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**Commerce & Labor Committee**

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**HB 1738**

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

**Sponsors:** Representatives Haigh and Armstrong; by request of Office of Financial Management.

**Brief Summary of 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.

**Hearing Date:** 2/19/03

**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 state 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 state 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.

**Summary of 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. Deductions may not exceed 5 percent of the employee's net pay per pay period.

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

**Rules Authority:** The bill prohibits agencies from modifying certain provisions dealing with administrative review by rule or otherwise.

**Appropriation:** None.

**Fiscal Note:** Requested on February 11, 2003.

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