

---

---

# 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.



1 SECTION 4. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3 SECTION 5. This Act shall take effect upon its approval.



**Report Title:**

State Salary; Indebtedness

**Description:**

Establishes a 2-year statute of limitations for recovering indebtedness to the State through withholding of state salaries. Calculates retirement benefits based on what the employee's salary should have been. (HB111 CD1)

