

Honolulu, Hawaii

APR - 3 2012

RE: S.R. No. 21  
S.D. 1

Honorable Shan S. Tsutsui  
President of the Senate  
Twenty-Sixth State Legislature  
Regular Session of 2012  
State of Hawaii

Sir:

Your Special Committee on Accountability - 01, to which was referred S.R. No. 21 entitled:

"SENATE RESOLUTION REQUESTING THE AUDITOR TO CONDUCT AN AUDIT OF STATE DEPARTMENTS WITH HIGH RATES OF ADDITIONAL COMPENSATION PAID TO EMPLOYEES,"

begs leave to report as follows:

The purpose and intent of this measure is to request the Auditor to conduct an audit of state departments with high rates of additional compensation paid to employees, including:

- (1) A review of the use of overtime pay, and any excessive use of sick leave and other forms of compensation such as compensatory time, which may directly or indirectly contribute to increased overtime for employees, and the impact of the use of additional compensation on pension payments;
- (2) A description of any specific instances of "pension spiking";
- (3) An identification of any patterns of abuse of additional compensation by either employees or their supervisors; and
- (4) Recommendations for addressing the issues raised in the audit.



Your Committee received testimony in support of this measure from the Auditor and Department of Human Resources Development. Your Committee received comments on this measure from the Employees' Retirement System, Department of Budget and Finance, Department of Health, Hawaii Health Systems Corporation, Department of Public Safety, and Department of Transportation.

Your Committee has also heard S.R. No. 20, "SENATE RESOLUTION REQUESTING THE AUDITOR TO CONDUCT A FINANCIAL AND MANAGEMENT AUDIT OF THOSE STATE AGENCIES WITH SALARY AND WAGE OVERPAYMENTS," which requested the Auditor to conduct a financial and management audit of those state agencies with salary and wage overpayments; including:

- (1) The full extent of the overpayments, the total amount repaid, amounts still eligible for repayment, and amounts deemed uncollectable, by department;
- (2) Efforts by the State to resolve the overpayments; and
- (3) Any recommendations for legislation to address or prevent the issue of salary and wage overpayment and improve the collection of overpayments.

Your Committee received testimony in support of this measure from the Auditor, Department of Accounting and General Services, and Koa Hills Consulting. Your Committee received comments on this measure from the Department of the Attorney General, Department of Education, Department of Health, Department of Public Safety, and Department of Transportation.

Your Committee held three hearings on S.R. No. 21, and two hearings on S.R. No. 20. During the conduct of these hearings, your Committee found a number of common themes, concerns, and recurring problems within specific state agencies that were relevant for both measures. After careful consideration, your Committee has combined many of the provisions from both measures, as well as recommendations from the Auditor, in S.R. No. 21, S.D. 1. The specific amendments are discussed in greater detail at the end of this standing committee report.

Your Committee is troubled chiefly by the lack of accountability demonstrated in the testimony and through questioning of the representatives of those agencies present at the hearings. Whether the issue was related to "pension spiking"



or the overpayment of compensation, your Committee found a pattern of misinformation, lack of information, and conflicting information that has resulted in several state agencies' inability to resolve their employee compensation problems - often for many years.

Your Committee has heard that the State's use of a manual, decentralized timekeeping system keeps the agencies from accurately tracking and addressing patterns of abuse, and that the situation will be difficult to resolve until the State embraces an automated system. Yet, your Committee has also heard from other state agencies that have implemented an electronic form of record keeping, with excellent results.

Your Committee has heard from several state agencies that their collective bargaining agreements hamper their efforts to address employee abuse of overtime, sick leave, and leave without pay. On questioning, however, your Committee found that agency directors and managers were not always clear about what was contained in their collective bargaining agreements.

In questioning one state agency regarding why they have not pursued repayment of overpayments to the full extent allowed, your Committee found that the official responsible had misinterpreted the law. While your Committee understands that such misinterpretations may occur, your Committee is greatly concerned that the official neither requested nor was offered information on the correct interpretation of the law as he implemented it.

Your Committee has heard that there is no statewide manual to address overpayments, and also heard that there is such a manual. One agency indicated they are following an overpayment Executive Memorandum issued by former Governor Cayetano on October 1, 1996 (Memo No. 96-16), which established policies and procedures based on section 78-12(c) and (e), Hawaii Revised Statutes. Other agencies appeared not to be aware of that or any directives on the subject. On April 28, 2003, the Comptroller issued a memorandum to supplement the salary overpayment write-off procedures in former Governor Cayetano's 1996 memo (Comptroller's Memorandum No. 2003-13). On October 1, 2003, the Comptroller at that time issued a memorandum on monthly reporting requirement of Salary Overpayment Amounts (Comptroller's Memorandum No. 2003-24, which was updated on April 28, 2004 (Comptroller's Memorandum No. 2004-11). It is unclear to your Committee what, if anything, is done with the required monthly reports to the Comptroller.



Your Committee further finds that on September 14, 2006, Governor Lingle issued Executive Memorandum No. 06-03, which revised the policies and procedures for salary and wage overpayment and superseded the 1996 Executive Memorandum issued by former Governor Cayetano. Governor Lingle's Executive Memorandum appears to have interpreted section 78-12, Hawaii Revised Statutes, far more leniently, which has had a detrimental effect on the State's efforts to collect for overpayments.

Section 78-12(f), Hawaii Revised Statutes, reads:

"(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."



The 1996 Executive Memorandum stipulated that in the case of an overpayment (OP) greater than \$1,000, a department was "to deduct one-quarter of the employee's salary, wages or compensation per pay period, until the OP is repaid in full." The 2006 Executive Memorandum, however, stipulated that for an OP greater than \$1,000, a department "deduct the amount agreed upon by the employer and employee until the OP is repaid in full. The minimum amount to be initially deducted is established by at law at \$100 per pay period."

Your Committee is astounded not only that the previous administration would choose to collect money legitimately owed to the State at the lesser level authorized by the statute, but that many in the current administration were not aware of this 2006 Executive Memorandum and that no attempt had been made to supersede it with a collection policy based on the full authorization of the law.

Throughout these hearings your Committee has questioned several state agencies regarding which department has the ultimate responsibility to ensure that compensation abuses do not continue and are addressed in a timely manner. Prior to the final hearing, your Committee had not received a satisfactory answer to the question. It was clear to your Committee that the absence of oversight by the administration as a whole has contributed to the continuation of these compensation abuses on the part of those employees who are adept at "gaming the system". Your Committee was further troubled that there appeared to be limited - and inconsistent - initiatives by the various state agencies to "fix" the system. While your Committee fully understands that a state agency does not have the flexibility of a private sector business, there are means available to the administration, including legislation, that have not been fully explored to address these problems.

Your Committee was encouraged at the last hearing on these measures to find that the issue of accountability was finally being seriously addressed. The Department of the Attorney General will be reviewing the past and current Executive Memoranda on the policies and procedures for salary and wage overpayment recovery for possible revisions; working with the departments to ensure they are correctly interpreting and implementing section 78-12, Hawaii Revised Statutes; working with the departments to reconcile the status of collections; reviewing the State's overpayment



policies and procedures; and considering legislation for introduction during the 2013 Regular Session.

In addition, the Department of Accounting and General Services will be preparing two overpayment reports to be distributed to the Governor's monthly cabinet meetings for discussion and resolution; issuing an updated Comptroller's Memorandum by the end of March 2012, reminding the departments of the State's overpayment collection procedures, policies, and laws; reviewing, with the Department of the Attorney General, relevant statutes that may require amendments; and reviewing, with the assistance of the Employees' Retirement System, the effects of overpayments on the retirement system. Your Committee understands that the Comptroller may issue additional memoranda to address these issues.

Your Committee has also heard a commitment by the agencies testifying in these hearings to work in a more collaborative manner to address the problems and issues uncovered by your Committee. Your Committee certainly hopes this will be the case, as many of the most troubling problems are years old.

Your Committee has amassed a considerable amount of data, documentation, and anecdotal accounts of compensation abuses that have a detrimental impact on the State's financial plan and the Employees' Retirement System. As noted by the State's Director of Finance, many of these issues -- particularly overtime calculations by state agencies -- lend a certain level of unpredictability to the budget process. For the Employees' Retirement System, the fiscal impact is not only significant, but it also presents a long-term problem for the agency and thousands of public worker retirees.

During the course of these hearings, your Committee has encountered problems that go far deeper than the members may have anticipated. As a result, it is difficult to assess the true cost to the State. Your Committee is in strong agreement that the audits in the two measures before your Committee are necessary and, in some cases, long overdue. Given the overlapping issues, and recurring problems in specific state departments, your Committee believes the Auditor should be given the flexibility to determine how many audits may be necessary, the most appropriate agencies to audit, and the scope of these audits.

Your Committee has amended this measure accordingly, by:



- (1) Amending the title to read: "SENATE RESOLUTION REQUESTING THE AUDITOR TO CONDUCT AUDITS OF STATE DEPARTMENT OPERATIONS THAT RESULT IN HIGH NON-BASE COMPENSATION OF STATE AND COUNTY EMPLOYEES, PAY FOR NOT WORKING, AND SALARY OVERPAYMENTS";
- (2) Replacing several findings with language to clarify the specifics of compensation issues relating to the impacts for the Employees' Retirement System;
- (3) Adding findings from S.R. No. 20, regarding the extent and impact of wage and salary overpayment;
- (4) Expanding the scope of the audit to include:
  - (A) An identification of such practices as failure to report to work nevertheless resulting in current compensation and leave credits and in future favorable impact on pensions;
  - (B) The full extent of overpayments to state employees, the total amount repaid, amounts still eligible for repayment, and amounts deemed uncollectable, by department;
  - (C) Efforts by the State to resolve the overpayments through timely and aggressive collections;
  - (D) A review of state agencies' personnel policies regarding overtime, sick leave, leave without pay, and other forms of compensation; and
  - (E) A review of collective bargaining agreements that address pay for not working;
- (5) Allowing the Auditor, in conducting the audits, to focus initial efforts additionally on departments that have:
  - (A) Employees in bargaining units with collective bargaining contracts that enable substantial non-base compensation payments to occur; or



- (B) Demonstrated contract management practices resulting in a pattern of overpayment of employees; and
- (6) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

It is the intent of your Committee to share the information presented at these hearings with the Auditor. While a considerable amount of data has been collected for the Auditor's review, additional records will be required. Given the scope of the task before the Auditor, your Committee would urge the departments to cooperate fully and expeditiously when requests for further information are made.

In addition, your Committee has requested that the Committee be kept apprised of further initiatives by Governor Abercrombie and the Administration to address the many problems uncovered during these hearings.

As affirmed by the record of votes of the members of your Special Committee on Accountability - 01 that is attached to this report, your Committee concurs with the intent and purpose of S.R. No. 21, as amended herein, and recommends its adoption in the form attached hereto as S.R. No. 21, S.D. 1.

Respectfully submitted on  
behalf of the members of the  
Special Committee on  
Accountability - 01,



DONNA MERCADO KIM, Chair





The Senate  
 Twenty-Sixth Legislature  
 State of Hawai'i

**Record of Votes**  
**Special Committee on Accountability**  
**SCA01**

Bill / Resolution No.:* <i>SR 21</i>	Committee Referral: <i>SCA01</i>	Date: <i>3/20/12</i>
---	-------------------------------------	-------------------------

The committee is reconsidering its previous decision on this measure.  
 If so, then the previous decision was to: \_\_\_\_\_

The Recommendation is:

Pass, unamended 2312      Pass, with amendments 2311      Hold 2310      Recommit 2313

Members	Aye	Aye (WR)	Nay	Excused
KIM, Donna Mercado (C)	✓			
ESPERO, Will (VC)	✓			
IHARA, Jr., Les	✓			
KOUCHI, Ronald D.	✓			
SLOM, Sam	✓			
<i>tee, Clayton</i>	✓			
<b>TOTAL</b>	<i>6</i>			

Recommendation:      Adopted      Not Adopted

Chair's or Designee's Signature:  
*Will Espero*

Distribution:     Original     Yellow     Pink     Goldenrod  
 File with Committee Report     Clerk's Office     Drafting Agency     Committee File Copy

\*Only one measure per Record of Votes