

# HOUSE BILL REPORT

## SHB 1738

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**As Passed House:**

March 11, 2003

**Title:** An act relating to the recoupment of state employee salary and wage overpayments.

**Brief Description:** Providing for recoupment of state employee salary and wage overpayments.

**Sponsors:** By House Committee on Commerce & Labor (originally sponsored by Representatives Haigh and Armstrong; by request of Office of Financial Management).

**Brief History:**

**Committee Activity:**

Commerce & Labor: 2/19/03, 2/26/03 [DPS].

**Floor Activity:**

Passed House: 3/11/03, 93-0.

**Brief Summary of Substitute Bill**

- Authorizes the state of Washington, as an employer, to recover overpayments of salary or wages to employees.
- Establishes a process, including notice and an opportunity to be heard, for reviewing and recovering overpayments of salary or wages.

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### HOUSE COMMITTEE ON COMMERCE & LABOR

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Conway, Chair; Wood, Vice Chair; Chandler, Ranking Minority Member; Condotta, Assistant Ranking Minority Member; Crouse, Holmquist, Hudgins, Kenney and McCoy.

**Staff:** Jill Reinmuth (786-7134).

**Background:**

It is unlawful for an employer to withhold or divert any portion of an employee's wages except in three limited circumstances. These circumstances do not include the recovery of overpayments of salary or wages. Consequently, an employer must bring a civil

action against an employee to collect such overpayments.

In State v. Adams, 107 Wn.2d 611 (1987), the Department of Transportation sought a declaratory judgment that the state had authority to recoup overpayments of wages by deducting "reasonable amounts" from employee paychecks until the amounts owed were recovered. The supreme court held that, in the absence of statutory procedures to protect an employee from an erroneous claim, the state may collect overpayments of wages only by bringing a civil action against the employee. The supreme court explained that deducting amounts from employee paychecks without notice and an opportunity to be heard violated employee rights to due process.

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### **Summary of Substitute Bill:**

The state of Washington, as an employer, is authorized to recover overpayments of salary or wages to an employee by deductions from subsequent payments of salary or wages to the employee or by a civil action. In general, deductions may not exceed 5 percent of the employee's disposable earnings per pay period. However, deductions may be for the amount still outstanding from a final pay period.

The state may make deductions only in accordance with a specified process for reviewing and recovering overpayments of salary or wages. This process is as follows:

- The state must notify the employee. This notice must include, among other items, the amount of the overpayment and the basis for the claim. This notice may be served upon the employee in the same manner as a summons in a civil action, or be mailed to the employee at the last known address by certified mail, return receipt requested.
- Within 20 calendar days after receiving the notice, the employee may request that the state review its finding that an overpayment occurred. If the employee does not request such review, the employee may not further challenge the overpayment, and has no right to further agency review, an adjudicative proceeding, or judicial review.
- Upon receipt of an employee's request for review, the state must review the employee's challenge to the overpayment. The state must then notify the employee of its decision regarding the employee's challenge. This notice must be mailed to the employee at the last known address by certified mail, return receipt requested.
- The employee may request an adjudicative proceeding governed by the Administrative Procedure Act. This application must include the original notice of overpayment, and state the basis for contesting the notice. This application must

be served on and received by the state within 28 calendar days of the employee's receipt of the state's decision regarding the employee's challenge. This application must be mailed to the state by certified mail, return receipt requested. If the employee does not request such a proceeding, the amount of the overpayment must be deemed final and the state may recoup the overpayment.

- If the employee requests an adjudicative proceeding, the presiding officer must determine the amount of the overpayment.
- If the employee fails to attend or participate in the adjudicative proceeding, an administrative order declaring the amount claims to be assessed against the employee and subject to collection action by the state.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of session in which bill is passed.

**Testimony For:** Last year there were over 1,200 overpayments of wages to state employees. The state, as an employer, cannot recoup overpayments of wages from subsequent wage payments unless a process is established that includes notice and an opportunity to be heard. This bill establishes that process. Some changes to the original bill should be made that provide for recouping the full amount owed from the last paycheck and that give the Office of Financial Management rule-making authority. Local governments would like similar authority.

**Testimony Against:** None.

**Testified:** Jennifer Strus, Office of Financial Management; and Michael Shaw, Pierce County.