

ACT 190

H.B. NO. 111

A Bill for an Act Relating to State Salaries.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 78-12, Hawaii Revised Statutes, is amended to read as follows:

“§78-12 Salary withheld for indebtedness to the government. (a) In case any officer, agent, employee, or other person in the service of a jurisdiction is indebted to a jurisdiction and the indebtedness has been determined by a hearing pursuant to chapter 91, upon demand of the officer charged with the duty of collecting the indebtedness, the disbursing officer charged with the duty of paying the indebted officer, agent, employee, or other person, after notice to the indebted person, shall withhold one-quarter of the salary, wages, or compensation due the indebted person and pay the same, from time to time as the same shall become due, to the officer charged with the duty of collecting the indebtedness, until the full amount of the indebtedness, together with penalties and interest thereon, is paid.

(b) If the indebtedness has arisen or been incurred by reason of the indebted officer, agent, employee, or other person having embezzled, stolen, or otherwise unlawfully acquired any moneys or other property of a jurisdiction, the whole amount of the salary, wages, or compensation, or so much thereof as may be required to pay the indebtedness in full, shall be withheld and paid over to the officer charged with the duty of collecting the indebtedness.

(c) The officer, agent, employee, or other person in the service of the jurisdiction, alleged to be indebted to a jurisdiction, may waive the right to a hear-

ing to determine the indebtedness and instead assign by contract to the officer charged with the duty of collecting debts:

- (1) The priority right to payment of the total amount of the alleged indebtedness; and
- (2) The right of the officer to deduct from each and every periodic payment normally due the assignor an amount equal to the maximum legally permissible amount deductible under garnishment law until the total amount owing is paid in full.

For purposes of this section, a person shall be deemed to waive the hearing if the person fails to request a hearing within fifteen days from the date the person was notified of the indebtedness and the opportunity to request a hearing.

(d) The operation of all garnishment process served upon the disbursing officer shall be stayed until the indebtedness has been fully paid.

(e) If the indebtedness has occurred as a result of salary or wage overpayment, the disbursing officer shall determine the amount of indebtedness and notify the employee in writing of the indebtedness[-]; provided that, to be an actionable cause of action, the determination and notice to the employee shall be made within two years from the date of the salary or wage overpayment, and not after. If the employee contests the disbursing officer's determination of indebtedness, the employee may request a hearing pursuant to chapter 91.

(f) Regardless of whether a contested determination of indebtedness is pending, the disbursing officer shall commence immediate recovery of the indebtedness as provided in this subsection. If the indebtedness is equal to or less than \$1,000, the disbursing officer shall immediately deduct from any subsequent periodic payment normally due the employee any amount up to the total amount of indebtedness and for indebtedness greater than \$1,000, the disbursing officer shall deduct:

- (1) An amount agreed to by the employee and the appointing authority, but not less than \$100 per pay period; or
- (2) One-quarter of the salary, wages, or compensation due the employee until the indebtedness is repaid in full.

In addition to paragraph (1), an employee and the appointing authority may agree to offset any remaining amount of indebtedness by applying the current value of appropriate leave or compensatory time credits posted in the employee's respective accounts as balances that would otherwise be payable in cash upon separation from service; provided that credits shall not be applied to any extent that would require a refund of any moneys already deducted or repaid or that would require the payment of any moneys to the employee equivalent to a cashing out of leave or compensatory time credits.

(g) If the determination of indebtedness was contested and is subsequently found to be incorrect:

- (1) Any moneys repaid or deducted under subsection (e) for any indebtedness in excess of the correct amount shall be promptly refunded with interest as specified by section 103-10; or
- (2) All leave or compensatory time credits applied to offset any indebtedness in excess of the correct amount shall be re-credited to the employee's respective leave or compensatory time accounts and shall not result in a cash payment.

(h) If an employee is entitled to contest the determination of indebtedness under a collective bargaining grievance procedure, that procedure shall be used in lieu of a hearing under subsection (e). A collective bargaining agreement may include overpayment recovery procedures; provided that the parties do not agree on any provision that would be inconsistent with subsections (f) and (g).

(i) Where an officer, agent, employee, or other person in the service of a jurisdiction is compensated in an amount greater than or less than that to which the person is entitled, the determination of the officer's, agent's, employee's, or other person's average final compensation for the period of indebtedness shall be calculated in accordance with section 88-81; provided that the compensation used to calculate the average final compensation shall be the compensation the officer, agent, employee, or other person should have been paid during that period."

SECTION 3.¹ This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 4.¹ Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5.¹ This Act shall take effect upon its approval.

(Became law on July 15, 2009, without the governor's signature, pursuant to Art. III, §16, State Constitution.)

Note

1. So in original.