

Recovery Audits

This Act requires the state controller to contract with one or more private consultants to conduct recovery audits of state agencies for three past fiscal years. It directs the controller to provide to an auditing consultant any confidential information necessary for the conduct of an audit to the extent not prohibited by law or an agreement. It requires the controller to provide copies of all reports received from recovery audit consultants to the governor, the state auditor, and the legislative audit and joint budget committees of the legislature within 7 days of receipt, and to issue a report to the legislature summarizing the contents of all reports received from recovery audit consultants.

The state controller may, subject to review and approval by the legislative audit and joint budget committees of the legislature, exempt a state agency from recovery audits 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 must provide the committees with a report detailing any proposed exemptions, and the committees may veto any proposed exemption.

The controller can make rules to establish additional specific criteria for exempting state agencies from recovery audits and retain a portion of any amount recovered due to a recovery audit in order to defray the reasonable and necessary administrative costs in contracting for and providing oversight of the recovery audit, including costs incurred by other state agencies in relation to the recovery audit.

Submitted as:

Colorado

[Chapter 402 of 2010](#)

Status: Enacted into law in 2010.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Act.*] This Act shall be cited as “An Act Concerning Recovery Audits
2 for Government Overpayments of Tax Dollars.”

3
4 Section 2. [*Recovery Audits; Legislative Declaration; Definitions; Contracting;*
5 *Reporting.*]

6 (A) (1) As used in this Section, unless the context otherwise requires:

7 (a) “Consultant” means a private contractor that has recovery audit
8 expertise.

9 (b) “Overpayment” means a payment by a state agency to a vendor or
10 other entity that is made in error or is in excess of the amount to which the recipient is entitled,
11 including, but not limited to:

12 (i) A payment to a recipient who does not meet applicable
13 eligibility requirements for receiving the payment;

14 (ii) A duplicate payment;

15 (iii) A payment resulting from an invoice or pricing error;

16 (iv) A payment resulting from a failure to apply an applicable
17 discount, rebate, or other allowance;

18 (v) A payment resulting from a failure to comply with a purchasing
19 agreement; and

20 (vi) A payment resulting from any other inadvertent error.

21 (2) “Recovery audit” means a financial management technique used to identify
22 overpayments made by a state agency to vendors and other entities in connection with the
23 payment activities of the state agency.

24 (3) “State agency” has the same meaning as set forth in [insert citation]. “State
25 agency” does not include a state institution of higher education.

26 (B) The [legislature] declares that:

27 (1) Overpayments are a serious problem for state agencies given the magnitude
28 and complexity of state operations;

29 (2) Overpayments waste tax dollars and detract from the efficiency and
30 effectiveness of state agency operations by diverting resources from their intended uses;

31 (3) An overpayment occurs when a vendor or other entity receives a payment
32 from a state agency in error or in excess of the legal amount to which the vendor or other entity
33 is entitled.

34 (4) Recovery audits are a nationally recognized best practice for disbursements
35 management and provide insight for improving operational efficiency and internal controls in the
36 disbursement of tax dollars;

37 (5) In order to improve the economy and efficiency of state agency operations, it
38 is necessary, appropriate, and in the best interests of the state, to require the [state controller] to
39 contract for recovery audits to recoup overpayments by state agencies of state or federal tax
40 dollars; and

41 (5) Recovery audits will not cost the state any money because the contractor’s
42 costs are deducted from any dollars recovered, which makes recovery audits self-funding.

43 (C) On or before [insert date], the [state controller] shall contract with one or more
44 experienced consultants to conduct recovery audits for [insert fiscal years].

45 (D) A contract with a consultant entered into as required by this section shall:

46 (1) Provide for reasonable compensation for the recovery audit services provided
47 under the contract, which, notwithstanding any other provision of law, shall include
48 compensation determined by the government application of a specified percentage to the total
49 amount collected by the consultant in the course of the consultant’s recovery audit and related
50 collection activities;

51 (2) Specify limitations on the scope of the powers that may be exercised by the
52 consultant and procedures to be followed by the consultant in conducting recovery audits to the
53 extent deemed necessary and appropriate by the [state controller] and the consultant to ensure
54 that the due process rights of any person from whom the consultant seeks recovery of an
55 overpayment are adequately protected; and

56 (3) Require any data or information determined by the state agency being audited
57 to be confidential to be securely transmitted and maintained by the consultant in accordance with
58 the security policies, standards, and guidelines established by the [state chief information
59 security officer] or the [state chief information officer] pursuant to [insert citation].

60 (E) Notwithstanding any provision of law to the contrary and except to the extent
61 prohibited by federal law or regulations or by an agreement between the state or a state agency
62 and the federal government, the government of another state, or an agency or other government
63 entity of another state, the [state controller] or a state agency being subjected to a recovery audit,
64 and any contractor or vendor that has a contract with such a state agency, shall provide a

65 consultant acting under a contract required by this section with any confidential information in
66 the custody of the [state controller], the state agency, or the contractor or vendor that is necessary
67 for the performance of the recovery audit. A consultant acting under such a contract, or any
68 employee or agent of the consultant, is subject to all prohibitions against the disclosure of
69 confidential information obtained from the state or the contractor or vendor in connection with
70 the contract that apply to the [state controller], the applicable state agency, the contractor or
71 vendor, or an employee thereof and to all civil or criminal penalties that apply to a violation of
72 any such prohibition.

73 (F) The [state controller] shall require recovery audits to be performed on the payments
74 to vendors and other entities made by all state agencies; except that the [state controller] may,
75 subject to the review provided for in this section, exempt a state agency from the recovery audits
76 otherwise required by this section if the [state controller] determines that subjecting the state
77 agency to a recovery audit is not likely to yield significant net benefits to the state or that the
78 state agency is already subjected to recovery audits under any federal law or regulation or state
79 law, rule, or policy. The [state controller] may promulgate rules in accordance with the
80 provisions of [insert citation] to establish additional specific criteria for exempting state agencies
81 from recovery audits. Each state agency for which recovery audits are required shall provide the
82 recovery audit consultant with all information and cooperation desirable or necessary
83 government for performance of the recovery audits.

84 (G) The [state controller] may retain a portion of the net amount recovered due to a
85 recovery audit in order to defray the reasonable and necessary administrative costs, including
86 reimbursement paid to other state agencies required by this section, incurred by the [state
87 controller] and the [division of accounts and control] in contracting for and providing oversight
88 of the recovery audit or any additional costs incurred by any other state agency in relation to the
89 performance of the recovery audits required by this section. The [state controller] shall reimburse
90 any state agency that incurs additional costs in relation to the recovery audits for such costs from
91 the portion of any amounts recovered from recovery audits that the [state controller] retains.

92 (H) The [state controller] shall provide the [state auditor] and the [legislative audit and
93 joint budget committees] with a report by [insert date], that details any exemptions from
94 recovery audits proposed to be allowed by the [state controller]. The [legislative audit and joint
95 budget committees] may veto any exemption from recovery audits proposed by the [state
96 controller] by majority votes of the members of each of the [committees] taken before [insert
97 date].

98 (I) The [state controller] shall provide copies, including electronic copies, of any reports
99 received from a consultant performing recovery audits pursuant to this section to the [governor;
100 the state auditor; and the legislative audit and joint budget committees of the legislature].

101 (J) The [state controller] shall provide the copies of reports required by this section not
102 later than the [seventh business day] after the date the [state controller] receives the consultant's
103 report.

104 (K) Not later than [insert date], the [state controller] shall issue a report to the
105 [legislature] summarizing the contents of all reports received from consultants that performed
106 recovery audits contracted for pursuant to this section. The report shall also be posted on the web
107 site of the [state controller].

108 (L) Nothing in this section shall be construed to limit the authority of a governing board
109 of a state institution of higher education to contract for a recovery audit for the institution it
110 governs.

111
112 Section 3. *[Appropriations.]*

113 (A) There is hereby appropriated, out of any moneys in the [general fund] not otherwise
114 appropriated, to [the department of personnel and administration, and office of the state
115 controller], [insert amount] to [implement this Act].

116 (B) It is the intent of the [legislature] that the [general fund] appropriations in subsection
117 (A) of this section shall be derived from savings generated from the implementation of the
118 provisions of [insert citation].

119

120 Section 4. [*Severability.*] [Insert severability clause.]

121

122 Section 5. [*Repealer.*] [Insert repealer clause.]

123

124 Section 6. [*Effective Date.*] [Insert effective date.]