

**ASSEMBLY BILL**

**No. 1538**

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**Introduced by Assembly Member Cook**

January 24, 2012

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1538, as introduced, 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 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. It would require contracts made under its provisions to apply the same confidentiality provisions to consultants as are applicable to the Controller, state agency, or employees of the Controller or state agency. It 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  
34 upon the authority of the Joint Legislative Audit Committee to  
35 direct the State Auditor to conduct any audit of state government  
36 pursuant to Chapter 6.5 (commencing with Section 8543) of  
37 Division 1 of Title 2.

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

6 SEC. 2. Section 12433 is added to the Government Code, to  
7 read:

8 12433. (a) Notwithstanding subdivision (a) of Section 8546.4,  
9 or any other law, the Controller shall contract with one or more  
10 consultants to conduct semiannual recovery audits of payments  
11 made by state agencies to vendors. The audits shall be designed  
12 to detect and recover overpayments to the vendors and to  
13 recommend improved state agency accounting operations.

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

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

1 would apply to the Controller or applicable state agency or an  
2 employee of the Controller or applicable state agency for that  
3 disclosure.

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

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

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

33 (g) For purposes of this section, “overpayment” includes a  
34 duplicated payment made to a vendor for a single invoice, the  
35 amount of a discount available from a vendor that was not applied,  
36 and the amount of any of the following:

37 (1) A late payment penalty that was improperly applied by the  
38 vendor.

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

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

3 (4) State sales tax.

4 (h) (1) The requirement for submitting a report to the  
5 Legislature pursuant to subdivision (f) is inoperative on January  
6 1, 2017, pursuant to Section 10231.5.

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

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