

**Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 10-0680.02 Jason Gelender

HOUSE BILL 10-1176

HOUSE SPONSORSHIP

Vaad,

SENATE SPONSORSHIP

Mitchell,

House Committees

Finance
State, Veterans, & Military Affairs

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.*

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.** Article 37 of title 24, Colorado Revised Statutes, is
3 amended BY THE ADDITION OF A NEW PART to read:

4 PART 4

5 RECOVERY AUDITS

6 **24-37-401. Legislative declaration.** (1) THE GENERAL
7 ASSEMBLY HEREBY FINDS AND DECLARES THAT:

8 (a) OVERPAYMENTS ARE A SERIOUS PROBLEM FOR CERTAIN
9 GOVERNMENT ENTITIES, AND ESPECIALLY FOR STATE AGENCIES GIVEN THE
10 MAGNITUDE AND COMPLEXITY OF STATE OPERATIONS;

11 (b) OVERPAYMENTS WASTE TAX DOLLARS AND DETRACT FROM THE
12 EFFICIENCY AND EFFECTIVENESS OF GOVERNMENTAL OPERATIONS BY
13 DIVERTING RESOURCES FROM THEIR INTENDED USES;

14 (c) AN OVERPAYMENT OCCURS WHEN AN INDIVIDUAL, VENDOR, OR
15 OTHER ENTITY RECEIVES A PAYMENT FROM A STATE AGENCY OR ANOTHER
16 GOVERNMENT ENTITY IN ERROR OR IN EXCESS OF THE LEGAL AMOUNT TO
17 WHICH THE INDIVIDUAL, VENDOR, OR OTHER ENTITY IS ENTITLED.

18 (2) THE GENERAL ASSEMBLY FURTHER FINDS AND DECLARES THAT:

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

23 (b) IN ORDER TO IMPROVE THE ECONOMY AND EFFICIENCY OF

1 GOVERNMENT OPERATIONS, IT IS NECESSARY, APPROPRIATE, AND IN THE
2 BEST INTERESTS OF THE STATE TO REQUIRE THE OFFICE OF STATE
3 PLANNING AND BUDGETING TO CONTRACT FOR RECOVERY AUDITS TO
4 RECOUP OVERPAYMENTS BY STATE AGENCIES OR CERTAIN OTHER
5 GOVERNMENT ENTITIES OF STATE OR FEDERAL TAX DOLLARS;

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

9 **24-37-402. Definitions.** AS USED IN THIS PART 4, UNLESS THE
10 CONTEXT OTHERWISE REQUIRES:

11 (1) "CONSULTANT" MEANS A PRIVATE CONTRACTOR WITH
12 RECOVERY AUDIT EXPERTISE.

13 (2) "DIRECTOR" MEANS THE DIRECTOR OF THE OFFICE OF STATE
14 PLANNING AND BUDGETING.

15 (3) "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 (4) "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 (a) A PAYMENT TO A RECIPIENT WHO DOES NOT MEET APPLICABLE
27 ELIGIBILITY REQUIREMENTS FOR RECEIVING THE PAYMENT;

- 1 (b) A DUPLICATE PAYMENT;
- 2 (c) A PAYMENT RESULTING FROM AN INVOICE OR PRICING ERROR;
- 3 (d) A PAYMENT RESULTING FROM A FAILURE TO APPLY AN
- 4 APPLICABLE DISCOUNT, REBATE, OR OTHER ALLOWANCE;
- 5 (e) A PAYMENT RESULTING FROM A FAILURE TO COMPLY WITH A
- 6 PURCHASING AGREEMENT; AND
- 7 (f) A PAYMENT RESULTING FROM ANY OTHER INADVERTENT
- 8 ERROR.

9 (5) "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 (6) "STATE AGENCY" MEANS AN AGENCY, AS DEFINED IN SECTION

15 24-3-101, A GOVERNMENTAL UNIT OF THE LEGISLATIVE OR JUDICIAL

16 BRANCH OF STATE GOVERNMENT, OR A STATE-SUPPORTED INSTITUTION OF

17 HIGHER EDUCATION.

18 **24-37-403. Contracting for recovery audits.** (1) THE DIRECTOR

19 SHALL CONTRACT WITH ONE OR MORE CONSULTANTS TO CONDUCT

20 RECOVERY AUDITS.

21 (2) A CONTRACT WITH A CONSULTANT ENTERED INTO AS REQUIRED

22 BY SUBSECTION (1) OF THIS SECTION:

23 (a) SHALL PROVIDE FOR REASONABLE COMPENSATION FOR THE

24 RECOVERY AUDIT SERVICES PROVIDED UNDER THE CONTRACT, INCLUDING

25 COMPENSATION DETERMINED BY THE APPLICATION OF A SPECIFIED

26 PERCENTAGE TO THE TOTAL AMOUNT RECOVERED DUE TO THE

27 CONSULTANT'S RECOVERY AUDIT ACTIVITIES;

1 (b) MAY PERMIT OR REQUIRE THE CONSULTANT TO PURSUE A
2 JUDICIAL ACTION IN A COURT INSIDE OR OUTSIDE THIS STATE TO RECOVER
3 AN OVERPAID AMOUNT; AND

4 (c) TO ALLOW TIME FOR THE PERFORMANCE OF EXISTING PAYMENT
5 AUDITING PROCEDURES, MAY NOT ALLOW A RECOVERY AUDIT OF A
6 PAYMENT DURING THE NINETY-DAY PERIOD AFTER THE DATE THE
7 PAYMENT WAS MADE.

8 (3) NOTWITHSTANDING ANY OTHER PROVISION OF STATE LAW TO
9 THE CONTRARY AND EXCEPT TO THE EXTENT PROHIBITED BY FEDERAL LAW
10 OR REGULATIONS OR BY AN AGREEMENT BETWEEN THE STATE OR A STATE
11 AGENCY OR OTHER COVERED ENTITY AND THE FEDERAL GOVERNMENT,
12 THE GOVERNMENT OF ANOTHER STATE, OR AN AGENCY OR OTHER
13 GOVERNMENT ENTITY OF ANOTHER STATE, THE DIRECTOR OR A STATE
14 AGENCY OR OTHER COVERED ENTITY BEING SUBJECTED TO A RECOVERY
15 AUDIT, AND ANY CONTRACTOR OR VENDOR THAT HAS A CONTRACT WITH
16 SUCH A STATE AGENCY OR OTHER COVERED ENTITY, SHALL PROVIDE A
17 CONSULTANT ACTING UNDER A CONTRACT REQUIRED BY SUBSECTION (1)
18 OF THIS SECTION WITH ANY CONFIDENTIAL INFORMATION IN THE CUSTODY
19 OF THE DIRECTOR, THE STATE AGENCY, THE OTHER COVERED ENTITY,
20 OR THE CONTRACTOR OR VENDOR THAT IS NECESSARY FOR THE
21 PERFORMANCE OF THE RECOVERY AUDIT. A CONSULTANT ACTING UNDER
22 SUCH A CONTRACT, OR ANY EMPLOYEE OR AGENT OF THE CONSULTANT, IS
23 SUBJECT TO ALL PROHIBITIONS AGAINST THE DISCLOSURE OF
24 CONFIDENTIAL INFORMATION OBTAINED FROM THE STATE, THE OTHER
25 COVERED ENTITY, OR THE CONTRACTOR OR VENDOR IN CONNECTION WITH
26 THE CONTRACT THAT APPLY TO THE DIRECTOR, THE APPLICABLE STATE
27 AGENCY OR OTHER COVERED ENTITY, THE CONTRACTOR OR VENDOR, OR

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

3 **24-37-404. State agencies and other covered entities subject to**
4 **mandatory recovery audits.** (1) EXCEPT AS OTHERWISE PROVIDED IN
5 SUBSECTION (2) OF THIS SECTION, THE DIRECTOR SHALL REQUIRE
6 RECOVERY AUDITS TO BE PERFORMED ON THE PAYMENTS TO INDIVIDUALS,
7 VENDORS, AND OTHER ENTITIES MADE BY A STATE AGENCY OR OTHER
8 COVERED ENTITY THAT HAS TOTAL EXPENDITURES DURING A STATE FISCAL
9 YEAR OF MORE THAN TWENTY-FIVE MILLION DOLLARS. THE DIRECTOR
10 SHALL ALSO REQUIRE RECOVERY AUDITS FOR ANY STATE AGENCY OR
11 OTHER COVERED ENTITY THAT RECEIVES AN AUDIT FINDING BY THE STATE
12 AUDITOR FOR INTERNAL CONTROL WEAKNESSES CONCERNING PAYMENTS
13 AND CONTRACTS. EACH STATE AGENCY OR OTHER COVERED ENTITY FOR
14 WHICH RECOVERY AUDITS ARE REQUIRED SHALL PROVIDE THE RECOVERY
15 AUDIT CONSULTANT WITH ALL INFORMATION NECESSARY FOR THE
16 RECOVERY AUDITS.

17 (2) (a) THE DIRECTOR MAY EXEMPT FROM THE RECOVERY AUDITS
18 OTHERWISE REQUIRED BY SUBSECTION (1) OF THIS SECTION A STATE
19 AGENCY OR OTHER COVERED ENTITY THAT HAS A LOW PROPORTION OF ITS
20 TOTAL EXPENDITURES MADE TO INDIVIDUALS, VENDORS, AND OTHER
21 ENTITIES. THE DIRECTOR SHALL MAKE ANY SUCH EXEMPTION IN
22 ACCORDANCE WITH CRITERIA ADOPTED BY RULES PROMULGATED BY THE
23 DIRECTOR PURSUANT TO THE PROVISIONS OF ARTICLE 4 OF THIS TITLE
24 AFTER CONSIDERATION OF THE LIKELY COSTS AND BENEFITS OF
25 PERFORMING RECOVERY AUDITS FOR AGENCIES OR OTHER COVERED
26 ENTITIES THAT MAKE RELATIVELY FEW OR SMALL PAYMENTS TO VENDORS.

27 (b) THE DIRECTOR SHALL PROVIDE THE STATE AUDITOR AND THE

1 LEGISLATIVE AUDIT AND JOINT BUDGET COMMITTEES WITH A REPORT BY
2 MAY 1 OF EACH YEAR THAT DETAILS ANY EXEMPTIONS FROM RECOVERY
3 AUDITS PROPOSED TO BE ALLOWED BY THE DIRECTOR FOR THE NEXT
4 FISCAL YEAR.

5 (c) THE LEGISLATIVE AUDIT AND JOINT BUDGET COMMITTEES MAY
6 VETO ANY EXEMPTION FROM RECOVERY AUDITS PROPOSED BY THE
7 DIRECTOR FOR A FISCAL YEAR BY MAJORITY VOTES OF THE MEMBERS OF
8 EACH OF THE COMMITTEES TAKEN BEFORE THE START OF THE FISCAL YEAR.

9 **24-37-405. Payment to consultants - retention of a portion of**
10 **amount recovered.** THE DIRECTOR SHALL ADOPT BY RULE REASONABLE
11 COMPENSATION FOR SERVICES PROVIDED UNDER RECOVERY AUDIT
12 CONTRACTS BASED ON THE APPLICATION OF A SPECIFIED PERCENTAGE TO
13 THE TOTAL AMOUNT RECOVERED DUE TO A CONSULTANT'S RECOVERY
14 AUDIT ACTIVITIES. THE DIRECTOR MAY ALSO RETAIN A PORTION OF ANY
15 AMOUNT RECOVERED DUE TO A RECOVERY AUDIT IN ORDER TO DEFRAY
16 THE REASONABLE AND NECESSARY ADMINISTRATIVE COSTS INCURRED BY
17 THE OFFICE OF STATE PLANNING AND BUDGETING IN CONTRACTING FOR
18 AND PROVIDING OVERSIGHT OF THE RECOVERY AUDIT.

19 **24-37-406. Use of federal money recovered.** A STATE AGENCY
20 OR OTHER COVERED ENTITY SHALL EXPEND OR SHALL RETURN TO THE
21 FEDERAL GOVERNMENT ANY FEDERAL MONEY THAT IS RECOVERED
22 THROUGH A RECOVERY AUDIT CONDUCTED UNDER THIS PART 4. THE STATE
23 AGENCY OR OTHER COVERED ENTITY SHALL EXPEND OR RETURN THE
24 FEDERAL MONEY IN ACCORDANCE WITH THE LAWS AND REGULATIONS
25 GOVERNING THE FEDERAL PROGRAM THROUGH WHICH THE AGENCY OR
26 OTHER COVERED ENTITY RECEIVED THE FEDERAL MONEY.

27 **24-37-407. Recovery audit reports.** (1) THE DIRECTOR SHALL

1 PROVIDE COPIES, INCLUDING ELECTRONIC FORM COPIES, OF ANY REPORTS
2 RECEIVED FROM A CONSULTANT CONTRACTING WITH A STATE AGENCY OR
3 OTHER COVERED ENTITY TO PERFORM RECOVERY AUDITS PURSUANT TO
4 THIS PART 4 TO:

- 5 (a) THE GOVERNOR;
- 6 (b) THE STATE AUDITOR; AND
- 7 (c) THE LEGISLATIVE AUDIT AND JOINT BUDGET COMMITTEES.

8 (2) THE DIRECTOR SHALL PROVIDE THE COPIES OF REPORTS
9 REQUIRED BY SUBSECTION (1) OF THIS SECTION NOT LATER THAN THE
10 SEVENTH BUSINESS DAY AFTER THE DATE THE DIRECTOR RECEIVES THE
11 CONSULTANT'S REPORT.

12 (3) NOT LATER THAN DECEMBER 31 OF EACH YEAR, THE DIRECTOR
13 SHALL ISSUE A REPORT TO THE GENERAL ASSEMBLY SUMMARIZING THE
14 CONTENTS OF ALL REPORTS RECEIVED FROM CONSULTANTS PURSUANT TO
15 THIS PART 4 DURING THE PAST FISCAL YEAR. THIS REPORT SHALL ALSO BE
16 POSTED ON THE WEB SITE OF THE OFFICE OF STATE PLANNING AND
17 BUDGETING.

18 **24-37-408. First recovery audit contract.** THE DIRECTOR SHALL
19 ADOPT RULES PROMULGATED IN ACCORDANCE WITH THE PROVISIONS OF
20 ARTICLE 4 OF THIS TITLE TO THE EXTENT NECESSARY TO IMPLEMENT THIS
21 PART 4 IN A TIMELY MANNER SO THAT THE DIRECTOR MAY BEGIN
22 CONTRACTING WITH CONSULTANTS FOR RECOVERY AUDITS NOT LATER
23 THAN JANUARY 1, 2011.

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