



**S.B. 126**

127th General Assembly  
(As Introduced)

Sens. Stivers, Carey, Gardner, Goodman, Spada, Clancy

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**BILL SUMMARY**

- Requires the Auditor of State to contract with consultants to conduct recovery audits for overpayments made to vendors by certain larger state agencies.
- Provides for the collection and distribution of those overpayments.

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**CONTENT AND OPERATION**

**Overpayment recovery audits required**

(R.C. 117.60, 117.61, 117.63, and 117.72(A))

The bill directs the Auditor of State to contract with one or more consultants to conduct recovery audits for overpayments made to vendors by any state agency that (1) during the most recently concluded biennium had total expenditures that exceeded \$100 million or (2) during the current biennium has appropriations in excess of \$100 million.<sup>1</sup>

For purposes of the bill, "**overpayment**" means a duplicate payment made by a state agency to a vendor for a single invoice **or** any payment made to a vendor that:

--Represents an amount above the required payment minus any available discounts applied to result in a deduction in the required payment;

--Includes a late payment penalty that was improperly applied;

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<sup>1</sup> The Auditor is required to establish, by rule, criteria for determining whether a state agency may be *exempted* from a recovery audit, taking into consideration the likely costs and benefits of performing such audits for agencies that make relatively few or small payments to vendors (R.C. 117.71 and 117.72(B)).

--Was collected to cover shipping costs that were incorrectly computed or incorrectly included in an invoice;

--Was paid for state sales tax;

--Was paid for a good or service that the vendor did not provide;

--Was paid as a result of an invoice error or a pricing error;

--Failed to reflect the appropriate discounts, rebates, or other allowances; or

--Failed to comply with the purchasing agreement.

The Auditor is to adopt rules that establish standards, procedures, and guidelines for the conduct of recovery audits, which are designed to detect and recover overpayments made by a state agency to a vendor and to recommend improved agency accounting operations.

**Scope of audit; confidential information**

(R.C. 117.62 to 117.64)

Before executing a contract with an audit consultant on behalf of a state agency, the Auditor of State must approve the scope of the audit as set forth in the contract. To allow for the completion of any existing internal auditing procedures of the agency, a payment cannot be audited during the 180-day period immediately following the date on which the payment was made.

The bill requires each agency subject to an audit to provide the consultant with all necessary information. It permits the agency, or the Auditor, to provide the consultant and the consultant's employees with any confidential information in the agency's or Auditor's custody that is necessary for the audit's performance or the recovery of an overpayment, but only to the extent the agency or Auditor is not prohibited from sharing the information under an agreement with another state or the federal government. A consultant, and each employee or agent of the consultant, are subject to all prohibitions against the disclosure of confidential information that apply to the agency, the Auditor, or an employee of the agency or Auditor. A consultant, or an employee or agent of the consultant, who discloses any such information is subject to the same sanctions and penalties that would apply to the agency, the Auditor, or an employee of the agency or Auditor.

### **Compensation of audit consultants; overpayments recovered**

(R.C. 117.13, 117.65, and 117.66)

Payment of an audit consultant is the responsibility of the state agency subject to the audit. Such compensation may be determined by the application of a specified percentage of the total amount recovered because of the consultant's audit activities or recommendations as a fee for services. The agency is to pay, from the recovered money, the consultant responsible for identifying the overpayment.

Any portion of an overpayment recovered that is not paid to the consultant must be credited to the fund or account from which the payment originated. The bill requires that any federal money recovered be expended or returned to the federal government in accordance with the rules of the federal program through which the agency received the money.

### **Collection of overpayments**

(R.C. 117.68 to 117.70)

If a recovery audit report states that an overpayment of public money exists and has not been collected, the head officer of the state agency receiving the report, or the audit consultant contracted to recover the overpayment, may commence a civil action for the recovery of that money from the vendor in question. The civil action must be brought within 120 days after receiving or issuing the report, as applicable, in the name of the agency to which the overpayment of public money is due.<sup>2</sup>

Within that 120-day period, the head officer of the agency or the audit consultant must notify the Attorney General in writing of whether any legal action has been taken against the vendor in question and, if no legal action has been taken, of the reason why. In the event an audit consultant does not intend to file a civil action to recover an overpayment, or no action is commenced within the 120-day period, the Attorney General may file a civil action on behalf of the agency and, either in conjunction with or independent of the head officer of the agency, prosecute the action to final determination.<sup>3</sup>

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<sup>2</sup> A contract with an audit consultant may authorize or require the consultant to pursue a civil action to recover an overpayment (R.C. 117.61).

<sup>3</sup> The overpayments governed by the bill would not be subject to the procedures provided in current law for the collection of money due the state (R.C. 131.02).

**Reporting requirements**

(R.C. 117.67)

A recovery audit consultant must submit a written audit report to the Auditor of State for each audit conducted, as well as to each state agency for which the consultant conducted an audit. The Auditor is to provide copies of those reports to the Governor within seven days after their receipt. The Auditor also is to notify the Attorney General in writing of each audit report that states an overpayment of public money exists and has not been collected, and of the date that the Auditor received the report.

The bill requires the Auditor, no later than January 1 of each even-numbered year, to issue a report to the General Assembly summarizing the contents of all recovery audit reports received during the state biennium ending June 30 of the previous year.

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**HISTORY**

ACTION	DATE
Introduced	03-21-07

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