

AMENDED IN ASSEMBLY MARCH 13, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1538

Introduced by Assembly Member Cook
(Coauthors: Assembly Members Nestande, Portantino, and Silva)
(Coauthors: Senators Dutton and Harman)

January 24, 2012

An act to add ~~Sections 12430 and~~ *Section 12433* to the Government Code, relating to audits.

LEGISLATIVE COUNSEL'S DIGEST

AB 1538, as amended, Cook. Recovery audits.

Existing law prescribes the duties of the Controller, including auditing all claims against the state and the disbursement of state money, for correctness, legality, and for sufficient provisions of law for payment.

~~This bill would require the Controller, State Auditor, and the Director of Finance to prepare plans each year to meet their audit responsibilities and to meet to review their plans.~~

This bill would also require the Controller to contract with consultants to provide semiannual *recovery* audits of state agencies with expenditures exceeding \$50,000,000 in a fiscal year, unless excepted by regulation. The bill would authorize reasonable payment to consultants from recovered overpayments, upon appropriation, including as a percentage of recovery. ~~†~~ *The bill* would require contracts made under its provisions to apply the same confidentiality provisions to consultants as are applicable to the Controller, *the state agency that is subject to the audit*, or employees of the Controller or *the state agency*. ~~†~~ *The bill* would further require the Controller to provide copies of the consultants' audit reports to the Department of Finance and the State

Auditor, and would, until January 1, 2017, require annual reports by the Controller to the Legislature summarizing these audits.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1.— Section 12430 is added to the Government Code,
2 to read:
3 12430. ~~Annually, the Controller, the State Auditor, and the~~
4 ~~Director of Finance shall each prepare a plan to meet their audit~~
5 ~~responsibilities. With respect to audits to fulfill the requirements~~
6 ~~necessary for the receipt of federal funds, the State Auditor shall~~
7 ~~be primarily responsible for financial audits, and the Director of~~
8 ~~Finance or the Controller shall be primarily responsible for~~
9 ~~compliance audits, and the Director of Finance shall be primarily~~
10 ~~responsible for coordinating state agency internal audits and~~
11 ~~determining when agencies are required to obtain federally~~
12 ~~mandated audits. Upon completion of these audit plans, the~~
13 ~~Controller, State Auditor, and Director of Finance shall meet to~~
14 ~~review and discuss the plans with the purpose of coordinating their~~
15 ~~audit efforts to avoid unnecessary duplication and negotiation with~~
16 ~~federal agencies regarding federally mandated audits.~~
17 ~~Subsequent to their review of the audit plans and negotiations~~
18 ~~with federal agencies if the Controller, the Director of Finance, or~~
19 ~~the State Auditor determines that the proposed audit plan of the~~
20 ~~other does not fulfill all audit requirements necessary for the receipt~~
21 ~~of federal funds, they may expand the scope of their audit of state~~
22 ~~agencies to meet the additional federal audit requirements. The~~
23 ~~financial audit report issued by the State Auditor and the~~
24 ~~compliance audit report issued by the Controller, the Director of~~
25 ~~Finance, or both, are intended to fulfill federally mandated audit~~
26 ~~requirements. These audit reports shall be performed in accordance~~
27 ~~with the “Standards for Audits of Governmental Organizations,~~
28 ~~Programs, Activities and Functions,” published by the Comptroller~~
29 ~~General of the United States, and the standards published by the~~
30 ~~American Institute of Certified Public Accountants.~~
31 ~~Nothing in this section shall be construed to limit, restrict, or~~
32 ~~otherwise infringe upon the duty of the State Auditor to conduct~~
33 ~~annual financial audits or to limit, restrict, or otherwise infringe~~

1 ~~upon the authority of the Joint Legislative Audit Committee to~~
2 ~~direct the State Auditor to conduct any audit of state government~~
3 ~~pursuant to Chapter 6.5 (commencing with Section 8543) of~~
4 ~~Division 1 of Title 2.~~

5 ~~Nothing in this section shall be construed to limit, restrict, or~~
6 ~~otherwise infringe upon the audits required by Section 12433,~~
7 ~~which are separate from and in addition to any federally mandated~~
8 ~~audits except those federally mandated audits that are conducted~~
9 ~~by contract consultants and as provided by Section 12433.~~

10 ~~SEC. 2.~~

11 *SECTION 1.* Section 12433 is added to the Government Code,
12 to read:

13 12433. (a) Notwithstanding subdivision (a) of Section 8546.4,
14 or any other law, the Controller shall contract with one or more
15 consultants to conduct semiannual recovery audits of payments
16 made by state agencies to vendors. The audits shall be designed
17 to detect and recover overpayments to the vendors and to
18 recommend improved state agency accounting operations.

19 (b) A contract under this section may provide reasonable
20 compensation for services provided under the contract, including
21 compensation determined by the application of a specified
22 percentage of the total amount recovered because of the
23 consultant's audit activities or recommendations as a fee for
24 services. A contract may permit or require the consultant to pursue
25 a judicial action in court inside or outside this state to recover an
26 overpaid amount. To allow time for the performance of any existing
27 state payment auditing procedures, a contract under this section
28 may not allow a recovery audit of a payment during the 180-day
29 period after the date the payment was made.

30 (c) The Controller or a state agency ~~whose payments are~~ *that*
31 *is* being audited pursuant to this section may provide a consultant
32 under this section with any confidential information in the custody
33 of the Controller or state agency that is necessary for the
34 performance of the audit or the recovery of an overpayment, to
35 the extent that the Controller or state agency is not prohibited from
36 sharing the information under an agreement with another state or
37 the federal government. A person acting under a contract authorized
38 by this section, and each employee or agent of that person, is
39 subject to all prohibitions against the disclosure of confidential
40 information obtained from the state in connection with the contract

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

9 (d) The Controller shall require that these semiannual recovery
10 audits be performed on the payments to vendors made by each
11 state agency that has total expenditures during a fiscal year in an
12 amount that exceeds fifty million dollars (\$50,000,000). Each state
13 agency described by this subdivision shall provide the recovery
14 audit consultant with all information necessary for the audit. The
15 Controller may exempt from the mandatory recovery audit process
16 a state agency that has a low proportion of its expenditures made
17 to vendors, according to the criteria that the Controller adopts by
18 regulation after consideration of the likely costs and benefits of
19 performing recovery audits for agencies that make relatively few
20 or small payments to vendors.

21 (e) A state agency shall pay, from recovered moneys
22 appropriated for the purpose, the recovery audit consultant
23 responsible for obtaining for the agency a reimbursement from a
24 vendor. A state agency shall expend or return to the federal
25 government any federal money that is recovered through a recovery
26 audit conducted under this section. The state agency shall expend
27 or return the federal money in accordance with the rules of the
28 federal program through which the agency received the federal
29 money.

30 (f) The Controller shall provide copies, including electronic
31 form copies, of any report received from a consultant contracting
32 under this section to the Director of Finance and the State Auditor
33 not later than the seventh day after the date the Controller receives
34 the consultant's report. Not later than January 1 of each year, the
35 Controller shall issue a report to the Legislature summarizing the
36 contents of all reports received under this section during the
37 immediately preceding fiscal year.

38 (g) For purposes of this section, "overpayment" includes a
39 duplicated payment made to a vendor for a single invoice, the

1 amount of a discount available from a vendor that was not applied,
2 and the amount of any of the following:

3 (1) A late payment penalty that was improperly applied by the
4 vendor.

5 (2) Excess shipping costs that were incorrectly computed or
6 incorrectly included in an invoice.

7 (3) Payment for a good or service that the vendor did not
8 provide.

9 (4) State sales tax.

10 (h) (1) The requirement for submitting a report to the
11 Legislature pursuant to subdivision (f) is inoperative on January
12 1, 2017, pursuant to Section 10231.5.

13 (2) A report to be submitted under subdivision (f) shall be
14 submitted in compliance with Section 9795.

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