
SENATE BILL 5842

State of Washington 62nd Legislature 2011 Regular Session

By Senators Baxter, Benton, Becker, Stevens, Swecker, and Honeyford

Read first time 02/21/11. Referred to Committee on Ways & Means.

1 AN ACT Relating to recovery audits for government overpayments;
2 adding a new chapter to Title 43 RCW; and prescribing penalties.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** The legislature finds that overpayments are
5 a serious problem for state agencies given the magnitude and complexity
6 of state operations and ongoing audit findings for agency internal
7 control weaknesses. Overpayments waste tax dollars and detract from
8 the efficiency and effectiveness of state operations by diverting
9 resources from their intended uses. An overpayment occurs when an
10 individual, vendor, or other entity receives a government payment in
11 error or in excess of the legal amount entitled. In order to improve
12 the economy and efficiency of governmental operations, the state must
13 contract for recovery audits to recoup any overpayments made of state
14 or federal tax dollars. The legislature recognizes that recovery
15 audits are a nationally recognized best practice for disbursements
16 management and will provide insight for improving operational
17 efficiency and internal controls in the state's disbursement of tax
18 dollars. Additionally, recovery audits will not cost the state any

1 resources as the contractor's costs are deducted from any dollars
2 recovered, making the recovery audits self-funding.

3 NEW SECTION. **Sec. 2.** The definitions in this section apply
4 throughout this chapter unless the context clearly requires otherwise.

5 (1) "Consultant" means a private contractor with recovery audit
6 expertise.

7 (2) "Director" means the director of financial management.

8 (3) "Overpayment" includes:

9 (a) Failure to meet eligibility requirements;

10 (b) Duplicate payments;

11 (c) Invoice and pricing errors;

12 (d) Failure to apply discounts, rebates, or other allowances;

13 (e) Failure to comply with purchasing agreements; and

14 (f) Any other inadvertent errors resulting in overpayments.

15 (4) "Recovery audit" means a financial management technique used to
16 identify overpayments made by a state agency with respect to
17 individuals, vendors, and other entities in connection with a payment
18 activity.

19 (5) "State agency" means a department, office, board, commission,
20 bureau, division, institution, or institution of higher education.
21 "State agency" includes individual state agencies and programs, as well
22 as those programs and activities that cross agency lines, all statewide
23 elected offices, and the legislature.

24 NEW SECTION. **Sec. 3.** (1) The director must contract with private
25 consultants to conduct recovery audits of payments made by state
26 agencies to individuals, vendors, and other entities.

27 (2) A contract under this section:

28 (a) May provide for reasonable compensation for services provided
29 under the contract, including compensation determined by the
30 application of a specified percentage of the total amount recovered
31 because of the consultant's audit activities;

32 (b) May permit or require the consultant to pursue a judicial
33 action in a court inside or outside this state to recover an overpaid
34 amount; and

35 (c) Must allow time for the performance of existing state payment

1 auditing procedures and may not allow a recovery audit of a payment
2 during the ninety-day period after the date the payment was made.

3 (3) The director or a state agency whose payments are being audited
4 must provide a person acting under a contract authorized by this
5 section with any confidential information in the custody of the
6 director or state agency that is necessary for the performance of the
7 audit or the recovery audit of an overpayment, to the extent the
8 director and state agency are not prohibited from sharing the
9 information under an agreement with another state or the federal
10 government. A person acting under a contract authorized by this
11 section, and each employee or agent of the person, is subject to all
12 prohibitions against the disclosure of confidential information
13 obtained from the state in connection with the contract that apply to
14 the director or applicable state agency or an employee of the director
15 or applicable state agency. A person acting under a contract
16 authorized by this section or an employee or agent of the person who
17 discloses confidential information in violation of a prohibition made
18 applicable to the person under this subsection is subject to
19 prosecution for a gross misdemeanor.

20 NEW SECTION. **Sec. 4.** (1) The director must require that recovery
21 audits be performed on the payments to individuals, vendors, and other
22 entities made by each state agency that has total expenditures from all
23 funds during a state fiscal biennium in an amount that exceeds fifty
24 million dollars, except as exempted under subsection (4) of this
25 section.

26 (2) In addition, the director must require recovery audits for any
27 state agency that receives an audit finding by the state auditor for
28 internal control weaknesses concerning agency payments and contracts.

29 (3) Each state agency to which this section applies must provide
30 the recovery audit consultant with all information necessary for the
31 audit.

32 (4) The director may exempt from mandatory recovery audit process
33 a state agency or activity, according to criteria the director adopts
34 by rule after consideration of the likely costs and benefits of
35 performing recovery audits for agencies. The director must provide the
36 state auditor and legislative fiscal committees with a report by

1 December 31st of each year detailing any exemptions from subsections
2 (1) and (2) of this section.

3 NEW SECTION. **Sec. 5.** (1) The director must adopt by rule
4 reasonable compensation for services provided under recovery audit
5 contracts based on a specified percentage of the total amount recovered
6 because of a consultant's audit activities.

7 (2) A state agency must expend or return to the federal government
8 any federal money that is recovered through a recovery audit conducted
9 under this chapter. The state agency must expend or return the federal
10 money in accordance with the rules of the federal program through which
11 the agency received the federal money.

12 NEW SECTION. **Sec. 6.** (1) The director must provide copies,
13 including electronic form copies, of any reports received from a
14 consultant contracting under this chapter to:

- 15 (a) The governor;
16 (b) The state auditor's office; and
17 (c) The legislative fiscal committees of the legislature.

18 (2) The director must provide the copies required by subsection (1)
19 of this section not later than the seventh business day after the date
20 the director receives the consultant's report.

21 (3) Not later than December 31st of each year, the director must
22 issue a report to the legislature summarizing the contents of all
23 reports received under this chapter during the past fiscal year. This
24 report must also be posted on the office of financial management's web
25 site.

26 NEW SECTION. **Sec. 7.** The director must adopt rules necessary to
27 implement this chapter in a timely manner so that the director may
28 begin contracting with consultants under this chapter not later than
29 January 1, 2012.

30 NEW SECTION. **Sec. 8.** Sections 1 through 7 of this act constitute
31 a new chapter in Title 43 RCW.

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