

7384

I N S E N A T E

April 6, 2010

Introduced by Sen. RANZENHOFER -- read twice and ordered printed, and
when printed to be committed to the Committee on Finance

AN ACT to amend the state finance law, in relation to establishing
audits of state agency expenditures to recover overpayments and lost
discounts

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. The state finance law is amended by adding a new article
2 7-B to read as follows:

3 ARTICLE 7-B

4 RECOVERY OF CERTAIN STATE AGENCY OVERPAYMENTS

5 SECTION 124. DEFINITIONS.

6 124-A. CONTRACT CONSULTANTS FOR RECOVERY AUDITS FOR CERTAIN
7 OVERPAYMENTS.

8 124-B. STATE AGENCIES SUBJECT TO MANDATORY RECOVERY AUDITS.

9 124-C. PAYMENT TO CONTRACTORS.

10 124-D. FORWARDING REPORTS.

11 S 124. DEFINITIONS. AS USED IN THIS ARTICLE:

12 1. OVERPAYMENT. "OVERPAYMENT" INCLUDES A DUPLICATE PAYMENT MADE TO A
13 VENDOR FOR A SINGLE INVOICE AND A PAYMENT MADE TO A VENDOR:

14 (A) WHEN AN AVAILABLE DISCOUNT FROM THE VENDOR WAS NOT APPLIED;

15 (B) FOR A LATE PAYMENT PENALTY THAT WAS IMPROPERLY APPLIED BY THE
16 VENDOR;

17 (C) FOR SHIPPING COSTS THAT WERE COMPUTED INCORRECTLY OR INCORRECTLY
18 INCLUDED IN AN INVOICE;

19 (D) FOR STATE SALES TAX; OR

20 (E) FOR A GOOD OR SERVICE THE VENDOR DID NOT PROVIDE.

21 2. STATE AGENCY. "STATE AGENCY" MEANS A DEPARTMENT, COMMISSION, BOARD,
22 OFFICE, OR OTHER AGENCY, INCLUDING A UNIVERSITY SYSTEM OR AN INSTITUTION
23 OF HIGHER EDUCATION THAT:

24 (A) IS IN THE EXECUTIVE BRANCH OF STATE GOVERNMENT; AND

25 (B) IS CREATED BY STATUTE.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

LBD16251-01-0

1 S 124-A. CONTRACT CONSULTANTS FOR RECOVERY AUDITS FOR CERTAIN OVERPAY-
2 MENTS. 1. THE COMPTROLLER SHALL CONTRACT WITH ONE OR MORE CONSULTANTS TO
3 CONDUCT RECOVERY AUDITS OF PAYMENTS MADE BY STATE AGENCIES TO VENDORS.
4 THE AUDITS MUST BE DESIGNATED TO DETECT AND RECOVER OVERPAYMENT TO THE
5 VENDORS AND TO RECOMMEND IMPROVED STATE AGENCY ACCOUNTING OPERATIONS.

6 2. A CONTRACT UNDER THIS SECTION:

7 (A) MAY PROVIDE FOR REASONABLE COMPENSATION FOR SERVICES PROVIDED
8 UNDER THE CONTRACT, INCLUDING COMPENSATION DETERMINED BY THE APPLICATION
9 OF A SPECIFIED PERCENTAGE OF THE TOTAL AMOUNT RECOVERED BECAUSE OF THE
10 CONSULTANT'S AUDIT ACTIVITIES OR RECOMMENDATIONS AS A FEE FOR SERVICES;

11 (B) MAY PERMIT OR REQUIRE THE CONSULTANT TO PURSUE A JUDICIAL ACTION
12 IN A COURT INSIDE OR OUTSIDE THIS STATE TO RECOVER AN OVERPAID AMOUNT;
13 AND

14 (C) TO ALLOW TIME FOR THE PERFORMANCE OF EXISTING STATE PAYMENT AUDIT-
15 ING PROCEDURES, MAY NOT ALLOW A RECOVERY AUDIT OF A PAYMENT DURING THE
16 ONE HUNDRED EIGHTY DAY PERIOD AFTER THE DATE THE PAYMENT WAS MADE.

17 3. THE COMPTROLLER OR A STATE AGENCY WHOSE PAYMENTS ARE BEING AUDITED
18 MAY PROVIDE A PERSON ACTING UNDER A CONTRACT AUTHORIZED BY THIS SECTION
19 WITH ANY CONFIDENTIAL INFORMATION IN THE CUSTODY OF THE COMPTROLLER OR
20 STATE AGENCY THAT IS NECESSARY FOR THE PERFORMANCE OF THE AUDIT OR THE
21 RECOVERY OF AN OVERPAYMENT, TO THE EXTENT THE COMPTROLLER AND STATE
22 AGENCY ARE NOT PROHIBITED FROM SHARING THE INFORMATION UNDER AN AGREE-
23 MENT WITH ANOTHER STATE OR THE FEDERAL GOVERNMENT. A PERSON ACTING UNDER
24 A CONTRACT AUTHORIZED BY THIS SECTION, AND EACH EMPLOYEE OR AGENT OF THE
25 PERSON, IS SUBJECT TO ALL PROHIBITIONS AGAINST THE DISCLOSURE OF CONFI-
26 DENTIAL INFORMATION OBTAINED FROM THE STATE IN CONNECTION WITH THE
27 CONTRACT THAT APPLY TO THE COMPTROLLER OR APPLICABLE STATE AGENCY OR AN
28 EMPLOYEE OF THE COMPTROLLER OR APPLICABLE STATE AGENCY. A PERSON ACTING
29 UNDER A CONTRACT AUTHORIZED BY THIS SECTION OR AN EMPLOYEE OR AGENT OF
30 THE PERSON WHO DISCLOSES CONFIDENTIAL INFORMATION IN VIOLATION OF A
31 PROHIBITION MADE APPLICABLE TO THE PERSON UNDER THIS SUBDIVISION IS
32 SUBJECT TO THE SAME SANCTIONS AND PENALTIES THAT WOULD APPLY TO THE
33 COMPTROLLER OR APPLICABLE STATE AGENCY OR AN EMPLOYEE OF THE COMPTROLLER
34 OR APPLICABLE STATE AGENCY FOR THAT DISCLOSURE.

35 S 124-B. STATE AGENCIES SUBJECT TO MANDATORY RECOVERY AUDITS. 1. THE
36 COMPTROLLER SHALL REQUIRE THAT RECOVERY AUDITS BE PERFORMED ON THE
37 PAYMENTS TO VENDORS MADE BY EACH STATE AGENCY THAT HAS TOTAL EXPENDI-
38 TURES DURING A STATE FISCAL BIENNIUM IN AN AMOUNT THAT EXCEEDS ONE
39 HUNDRED MILLION DOLLARS. EACH STATE AGENCY SHALL PROVIDE THE RECOVERY
40 AUDIT CONSULTANT WITH ALL INFORMATION NECESSARY FOR THE AUDIT.

41 2. THE COMPTROLLER MAY EXEMPT FROM THE MANDATORY RECOVERY AUDIT PROC-
42 ESS A STATE AGENCY THAT HAS A LOW PROPORTION OF ITS EXPENDITURES MADE TO
43 VENDORS, ACCORDING TO CRITERIA THE COMPTROLLER ADOPTS BY RULE AFTER
44 CONSIDERATION OF THE LIKELY COSTS AND BENEFITS OF PERFORMING RECOVERY
45 AUDITS FOR AGENCIES THAT MAKE RELATIVELY FEW OR SMALL PAYMENTS TO
46 VENDORS.

47 S 124-C. PAYMENT TO CONTRACTORS. 1. A STATE AGENCY SHALL PAY, FROM
48 RECOVERED MONEY APPROPRIATED FOR THAT PURPOSE, THE RECOVERY AUDIT
49 CONSULTANT RESPONSIBLE FOR OBTAINING FOR THE AGENCY A REIMBURSEMENT FROM
50 A VENDOR.

51 2. A STATE AGENCY SHALL EXPEND OR RETURN TO THE FEDERAL GOVERNMENT ANY
52 FEDERAL MONEY THAT IS RECOVERED THROUGH A RECOVERY AUDIT CONDUCTED UNDER
53 SECTION ONE HUNDRED TWENTY-FOUR-A OF THIS ARTICLE. THE STATE AGENCY
54 SHALL EXPEND OR RETURN THE FEDERAL MONEY IN ACCORDANCE WITH THE RULES OF
55 THE FEDERAL PROGRAM THROUGH WHICH THE AGENCY RECEIVED THE FEDERAL MONEY.

1 S 124-D. FORWARDING REPORTS. 1. THE COMPTROLLER SHALL PROVIDE COPIES,
2 INCLUDING ELECTRONIC FORM COPIES, OF ANY REPORTS RECEIVED FROM A
3 CONSULTANT CONTRACTING PURSUANT TO SECTION ONE HUNDRED TWENTY-FOUR-A OF
4 THIS ARTICLE TO:

5 (A) THE GOVERNOR;

6 (B) THE SPEAKER OF THE ASSEMBLY AND THE TEMPORARY PRESIDENT OF THE
7 SENATE; AND

8 (C) THE MINORITY LEADERS OF THE SENATE AND THE ASSEMBLY.

9 2. THE COMPTROLLER SHALL PROVIDE THE COPIES REQUIRED BY SUBDIVISION
10 ONE OF THIS SECTION NOT LATER THAN THE SEVENTH DAY AFTER THE DATE THE
11 COMPTROLLER RECEIVES THE CONSULTANT'S REPORT.

12 3. NOT LATER THAN AUGUST FIRST OF EACH ODD NUMBERED YEAR, THE COMP-
13 TROLLER SHALL ISSUE A REPORT TO THE LEGISLATURE SUMMARIZING THE CONTENTS
14 OF ALL REPORTS RECEIVED UNDER THIS ARTICLE DURING THE STATE FISCAL BIEN-
15 NIUM ENDING MARCH THIRTY-FIRST OF THE PREVIOUS YEAR.

16 S 2. The comptroller shall adopt rules to administer the provisions of
17 article 7-B of the state finance law as added by section one of this act
18 not later than August 1, 2010.

19 S 3. This act shall take effect immediately.