Department of Planning and Budget
2012 Fiscal Impact Statement

1. **Bill Number:** HB939

House of Origin	☐	Introduced	☒	Substitute	☐	Engrossed
Second House	☐	In Committee	☐	Substitute	☐	Enrolled

2. **Patron:** Lingamfelter

3. **Committee:** Appropriations

4. **Title:** Department of Accounts; recovery of erroneous or improper payments to state employees.

5. **Summary:** This bill provides that any state officer or employee is liable for repayment of any compensation or payments received to which they are not entitled, unless they prove by a preponderance of the evidence that the improper payment occurred through no fault of their own and they did not have actual knowledge of or could not have reasonably detected the error. Any officer or employee of the Commonwealth who authorizes improper payment shall be liable for repayment. If an employee or officer is determined to be liable, the bill authorizes an employer to use payroll deductions limited to 25 percent of disposal earnings to effect repayment. The bill also provides that employers are to take necessary action to correct errors and adjust future payments to the correct amount when a change or error in records results in improper payment. Finally, when recovery cannot be accomplished, the bill authorizes the employer to request the Attorney General to bring an action for restitutions in accordance with the Virginia Debt Collection Act.

6. **Budget Amendment Necessary**: No.

7. **Fiscal Impact Estimates:** Preliminary.

8. **Fiscal Implications:** In accordance with current public payroll practice, employees are required to return overpayments made due to administrative error through future payroll deductions. The bill provides that employees are not liable for repayment if the recipient officer or employee can prove, by a preponderance of the evidence, that the improper payment occurred through no fault of their own and they did not have actual knowledge of or could not have reasonably detected the error. As such, it is possible that the bill may result in the potential loss of public dollars that would have otherwise been returned to state accounts. However, it is not anticipated that this will result in a material impact to the state.

   The Division of Debt Collection (DDC) within the Office of the Attorney General (OAG) is self-funded and operates on a contingency fee basis, based on the amount of debt collected by the division. As such, in as much as this bill may result in a reduction of collections by the DDC, the division's operational budget may incur a commensurate reduction in funds.

However, according to the DDC, referrals for this type of debt are rare and so the division anticipates that any fiscal impact resulting from this bill, both on the workload of the DDC and on the OAG as an employer, would be minimal and can be absorbed within the agency's current resources.

9. **Specific Agency or Political Subdivisions Affected:** Office of the Attorney General, Division of Debt Collection, Department of Accounts.

10. **Technical Amendment Necessary:** No.

11. **Other Comments:** The proposed language in § 2.2-804 E, "If the officer or employee admits liability" appears to require the Department of Accounts (DOA) to modify state payroll policy to require agency payroll officers to obtain officer or employee concurrence before using payroll deduction. Currently, agency payroll officers routinely process payroll adjustments related to benefit plan enrollments as well as for wage, salary or expense overpayments stemming from timing errors that occur due to the very short time available to process payroll between the pay period end date and the payday. This bill will increase administrative costs in order to obtain employee repayment concurrence for routine overpayment/repayment circumstances. DOA recommends an exclusion from the requirement to notify and obtain employee concurrence for good faith overpayments related to payroll deductions made in support of employee benefit program enrollments (e.g., under withheld retirement, health insurance). DOA also recommends a de minimus exclusion from the requirement to notify and obtain employee concurrence for good faith wage, salary or expense overpayments.

    Additionally, § 4-6.01 e.3. of Chapter 890, the 2011 Appropriation Act, as well as § 4-6.01 e.3. of HB/SB 30, the Introduced Budget Bill, provide authorizations for compromise and settlement and payroll deductions. The language provided in both Chapter 890 and HB/SB30 is as follows:

    Notwithstanding §§ 40.1-29 and 2.2-804, Code of Virginia, agencies are authorized to seek compromise and settlement of erroneous payroll overpayments with the approval of the Attorney General pursuant to, and consistent with, § 2.2-514, Code of Virginia and as approved by the Governor or his designee. If so approved, agencies are authorized to use payroll deductions to recover the compromise and settlement of erroneous payroll overpayments made to state employees. Such overpayments may include, but are not limited to, excess wage or salary payments, erroneous refunds, and under-withheld payroll deductions for retirement, health and other benefit programs. Payroll deductions made pursuant to this section are limited to 25 percent of disposable earnings as defined in Code § 34-29(d).

Date: 2/7/2012