

**First Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO**

ENGROSSED

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

LLS NO. 11-0937.01 Jason Gelender

HOUSE BILL 11-1307

HOUSE SPONSORSHIP

Becker, Gerou, Ferrandino

SENATE SPONSORSHIP

Steadman, Hodge, Lambert

House Committees

Finance
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING RECOVERY AUDITS.**

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>.)

Current law, enacted by House Bill 10-1176:

- ! Requires the state controller to contract with one or more experienced consultants on a one-time basis to perform recovery audits for the 2007-08, 2008-09, and 2009-10 fiscal years in order to identify and recover overpayments made by state agencies to vendors and other entities during those fiscal years; and

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
Amended 2nd Reading
May 4, 2011

! Allows the state controller to propose to the legislative audit committee and the joint budget committee state agencies to be exempted from the recovery audits.

The bill:

! Makes the recovery audit process ongoing by requiring the state controller to enter into new recovery audit contracts for 3-year periods every 3 years and allowing the state controller to propose changes to the recovery audit exemptions;

! Exempts the department of health care policy and financing from recovery audits and authorizes the state controller to exempt portions of other agencies or entire agencies from recovery audits;

! Limits and clarifies the extent of the authority of the state controller to recover costs incurred by the state controller and other state agencies in the recovery audit process and to reimburse state agencies for those costs;

! Requires the state controller to reimburse federal agencies for any amounts recovered from federal programs in accordance with federal statutes, rules, and regulations;

! Creates the recovery audit cash fund (cash fund), requires all moneys collected from recovery audits and all interest and income earned on the deposit and investment of the cash fund to be credited to the cash fund, and requires any moneys remaining in the cash fund at the end of each recovery audit cycle to be credited to the general fund or the other fund from which an improper payment was made if the state constitution specifies the purposes for which that fund may be used; and

! Requires that the state controller manage all state agency recovery audits.

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

2 **SECTION 1.** 24-30-203.5 (1) (a), (1) (b) (I), and (1) (b) (II), the
3 introductory portion to 24-30-203.5 (2) (b), and 24-30-203.5 (2) (c), (3)
4 (a), (3) (b) (II), (4), (5), and (6) (c), Colorado Revised Statutes, are
5 amended, and the said 24-30-203.5 is further amended BY THE
6 ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

7 **24-30-203.5. Recovery audits - legislative declaration -**

1 **contracting - reporting - definitions.** (1) (a) The general assembly
2 hereby finds and declares that:

3 (I) ~~Overpayments~~ IMPROPER PAYMENTS are a serious problem for
4 state agencies given the magnitude and complexity of state operations;

5 (II) ~~Overpayments~~ IMPROPER PAYMENTS waste ~~tax dollars~~ STATE
6 AND FEDERAL MONEYS and detract from the efficiency and effectiveness
7 of state agency operations by diverting resources from their intended
8 uses;

9 (III) An ~~overpayment~~ IMPROPER PAYMENT occurs when a vendor
10 or other entity receives a payment from a state agency in error or in
11 excess of the legal amount to which the vendor or other entity is entitled.

12 (b) The general assembly further finds and declares that:

13 (I) Recovery audits are a nationally recognized best practice for
14 disbursements management and provide insight for improving operational
15 efficiency and internal controls in the disbursement of ~~tax dollars~~ STATE
16 AND FEDERAL MONEYS;

17 (II) In order to improve the economy and efficiency of state
18 agency operations, it is necessary, appropriate, and in the best interests of
19 the state to require the state controller to contract for recovery audits to
20 recoup ~~overpayments~~ IMPROPER PAYMENTS by state agencies of state or
21 federal tax dollars, FEES, GIFTS, GRANTS, DONATIONS, AND OTHER STATE
22 AND FEDERAL MONEYS NOT SPECIFICALLY EXCLUDED BY LAW OR RULE;
23 and

24 (2) As used in this section, unless the context otherwise requires:

25 (b) "~~Overpayment~~" "IMPROPER PAYMENT" means a payment by a
26 state agency to a vendor or other entity that is made in error or is in excess
27 of the amount to which the recipient is entitled, including, but not limited

1 to:

2 (c) "Recovery audit" means a financial management technique
3 used to identify ~~overpayments~~ IMPROPER PAYMENTS made by a state
4 agency to vendors and other entities in connection with the payment
5 activities of the state agency.

6 (3) (a) On or before July 1, 2011, the state controller shall contract
7 with one or more experienced consultants to conduct recovery audits for
8 the 2007-08, 2008-09, and 2009-10 fiscal years. ON OR BEFORE JULY 1,
9 2011, AND ON OR BEFORE JULY 1 OF EVERY THIRD YEAR THEREAFTER, THE
10 STATE CONTROLLER SHALL CONTRACT WITH ONE OR MORE EXPERIENCED
11 CONSULTANTS TO CONDUCT RECOVERY AUDITS FOR THE PERIOD OF THREE
12 FISCAL YEARS THAT ENDS ON THE JUNE 30 IMMEDIATELY PRECEDING THE
13 APPLICABLE JULY 1 CONTRACTING DEADLINE.

14 (b) A contract with a consultant entered into as required by
15 paragraph (a) of this subsection (3) shall:

16 (II) Specify limitations on the scope of the powers that may be
17 exercised by the consultant and procedures to be followed by the
18 consultant in conducting recovery audits to the extent deemed necessary
19 and appropriate by the state controller and the consultant to ensure that
20 the due process rights of any person from whom the consultant seeks
21 recovery of an ~~overpayment~~ IMPROPER PAYMENT are adequately
22 protected; and

23 (4) (a) The state controller shall require recovery audits to be
24 performed on the payments to vendors and other entities made by all state
25 agencies; except that ■■■ the state controller may, subject to the
26 review provided for in paragraph (b) of this subsection (4), exempt a ANY
27 OTHER state agency IN WHOLE OR IN PART from the recovery audits

1 otherwise required by this section if the state controller determines that
2 ~~subjecting the state agency to a recovery audit is not likely to yield~~
3 ~~significant net benefits to the state or that the EXEMPTED state agency OR~~
4 ~~PORTION OF A STATE AGENCY is already subjected to recovery audits under~~
5 ~~any federal law or regulation or state law, rule, or policy. The state~~
6 ~~controller may promulgate rules in accordance with the provisions of~~
7 ~~article 4 of this title to establish additional specific criteria for exempting~~
8 ~~state agencies from recovery audits. Each state agency for which recovery~~
9 ~~audits are required shall provide the recovery audit consultant with all~~
10 ~~information and cooperation desirable or necessary for performance of~~
11 ~~the recovery audits.~~

12 (b) FOR RECOVERY AUDITS FOR THE 2007-08, 2008-09, AND
13 2009-10 FISCAL YEARS, the state controller shall provide the state auditor
14 and the legislative audit and joint budget committees with a report by
15 March 1, 2011, that details any exemptions from recovery audits proposed
16 to be allowed by the state controller. FOR THE 2010-11 FISCAL YEAR AND
17 FOR ANY FISCAL YEAR THEREAFTER IN WHICH THE STATE CONTROLLER
18 PROPOSES TO CHANGE THE EXEMPTIONS FROM RECOVERY AUDITS, THE
19 STATE CONTROLLER SHALL PROVIDE A REPORT OF THE PROPOSED CHANGES
20 TO THE STATE AUDITOR AND THE LEGISLATIVE AUDIT AND JOINT BUDGET
21 COMMITTEES BY THE MARCH 1 THAT IMMEDIATELY PRECEDES THE
22 EXECUTION OF ONE OR MORE RECOVERY AUDIT CONTRACTS FOR THE
23 APPLICABLE FISCAL YEAR. The legislative audit and joint budget
24 committees may veto any exemption from recovery audits proposed by
25 the state controller by majority votes of the members of each of the
26 committees taken before May 1, 2011, AND TAKEN BEFORE MAY 1 OF
27 EACH YEAR THEREAFTER IN WHICH THE STATE CONTROLLER PROPOSES A

1 CHANGE IN THE EXEMPTIONS FROM RECOVERY AUDITS.

2 (5) The state controller SHALL REIMBURSE FEDERAL AGENCIES FOR
3 ANY AMOUNTS RECOVERED FROM FEDERAL PROGRAMS IN ACCORDANCE
4 WITH FEDERAL STATUTES, RULES, AND REGULATIONS. THE STATE
5 CONTROLLER may retain a portion of the net amount recovered due to a
6 recovery audit in order to ~~defray the reasonable and necessary~~ REIMBURSE
7 THE ACTUAL administrative costs, including reimbursement paid to other
8 state agencies required by this subsection (5) AND ADDITIONAL COSTS
9 incurred by the state controller ~~and the division of accounts and control~~
10 in contracting for and providing oversight of the recovery audit. ~~or any~~
11 ~~additional costs incurred by any other state agency in relation to the~~
12 ~~performance of the recovery audits required by this section.~~ The state
13 controller shall reimburse any state agency that incurs additional costs in
14 relation to the recovery audits for such costs from the portion of any
15 amounts recovered from recovery audits ~~that the state controller retains~~
16 OF THE STATE AGENCY.

17 (6) (c) Not later than June 30, 2012, AND NOT LATER THAN JUNE
18 30 OF EVERY THIRD YEAR THEREAFTER, the state controller shall issue a
19 report to the general assembly summarizing the contents of all reports
20 received from consultants that performed recovery audits contracted for
21 pursuant to this section. The report shall also be posted on the web site of
22 the state controller.

23 (8) ANY MONEYS COLLECTED FROM A RECOVERY AUDIT PURSUANT
24 TO THIS SECTION SHALL BE TRANSMITTED TO THE STATE TREASURER AND
25 CREDITED TO THE RECOVERY AUDIT CASH FUND, WHICH IS HEREBY
26 CREATED IN THE STATE TREASURY. THE CASH FUND SHALL CONSIST OF
27 MONEYS CREDITED TO THE CASH FUND PURSUANT TO THIS SUBSECTION (8)

1 AND ANY OTHER MONEYS APPROPRIATED OR TRANSFERRED TO THE CASH
2 FUND BY THE GENERAL ASSEMBLY. THE GENERAL ASSEMBLY SHALL
3 ANNUALLY APPROPRIATE THE MONEYS IN THE CASH FUND TO THE STATE
4 CONTROLLER FOR THE PURPOSE OF PAYING CONTINGENT CONTRACTOR
5 FEES, STATE AGENCY RECOVERY AUDIT COSTS, AND AMOUNTS DUE TO THE
6 FEDERAL GOVERNMENT FOR MONEYS COLLECTED FROM RECOVERY
7 AUDITS. ALL INTEREST AND INCOME DERIVED FROM THE DEPOSIT AND
8 INVESTMENT OF MONEYS IN THE CASH FUND SHALL BE CREDITED TO THE
9 CASH FUND. AT THE COMPLETION OF EACH RECOVERY AUDIT CYCLE, THE
10 STATE CONTROLLER SHALL TRANSFER ANY MONEYS REMAINING IN THE
11 CASH FUND TO THE GENERAL FUND; EXCEPT THAT THE STATE CONTROLLER
12 SHALL INSTEAD TRANSFER MONEYS REMAINING IN THE CASH FUND TO THE
13 FUND FROM WHICH THE IMPROPER PAYMENT WAS ORIGINALLY MADE IF THE
14 STATE CONSTITUTION SPECIFIES THE PURPOSES FOR WHICH THE MONEYS IN
15 THAT FUND SHALL BE USED OR IF THE IMPROPER PAYMENT WAS MADE WITH
16 MONEYS ORIGINALLY RECEIVED BY THE STATE AS GIFTS, GRANTS, OR
17 DONATIONS.

18 (9) THE STATE CONTROLLER SHALL MANAGE ALL STATE AGENCY
19 RECOVERY AUDITS.

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