



1 Financial Services to adopt rules; providing an  
2 effective date.

3  
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, and

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,

27  
28 Be It Enacted by the Legislature of the State of Florida:

29  
30 Section 1. Claim for compensation for wrongful  
31 incarceration.--

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

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

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

16           (a) The claimant was charged, by indictment or  
17 information, with the commission of an offense classified as a  
18 felony;

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

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

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

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

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

29           (4) A claimant is not eligible for compensation if the  
30 claimant:

31

1       (a) Pled guilty or nolo contendere to, or was  
2 convicted of, regardless of adjudication, a felony prior to  
3 payment of a claim pursuant to this act, not including the  
4 wrongful incarceration for which compensation is being sought  
5 pursuant to this act;

6       (b) Submits a completed application to the Department  
7 of Financial Services after October 1, 2008, or more than 2  
8 years after the order vacating, reversing, or dismissing the  
9 sentence, whichever is later; or

10       (c) Applies for compensation based on an order  
11 vacating, dismissing, or reversing a conviction and sentence  
12 that was issued before October 1, 2001.

13       (5) The claimant must submit to the Department of  
14 Financial Services for review and processing the following  
15 documents as an application package as proof of the person's  
16 eligibility for compensation:

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

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

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

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

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

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

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

4       (6)(a) Upon receipt of an application, the Department  
5 of Financial Services shall examine the application. Within 30  
6 days after receipt of the application, the department shall  
7 notify the applicant of any apparent errors or omissions and  
8 request any additional information the department is permitted  
9 by law to require. The department shall not deny a claim for  
10 failure to correct an error or omission or supply additional  
11 information unless the department timely notified the claimant  
12 within the 30-day period specified in this paragraph.

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

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

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

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

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

1           (8)(a) Before payment is tendered pursuant to this  
2 act, the claimant must present to the Chief Financial Officer  
3 an executed release and waiver on behalf of the claimant, or  
4 his or her heirs, successors, and assigns, forever releasing  
5 the state or any agency, instrumentality, officer, employee,  
6 or political subdivision thereof, or any other entity subject  
7 to the provisions of s. 768.28, Florida Statutes, from any and  
8 all present or future claims that the claimant or his or her  
9 heirs, successors, and assigns may have against such  
10 enumerated entities and arising out of the factual situation  
11 in connection with the conviction for which compensation is  
12 being sought under this act.

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

16           (9)(a) The Chief Financial Officer shall process and  
17 pay a claim under this act according to the request for  
18 payment made by the Department of Financial Services within a  
19 reasonable time after receiving the request, which may not  
20 exceed 90 days.

21           (b) Payment shall be made pursuant to specific  
22 appropriation provided to the Department of Financial  
23 Services.

24           (c) In the event that payments must be made for a  
25 10-year period under paragraph (7)(b), the Department of  
26 Financial Services shall include in its annual legislative  
27 budget request a specific appropriation for funds sufficient  
28 to make payments payable under this act during each relevant  
29 fiscal year. It is the intent of the Legislature that any  
30 amounts appropriated pursuant to authority granted by this act  
31

1 be from recurring funds for a sufficient length of time to  
2 cover the obligation.

3 (10) Any claimant who is compensated pursuant to this  
4 act shall also have tuition and fees waived for up to a total  
5 of 120 hours of instruction at any career center established  
6 pursuant to s. 1001.44, Florida Statutes, any community  
7 college established under part III of chapter 1004, Florida  
8 Statutes, or any state university. For any educational benefit  
9 made, the claimant shall meet and maintain the regular  
10 admission requirements of, and be registered at, such career  
11 center, community college, or state university and make  
12 satisfactory academic progress as defined by the educational  
13 institution in which the claimant is enrolled.

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

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

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

29 Section 2. This act shall take effect October 1,  
30 2006.

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1                   STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
2                                   COMMITTEE SUBSTITUTE FOR  
3   Senate Bill 1920

4 The substantial changes made by the committee substitute to  
5 the underlying bill:

6 -- Remove a section of the bill naming the bill the  
7 "Wrongful Incarceration Compensation Act";

8 -- Provide for compensation to persons who are found to be  
9 actually innocent rather than wrongfully incarcerated for  
10 a felony conviction;

11 -- Authorize a person to petition a court for a  
12 determination of actual innocence;

13 -- Remove a provision which would have made a person  
14 ineligible for compensation if he or she plead guilty to  
15 the felony for which he or she was actually innocent;

16 -- Provide for administration of the compensation by the  
17 Department of Financial Services and the Chief Financial  
18 Officer rather than the Attorney General;

19 -- Provide for compensation at a rate of \$50,000 per year  
20 rather than actual economic damages;

21 -- Remove provisions relating to the application for and  
22 determination of economic damages;

23 -- Provide for 10 annual installments for compensation that  
24 exceeds \$500,000;

25 -- Provide for the forfeiture of unpaid compensation  
26 installments upon the conviction of a subsequent felony;

27 -- Remove provisions providing for the purchase of an  
28 annuity;

29 -- Require the Department of Financial Services to request  
30 the appropriation of funds to pay claims that are made in  
31 installments;

-- Remove a provision prohibiting the payment of attorney's  
fees for services to obtain compensation;

-- Provide for a tuition waiver for 120 hours of instruction  
at state universities, community colleges, and career  
centers in addition to monetary compensation; and

-- Require a person receiving compensation to waive any  
rights to claims he or she may have relating to a  
conviction for which he or she was actually innocent.