

By: Smith of Tarrant

H.B. No. 2801

A BILL TO BE ENTITLED

AN ACT

relating to audits of state agency expenditures to recover overpayments and lost discounts.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle C, Title 10, Government Code, is amended by adding Chapter 2115 to read as follows:

CHAPTER 2115. RECOVERY OF CERTAIN STATE AGENCY OVERPAYMENTS

Sec. 2115.001. DEFINITIONS. In this chapter:

(1) "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" means a department, commission, board, office, or other agency, including a university system or an institution of higher education other than a public junior college, that:

(A) is in the executive branch of state

1 government;

2 (B) is created by statute; and

3 (C) does not have statutory geographical  
4 boundaries limited to a part of the state.

5 Sec. 2115.002. CONTRACT CONSULTANTS FOR RECOVERY AUDITS FOR  
6 CERTAIN OVERPAYMENTS. (a) The comptroller shall contract with one  
7 or more consultants to conduct recovery audits of payments made by  
8 state agencies to vendors. The audits must be designed to detect  
9 and recover overpayments to the vendors and to recommend improved  
10 state agency accounting operations.

11 (b) A contract under this section:

12 (1) may provide for reasonable compensation for  
13 services provided under the contract, including compensation  
14 determined by the application of a specified percentage of the  
15 total amount recovered because of the consultant's audit activities  
16 or recommendations as a fee for services;

17 (2) may permit or require the consultant to pursue a  
18 judicial action in a court inside or outside this state to recover  
19 an overpaid amount; and

20 (3) to allow time for the performance of existing  
21 state payment auditing procedures, may not allow a recovery audit  
22 of a payment during the 180-day period after the date the payment  
23 was made.

24 (c) The comptroller or a state agency whose payments are  
25 being audited may provide a person acting under a contract  
26 authorized by this section with any confidential information in the  
27 custody of the comptroller or state agency that is necessary for the

1 performance of the audit or the recovery of an overpayment, to the  
2 extent the comptroller and state agency are not prohibited from  
3 sharing the information under an agreement with another state or  
4 the federal government. A person acting under a contract  
5 authorized by this section, and each employee or agent of the  
6 person, is subject to all prohibitions against the disclosure of  
7 confidential information obtained from the state in connection with  
8 the contract that apply to the comptroller or applicable state  
9 agency or an employee of the comptroller or applicable state  
10 agency. A person acting under a contract authorized by this section  
11 or an employee or agent of the person who discloses confidential  
12 information in violation of a prohibition made applicable to the  
13 person under this subsection is subject to the same sanctions and  
14 penalties that would apply to the comptroller or applicable state  
15 agency or an employee of the comptroller or applicable state agency  
16 for that disclosure.

17 Sec. 2115.003. STATE AGENCIES SUBJECT TO MANDATORY RECOVERY  
18 AUDITS. (a) The comptroller shall require that recovery audits be  
19 performed on the payments to vendors made by each state agency that  
20 has total expenditures during a state fiscal biennium in an amount  
21 that exceeds \$100 million. Each state agency described by this  
22 subsection shall provide the recovery audit consultant with all  
23 information necessary for the audit.

24 (b) The comptroller may exempt from the mandatory recovery  
25 audit process a state agency that has a low proportion of its  
26 expenditures made to vendors, according to criteria the comptroller  
27 adopts by rule after consideration of the likely costs and benefits

1 of performing recovery audits for agencies that make relatively few  
2 or small payments to vendors.

3 Sec. 2115.004. PAYMENT TO CONTRACTORS. (a) A state agency  
4 shall pay, from recovered money appropriated for the purpose, the  
5 recovery audit consultant responsible for obtaining for the agency  
6 a reimbursement from a vendor.

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

13 Sec. 2115.005. FORWARDING REPORTS. (a) The comptroller  
14 shall provide copies, including electronic form copies, of any  
15 reports received from a consultant contracting under Section  
16 2115.002 to:

- 17 (1) the governor;  
18 (2) the state auditor's office; and  
19 (3) the Legislative Budget Board.

20 (b) The comptroller shall provide the copies required by  
21 Subsection (a) not later than the seventh day after the date the  
22 comptroller receives the consultant's report.

23 (c) Not later than January 1 of each odd-numbered year, the  
24 comptroller shall issue a report to the legislature summarizing the  
25 contents of all reports received under this chapter during the  
26 state fiscal biennium ending August 31 of the previous year.

27 SECTION 2. The comptroller shall adopt rules under Chapter

1 2115, Government Code, as added by this Act, in a timely manner so  
2 that the comptroller may begin contracting with a consultant under  
3 that chapter not later than January 1, 2006.

4 SECTION 3. This Act takes effect immediately if it receives  
5 a vote of two-thirds of all the members elected to each house, as  
6 provided by Section 39, Article III, Texas Constitution. If this  
7 Act does not receive the vote necessary for immediate effect, this  
8 Act takes effect September 1, 2005.