

By Senator Baxley

12-00139-20

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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  
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

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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

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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

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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 are  
111 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

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

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