

Bill No. SB 1920

Barcode 702724

CHAMBER ACTION

Senate

House

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The Committee on Judiciary (Webster) recommended the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

Section 1. Claim for compensation for wrongful incarceration.--

(1) A person who has been wrongfully convicted of a felony offense and incarcerated within the Department of Corrections as a result of that conviction may be financially compensated if the claimant is found to be actually innocent by a court.

(2) A person may petition a court to determine whether he or she was actually innocent of a felony conviction. As a prerequisite to the petition, the court must issue an order vacating, dismissing, or reversing the conviction and sentence and providing that no further proceedings can or will be held against the person on any facts and circumstances alleged in the proceedings which resulted in the conviction.

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1 (3) As used in this section, a claimant is actually
2 innocent if a court has found by clear and convincing evidence
3 that:

4 (a) The claimant was charged, by indictment or
5 information, with the commission of an offense classified as a
6 felony;

7 (b) The claimant was convicted of the offense;

8 (c) The claimant was sentenced to incarceration for a
9 term of imprisonment as a result of the conviction;

10 (d) The claimant was imprisoned solely on the basis of
11 the conviction for the offense;

12 (e) The claimant did not commit the offense that
13 resulted in the conviction and incarceration or that the
14 claimant's acts did not constitute a crime; and

15 (f) The claimant did not aid, abet, or act as an
16 accomplice to a person who committed the offense.

17 (4) A claimant is not eligible for compensation if the
18 claimant:

19 (a) Pled guilty or nolo contendere to, or was
20 convicted of, regardless of adjudication, a felony prior to
21 payment of a claim pursuant to this act, not including the
22 wrongful incarceration for which compensation is being sought
23 pursuant to this act;

24 (b) Pled guilty or nolo contendere to the felony for
25 which compensation is sought;

26 (c) Submits a completed application to the Department
27 of Financial Services after October 1, 2008, or more than 2
28 years after the order vacating, reversing, or dismissing the
29 sentence, whichever is later; or

30 (d) Applies for compensation based on an order
31 vacating, dismissing, or reversing a conviction and sentence

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1 that was issued before October 1, 2001.

2 (5) The claimant must submit to the Department of
3 Financial Services for review and processing the following
4 documents as an application package, as proof of the person's
5 eligibility for compensation:

6 (a) A certified copy of the judgment and sentence in
7 the case, including fingerprints;

8 (b) A set of the claimant's fingerprints, prepared by
9 the sheriff of the county in which the person resides and
10 taken within 6 months before the date on which the claim is
11 submitted;

12 (c) A recent photograph of the claimant in a format no
13 larger than 2 inches by 3 inches;

14 (d) A certified copy of the order vacating,
15 dismissing, or reversing the conviction;

16 (e) A certified copy of the court order finding that
17 the claimant is actually innocent;

18 (f) A record from the Department of Corrections
19 showing the actual dates of the claimant's incarceration and a
20 photograph of the person taken by the department; and

21 (g) A brief statement reciting the facts upon which
22 the claim for compensation is based and showing that the
23 claimant is in compliance with all requirements of this act.

24 (6)(a) Upon receipt of an application, the Department
25 of Financial Services shall examine the application. Within 30
26 days after receipt of the application, the department shall
27 notify the applicant of any apparent errors or omissions and
28 request any additional information the department is permitted
29 by law to require. The department shall not deny a claim for
30 failure to correct an error or omission or supply additional
31 information unless the department timely notified the claimant

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1 within the 30-day period specified in this paragraph.

2 (b) The department shall process and review the claim
3 within a reasonable period of time after receiving a completed
4 application, which may not exceed 90 days.

5 (7) If the department determines that the claim for
6 compensation is supported by sufficient proof, the department
7 must forward a request for payment to the Chief Financial
8 Officer, who shall pay the claim according to the
9 recommendation. Payment shall be as follows:

10 (a) At the rate of \$50,000 for each year of wrongful
11 incarceration, prorated as necessary to compensate for
12 portions of years.

13 (b) For sums exceeding \$500,000, payments shall be
14 made in equal annual installments prorated over 10 years.

15 (c) Any person who receives prorated payments pursuant
16 to paragraph (b) and who subsequently pleads guilty or nolo
17 contendere to, or is convicted of, regardless of adjudication,
18 a felony shall, immediately upon conviction, be ineligible to
19 receive any unpaid amounts or benefits pursuant to this act.
20 Any amount forfeited shall revert to the General Revenue Fund.

21 (8)(a) Before payment is tendered pursuant this act,
22 the claimant must present to the Chief Financial Officer an
23 executed release and waiver on behalf of the claimant or his
24 or her heirs, successors, and assigns, forever releasing the
25 state or any agency, instrumentality, officer, or employee, or
26 any political subdivision thereof, or any other entity subject
27 to the provisions of s. 768.28, Florida Statutes, from any and
28 all present or future claims the claimant or his or her heirs,
29 successors, and assigns may have against such enumerated
30 entities and arising out of the factual situation in
31 connection with the conviction for which compensation is being

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1 sought under this act.

2 (b) Declaratory action to obtain judicial expungement
3 of the claimant's judicial and executive branch records as
4 otherwise provided by law is not prohibited by this act.

5 (9)(a) The Chief Financial Officer shall process and
6 pay a claim under this act according to the request for
7 payment made by the Department of Financial Services within a
8 reasonable time after receiving the request which may not
9 exceed 90 days.

10 (b) Payment shall be made pursuant to specific
11 appropriation provided to the Department of Financial
12 Services.

13 (c) In the event that payments must be made for a
14 10-year period under paragraph (7)(b), the Department of
15 Financial Services shall include in its annual legislative
16 budget request, a specific appropriation for funds sufficient
17 to make payments payable under this act during each relevant
18 fiscal year. It is the intent of the Legislature that any
19 amounts appropriated pursuant to authority granted by this act
20 shall be from recurring funds for a sufficient length of time
21 to cover the obligation.

22 (10) Any claimant who is compensated pursuant to this
23 act shall also have tuition and fees waived for up to a total
24 of 120 hours of instruction at any career center established
25 pursuant to s. 1001.44, Florida Statutes, any community
26 college established under part III of chapter 1004, Florida
27 Statutes, or any state university. For any educational benefit
28 made, the claimant is required to meet and maintain the
29 regular admission requirements of, and be registered at, such
30 career center, community college, or state university and make
31 satisfactory academic progress as defined by the educational

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1 institution in which the claimant is enrolled.

2 (11) The Legislature shall not be deemed by this act
3 or by the payment of any claim to have waived any defense of
4 sovereign immunity or to have increased the limits of
5 liability on behalf of the state or any person subject to the
6 provisions of s. 768.28, Florida Statutes, or any other law.

7 (12) Any amount awarded by this act is intended to
8 provide the sole compensation for any and all present and
9 future claims arising out of the factual situation in
10 connection with the claimant's conviction and imprisonment. No
11 further award for attorney's fees, lobbying fees, costs, or
12 other similar expenses shall be made by the state.

13 (13) The Department of Financial Services may adopt
14 rules under ss. 120.536(1) and 120.54, Florida Statutes,
15 governing the forms and procedures related to applications for
16 compensation.

17 Section 2. This act shall take effect October 1, 2006.

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20 ===== T I T L E A M E N D M E N T =====

21 And the title is amended as follows:

22 Delete everything before the enacting clause

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24 and insert:

25 A bill to be entitled

26 An act relating to compensation for wrongful
27 incarceration; providing that a person who has
28 been wrongfully convicted of a felony offense
29 and incarcerated within the Department of
30 Corrections as a result of that conviction may
31 be financially compensated if determined to be

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1 actually innocent; defining the term "actually
2 innocent;" providing conditions which
3 constitute ineligibility for compensation under
4 the act; requiring that the claimant submit
5 specified documents to the Department of Legal
6 Affairs as proof of eligibility for
7 compensation; providing procedures and
8 requirements of the department with respect to
9 the examination and review of a claim;
10 providing criteria for payment of a claim by
11 the Chief Financial Officer; providing for
12 forfeiture and reversion of unpaid amounts
13 under specified circumstances; providing for
14 legislative redress of disputes; requiring an
15 executed release and waiver as a condition
16 precedent to tender of payment; providing
17 requirements of the Chief Financial Officer
18 with respect to the processing and payment of a
19 claim; providing that payment shall be made
20 pursuant to specific appropriation provided to
21 the Department of Legal Affairs; providing
22 legislative intent with respect to such
23 appropriations; providing for waiver of
24 specified tuition and fees for claimants
25 compensated under the act; providing
26 requirements with respect to educational
27 benefits; providing that the Legislature is not
28 deemed to have waived any defense of sovereign
29 immunity nor increased the limits of liability
30 as a result of the act or the payment of a
31 claim thereunder; providing legislative intent

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1 with respect to amounts awarded under the act;
 2 authorizing the Legislature to make an official
 3 apology; providing an effective date.

4 WHEREAS, the Legislature recognizes that no system of
 5 justice is impervious to human error, and WHEREAS, United
 6 States v. Hasting, 461 U.S. 499 (1983), states, in part,
 7 "Given the myriad safeguards provided to assure a fair trial,
 8 and taking into account the reality of the human fallibility
 9 of the participants, there can be no such thing as an
 10 error-free, perfect trial, and . . . the Constitution does not
 11 guarantee such a trial.", and

12 WHEREAS, the Legislature acknowledges that the state's
 13 system of justice infrequently yields imperfect results that
 14 may have tragic consequences, and this act is based on a moral
 15 desire to acknowledge those who are wrongfully convicted of a
 16 felony offense, incarcerated as a result of that conviction,
 17 and determined to be actually innocent and is not a
 18 recognition of a constitutional right or violation,

19 WHEREAS, the Legislature finds that persons who are
 20 actually innocent and were incarcerated have been deprived of
 21 their liberty, and

22 WHEREAS, the Legislature intends that any compensation
 23 made pursuant to this act be the sole compensation to be
 24 provided by the state for any and all present and future
 25 claims arising out of the factual situation in connection with
 26 the claimant's conviction and imprisonment, NOW, THEREFORE,

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