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LEGISLATIVE ACTION

Senate

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House

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Floor: 1/AD/2R

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05/02/2014 09:00 PM

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Senator Thompson moved the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Section 961.055, Florida Statutes, is created to  
read:

961.055 Application for compensation for a wrongfully  
incarcerated person; exemption from application by nolle  
prosequi.-

(1) A person alleged to be a wrongfully incarcerated person  
who was convicted and sentenced to death on or before December



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12 31, 1979, is exempt from the application provisions of ss.  
13 961.03, 961.04, and 961.05 in the determination of wrongful  
14 incarceration and eligibility to receive compensation pursuant  
15 to s. 961.06 if:

16 (a) The Governor issues an executive order appointing a  
17 special prosecutor to review the defendant's conviction; and

18 (b) The special prosecutor thereafter enters a nolle  
19 prosequi for the charges for which the defendant was convicted  
20 and sentenced to death.

21 (2) The nolle prosequi constitutes conclusive proof that  
22 the defendant is innocent of the offenses charged and is  
23 eligible to receive compensation under this chapter.

24 (3) This section is repealed July 1, 2018.

25 Section 2. Section 961.056, Florida Statutes, is created to  
26 read:

27 961.056 Alternative application for compensation for a  
28 wrongfully incarcerated person.-

29 (1) A person who has been determined to be a wrongfully  
30 incarcerated person pursuant to s. 961.055 is eligible to apply  
31 to the department to receive compensation for such wrongful  
32 incarceration.

33 (a) Only the wrongfully incarcerated person may apply for  
34 compensation. The estate of, or personal representative for, a  
35 decedent may not apply on behalf of the decedent for  
36 compensation for wrongful incarceration.

37 (b) In order to receive compensation, the wrongfully  
38 incarcerated person shall, by July 1, 2016, submit to the  
39 Department of Legal Affairs an application for compensation  
40 irrespective of whether the person has previously sought



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41 compensation under this chapter. The application must include:  
42 1. A certified copy of the nolle prosequi or nolle prosequi  
43 memorandum;  
44 2. Certified copies of the original judgment and sentence;  
45 3. Documentation demonstrating the length of the sentence  
46 served, including documentation from the Department of  
47 Corrections regarding the person's admission into and release  
48 from the custody of the Department of Corrections;  
49 4. Positive proof of identification, as evidenced by two  
50 full sets of fingerprints prepared by a law enforcement agency  
51 of this state and a current form of photo identification;  
52 5. Supporting documentation of any fine, penalty, or court  
53 costs imposed on and paid by the wrongfully incarcerated person  
54 as described in s. 961.06(1);  
55 6. Supporting documentation of any reasonable attorney fees  
56 and expenses as described in s. 961.06(1); and  
57 7. Any other documentation, evidence, or information  
58 required by rules adopted by the department.  
59 (2) The law enforcement agency that prepared the  
60 applicant's set of fingerprints shall forward both full sets to  
61 the Department of Law Enforcement. The Department of Law  
62 Enforcement shall retain one set for statewide criminal records  
63 checks and forward the second set of fingerprints to the Federal  
64 Bureau of Investigation for national criminal records checks.  
65 The results of the state and national records checks shall be  
66 submitted to the department.  
67 (3) Upon receipt of an application, the department shall  
68 examine the application and, within 30 days after receipt of the  
69 application, shall notify the claimant of any error or omission



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70 and request any additional information relevant to the review of  
71 the application.

72 (a) The claimant has 15 days after proper notification by  
73 the department to correct any identified error or omission in  
74 the application and to supply any additional information  
75 relevant to the application.

76 (b) The department may not deny an application for failure  
77 of the claimant to correct an error or omission or to supply  
78 additional information unless the department has notified the  
79 claimant of such error or omission and requested the additional  
80 information within the 30-day period specified in this  
81 subsection.

82 (c) The department shall process and review each complete  
83 application within 90 calendar days.

84 (d) Once the department determines whether a claim for  
85 compensation meets the requirements of this chapter, the  
86 department shall notify the claimant within 5 business days  
87 after that determination.

88 (4) If the department determines that a claimant making  
89 application under this section meets the requirements of this  
90 chapter, the wrongfully incarcerated person is entitled to  
91 compensation under s. 961.06.

92 (5) (a) No portion of the compensation paid to a claimant  
93 making application under this section may be used for attorney  
94 fees, lobbyist fees, or costs relating to assisting the claimant  
95 in receiving such compensation.

96 (b) A person who accepts any portion of the compensation  
97 paid to a claimant making application under this section as  
98 payment for attorney fees, lobbyist fees, or costs relating to



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99 assisting the claimant in receiving such compensation commits a  
100 misdemeanor of the first degree, punishable as provided in s.  
101 775.082 or s. 775.083.

102 (6) This section is repealed July 1, 2018.

103 Section 3. Subsections (4) and (5) of section 961.06,  
104 Florida Statutes, are amended to read:

105 961.06 Compensation for wrongful incarceration.-

106 (4) The Chief Financial Officer shall issue payment in the  
107 amount determined by the department to an insurance company or  
108 other financial institution admitted and authorized to issue  
109 purchase an annuity contracts in this state to purchase an  
110 annuity or annuities, selected by the wrongfully incarcerated  
111 person, on behalf of the claimant for a term of not less than 10  
112 years. The Chief Financial Officer is directed to execute all  
113 necessary agreements to implement this act and to maximize the  
114 benefit to the wrongfully incarcerated person. The terms of the  
115 annuity or annuities shall:

116 (a) Provide that the annuity or annuities may not be sold,  
117 discounted, or used as security for a loan or mortgage by the  
118 wrongfully incarcerated person applicant.

119 (b) Contain beneficiary provisions for the continued  
120 disbursement of the annuity or annuities in the event of the  
121 death of the wrongfully incarcerated person applicant.

122 (5) Before the department approves the application for  
123 compensation ~~Chief Financial Officer draws the warrant for the~~  
124 ~~purchase of the annuity,~~ the wrongfully incarcerated person  
125 ~~claimant~~ must sign a release and waiver on behalf of the  
126 wrongfully incarcerated person claimant and his or her heirs,  
127 successors, and assigns, forever releasing the state or any



128 agency, instrumentality, or any political subdivision thereof,  
129 or any other entity subject to ~~the provisions of s. 768.28~~, from  
130 all present or future claims that the wrongfully incarcerated  
131 person claimant or his or her heirs, successors, or assigns may  
132 have against such entities arising out of the facts in  
133 connection with the wrongful conviction for which compensation  
134 is being sought under the act. ~~The release and waiver must be~~  
135 ~~provided to the department prior to the issuance of the warrant~~  
136 ~~by the Chief Financial Officer.~~

137 Section 4. This act shall take effect July 1, 2014.

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

140 And the title is amended as follows:

141 Delete everything before the enacting clause  
142 and insert:

143 A bill to be entitled  
144 An act relating to victims of wrongful incarceration;  
145 creating s. 961.055, F.S.; providing that a wrongfully  
146 incarcerated person who was convicted and sentenced to  
147 death on or before December 31, 1979, is exempt from  
148 certain application procedures for compensation if a  
149 special prosecutor issues a nolle prosequi after  
150 reviewing the defendant's conviction; creating s.  
151 961.056, F.S.; providing alternative procedures for  
152 applying for compensation; requiring the claimant to  
153 file an application with the Department of Legal  
154 Affairs within a specified time; requiring the  
155 application to include certain information and  
156 documents; providing that the claimant is entitled to



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157 compensation if all requirements are met; prohibiting  
158 compensation from being used for specified attorney  
159 fees, lobbyist fees, and costs; providing criminal  
160 penalties; providing that the section is repealed on a  
161 specified date; amending s. 961.06, F.S.; requiring  
162 the Chief Financial Officer to issue payment to an  
163 insurance company or other financial institution  
164 authorized to issue annuity contracts to purchase an  
165 annuity or annuities selected by the wrongfully  
166 incarcerated person; requiring the Chief Financial  
167 Officer to execute all necessary agreements to  
168 implement compensation and to maximize the benefit to  
169 the wrongfully incarcerated person; requiring the  
170 wrongfully incarcerated person to sign a waiver before  
171 the department's approval of the application;  
172 providing an effective date.