

1 A bill to be entitled

2 An act for the relief of Scotty Bartek; providing an
3 appropriation to compensate Scotty Bartek for being
4 wrongfully incarcerated; providing a limitation on the
5 payment of attorney fees; providing an effective date.
6

7 WHEREAS, on September 9, 1991, Scotty Bartek was convicted
8 of two counts of sexual battery upon a child under 12 years of
9 age and was sentenced to two life sentences with a 25-year
10 minimum mandatory term on each count, and

11 WHEREAS, on October 5, 2009, Mr. Bartek filed a motion for
12 post-conviction relief, claiming newly discovered evidence in
13 the form of the victim's recantation, and

14 WHEREAS, the victim informed the state that she had no
15 recollection of Mr. Bartek, her father, committing sexual
16 battery and that her mother had coached her to fabricate
17 testimony against Mr. Bartek, and

18 WHEREAS, on May 15, 2012, the Circuit Court for the Fifth
19 Judicial Circuit, in and for Marion County, granted Mr. Bartek's
20 petition of post-conviction relief in Case No. 1991-CF-376, and
21 the State of Florida then appealed the circuit court's order,
22 and

23 WHEREAS, if a circuit court's order vacating a conviction
24 and sentence is appealed by the State of Florida, the order
25 becomes final upon the issuance of a mandate by the appellate

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26 | court, and

27 | WHEREAS, on November 26, 2013, the Fifth District Court of
28 | Appeal *per curiam* affirmed the circuit court's order granting
29 | Mr. Bartek's petition and vacating the judgment and sentence in
30 | Case No. 5D12-2399, and

31 | WHEREAS, section 961.03(1)(b)1., Florida Statutes (2014),
32 | requires a wrongfully convicted person to file a petition
33 | seeking compensation within 90 days after the order vacating a
34 | conviction and sentence becomes final, and

35 | WHEREAS, on December 20, 2013, after more than 22 years of
36 | wrongful incarceration, Mr. Bartek was exonerated and the
37 | mandate was issued by the district court of appeal, giving him
38 | until March 20, 2014, to timely file his petition seeking a
39 | determination of eligibility for compensation, and

40 | WHEREAS, Mr. Bartek's case was scheduled for a retrial in
41 | March 2014, and

42 | WHEREAS, on February 27, 2014, the state entered a *nolle*
43 | *prosequi*, dismissing its charges against Mr. Bartek, and
44 | indicated that it did not have sufficient evidence to establish
45 | beyond a reasonable doubt that Mr. Bartek committed sexual
46 | battery, and

47 | WHEREAS, on May 20, 2014, within 90 days after the state's
48 | filing of the *nolle prosequi*, Mr. Bartek filed a petition
49 | seeking compensation for wrongful incarceration, and

50 | WHEREAS, on September 8, 2014, counsel for Mr. Bartek filed

51 a supplemental memorandum of law alleging that Mr. Bartek is
52 "eligible for compensation" under chapter 961, Florida Statutes
53 (2014), and

54 WHEREAS, counsel for Mr. Bartek alleged that although Mr.
55 Bartek was disqualified from seeking compensation by s.
56 961.04(1), Florida Statutes (2014), the statute did not afford
57 him equal protection under the law, in violation of the United
58 States Constitution and the State Constitution, because the
59 statute unconstitutionally discriminated between persons
60 wrongfully incarcerated who had prior felony convictions and
61 those persons who did not have prior felony convictions, and

62 WHEREAS, Mr. Bartek was convicted before his wrongful
63 sexual battery conviction and incarceration on one count of the
64 sale of cannabis, a nonviolent felony of the third degree, and

65 WHEREAS, the courts did not consider Mr. Bartek's equal
66 protection argument, but the Legislature narrowed the types of
67 disqualifying felonies in its passage of chapter 2017-120, Laws
68 of Florida, so that wrongfully incarcerated persons would be
69 disqualified if they committed a violent felony before their
70 wrongful conviction and incarceration and so that those persons
71 who committed a nonviolent felony would no longer be
72 disqualified, and

73 WHEREAS, Mr. Bartek's counsel argued that the Legislature
74 did not intend to require a defendant seeking compensation for
75 wrongful incarceration to file a petition while the state could

76 | pursue charges against him or her, and

77 | WHEREAS, on March 3, 2015, the circuit court dismissed Mr.
78 | Bartek's petition seeking compensation because it was not timely
79 | filed, and on August 12, 2016, the District Court of Appeal
80 | affirmed the trial court's dismissal, and

81 | WHEREAS, the Legislature has determined that it is
82 | appropriate to compensate individuals who have been wrongly
83 | incarcerated, and

84 | WHEREAS, if Mr. Bartek had met the requirements of chapter
85 | 961, Florida Statutes (2014), he would have been entitled to
86 | compensation at a rate of \$50,000 for each year of wrongful
87 | incarceration, prorated to account for a portion of a year
88 | served; a waiver of tuition and fees for up to 120 hours of
89 | instruction at a career center, community college, or state
90 | university; a refund of the amount of any fine, penalty, or
91 | court costs imposed which he paid; and a refund of the amount of
92 | reasonable attorney fees and expenses which he incurred and
93 | paid, and

94 | WHEREAS, Mr. Bartek was wrongfully incarcerated for 22
95 | years and 242 days, which amounts to \$1,133,150.69, and

96 | WHEREAS, the estimated cost of attendance for a full-time
97 | undergraduate Florida resident to attend a state university for
98 | 4 years is approximately \$24,000, and

99 | WHEREAS, Mr. Bartek paid an estimated \$500 in court costs
100 | and fines, and

101 WHEREAS, Mr. Bartek's defense attorney charged him \$40,000
 102 for legal services relating to the charges described in this
 103 case, and

104 WHEREAS, these figures amount to an estimated total of
 105 \$1,197,650.69, which is the amount Mr. Bartek seeks under this
 106 claim bill, NOW, THEREFORE,

107

108 Be It Enacted by the Legislature of the State of Florida:

109

110 Section 1. The facts stated in the preamble to this act
 111 are found and declared to be true.

112 Section 2. The sum of \$1,197,650.69 is appropriated from
 113 the General Revenue Fund to the Department of Legal Affairs for
 114 the relief of Scotty Bartek for his wrongful incarceration.

115 Section 3. The Chief Financial Officer is directed to draw
 116 a warrant in favor of Scotty Bartek in the sum of \$1,197,650.69
 117 upon funds of the Department of Legal Affairs in the State
 118 Treasury and to pay the same out of such funds in the State
 119 Treasury.

120 Section 4. The amount awarded under this act is intended
 121 to provide the sole compensation for all present and future
 122 claims arising out of the wrongful incarceration of Scotty
 123 Bartek as described in this act. The total amount paid for
 124 attorney fees, including the \$40,000 reimbursement for Mr.
 125 Bartek's defense attorney fees, may not exceed 25 percent of the

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126 | amount awarded under this act.

127 | Section 5. This act shall take effect upon becoming a law.