

AMENDED IN ASSEMBLY MARCH 30, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

## ASSEMBLY BILL

No. 1753

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**Introduced by Assembly Member Obernolte**

February 2, 2016

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An act to amend Section 19838 of the Government Code, relating to state employees.

### LEGISLATIVE COUNSEL'S DIGEST

AB 1753, as amended, Obernolte. State employees: overpayment.

Existing law authorizes the state to recoup employee overpayments through methods mutually agreed to by the employee and the state, as specified, and provides the state, when an employee separates from employment prior to full repayment, with the right to exercise all legal means to recover the additional amount owed. Existing law prohibits the state from taking administrative action to recover an overpayment unless the action is initiated within 3 years from the overpayment.

This bill would require the administrative action for overpayment to be initiated by written notice to the employee and would instead prohibit the state from taking that action unless the action is initiated within 3 years from employee. *The bill, for an overpayment that involves leave credits, would make the date of overpayment either the date the employee separates from state service receives compensation in exchange for leave erroneously credited to the employee or, when if the state alleges that the employee obtained the overpayment as a result of fraud, embezzlement, or falsification, the date the state discovers the fraud, embezzlement, or falsification, whichever is later.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. Section 19838 of the Government Code is amended to read:

19838. (a) When the state determines an overpayment has been made to an employee, it shall notify the employee of the overpayment and afford the employee an opportunity to respond prior to commencing recoupment actions. Thereafter, reimbursement shall be made to the state through one of the following methods mutually agreed to by the employee and the state:

(1) Cash payment or payments.

(2) Installments through payroll deduction to cover at least the same number of pay periods in which the error occurred. When overpayments have continued for more than one year, full payment may be required by the state through payroll deductions over the period of one year.

(3) The adjustment of appropriate leave credits or compensating time off, provided that the overpayment involves the accrual or crediting of leave credits (e.g., vacation, annual leave, or holiday) or compensating time off. Any errors in sick leave balances may only be adjusted with sick leave credits.

Absent mutual agreement on a method of reimbursement, the state shall proceed with recoupment in the manner set forth in paragraph (2).

(b) An employee who is separated from employment prior to full repayment of the amount owed shall have withheld from any money owing the employee upon separation an amount sufficient to provide full repayment. If the amount of money owing upon separation is insufficient to provide full reimbursement to the state, the state shall have the right to exercise any and all other legal means to recover the additional amount owed.

(c) Amounts deducted from payment of salary or wages pursuant to the above provisions, except as provided in subdivision (b), shall ~~in no event~~ *not* exceed 25 percent of the employee's net disposable earnings.

(d) No administrative action shall be taken by the state pursuant to this section to recover an overpayment unless the action is initiated by written notice to the employee within three years from *the date of overpayment. If an overpayment involves leave credits,*

1 *the date of overpayment is either of the following, whichever is*  
2 *later:*

3 (1) ~~The date the employee separates from state service.~~ *receives*  
4 *compensation in exchange for leave erroneously credited to the*  
5 *employee.*

6 (2) ~~When~~ *If* the state alleges that the employee obtained the  
7 overpayment as a result of fraud, embezzlement, or falsification,  
8 the date the state discovers the fraud, embezzlement, or  
9 falsification.

10 (e) If the provisions of this section are in conflict with the  
11 provisions of a memorandum of understanding reached pursuant  
12 to Section 3517.5, the memorandum of understanding shall be  
13 controlling without further legislative action, except that if the  
14 provisions of a memorandum of understanding require the  
15 expenditure of funds, the provisions shall not become effective  
16 unless approved by the Legislature in the annual Budget Act.