S T A T E O F N E W Y O R K

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I N A S S E M B L Y

April 12, 2010

Introduced by M. of A. CORWIN, CASTELLI, HAWLEY, OAKS, SAYWARD, TOBACCO -- Multi-Sponsored by -- M. of A. BACALLES, BARCLAY, FINCH, P. LOPEZ, McDONOUGH, MOLINARO, MONTESANO, SCOZZAFAVA, TOWNSEND -- read once and referred to the Committee on Governmental Operations

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 ASSEMBLY, DO ENACT AS FOLLOWS:

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

ARTICLE 7-B
RECOVERY OF CERTAIN STATE AGENCY OVERPAYMENTS

SECTION 124. DEFINITIONS.
124-A. CONTRACT CONSULTANTS FOR RECOVERY AUDITS FOR CERTAIN OVERPAYMENTS.
124-B. STATE AGENCIES SUBJECT TO MANDATORY RECOVERY AUDITS.
124-C. PAYMENT TO CONTRACTORS.
124-D. FORWARDING REPORTS.

S 124. DEFINITIONS. AS USED IN THIS ARTICLE:

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

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

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

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

(D) FOR STATE SALES TAX; OR

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

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

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

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

LBD16251-01-0

(B) IS CREATED BY STATUTE.

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

2. A CONTRACT UNDER THIS SECTION:

(A) MAY PROVIDE FOR REASONABLE COMPENSATION FOR SERVICES PROVIDED UNDER THE CONTRACT, INCLUDING COMPENSATION 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;

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

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

3. THE COMPTROLLER OR A STATE AGENCY WHOSE PAYMENTS ARE BEING AUDITED MAY PROVIDE A PERSON ACTING UNDER A CONTRACT AUTHORIZED BY THIS SECTION WITH ANY CONFIDENTIAL INFORMATION IN THE CUSTODY OF THE COMPTROLLER OR STATE AGENCY THAT IS NECESSARY FOR THE PERFORMANCE OF THE AUDIT OR THE RECOVERY OF AN OVERPAYMENT, TO THE EXTENT THE COMPTROLLER AND STATE AGENCY ARE NOT PROHIBITED FROM SHARING THE INFORMATION UNDER AN AGREEMENT WITH ANOTHER STATE OR THE FEDERAL GOVERNMENT. A PERSON ACTING UNDER A CONTRACT AUTHORIZED BY THIS SECTION, AND EACH EMPLOYEE OR AGENT OF THE PERSON, IS SUBJECT TO ALL PROHIBITIONS AGAINST THE DISCLOSURE OF CONFIDENTIAL INFORMATION OBTAINED FROM THE STATE IN CONNECTION WITH THE CONTRACT THAT APPLY TO THE COMPTROLLER OR APPLICABLE STATE AGENCY OR AN EMPLOYEE OF THE COMPTROLLER OR APPLICABLE STATE AGENCY. A PERSON ACTING UNDER A CONTRACT AUTHORIZED BY THIS SECTION OR AN EMPLOYEE OR AGENT OF THE PERSON WHO DISCLOSES CONFIDENTIAL INFORMATION IN VIOLATION OF A PROHIBITION MADE APPLICABLE TO THE PERSON UNDER THIS SUBDIVISION IS SUBJECT TO THE SAME SANCTIONS AND PENALTIES THAT WOULD APPLY TO THE COMPTROLLER OR APPLICABLE STATE AGENCY OR AN EMPLOYEE OF THE COMPTROLLER OR APPLICABLE STATE AGENCY FOR THAT DISCLOSURE.

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

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

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

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

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

(A) THE GOVERNOR;

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

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

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

3. NOT LATER THAN AUGUST FIRST OF EACH ODD NUMBERED YEAR, THE COMPTROLLER SHALL ISSUE A REPORT TO THE LEGISLATURE SUMMARIZING THE CONTENTS OF ALL REPORTS RECEIVED UNDER THIS ARTICLE DURING THE STATE FISCAL BIENNIUM ENDING MARCH THIRTY-FIRST OF THE PREVIOUS YEAR.

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

S 3. This act shall take effect immediately.