

1-1 By: Williams S.B. No. 1569
1-2 (In the Senate - Filed March 11, 2005; March 30, 2005, read
1-3 first time and referred to Committee on Finance; April 19, 2005,
1-4 reported favorably by the following vote: Yeas 13, Nays 0;
1-5 April 19, 2005, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to audits of state agency expenditures to recover
1-9 overpayments and lost discounts.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Subtitle C, Title 10, Government Code, is
1-12 amended by adding Chapter 2115 to read as follows:

1-13 CHAPTER 2115. RECOVERY OF CERTAIN STATE AGENCY OVERPAYMENTS

1-14 Sec. 2115.001. DEFINITIONS. In this chapter:

1-15 (1) "Overpayment" includes a duplicate payment made to
1-16 a vendor for a single invoice and a payment made to a vendor:

1-17 (A) when an available discount from the vendor
1-18 was not applied;

1-19 (B) for a late payment penalty that was
1-20 improperly applied by the vendor;

1-21 (C) for shipping costs that were computed
1-22 incorrectly or incorrectly included in an invoice;

1-23 (D) for state sales tax; or

1-24 (E) for a good or service the vendor did not
1-25 provide.

1-26 (2) "State agency" means a department, commission,
1-27 board, office, or other agency, including a university system or an
1-28 institution of higher education other than a public junior college,
1-29 that:

1-30 (A) is in the executive branch of state
1-31 government;

1-32 (B) is created by statute; and

1-33 (C) does not have statutory geographical
1-34 boundaries limited to a part of the state.

1-35 Sec. 2115.002. CONTRACT CONSULTANTS FOR RECOVERY AUDITS FOR
1-36 CERTAIN OVERPAYMENTS. (a) The comptroller shall contract with one
1-37 or more consultants to conduct recovery audits of payments made by
1-38 state agencies to vendors. The audits must be designed to detect
1-39 and recover overpayments to the vendors and to recommend improved
1-40 state agency accounting operations.

1-41 (b) A contract under this section:

1-42 (1) may provide for reasonable compensation for
1-43 services provided under the contract, including compensation
1-44 determined by the application of a specified percentage of the
1-45 total amount recovered because of the consultant's audit activities
1-46 or recommendations as a fee for services;

1-47 (2) may permit or require the consultant to pursue a
1-48 judicial action in a court inside or outside this state to recover
1-49 an overpaid amount; and

1-50 (3) to allow time for the performance of existing
1-51 state payment auditing procedures, may not allow a recovery audit
1-52 of a payment during the 180-day period after the date the payment
1-53 was made.

1-54 (c) The comptroller or a state agency whose payments are
1-55 being audited may provide a person acting under a contract
1-56 authorized by this section with any confidential information in the
1-57 custody of the comptroller or state agency that is necessary for the
1-58 performance of the audit or the recovery of an overpayment, to the
1-59 extent the comptroller and state agency are not prohibited from
1-60 sharing the information under an agreement with another state or
1-61 the federal government. A person acting under a contract
1-62 authorized by this section, and each employee or agent of the
1-63 person, is subject to all prohibitions against the disclosure of
1-64 confidential information obtained from the state in connection with

2-1 the contract that apply to the comptroller or applicable state
2-2 agency or an employee of the comptroller or applicable state
2-3 agency. A person acting under a contract authorized by this section
2-4 or an employee or agent of the person who discloses confidential
2-5 information in violation of a prohibition made applicable to the
2-6 person under this subsection is subject to the same sanctions and
2-7 penalties that would apply to the comptroller or applicable state
2-8 agency or an employee of the comptroller or applicable state agency
2-9 for that disclosure.

2-10 Sec. 2115.003. STATE AGENCIES SUBJECT TO MANDATORY RECOVERY
2-11 AUDITS. (a) The comptroller shall require that recovery audits be
2-12 performed on the payments to vendors made by each state agency that
2-13 has total expenditures during a state fiscal biennium in an amount
2-14 that exceeds \$100 million. Each state agency described by this
2-15 subsection shall provide the recovery audit consultant with all
2-16 information necessary for the audit.

2-17 (b) The comptroller may exempt from the mandatory recovery
2-18 audit process a state agency that has a low proportion of its
2-19 expenditures made to vendors, according to criteria the comptroller
2-20 adopts by rule after consideration of the likely costs and benefits
2-21 of performing recovery audits for agencies that make relatively few
2-22 or small payments to vendors.

2-23 Sec. 2115.004. PAYMENT TO CONTRACTORS. (a) A state agency
2-24 shall pay, from recovered money appropriated for the purpose, the
2-25 recovery audit consultant responsible for obtaining for the agency
2-26 a reimbursement from a vendor.

2-27 (b) A state agency shall expend or return to the federal
2-28 government any federal money that is recovered through a recovery
2-29 audit conducted under this chapter. The state agency shall expend
2-30 or return the federal money in accordance with the rules of the
2-31 federal program through which the agency received the federal
2-32 money.

2-33 Sec. 2115.005. FORWARDING REPORTS. (a) The comptroller
2-34 shall provide copies, including electronic form copies, of any
2-35 reports received from a consultant contracting under Section
2-36 2115.002 to:

- 2-37 (1) the governor;
- 2-38 (2) the state auditor's office; and
- 2-39 (3) the Legislative Budget Board.

2-40 (b) The comptroller shall provide the copies required by
2-41 Subsection (a) not later than the seventh day after the date the
2-42 comptroller receives the consultant's report.

2-43 (c) Not later than January 1 of each odd-numbered year, the
2-44 comptroller shall issue a report to the legislature summarizing the
2-45 contents of all reports received under this chapter during the
2-46 state fiscal biennium ending August 31 of the previous year.

2-47 SECTION 2. The comptroller of public accounts shall adopt
2-48 rules under Chapter 2115, Government Code, as added by this Act, in
2-49 a timely manner so that the comptroller may begin contracting with a
2-50 consultant under that chapter not later than January 1, 2006.

2-51 SECTION 3. This Act takes effect immediately if it receives
2-52 a vote of two-thirds of all the members elected to each house, as
2-53 provided by Section 39, Article III, Texas Constitution. If this
2-54 Act does not receive the vote necessary for immediate effect, this
2-55 Act takes effect September 1, 2005.

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