUDITS UNDER
6 ANY FEDERAL LAW OR REGULATION OR STATE LAW, RULE, OR POLICY. THE
7 STATE CONTROLLER MAY PROMULGATE RULES IN ACCORDANCE WITH THE
8 PROVISIONS OF ARTICLE 4 OF THIS TITLE TO ESTABLISH ADDITIONAL
9 SPECIFIC CRITERIA FOR EXEMPTING STATE AGENCIES FROM RECOVERY
10 AUDITS. EACH STATE AGENCY FOR WHICH RECOVERY AUDITS ARE
11 REQUIRED SHALL PROVIDE THE RECOVERY AUDIT CONSULTANT WITH ALL
12 INFORMATION AND COOPERATION DESIRABLE OR NECESSARY FOR
13 PERFORMANCE OF THE RECOVERY AUDITS.

14 (b) THE STATE CONTROLLER SHALL PROVIDE THE STATE AUDITOR
15 AND THE LEGISLATIVE AUDIT AND JOINT BUDGET COMMITTEES WITH A
16 REPORT BY MARCH 1, 2011, THAT DETAILS ANY EXEMPTIONS FROM
17 RECOVERY AUDITS PROPOSED TO BE ALLOWED BY THE STATE CONTROLLER.
18 THE LEGISLATIVE AUDIT AND JOINT BUDGET COMMITTEES MAY VETO ANY
19 EXEMPTION FROM RECOVERY AUDITS PROPOSED BY THE STATE
20 CONTROLLER BY MAJORITY VOTES OF THE MEMBERS OF EACH OF THE
21 COMMITTEES TAKEN BEFORE MAY 1, 2011.

22 (5) THE STATE CONTROLLER MAY RETAIN A PORTION OF THE NET
23 AMOUNT RECOVERED DUE TO A RECOVERY AUDIT IN ORDER TO DEFRAY
24 THE REASONABLE AND NECESSARY ADMINISTRATIVE COSTS, INCLUDING
25 REIMBURSEMENT PAID TO OTHER STATE AGENCIES REQUIRED BY THIS
26 SUBSECTION (5), INCURRED BY THE STATE CONTROLLER AND THE DIVISION
27 OF ACCOUNTS AND CONTROL IN CONTRACTING FOR AND PROVIDING

1 OVERSIGHT OF THE RECOVERY AUDIT OR ANY ADDITIONAL COSTS
2 INCURRED BY ANY OTHER STATE AGENCY IN RELATION TO THE
3 PERFORMANCE OF THE RECOVERY AUDITS REQUIRED BY THIS SECTION.
4 THE STATE CONTROLLER SHALL REIMBURSE ANY STATE AGENCY THAT
5 INCURS ADDITIONAL COSTS IN RELATION TO THE RECOVERY AUDITS FOR
6 SUCH COSTS FROM THE PORTION OF ANY AMOUNTS RECOVERED FROM
7 RECOVERY AUDITS THAT THE STATE CONTROLLER RETAINS.

8 (6) (a) THE STATE CONTROLLER SHALL PROVIDE COPIES,
9 INCLUDING ELECTRONIC COPIES, OF ANY REPORTS RECEIVED FROM A
10 CONSULTANT PERFORMING RECOVERY AUDITS PURSUANT TO THIS SECTION
11 TO:

12 (I) THE GOVERNOR;

13 (II) THE STATE AUDITOR; AND

14 (III) THE LEGISLATIVE AUDIT AND JOINT BUDGET COMMITTEES OF
15 THE GENERAL ASSEMBLY.

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

20 (c) NOT LATER THAN JUNE 30, 2012, THE STATE CONTROLLER
21 SHALL ISSUE A REPORT TO THE GENERAL ASSEMBLY SUMMARIZING THE
22 CONTENTS OF ALL REPORTS RECEIVED FROM CONSULTANTS THAT
23 PERFORMED RECOVERY AUDITS CONTRACTED FOR PURSUANT TO THIS
24 SECTION. THE REPORT SHALL ALSO BE POSTED ON THE WEB SITE OF THE
25 STATE CONTROLLER.

26 (7) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO LIMIT THE
27 AUTHORITY OF A GOVERNING BOARD OF A STATE INSTITUTION OF HIGHER

1 EDUCATION TO CONTRACT FOR A RECOVERY AUDIT FOR THE INSTITUTION
2 IT GOVERNS.

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

11 (2) In addition to any other appropriation, there is hereby
12 appropriated, out of any moneys in the general fund not otherwise
13 appropriated, to the department of personnel and administration, for
14 allocation to the division of accounts and control - controller, office of the
15 state controller, for operating expenses, for the fiscal year beginning July
16 1, 2010, the sum of eighteen thousand five hundred twenty-two dollars
17 (\$18,522), or so much thereof as may be necessary, for the
18 implementation of this act.

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

26 (4) In addition to any other appropriation, there is hereby
27 appropriated, out of any moneys in the general fund not otherwise

1 appropriated, to the department of local affairs, for allocation to the
2 division of local governments, field services, for program costs, for the
3 fiscal year beginning July 1, 2010, the sum of twenty-six thousand nine
4 hundred twenty-seven dollars (\$26,927) and 0.3 FTE, or so much thereof
5 as may be necessary, for the implementation of this act.

6 (5) In addition to any other appropriation, there is hereby
7 appropriated to the department of law, for the fiscal year beginning July
8 1, 2010, the sum of two thousand dollars (\$2,000), or so much thereof as
9 may be necessary, for the provision of legal services to the department of
10 personnel and administration related to the implementation of this act.
11 Said sum shall be from reappropriated funds received from the
12 department of personnel and administration out of the appropriation made
13 in subsection (3) of this section.

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

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

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

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

25 (b) The final fiscal estimate for House Bill 10-1338, as determined
26 from the appropriations enacted in said bill, shows a net reduction in the
27 amount of general fund revenues appropriated for the state fiscal year

1 2010-11, that is equal to or greater than the amount of general fund
2 appropriations made for the implementation of this act for the state fiscal
3 year 2010-11; and

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

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