
A BILL FOR AN ACT

RELATING TO IMPROPER PAYMENTS ELIMINATION AND RECOVERY.

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

1 SECTION 1. Chapter 37, Hawaii Revised Statutes, is amended
2 by adding a new part to be appropriately designated and to read
3 as follows:

4 "PART . IMPROPER PAYMENTS ELIMINATION AND RECOVERY

5 §37-A Definitions. For the purposes of this part, unless
6 the context clearly requires otherwise:

7 "Agency" has the same meaning as defined in section 37D-1.

8 "Improper payment":

- 9 (1) Means any payment that should not have been made or
10 that was made in an incorrect amount, including
11 overpayments and underpayments, under statutory,
12 contractual, administrative, or other legally
13 applicable requirements; and
- 14 (2) Includes any payment to an ineligible recipient, any
15 payment for an ineligible good or service, any
16 duplicate payment, any payment for a good or service
17 not received, except for payments authorized by law,



1 and any payment that does not account for credit for
2 applicable discounts.

3 "Payment" means any transfer or commitment for future
4 transfer of state funds such as cash, securities, loans, loan
5 guarantees, and insurance subsidies to any non-state person or
6 entity that is made by a state agency, a state contractor, a
7 state grantee, or a governmental or other organization
8 administering a state program or activity.

9 "Payment for an ineligible good or service" includes a
10 payment for any good or service that is rejected under any
11 provision of any contract, grant, lease, cooperative agreement,
12 or any other procurement mechanism.

13 **§37-B Improper payments elimination and recovery;**
14 **identification of susceptible programs and activities.** (a) The
15 head of each state agency, in accordance with guidance
16 prescribed by the director of finance, shall periodically review
17 all programs and activities that the relevant agency head
18 administers and identify all programs and activities that may be
19 susceptible to significant improper payments.

20 (b) Reviews under this part shall be performed for each
21 program and activity that the relevant agency head administers



1 during fiscal year 2010-2011 and at least once every three
2 fiscal years thereafter.

3 (c) Unless the context clearly requires otherwise, the
4 term "significant" means:

5 (1) Except as provided under paragraph (2), that improper
6 payments in the program or activity in the preceding
7 fiscal year may have exceeded:

8 (A) \$ of all program or activity payments
9 made during that fiscal year reported and 2.5 per
10 cent of program outlays; or

11 (B) \$; and

12 (2) With respect to fiscal years following June 30 of a
13 fiscal year beginning before fiscal year 2013-2014 as
14 determined by the department of budget and finance,
15 that improper payments in the program or activity in
16 the preceding fiscal year may have exceeded:

17 (A) \$ of all program or activity payments
18 made during that fiscal year reported and 1.5 per
19 cent of program outlays; or

20 (B) \$.

21 (d) In conducting the reviews under this part, the head of
22 each agency shall take into account those risk factors that are



1 likely to contribute to a susceptibility to significant improper
2 payments, including:

3 (1) Whether the program or activity reviewed is new to the
4 agency;

5 (2) The complexity of the program or activity reviewed;

6 (3) The volume of payments made through the program or
7 activity reviewed;

8 (4) Whether payments or payment eligibility decisions are
9 made outside of the agency;

10 (5) Recent major changes in program funding, authorities,
11 practices, or procedures;

12 (6) The level and quality of training for personnel
13 responsible for making program eligibility
14 determinations or certifying that payments are
15 accurate; and

16 (7) Significant deficiencies in the audit report of the
17 agency or other relevant management findings that
18 might hinder accurate payment certification.

19 §37-C Estimation of improper payments. With respect to
20 each program and activity identified under section 37-B, the
21 head of the relevant agency shall:

1 (1) Produce a statistically valid or otherwise appropriate
2 estimate of the improper payments made by each program
3 and activity; and

4 (2) With applicable guidance of the department of budget
5 and finance, include the estimates of improper
6 payments in the accompanying materials to the annual
7 financial statement of the agency required under law.

8 §37-D Reports on actions to reduce improper payments.

9 With respect to any program or activity of an agency with
10 estimated improper payments, the head of the agency shall
11 provide with the estimate a report on what actions the agency is
12 taking to reduce improper payments, including:

13 (1) A description of the causes of the improper payments,
14 actions planned or taken to correct those causes, and
15 the planned or actual completion date of the actions
16 taken to address those causes;

17 (2) To reduce improper payments to a level below which
18 further expenditures to reduce improper payments would
19 cost more than the amount the expenditures would save
20 in prevented or recovered improper payments, a
21 statement of whether the agency has the resources
22 needed with respect to:



- 1 (A) Internal controls;
- 2 (B) Human capital; and
- 3 (C) Information systems and other infrastructure;
- 4 (3) If the agency does not have sufficient resources to
- 5 establish and maintain effective internal controls, a
- 6 description of the resources the agency has requested
- 7 in its budget submission to establish and maintain the
- 8 internal controls;
- 9 (4) Program-specific and activity-specific improper
- 10 payments reduction targets that have been approved by
- 11 the director of finance; and
- 12 (5) A description of the steps the agency has taken to
- 13 ensure that agency managers, programs, and, where
- 14 appropriate, counties are held accountable through
- 15 annual performance appraisal criteria for:
 - 16 (A) Meeting applicable improper payments reduction
 - 17 targets; and
 - 18 (B) Establishing and maintaining sufficient internal
 - 19 controls, including an appropriate control
 - 20 environment, that effectively:
 - 21 (i) Prevent improper payments from being made;
 - 22 and

1 (ii) Promptly detect and recover improper
2 payments that are made.

3 §37-E Reports on actions to recover improper payments.

4 With respect to any improper payments identified in recovery
5 audits conducted under section 37-I, the head of the agency
6 shall provide with the estimate a report on all actions the
7 agency is taking to recover improper payments, including:

- 8 (1) A discussion of the methods used by the agency to
9 recover improper payments;
- 10 (2) The amounts recovered, outstanding, and determined to
11 not be collectable, including the percentage the
12 amounts represent of the total improper payments of
13 the agency;
- 14 (3) If a determination has been made that certain improper
15 payments are not collectable, a justification for that
16 determination;
- 17 (4) An aging schedule of the amounts outstanding;
- 18 (5) A summary of how recovered amounts have been disposed
19 of;
- 20 (6) A discussion of any conditions giving rise to improper
21 payments and how those conditions are being resolved;
22 and



1 (7) If the agency has determined under section 37-I that
2 performing recovery audits for any applicable program
3 or activity is not cost effective, a justification for
4 that determination.

5 **§37-F Government-wide reporting.** At least twenty days
6 prior to the convening of each regular session, the director of
7 finance shall submit a report to the governor and the
8 legislature with respect to the preceding fiscal year on actions
9 agencies have taken to report information regarding improper
10 payments and actions taken to recover improper payments. The
11 report shall include:

- 12 (1) A summary of the reports of each agency on improper
13 payments and recovery actions submitted;
- 14 (2) An identification of the compliance status of each
15 agency to which this part applies;
- 16 (3) Government-wide improper payments reduction targets;
17 and
- 18 (4) A discussion of progress made towards meeting
19 government-wide improper payments reduction targets.

20 **§37-G Guidance by the department of finance.** Not later
21 than December 31, 2010, the director of finance shall prescribe
22 guidance for agencies to implement the requirements of this



1 part. The guidance shall not include any exemptions to the
2 requirements not specifically authorized by this part. The
3 guidance shall prescribe:

- 4 (1) The form of the reports on actions to reduce improper
5 payments, recovery actions, and government-wide
6 reporting; and
7 (2) Strategies for addressing risks and establishing
8 appropriate prepayment and postpayment internal
9 controls.

10 §37-H Determination of agency readiness for opinion on
11 internal control. Not later than July 1, 2011, the director of
12 finance shall develop:

- 13 (1) Specific criteria as to when an agency should
14 initially be required to obtain an audit opinion on
15 internal control over financial reporting; and
16 (2) Specific criteria for an agency that has demonstrated
17 a stabilized, effective system of internal control
18 over financial reporting, whereby the agency would
19 qualify for a multiyear cycle for obtaining an audit
20 opinion on internal control over financial reporting,
21 rather than an annual cycle.



1 §37-I Recovery audits. (a) In general, with regard to
2 recovery audits, except as provided under section 37-K and if
3 not prohibited under any other provision of law, the head of
4 each agency shall conduct recovery audits with respect to each
5 program and activity of the agency that expends \$ or
6 more annually if conducting the audits would be cost-effective.
7 In conducting recovery audits under this section, the head of an
8 agency:

9 (1) Shall give priority to the most recent payments and to
10 payments made in any program or programs identified as
11 susceptible to significant improper payments under
12 section 37-B;

13 (2) Shall implement this section in a manner designed to
14 ensure the greatest financial benefit to the State;
15 and

16 (3) May conduct recovery audits directly, by procuring
17 performance of recovery audits by contract, subject to
18 the availability of appropriations, or by any
19 combination thereof.

20 (b) With respect to recovery audits procured by an agency
21 by contract:

- 1 (1) Subject to subsection (a)(3), the head of the agency
2 may authorize the contractor to notify entities,
3 including persons, of potential improper payments made
4 to the entities; respond to questions concerning
5 potential improper payments; and take other
6 administrative actions with respect to improper
7 payment claims made or to be made by the agency; and
- 8 (2) The contractor shall have no authority to make final
9 determinations relating to whether any improper
10 payment occurred and whether to compromise, settle, or
11 terminate improper payment claims.
- 12 (c) The agency shall include in each contract for
13 procurement of performance of a recovery audit a requirement
14 that the contractor shall:
- 15 (1) Provide to the agency periodic reports on conditions
16 giving rise to improper payments identified by the
17 contractor and any recommendations on how to mitigate
18 such conditions; and
- 19 (2) Notify the agency of any improper payments identified
20 by the contractor pertaining to the agency or to any
21 other agency or agencies that are beyond the scope of
22 the contract.



1 (d) An agency shall take prompt and appropriate action in
 2 response to a report or notification by a contractor under
 3 subsection (c) (2), to collect improper payments and shall
 4 forward to other agencies any information that applies to the
 5 agencies.

6 §37-J Disposition of amounts recovered. (a) Amounts
 7 collected by agencies each fiscal year through recovery audits
 8 conducted under this part shall be treated in accordance with
 9 this section.

10 (b) Not more than twenty-five per cent of the amounts
 11 collected by an agency through recovery audits:

12 (1) Shall be available, subject to appropriation, to the
 13 head of the agency administering the program or
 14 activity to carry out the financial management
 15 improvement program of the agency under section 37-K;

16 (2) May be credited, if applicable, for the financial
 17 management improvement program of that agency by the
 18 head of an agency to any agency appropriations and
 19 funds that are available for obligation at the time of
 20 collection; and

21 (3) Shall be used to supplement and not supplant any other
 22 amounts available for the financial management



1 improvement program of the agency and shall remain
2 available until expended.

3 (c) Not more than twenty-five per cent of the amounts
4 collected by an agency through recovery audits:

5 (1) Shall be credited to the appropriation or fund, if
6 any, available for obligation at the time of
7 collection for the same general purposes as the
8 appropriation or fund from which the improper payment
9 was made; and

10 (2) Shall remain available for the same period and
11 purposes as the appropriation or fund to which
12 credited.

13 (d) Funds made available under subsection (b) shall be:

14 (1) Deposited into the appropriate program accounts of the
15 agency administering the program or activity; and

16 (2) Expended only as authorized by appropriation.

17 (e) Amounts collected that are not applied in accordance
18 with subsection (b) or (c) or to meet obligations to recovery
19 audit contractors shall be deposited in the state general fund.

20 §37-K Financial management improvement program. (a) The
21 head of each agency shall conduct a financial management



1 improvement program, consistent with rules prescribed by the
2 director of finance.

3 (b) In conducting the program, the head of the agency:

4 (1) As the first priority of the program, shall address
5 problems that contribute directly to agency improper
6 payments; and

7 (2) May seek to reduce errors and waste in other agency
8 programs and operations."

9 SECTION 2. In codifying the new sections added by section
10 1 of this Act, the revisor of statutes shall substitute
11 appropriate section numbers for the letters used in designating
12 the new sections in this Act.

13 SECTION 3. This Act shall take effect on July 1, 2020.



Report Title:

Improper Payments Elimination and Recovery

Description:

Establishes procedures to eliminate and recover improper payments made by a State agency, State contractor, State grantee, or a governmental or other organization administering a State program or activity, to any non-State person or entity. Requires the head of each agency to conduct a financial management improvement program and additional reporting requirements for State agencies consistent with rules prescribed by the Director of Finance. Effective July 1, 2020. (HB2186 HD1)

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