

By Senator Joyner

18-1257-07

See HB 125

1 A bill to be entitled
2 An act relating to compensation for wrongful
3 incarceration; providing that a person who has
4 been wrongfully convicted of a felony offense
5 and incarcerated within the Department of
6 Corrections as a result of that conviction may
7 be financially compensated if determined to be
8 actually innocent; defining the term "actually
9 innocent"; providing a condition which
10 constitutes ineligibility for compensation
11 under the act; requiring that the claimant
12 submit specified documents to the Department of
13 Legal Affairs as proof of eligibility for
14 compensation; providing procedures and
15 requirements of the department with respect to
16 the examination and review of a claim;
17 providing criteria for payment of a claim by
18 the Chief Financial Officer; providing for
19 forfeiture and reversion of unpaid amounts
20 under specified circumstances; providing for
21 legislative redress of disputes; requiring an
22 executed release and waiver as a condition
23 precedent to tender of payment; providing
24 requirements of the Chief Financial Officer
25 with respect to the processing and payment of a
26 claim; providing that payment shall be made
27 pursuant to specific appropriation provided to
28 the Department of Legal Affairs; providing
29 legislative intent with respect to such
30 appropriations; providing for waiver of
31 specified tuition and fees for claimants

1 compensated under the act; providing
2 requirements with respect to educational
3 benefits; providing that the Legislature is not
4 deemed to have waived any defense of sovereign
5 immunity nor increased the limits of liability
6 as a result of the act or the payment of a
7 claim thereunder; providing legislative intent
8 with respect to amounts awarded under the act;
9 authorizing the Legislature to make an official
10 apology; providing an effective date.

11
12 WHEREAS, the Legislature recognizes that no system of
13 justice is impervious to human error, and

14 WHEREAS, United States v. Hasting, 461 U.S. 499 (1983),
15 reads, in part, "Given the myriad safeguards provided to
16 assure a fair trial, and taking into account the reality of
17 the human fallibility of the participants, there can be no
18 such thing as an error-free, perfect trial, and . . . the
19 Constitution does not guarantee such a trial," and

20 WHEREAS, the Legislature acknowledges that the state's
21 system of justice infrequently yields imperfect results which
22 may have tragic consequences, and

23 WHEREAS, this act is based on a moral desire to
24 acknowledge those who are wrongfully convicted of a felony
25 offense, incarcerated as a result of that conviction, and
26 determined to be actually innocent and is not a recognition of
27 a constitutional right or violation, and

28 WHEREAS, the Legislature intends that any compensation
29 made pursuant to this act be the sole compensation to be
30 provided by the state for any and all present and future
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1 | claims arising out of the factual situation in connection with
2 | the claimant's conviction and imprisonment, NOW, THEREFORE,

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4 | Be It Enacted by the Legislature of the State of Florida:

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6 | Section 1. Claim for compensation for wrongful
7 | incarceration.--

8 | (1) A person who has been wrongfully convicted of a
9 | felony offense and incarcerated within the Department of
10 | Corrections as a result of that conviction may be financially
11 | compensated if the claimant is actually innocent.

12 | (2) As used in this section, the term "actually
13 | innocent" means:

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

17 | (b) The claimant was convicted of the offense;

18 | (c) The claimant was sentenced to incarceration for a
19 | term of imprisonment as a result of the conviction;

20 | (d) The claimant's acts did not constitute a crime;

21 | and

22 | (e) A court of competent jurisdiction found by clear
23 | and convincing evidence that the claimant is actually innocent
24 | as defined in this act and issued an order vacating,
25 | dismissing, or reversing the conviction and sentence and
26 | providing that no further proceedings can or will be held
27 | against the claimant on any facts and circumstances alleged in
28 | the proceedings which resulted in the conviction.

29 | (3) A claimant shall not be eligible for compensation
30 | if the claimant submits a completed application to the
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1 Department of Legal Affairs later than 2 years after the order
2 vacating, reversing, or dismissing the sentence.

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

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

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

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

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

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

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

24 (5)(a) Upon receipt of an application, the Department
25 of Legal Affairs shall examine the application. Within 30 days
26 after receipt of the application, the department shall notify
27 the applicant of any apparent errors or omissions and request
28 any additional information the department is permitted by law
29 to require. The department shall not deny a claim for failure
30 to correct an error or omission or supply additional
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1 information unless the department timely notified the claimant
2 within the 30-day period specified in this paragraph.

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

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

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

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

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

22 (d) If the claimant has not executed the release and
23 waiver pursuant to paragraph (7)(a), the claimant is not
24 precluded from filing a claim bill in accordance with the
25 current Rules of the House of Representatives and the Rules of
26 the Senate, which shall be the sole redress of any dispute
27 regarding any part of this act.

28 (7)(a) Before payment is tendered pursuant this act,
29 the claimant must present to the Chief Financial Officer an
30 executed release and waiver on behalf of the claimant or his
31 or her heirs, successors, and assigns, forever releasing the

1 state or any agency, instrumentality, officer, or employee, or
2 any political subdivision thereof, or any other entity subject
3 to the provisions of s. 768.28, Florida Statutes, from any and
4 all present or future claims the claimant or his or her heirs,
5 successors, and assigns may have against such enumerated
6 entities and arising out of the factual situation in
7 connection with the conviction for which compensation is being
8 sought under this act.

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

12 (8)(a) The Chief Financial Officer shall process and
13 pay a claim under this act according to the request for
14 payment made by the Department of Legal Affairs within a
15 reasonable time after receiving the department's request which
16 may not exceed 90 days.

17 (b) Payment shall be made pursuant to specific
18 appropriation provided to the Department of Legal Affairs.

19 (c) In the event that payments are prorated pursuant
20 to this act, the Department of Legal Affairs shall include in
21 its annual legislative budget request a specific appropriation
22 for funds sufficient to make prorated payments payable under
23 this act during each relevant fiscal year. It is the intent of
24 the Legislature that any amounts appropriated pursuant to
25 authority granted by this act shall be from recurring funds
26 for a sufficient length of time to cover the obligation.

27 (9) Any claimant who is compensated pursuant to this
28 act shall also have tuition and fees waived for up to a total
29 of 120 hours of instruction at any career center established
30 pursuant to s. 1001.44, Florida Statutes, any community
31 college established under part III of chapter 1004, Florida

1 Statutes, or any state university. For any educational benefit
2 made, the claimant is required to meet and maintain the
3 regular admission requirements of, and be registered at, such
4 career center, community college, or state university and make
5 satisfactory academic progress as defined by the educational
6 institution in which the claimant is enrolled.

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

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

18 (12) The Legislature is authorized to make an official
19 apology to a claimant under this act on behalf of the State of
20 Florida.

21 Section 2. This act shall take effect October 1, 2007.
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