

## CHAPTER 270

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**GOVERNMENT - STATE**


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**HOUSE BILL 11-1307**

BY REPRESENTATIVE(S) Becker, Gerou, Ferrandino, Conti, Kefalas, Kerr J., Labuda, Priola, Jones, Kagan, Ramirez, Vigil;  
also SENATOR(S) Steadman, Hodge, Lambert, Newell.

**AN ACT****CONCERNING RECOVERY AUDITS.**

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

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

**24-30-203.5. Recovery audits - legislative declaration - contracting - reporting - definitions.** (1) (a) The general assembly hereby finds and declares that:

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

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

(III) An ~~overpayment~~ IMPROPER PAYMENT 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

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

management and provide insight for improving operational efficiency and internal controls in the disbursement of ~~tax dollars~~ STATE AND FEDERAL MONEYS;

(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~~ IMPROPER PAYMENTS by state agencies of state or federal tax dollars, FEES, GIFTS, GRANTS, DONATIONS, AND OTHER STATE AND FEDERAL MONEYS NOT SPECIFICALLY EXCLUDED BY LAW OR RULE; and

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

(b) "~~Overpayment~~" "IMPROPER PAYMENT" 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:

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

(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. ON OR BEFORE JULY 1, 2011, AND ON OR BEFORE JULY 1 OF EVERY THIRD YEAR THEREAFTER, THE STATE CONTROLLER SHALL CONTRACT WITH ONE OR MORE EXPERIENCED CONSULTANTS TO CONDUCT RECOVERY AUDITS FOR THE PERIOD OF THREE FISCAL YEARS THAT ENDS ON THE JUNE 30 IMMEDIATELY PRECEDING THE APPLICABLE JULY 1 CONTRACTING DEADLINE.

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

(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~~ IMPROPER PAYMENT are adequately protected; and

(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 IN WHOLE OR IN PART 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 EXEMPTED state agency OR PORTION OF A 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) FOR RECOVERY AUDITS FOR THE 2007-08, 2008-09, AND 2009-10 FISCAL YEARS, 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. FOR THE 2010-11 FISCAL YEAR AND FOR ANY FISCAL YEAR THEREAFTER IN WHICH THE STATE CONTROLLER PROPOSES TO CHANGE THE EXEMPTIONS FROM RECOVERY AUDITS, THE STATE CONTROLLER SHALL PROVIDE A REPORT OF THE PROPOSED CHANGES TO THE STATE AUDITOR AND THE LEGISLATIVE AUDIT AND JOINT BUDGET COMMITTEES BY THE MARCH 1 THAT IMMEDIATELY PRECEDES THE EXECUTION OF ONE OR MORE RECOVERY AUDIT CONTRACTS FOR THE APPLICABLE FISCAL YEAR. 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~~ JUNE 30, 2011, AND TAKEN BEFORE JUNE 30 OF EACH YEAR THEREAFTER IN WHICH THE STATE CONTROLLER PROPOSES A CHANGE IN THE EXEMPTIONS FROM RECOVERY AUDITS.

(5) The state controller SHALL REIMBURSE FEDERAL AGENCIES FOR ANY AMOUNTS RECOVERED FROM FEDERAL PROGRAMS IN ACCORDANCE WITH FEDERAL STATUTES, RULES, AND REGULATIONS. 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~~ REIMBURSE THE ACTUAL administrative costs, including reimbursement paid to other state agencies required by this subsection (5) AND ADDITIONAL COSTS 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~~ OF THE STATE AGENCY.

(6) (c) Not later than June 30, 2012, AND NOT LATER THAN JUNE 30 OF EVERY THIRD YEAR THEREAFTER, 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.

(8) ANY MONEYS COLLECTED FROM A RECOVERY AUDIT PURSUANT TO THIS SECTION SHALL BE TRANSMITTED TO THE STATE TREASURER AND CREDITED TO THE RECOVERY AUDIT CASH FUND, WHICH IS HEREBY CREATED IN THE STATE TREASURY. THE CASH FUND SHALL CONSIST OF MONEYS CREDITED TO THE CASH FUND PURSUANT TO THIS SUBSECTION (8) AND ANY OTHER MONEYS APPROPRIATED OR TRANSFERRED TO THE CASH FUND BY THE GENERAL ASSEMBLY. THE GENERAL ASSEMBLY SHALL ANNUALLY APPROPRIATE THE MONEYS IN THE CASH FUND TO THE STATE CONTROLLER FOR THE PURPOSE OF PAYING CONTINGENT CONTRACTOR FEES, STATE AGENCY RECOVERY AUDIT COSTS, AND AMOUNTS DUE TO THE FEDERAL GOVERNMENT FOR MONEYS COLLECTED FROM RECOVERY AUDITS. ALL INTEREST AND INCOME DERIVED FROM THE DEPOSIT AND INVESTMENT OF MONEYS IN THE CASH FUND SHALL BE CREDITED TO THE CASH FUND. AT THE COMPLETION OF EACH RECOVERY AUDIT CYCLE, THE STATE CONTROLLER SHALL TRANSFER ANY MONEYS

REMAINING IN THE CASH FUND TO THE GENERAL FUND; EXCEPT THAT THE STATE CONTROLLER SHALL INSTEAD TRANSFER MONEYS REMAINING IN THE CASH FUND TO THE FUND FROM WHICH THE IMPROPER PAYMENT WAS ORIGINALLY MADE IF THE STATE CONSTITUTION SPECIFIES THE PURPOSES FOR WHICH THE MONEYS IN THAT FUND SHALL BE USED OR IF THE IMPROPER PAYMENT WAS MADE WITH MONEYS ORIGINALLY RECEIVED BY THE STATE AS A FIDUCIARY OR AS GIFTS, GRANTS, DONATIONS, OR CUSTODIAL FUNDS.

(9) THE STATE CONTROLLER SHALL MANAGE ALL STATE AGENCY RECOVERY AUDITS CONDUCTED PURSUANT TO THIS SECTION.

**SECTION 2. 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.

Approved: June 2, 2011