



Ralph D. Clark

Bill Analysis
Legislative Service Commission

Am. Sub. S.B. 126
127th General Assembly
(As Passed by the Senate)

Sens. Stivers, Carey, Gardner, Goodman, Spada, Clancy, Cates, Buehrer,
Schaffer, Schuler, Schuring, Wilson, Harris, R. Miller

BILL SUMMARY

- Requires the Auditor of State to perform recovery audits for overpayments made to vendors by certain larger state agencies.
- Permits the Auditor to contract with overpayment recovery audit consultants to conduct those audits.

CONTENT AND OPERATION

Overpayment recovery audits required

(R.C. 117.60, 117.61, and 117.70(A))

The bill directs the Auditor of State to conduct recovery audits for overpayments made to vendors by each 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.¹ These audits must be performed once a biennium.

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;

¹ 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 the audit (R.C. 117.61(B) and 117.70(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.

Use of overpayment recovery audit consultants

(R.C. 117.62)

The Auditor of State may contract with one or more overpayment recovery audit consultants to conduct the audits required by the bill. Recovery audits conducted by those consultants are subject to specified conditions and procedures.

Scope of audit; confidential information

(R.C. 117.63 to 117.65)

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, 117.66, and 117.67)

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.

Reporting requirements

(R.C. 117.68)

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.

Collection of overpayments

(R.C. 117.69 and 131.02)

If a recovery audit report states that an overpayment of public money exists and has not been collected, the audit consultant has 45 days following the issuance of the report to continue attempting to recover the overpayment. The bill also

requires the head officer of the state agency receiving the report to proceed to collect the money during that same 45 days in accordance with current law procedures for the collection of money due the state. Under those existing law procedures, the Attorney General takes over the duty to collect the overpayment once the 45 days have run. Any overpayment discovered and collected by the audit consultant will not be subject to the existing law procedures. And all overpayments are considered due and payable when the head officer receives the audit report.

HISTORY

ACTION	DATE
Introduced	03-21-07
Reported, S. Finance & Financial Institutions	05-01-07
Passed Senate (33-0)	05-08-07

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