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SENATE BILL 6198

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State of Washington

54th Legislature

1996 Regular Session

By Senators Long and Fraser; by request of Department of Retirement Systems

Read first time 01/09/96. Referred to Committee on Ways & Means.

1 AN ACT Relating to collection of state retirement system  
2 overpayments; and adding new sections to chapter 41.50 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** (1) If the department finds that any member,  
5 beneficiary, or other person or entity has been paid an amount of  
6 retirement benefits to which that person or entity is not entitled, the  
7 department may issue an order and notice of assessment specifying the  
8 amount due, including interest, to be remitted to the department. The  
9 order and notice of assessment shall be served upon any person or  
10 entity who may have received benefits to which the person or entity is  
11 not entitled. The order and notice of assessment shall be served by  
12 the department in the manner prescribed for the service of a summons in  
13 a civil action, or by certified mail to the last known address of the  
14 obligor as shown by the records of the department.

15 (2) The department may issue an order and notice of assessment  
16 under this section only after it has notified the person of the  
17 department's decision that an amount is due, and of the person's right  
18 to seek a review of the department's decision within sixty days. The  
19 order and notice of assessment may be served after the end of the

1 sixty-day period if the person does not seek a review of the decision,  
2 or upon completion of the review, if the department's decision is  
3 upheld on review.

4 (3) Any notice of assessment under subsection (1) of this section  
5 shall constitute a determination of liability from which the member,  
6 beneficiary, or other person or entity served may appeal by filing a  
7 petition for adjudicative proceedings with the director personally or  
8 by mail within thirty days from the date the assessment was served. If  
9 a petition for adjudicative proceedings is not filed within thirty days  
10 of the delivery of the notice of assessment, the determination that was  
11 the basis for establishing the overpayment debt and the assessment is  
12 conclusive and final.

13 NEW SECTION. **Sec. 2.** Whenever a notice of determination of  
14 liability becomes conclusive and final under section 1 of this act, the  
15 director, upon giving at least twenty days notice by certified mail  
16 return receipt requested to the individual's last known address of the  
17 intended action, may file with the superior court clerk of any county  
18 within the state a warrant in the amount of the notice of determination  
19 of liability plus a filing fee of five dollars. The clerk of the  
20 county where the warrant is filed shall immediately designate a  
21 superior court cause number for the warrant, and the clerk shall cause  
22 to be entered in the judgment docket under the superior court cause  
23 number assigned to the warrant, the name of the person mentioned in the  
24 warrant, the amount of the notice of determination of liability, and  
25 the date when the warrant was filed. The amount of the warrant as  
26 docketed shall become a lien upon the title to, and any interest in,  
27 all real and personal property of the person against whom the warrant  
28 is issued, the same as a judgment in a civil case duly docketed in the  
29 office of such clerk. A copy of the warrant shall be mailed to the  
30 person mentioned in the warrant by certified mail to the person's last  
31 known address within five days of its filing with the clerk.

32 NEW SECTION. **Sec. 3.** The department may issue subpoenas to compel  
33 the statement of witnesses and the production of any books, records, or  
34 documents necessary or relevant to the department's administration of  
35 duties under this chapter. It is unlawful for any person or entity,  
36 without just cause, to fail to comply with any subpoena issued under  
37 this section.

1        NEW SECTION.    **Sec. 4.**    (1) The director may waive repayment of all  
2 or part of a retirement allowance overpayment, under RCW 41.50.130  
3 only, if:

4        (a) The overpayment was not the result of the retiree's or the  
5 beneficiary's nondisclosure, fraud, misrepresentation, or other fault;  
6 and

7        (b) The director finds in his or her sole discretion that recovery  
8 of the overpayment would be a manifest injustice.

9        (2) The director may not waive an overpayment if the member,  
10 retiree, or beneficiary:

11        (a) Provided incorrect information to the department or the  
12 employer which caused the overpayment;

13        (b) Failed to provide information to the department or the employer  
14 which was necessary to correctly calculate the retirement allowance;

15        (c) Caused the employer to provide incorrect information or fail to  
16 provide necessary information; or

17        (d) Knew or reasonably should have known that he or she was in  
18 receipt of an overpayment.

19        (3) If the director waives an overpayment and the overpayment  
20 occurred because the member's or retiree's employer:

21        (a) Provided incorrect information to the department which caused  
22 the overpayment;

23        (b) Failed to provide information to the department which was  
24 necessary to correctly calculate the retirement allowance;

25        (c) Caused another party to provide incorrect information or fail  
26 to provide necessary information; or

27        (d) Knew or reasonably should have known that the information  
28 provided would cause the retiree or beneficiary to be overpaid;

29 then the department shall bill the member's or retiree's employer for  
30 the amount of the overpayment that would have been recoverable under  
31 RCW 41.50.130 had the overpayment not been waived pursuant to this  
32 section.

33        (4) Nothing in this section authorizes the director to waive the  
34 prospective correction of an overstated retirement allowance.

35        (5) If the director waives an overpayment he or she must state in  
36 writing:

37        (a) The nature of and reason for the overpayment;

38        (b) The reason for the waiver; and

39        (c) The amount of the overpayment that is waived.

1 The department will maintain a file containing documentation of all  
2 overpayments waived. The department will provide the file to any  
3 person upon request.

4 (6) This section applies to overpayments identified on or after  
5 September 1, 1994.

6 NEW SECTION. **Sec. 5.** Sections 1 through 4 of this act are each  
7 added to chapter 41.50 RCW.

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