



GOV. MSG. NO. 861

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

July 16, 2009

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fifth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

Re: House Bill No. 111 SD2 CD1

On July 15, 2009, House Bill No. 111, entitled "A Bill for an Act Relating to State Salaries" became law without my signature, pursuant to Section 16 of Article III of the State Constitution.

The purpose of this bill is to establish a two-year statute of limitations for governmental bodies to recover salary or wage overpayments to their employees.

We are concerned that the two-year limitation does not allow the State and counties sufficient opportunity to recover salary overpayments. It often takes time to review an employee's daily work records to determine whether the employee has been overpaid. Most salary overpayments are discovered when the employee is about to retire and the employee's pension is calculated.

Salary overpayments are made by mistake, and while some employees, upon becoming aware of overpayments, promptly report the overpayments, not all do so. Employees are not entitled to keep overpayments and should not benefit from an inadvertent error. An overpayment to an employee deprives another employee or program of the use of those funds.

The existing statutes protect an employee from an arbitrary employer action. There is a process that the State and counties must follow to recover the overpayment, and the employee is free to contest the government's assertion that there has been an overpayment. Current law provides that the employee may request a hearing and, if the employee so chooses, may appeal an adverse determination.

While it is understandable that some would contend that the State should not have an unlimited period to recoup its mistakes, limiting this period to only two years will hamper the State and counties and result in the unjust enrichment of some.

The Honorable Colleen Hanabusa, President
and Members of the Senate
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For the foregoing reasons, I allowed House Bill No. 111 to become law as Act 190,
effective July 15, 2009, without my signature.

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Lingle", with a large, stylized loop at the end.

LINDA LINGLE

A BILL FOR AN ACT

RELATING TO STATE SALARIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

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

3 "§78-12 Salary withheld for indebtedness to the
4 government. (a) In case any officer, agent, employee, or other
5 person in the service of a jurisdiction is indebted to a
6 jurisdiction and the indebtedness has been determined by a
7 hearing pursuant to chapter 91, upon demand of the officer
8 charged with the duty of collecting the indebtedness, the
9 disbursing officer charged with the duty of paying the indebted
10 officer, agent, employee, or other person, after notice to the
11 indebted person, shall withhold one-quarter of the salary,
12 wages, or compensation due the indebted person and pay the same,
13 from time to time as the same shall become due, to the officer
14 charged with the duty of collecting the indebtedness, until the
15 full amount of the indebtedness, together with penalties and
16 interest thereon, is paid.

17 (b) If the indebtedness has arisen or been incurred by
18 reason of the indebted officer, agent, employee, or other person



1 having embezzled, stolen, or otherwise unlawfully acquired any
2 moneys or other property of a jurisdiction, the whole amount of
3 the salary, wages, or compensation, or so much thereof as may be
4 required to pay the indebtedness in full, shall be withheld and
5 paid over to the officer charged with the duty of collecting the
6 indebtedness.

7 (c) The officer, agent, employee, or other person in the
8 service of the jurisdiction, alleged to be indebted to a
9 jurisdiction, may waive the right to a hearing to determine the
10 indebtedness and instead assign by contract to the officer
11 charged with the duty of collecting debts:

12 (1) The priority right to payment of the total amount of
13 the alleged indebtedness; and

14 (2) The right of the officer to deduct from each and every
15 periodic payment normally due the assignor an amount
16 equal to the maximum legally permissible amount
17 deductible under garnishment law until the total
18 amount owing is paid in full.

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



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

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

13 (f) Regardless of whether a contested determination of
14 indebtedness is pending, the disbursing officer shall commence
15 immediate recovery of the indebtedness as provided in this
16 subsection. If the indebtedness is equal to or less than
17 \$1,000, the disbursing officer shall immediately deduct from any
18 subsequent periodic payment normally due the employee any amount
19 up to the total amount of indebtedness and for indebtedness
20 greater than \$1,000, the disbursing officer shall deduct:

21 (1) An amount agreed to by the employee and the appointing
22 authority, but not less than \$100 per pay period; or



1 (2) One-quarter of the salary, wages, or compensation due
2 the employee until the indebtedness is repaid in full.

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

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

15 (1) Any moneys repaid or deducted under subsection (e) for
16 any indebtedness in excess of the correct amount shall
17 be promptly refunded with interest as specified by
18 section 103-10; or

19 (2) All leave or compensatory time credits applied to
20 offset any indebtedness in excess of the correct
21 amount shall be re-credited to the employee's



1 respective leave or compensatory time accounts and
2 shall not result in a cash payment.

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

10 (i) Where an officer, agent, employee, or other person in
11 the service of a jurisdiction is compensated in an amount
12 greater than or less than that to which the person is entitled,
13 the determination of the officer's, agent's, employee's, or
14 other person's average final compensation for the period of
15 indebtedness shall be calculated in accordance with section 88-
16 81; provided that the compensation used to calculate the average
17 final compensation shall be the compensation the officer, agent,
18 employee, or other person should have been paid during that
19 period."

20 SECTION 3. This Act does not affect rights and duties that
21 matured, penalties that were incurred, and proceedings that were
22 begun, before its effective date.



