

SENATE BILL REPORT

SB 5767

As Reported By Senate Committee On:
Government Operations & Elections, March 4, 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: Senators Roach and Kastama; by request of Office of Financial Management.

Brief History:

Committee Activity: Government Operations & Elections: 2/28/03, 3/4/03 [DPS].

SENATE COMMITTEE ON GOVERNMENT OPERATIONS & ELECTIONS

Majority Report: That Substitute Senate Bill No. 5767 be substituted therefor, and the substitute bill do pass.

Signed by Senators Roach, Chair; Stevens, Vice Chair; Fairley, Horn, Kastama, McCaslin and Reardon.

Staff: Ronda Larson (786-7429)

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.

The state Supreme Court has held that because there are no statutory procedures in place to protect an employee from an erroneous claim of overpayment, the state may collect overpayments only by bringing a civil action against the employee. The court explained that deducting amounts from employee paychecks without notice and an opportunity to be heard violated employee rights to due process.

Summary of Substitute Bill: The state of Washington, as an employer, is authorized to recover overpayments of salary or wages to an employee by deducting amounts from future paychecks, or by bringing a civil action. Deductions must not exceed 5 percent of the employee's disposable earnings per pay period. However, in the final pay period, over 5 percent can be deducted, up to the amount still outstanding.

The state may make deductions only in accordance with a specified process:

- The state must notify the employee of overpayment by summons or certified mail.
- Within 20 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.

- If the employee requests review by the deadline, the state must review the challenge and mail notice of its decision to the employee.
- Within 28 days of receiving the state's decision, the employee may mail a request for an administrative hearing.
- If the employee requests a hearing and then fails to attend or participate in it, the state can pursue collection action against the employee for the overpayment. If the employee does not request a hearing, the state may deduct the overpayment from future paychecks.

Substitute Bill Compared to Original Bill: Unlike the original bill, the substitute bill defines overpayment; it explicitly allows an employee to voluntarily pay more from his or her paycheck than 5 percent; it allows a maximum deduction per pay period of 5 percent of an employee's disposable earnings, as opposed to 5 percent of net pay; it allows a deduction of over 5 percent in the final pay period if over 5 percent is still outstanding; and it designates the Office of Financial Management as the rule-making agency for the process of deductions.

Appropriation: None.

Fiscal Note: Available.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: The court held that the state's prior program for deducting overpayments was unconstitutional because there was no statutory requirement that the employee get notice and have a right to a hearing. This bill satisfies those requirements. The changes that need to be made to the original bill are merely technical changes that make the bill consistent with accounting procedures.

Testimony Against: None.

Testified: Jennifer Strus, Office of Financial Management.