

NOTE: This bill has been prepared for the signature of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.



HOUSE BILL 10-1176

BY REPRESENTATIVE(S) Vaad, Apuan, Frangas, Gerou, Kefalas, Kerr J., King S., Roberts, Summers, Nikkel;
also SENATOR(S) Mitchell, Boyd, Newell, Steadman.

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

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

SECTION 1. Part 2 of article 30 of title 24, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

24-30-203.5. Recovery audits - legislative declaration - definitions - contracting - reporting. (1) (a) THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT:

(I) OVERPAYMENTS ARE A SERIOUS PROBLEM FOR STATE AGENCIES GIVEN THE MAGNITUDE AND COMPLEXITY OF STATE OPERATIONS;

(II) OVERPAYMENTS WASTE TAX DOLLARS AND DETRACT FROM THE EFFICIENCY AND EFFECTIVENESS OF STATE AGENCY OPERATIONS BY DIVERTING RESOURCES FROM THEIR INTENDED USES;

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(III) AN OVERPAYMENT OCCURS WHEN A VENDOR OR OTHER ENTITY RECEIVES A PAYMENT FROM A STATE AGENCY IN ERROR OR IN EXCESS OF THE LEGAL AMOUNT TO WHICH THE VENDOR OR OTHER ENTITY IS ENTITLED.

(b) THE GENERAL ASSEMBLY FURTHER FINDS AND DECLARES THAT:

(I) RECOVERY AUDITS ARE A NATIONALLY RECOGNIZED BEST PRACTICE FOR DISBURSEMENTS MANAGEMENT AND PROVIDE INSIGHT FOR IMPROVING OPERATIONAL EFFICIENCY AND INTERNAL CONTROLS IN THE DISBURSEMENT OF TAX DOLLARS;

(II) IN ORDER TO IMPROVE THE ECONOMY AND EFFICIENCY OF STATE AGENCY OPERATIONS, IT IS NECESSARY, APPROPRIATE, AND IN THE BEST INTERESTS OF THE STATE TO REQUIRE THE STATE CONTROLLER TO CONTRACT FOR RECOVERY AUDITS TO RECOUP OVERPAYMENTS BY STATE AGENCIES OF STATE OR FEDERAL TAX DOLLARS; AND

(III) RECOVERY AUDITS WILL NOT COST THE STATE ANY MONEY BECAUSE THE CONTRACTOR'S COSTS ARE DEDUCTED FROM ANY DOLLARS RECOVERED, WHICH MAKES RECOVERY AUDITS SELF-FUNDING.

(2) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "CONSULTANT" MEANS A PRIVATE CONTRACTOR THAT HAS RECOVERY AUDIT EXPERTISE.

(b) "OVERPAYMENT" MEANS A PAYMENT BY A STATE AGENCY TO A VENDOR OR OTHER ENTITY THAT IS MADE IN ERROR OR IS IN EXCESS OF THE AMOUNT TO WHICH THE RECIPIENT IS ENTITLED, INCLUDING, BUT NOT LIMITED TO:

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

(II) A DUPLICATE PAYMENT;

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

(IV) A PAYMENT RESULTING FROM A FAILURE TO APPLY AN

APPLICABLE DISCOUNT, REBATE, OR OTHER ALLOWANCE;

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

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

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

(d) "STATE AGENCY" HAS THE SAME MEANING AS SET FORTH IN SECTION 24-3-101. "STATE AGENCY" DOES NOT INCLUDE A STATE INSTITUTION OF HIGHER EDUCATION.

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

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

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

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

(III) REQUIRE ANY DATA OR INFORMATION DETERMINED BY THE

STATE AGENCY BEING AUDITED TO BE CONFIDENTIAL TO BE SECURELY TRANSMITTED AND MAINTAINED BY THE CONSULTANT IN ACCORDANCE WITH THE SECURITY POLICIES, STANDARDS, AND GUIDELINES ESTABLISHED BY THE STATE CHIEF INFORMATION SECURITY OFFICER OR THE STATE CHIEF INFORMATION OFFICER PURSUANT TO SECTION 24-37.5-403.

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

(4) (a) THE STATE CONTROLLER SHALL REQUIRE RECOVERY AUDITS TO BE PERFORMED ON THE PAYMENTS TO VENDORS AND OTHER ENTITIES MADE BY ALL STATE AGENCIES; EXCEPT THAT THE STATE CONTROLLER MAY, SUBJECT TO THE REVIEW PROVIDED FOR IN PARAGRAPH (b) OF THIS SUBSECTION (4), EXEMPT A STATE AGENCY FROM THE RECOVERY AUDITS OTHERWISE REQUIRED BY THIS SECTION IF THE STATE CONTROLLER DETERMINES THAT SUBJECTING THE STATE AGENCY TO A RECOVERY AUDIT IS NOT LIKELY TO YIELD SIGNIFICANT NET BENEFITS TO THE STATE OR THAT THE STATE AGENCY IS ALREADY SUBJECTED TO RECOVERY AUDITS UNDER ANY FEDERAL LAW OR REGULATION OR STATE LAW, RULE, OR POLICY. THE STATE CONTROLLER MAY PROMULGATE RULES IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE 4 OF THIS TITLE TO ESTABLISH ADDITIONAL SPECIFIC CRITERIA FOR EXEMPTING STATE AGENCIES FROM RECOVERY AUDITS. EACH

STATE AGENCY FOR WHICH RECOVERY AUDITS ARE REQUIRED SHALL PROVIDE THE RECOVERY AUDIT CONSULTANT WITH ALL INFORMATION AND COOPERATION DESIRABLE OR NECESSARY FOR PERFORMANCE OF THE RECOVERY AUDITS.

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

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

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

(I) THE GOVERNOR;

(II) THE STATE AUDITOR; AND

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

(b) THE STATE CONTROLLER SHALL PROVIDE THE COPIES OF REPORTS

REQUIRED BY PARAGRAPH (a) OF THIS SUBSECTION (6) NOT LATER THAN THE SEVENTH BUSINESS DAY AFTER THE DATE THE STATE CONTROLLER RECEIVES THE CONSULTANT'S REPORT.

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

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

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

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

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

implementation of this act.

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

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

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

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

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

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

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

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

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

Terrance D. Carroll
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Brandon C. Shaffer
PRESIDENT OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Karen Goldman
SECRETARY OF
THE SENATE

APPROVED _____

Bill Ritter, Jr.
GOVERNOR OF THE STATE OF COLORADO