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## 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" means:

- 9           (1) Any payment that should not have been made or that was  
10           made in an incorrect amount (including overpayments  
11           and underpayments) under statutory, contractual,  
12           administrative, or other legally applicable  
13           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 such payments where



1 authorized by law), and any payment that does not  
2 account for credit for 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, such as:

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) Include those estimates in the accompanying materials  
5 to the annual financial statement of the agency  
6 required under law and applicable guidance of the  
7 department of budget and finance.

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) In order to reduce improper payments to a level below  
18 which further expenditures to reduce improper payments  
19 would cost more than the amount the expenditures would  
20 save in prevented or recovered improper payments, a  
21 statement of whether the agency has what is needed  
22 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) Prevents improper payments from being made;
    - 22 and



1                   (ii) Promptly detects and recovers 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. The director of finance  
6           shall submit a report to the governor and the legislature with  
7           respect to the preceding fiscal year on actions agencies have  
8           taken to report information regarding improper payments and  
9           actions taken to recover improper payments at least twenty days  
10          prior to the convening of each regular session. The report  
11          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 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) Criteria for an agency that has demonstrated a  
17 stabilized, effective system of internal control over  
18 financial reporting, whereby the agency would qualify  
19 for a multiyear cycle for obtaining an audit opinion  
20 on internal control over financial reporting, rather  
21 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 that purpose by  
17 the head of an agency to any agency appropriations and  
18 funds that are available for obligation at the time of  
19 collection; and

20 (3) Shall be used to supplement and not supplant any other  
21 amounts available for that purpose and shall remain  
22 available until expended.



1 (c) Not more than twenty-five per cent of the amounts  
2 collected by an agency:

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

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

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

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

14 (2) Expended only as authorized by appropriation.

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

18 §37-K Financial management improvement program. (a) The  
19 head of each agency shall conduct a financial management  
20 improvement program, consistent with rules prescribed by the  
21 director of finance.

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



- 1           (1) As the first priority of the program, shall address  
2                    problems that contribute directly to agency improper  
3                    payments; and  
4           (2) May seek to reduce errors and waste in other agency  
5                    programs and operations."

6           SECTION 2. This Act shall take effect on July 1, 2010.

7

INTRODUCED BY:









JAN 20 2010



**Report Title:**

Improper Payments Elimination and Recovery

**Description:**

Mandates a financial management improvement program and additional reporting requirements for state agencies consistent with department of finance guidance.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

