Committee on Claims

Tuesday

March 28, 2006

10:15 A.M.

28 House Office Building

Allan G. Bense
Speaker

John Quinones
Chair

Agenda

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Allan G. Bense

Claims Committee

Start Date and Time:	Tuesday, March 28, 2006 10:15 am
End Date and Time:	Tuesday, March 28, 2006 12:00 pm
Location:	28 HOB
Duration:	1.75 hrs

Consideration of the following proposed committee bill(s):

PCB CLAM 06-03 -- Compensation for wrongful incarceration

NOTICE FINALIZED on 03/24/2006 13:09 by WATSON.LOIS

PCB CLAM 06-03

1 A bill to be entitled
2 An act relating to compensation for wrongful
3 incarceration; providing that specified persons who have
4 been wrongfully incarcerated and are actually innocent may
5 be compensated under certain circumstances; prohibiting
6 compensation under specified circumstances; providing a
7 definition of "actually innocent"; requiring that the
8 claimant submit specified documents as proof of wrongful
9 incarceration; directing the Department of Legal Affairs
10 to review and process the documents; providing criteria
11 for payment by the Chief Financial Officer; providing for
12 forfeiture of unpaid amounts under specified
13 circumstances; requiring a specified release and waiver;
14 providing that payment be made pursuant to specific
15 appropriation; providing for the waiver of specified
16 tuition and fees; providing that the Legislature is not
17 deemed to have waived any defense of sovereign immunity
18 nor increased the limits of liability; providing
19 legislative intent; authorizing the Legislature to make an
20 official apology; providing an effective date.
21
22 WHEREAS, the Legislature recognizes that no system of
23 justice is impervious to human error. "Given the myriad
24 safeguards provided to assure a fair trial, and taking into
25 account the reality of the human fallibility of the
26 participants, there can be no such thing as an error-free,
27 perfect trial, and …the Constitution does not guarantee such a
28 trial." United States v. Hasting, 461 U.S. 499 (1983), and

29 WHEREAS, the Legislature acknowledges that the state's
30 system of justice infrequently yields imperfect results which
31 may have tragic consequences, and
32 WHEREAS, this Act is based on a moral desire to
33 acknowledge those who are actually innocent, and is not a
34 recognition of a constitutional right or violation; and
35 WHEREAS, the Legislature intends that any compensation
36 made pursuant to this Act be the sole compensation to be
37 provided by the state for any and all present and future claims
38 arising out of the factual situation in connection with the
39 claimant's conviction and imprisonment, NOW, THEREFORE,
40
41 Be It Enacted by the Legislature of the State of Florida:
42
43 Section 1. Claim for compensation for wrongful incarceration.--
44 (1) A person who has been wrongfully convicted of a felony
45 offense and incarcerated within the Department of Corrections as
46 a result of that conviction may be financially compensated if the
47 claimant is actually innocent.
48 (2) As used in this section, the term "actually innocent"
49 means:
50 (a) The claimant was charged, by indictment or information,
51 with the commission of an offense classified as a felony;
52 (b) The claimant did not plead guilty or no contest to the
53 offense charged or to any lesser included offense, unless the
54 claimant was charged with a capital offense;
55 (c) The claimant was convicted of the offense;
56 (d) The claimant was sentenced to incarceration for a term
57 of imprisonment as a result of the conviction;

58 (e) The claimant was imprisoned solely on the basis of the
59 conviction for the offense;
60 (f) The claimant did not, by his or her misconduct or
61 neglect, bring about the prosecution;
62 (g) The claimant's acts did not constitute a crime; and
63 (h) A court of competent jurisdiction found by clear and
64 convincing evidence that the offense for which the claimant was
65 convicted, sentenced, and imprisoned, including any lesser
66 included offenses, was not committed by the claimant and issued
67 an order vacating, dismissing, or reversing the conviction and
68 sentence and providing that no further proceedings can or will be
69 held against the claimant on any facts and circumstances alleged
70 in the proceedings which had resulted in the conviction.
71 (3) A claimant shall not be eligible for compensation if
72 the claimant:
73 (a) Was convicted of a crime before the conviction that
74 resulted in the period of incarceration for which the person is
75 seeking compensation, including any crime for which adjudication
76 of guilt was withheld by the court;
77 (b) Was convicted of a crime while incarcerated;
78 (c) Was convicted of a crime after the term of
79 incarceration and before the claim for wrongful incarceration is
80 submitted;
81 (d) Was also serving a concurrent felony sentence; or
82 (e) Submits a claim to the Department of Legal Affairs
83 later than two years after the order vacating, reversing, or
84 dismissing the sentence.
85 (4) The claimant must submit to the Department of Legal
86 Affairs for review and processing the following documents, in one

87 complete package, as proof of the person's eligibility for
88 compensation:
89 (a) A certified copy of the judgment and sentence in the
90 case, including fingerprints;
91 (b) A set of the claimant's fingerprints, prepared by the
92 sheriff of the county in which the person resides and taken
93 within the 6 months before the date the claim is filed;
94 (c) A recent photograph of the claimant in a format no
95 larger than 2 inches by 3 inches;
96 (d) A certified copy of the order vacating, dismissing, or
97 reversing the conviction;
98 (e) A record from the Department of Corrections showing
99 the actual dates of the claimant's incarceration and a photograph
100 of the person taken by the department; and
101 (f) A brief, sworn statement reciting the facts upon which
102 the claim for compensation is based, and showing that the
103 claimant is actually innocent and in compliance with all
104 requirements of this act.
105 (5) The Department of Legal Affairs shall process and
106 review the claim within a reasonable time after receiving the
107 documents, which may not exceed 90 days.
108 (6) If the Department of Legal Affairs determines that the
109 claim for compensation is supported by sufficient proof and
110 recommends payment of the claim for a period of time for which
111 the compensation is payable, the department must forward the
112 recommendation to the Chief Financial Officer who shall pay the
113 claim according to the recommendation. Payment shall be as
114 follows:
115 (a) At the rate of $50,000 for each year of wrongful

116 incarceration, prorated as necessary to compensate for portions
117 of complete years.
118 (b) For sums exceeding $500,000, payments shall be made in
119 equal annual installments prorated over 5 years.
120 (c) Any person awarded compensation pursuant to this act
121 who is subsequently convicted of a felony shall, immediately upon
122 conviction, not be eligible to receive any unpaid amounts or
123 benefits from any compensation awarded pursuant to this act. Any
124 amount forfeited shall revert to the state General Revenue Fund.
125 (7) Before payment is tendered the claimant must present
126 the following to the Chief Financial Officer:
127 (a) Positive proof of identity; and
128 (b) An executed release and waiver on behalf of the
129 claimant or his or her heirs, successors, and/or assigns forever
130 releasing the State of Florida or any agency, instrumentality,
131 officer, employee, or political subdivision thereof, or any other
132 entity subject to the provisions of section 768.28, Florida
133 Statutes, from any and all present or future claims the claimant
134 or his or her heirs, successors, and/or assigns may have against
135 such enumerated entities and arising out of the factual situation
136 in connection with the conviction for which the compensation is
137 being sought under this act. Declaratory action to obtain
138 judicial expungement of the claimant's judicial and executive
139 branch records as otherwise provided by law is not prohibited by
140 this act.
141 (8)(a) The Chief Financial Officer shall process and pay
142 the claim according to the recommendation of the Department of
143 Legal Affairs within a reasonable time after receiving the
144 recommendation, which may not exceed 90 days.

145 (b) Payment shall be made pursuant to specific
146 appropriation.
147 (9) Any claimant who is compensated pursuant to this act
148 shall also have tuition and fees waived for up to a total of 120
149 hours of instruction at any career center established pursuant to
150 s. 1001.44, Florida Statutes, at any community college
151 established under part III of chapter 1004, Florida Statutes, or
152 any state university. For any educational benefit made, the
153 claimant is required to meet and maintain the regular admission
154 requirements of, and be registered at, such career center,
155 community college, or state university and make satisfactory
156 academic progress as defined by the educational institution in
157 which the claimant is enrolled.
158 (10) The Legislature shall not be deemed by this act or by
159 the payment of any claim to have waived any defense of sovereign
160 immunity or to have increased the limits of liability on behalf
161 of the state or any person subject to the provisions of s.
162 768.28, Florida Statutes, or any other law.
163 (11) Any amount awarded by this act is intended to provide
164 the sole compensation for any and all present and future claims
165 arising out of the factual situation in connection with the
166 claimant's conviction and imprisonment. No further award for
167 attorney's fees, lobbying fees, costs, or other similar expenses
168 shall be made by the state.
169 (12) The Legislature is authorized to make an official
170 apology to the claimant on behalf of the State.
171 Section 2. This act shall take effect October 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB CLAM 06-03 Compensation for wrongful incarceration
SPONSOR(S): Claims Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Claims Committee		Birtman	Birtman
1)			
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

This bill would allow persons who have been wrongfully incarcerated to be compensated, provided that the person is actually innocent. Actual innocence is defined by the bill, and requires the following:

- The claimant was charged with a felony;
- The claimant did not plead guilty or no contest to the offense charged or any lesser included offense, unless the claimant was charged with a capital offense;
- The claimant was convicted of the offense;
- The claimant was incarcerated as a result of the conviction;
- The claimant was imprisoned solely on the basis of the conviction for the offense;
- The claimant did not, by his or her own misconduct or neglect, bring about the prosecution;
- The claimant's acts did not constitute a crime; and
- A court of competent jurisdiction found by clear and convincing evidence that the offense, including any lesser included offenses, was not committed by the claimant.

The bill requires the Department of Legal Affairs to process the claim and make a recommendation to the Chief Financial Officer for payment. Payment shall be at the rate of $50,000 for each year of wrongful incarceration; sums exceeding $500,000 are payable in five equal, annual installments. Payment may only be made upon specific appropriation by the Legislature. Claimants are also eligible for waiver of fees and tuition for up to 120 hours of instruction at specified educational institutions.

As a condition of the award, the claimant would release and forever waive any governmental entity from any and all present or future claims arising from the factual situation giving rise to the relief act. Neither the passage of the act nor payment of a claim shall be deemed as a waiver of any defense of sovereign immunity nor an increase on the limits of liability on behalf of the state. The bill provides that any amount awarded pursuant to the act is intended to provide the sole compensation by the state for all present and future claims. Lastly, the bill authorizes the Legislature to make an official apology on behalf of the state.

This bill appears to have a minimal fiscal impact.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard individual liberty – the bill provides a mechanism to provide compensation and benefits to those who have been wrongfully incarcerated.

Promote personal responsibility – the bill limits eligibility to those who have not pled guilty or no contest, or who have contributed to their own incarceration by their own acts. The bill also provides that unpaid compensation and benefits cease upon the subsequent conviction of a felony.

B. EFFECT OF PROPOSED CHANGES:

For those people who are actually innocent of a crime for which they have been incarcerated, there are very few, if any, legal remedies available due to the doctrines of sovereign immunity[1], absolute immunity[2], and qualified immunity[3]. Thus there are individuals who have been incarcerated for crimes that they did not commit with no avenue for compensation. In recent history, five people in Florida have been exonerated based on DNA.[4] In the past 10 years, five claimants have petitioned the Legislature for compensation for wrongful incarceration: Freddie Lee Pitts and Wilbert Lee,[5] Jesse Hill,[6] Frank Lee Smith,[7] and Wilton Dedge.[8]

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[1] Sovereign immunity is a doctrine that prohibits suits against the government without the government's consent. Article X, section 13 of the State Constitution allows the state to waive its immunity through an enactment of general law. In 1973, the Legislature enacted s. 768.28, F.S., which allows individuals to sue the state government, subdivisions of the state, and municipalities under circumstances where a private person would be liable to the claimant. Florida courts have recognized two exceptions to the state's waiver of sovereign immunity: the state is immune from discretionary or planning-level functions (Department of Health and Rehabilitative Services v. Yamuni, 529 So.2d 258 (Fla. 1988)) and is immune where the government owes a general duty to all citizens but no particular duty to the injured party (Everton v. Willard, 468 So.2d 936 (Fla. 1985)).

[2] Judges and prosecutors are afforded absolute immunity. Berry v. State, 400 So.2d 80 (Fla. 4th DCA 1981), review denied, 411 So.2d 380 (Fla. 1981).

[3] Qualified immunity protects public officials from civil damages to the extent that their conduct does not violate established statutory or constitutional rights of which a reasonable person would have known. To establish qualified immunity, the official had to be acting within the scope of his/her discretionary authority and there was a clear violation of established rights. Gentile v. Bauder, 718 So.2d 781 (Fla. 1998).

[4] Those exonerated based on DNA in Florida include Jerry Frank Townsend, Frank Lee Smith, Wilton Dedge, Luis Diaz, and Allen Crotzer.

[5] The first of 22 claims bills for Pitts and Lee was filed in 1977. HB 3035 passed in 1998, and directed the Division of Administrative Hearings to determine whether a cause for equitable relief existed, and if so, to award the claimants $500,000 each plus attorney's fees and costs not to exceed $250,000. The claimants were ultimately awarded the maximum allowable. The two claimants had been convicted of murder and sentenced to death for the murders of two Port St. Joe men in 1963. These convictions were ultimately overturned, partly on the grounds that there was a knowing or negligent withholding of evidence by the state, and the claimants were again convicted and sentenced to death in a new trial. In 1973, the United States Supreme Court determined that the death penalty was unconstitutional, and overturned Pitts' and Lee's death sentence at which time they began serving a sentence of life imprisonment. In 1975, after serving 12 years for murder, Governor Askew and the Cabinet granted a pardon, concluding that "substantial doubt exists as to the guilt of Pitts and Lee." Division of Administrative Hearings, Final Report in Case No 98-2005, June 30, 1998.

[6] Jesse Hill was arrested for violating his probation for failure to report to his probation officer. Five days after his arrest it was discovered that his original probation did not require him to report, so he was released. During his incarceration a pre-existing injury to his spine was aggravated, and he sued for false imprisonment. The jury determined that the Department of Corrections was liable, and assigned 75% of the liability to the Department and 25% to Hill; damages were assessed at $750,000. Due to legal arguments

Twenty one states and the Federal Government provide some sort of compensation to the wrongfully incarcerated; thirty states don't provide any mechanism for compensation. The states that provide monetary compensation for the wrongfully convicted do so at a wide range of levels and formulas, ranging from a low of $20,000[9] to a high of $1 million.[10] There are states that award compensation for each day of incarceration;[11] New Jersey allows twice the amount of the claimant's income in the year prior to incarceration or $20,000 per year of incarceration (whichever is greater)[12]; and Virginia ties the award to 90% of the Virginia per capita personal income as reported by the Economic Analysis of the U.S. Department of Commerce, for up to 20 years.[13]

Similarly, the states require different governmental bodies to determine compensation. Ten states and the Federal Government require compensation decisions be made by the judicial branch,[14] as does the new Louisiana law.[15] The Legislatures in several states make the appropriation;[16] some after having received a recommendation from a separate body.[17] Lastly, there are states that have an independent board make the compensation decision.[18]

This bill creates a process by which a wrongfully incarcerated person who is actually innocent could apply for compensation and benefits.

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regarding the assignment of comparative fault in intentional tort cases, the claim bill was filed twice: in 1989 and again in 1996. Ultimately SB 1218 (1996) passed and awarded Jesse Hill $250,000.

[7] Claim bills for $3.5 million were filed in 2001 and 2002: SB 292/HB 1483 (2001 – both bills died in committee) and SB 80 (2002-withdrawn by sponsor). Frank Lee Smith spent 14 years on death row and died there, of cancer. Based on DNA evidence, he was exonerated of the 1985 rape and murder of an eight year-old girl, eleven months after his death. DNA also identified the true perpetrator, Eddie Lee Mosley, also implicated in the case of Jerry Frank Townsend (A mentally retarded man convicted of six murders and one rape; DNA exonerated him and implicated Eddie Lee Mosley. Townsend has not filed a claim bill, but is proceeding against the Broward County Sheriff's Office and the City of Miami in court.)

[8] Mr. Dedge served 22 years in prison for sexual battery, aggravated battery, and burglary. Based on DNA, he was exonerated. A Petition for Expungement of Record, Factual Findings and other Relief Including Actions for Declaratory Relief and Damages and Equitable Relief under Extraordinary Writ Authority was filed with the Eighteenth Judicial Circuit Court in and for Brevard County, Florida in June, 2005, case no's. 82-135-CF-A and 05-20-05-CA-007583 and subsequently transferred to the Second Judicial Circuit. The petition was dismissed by the court on August 29, 2005. He was awarded $2 million, had tuition waived, and was offered an official apology by the Legislature during the 2005B Special Session of the Florida Legislature. See ch. 2005-354, L.O.F.

[9] New Hampshire (NH Stat. s. 541-B:14).

[10] Tennessee (Tenn. Code s. 9-8-108).

[11] California ($100 per day); Iowa ($50 per day, up to $25,000 per year).

[12] NJ Stat. 52:4C-1 to 4C-6.

[13] Virginia Code ss. 8.01-195.10 & 19.2-327.1.

[14] Washington D.C., Illinois, Iowa, Maine, Massachusetts, New Jersey, New York, Ohio, Oklahoma, and West Virginia. Note that in the Federal Government and in four of these states, Illinois, New York, Ohio, and West Virginia, the decision is made by a court of claims, which is typically an administrative court.

[15] Louisiana Act 486 (2005).

[16] Montana and Virginia.

[17] Alabama requires verification by the Division of Risk Management, and recommendation by the committee on Compensation for Wrongful Incarceration; California requires a recommendation from the State Board of Control.

[18] Maryland Board of Public Works (comprised of the Governor, the Comptroller, and the Treasurer); New Hampshire Board of Claims (comprised of two appointees of the Governor; one House member; one Senate member; and a Chair appointed by the Chief Justice of the Supreme Court); North Carolina Industrial Commission (administers the Worker's Comp. Act under the Department of Commerce); Tennessee Board of Claims (Commission within the Treasurer's office); and Wisconsin Claims Board (aligned with the Department of Administration and comprised of a representative of the Governor, a representative of the Secretary of Administration, a representative of the Department of Justice, and chairs of both House and Senate finance committees).

ELIGIBILITY

The bill provides that in order to be eligible for relief, a person who has been wrongfully convicted of a felony must be actually innocent. 'Actually innocent' is defined by the bill to mean:

- the claimant was charged, by indictment or information, with the commission of an offense classified as a felony;
- the claimant did not plead guilty or no contest to the offense charged or to any lesser included offense, unless the claimant was charged with a capital offense;[19]
- the claimant was convicted of the offense;
- the claimant was sentenced to incarceration for a term of imprisonment as a result of the conviction;
- the claimant was imprisoned solely on the basis of the conviction for the offense;
- the claimant did not, by his or her misconduct or neglect, bring about the prosecution;[20]
- the claimant's acts did not constitute a crime; and
- a court of competent jurisdiction found by clear and convincing evidence that the offense for which the claimant was convicted, sentenced, and imprisoned, including any lesser included offenses, was not committed by the claimant and issued an order vacating, dismissing, or reversing the conviction and sentence and providing that no further proceedings can be or will be held against the claimant on any facts and circumstances alleged in the proceedings which had resulted in the conviction.[21]

Further, the bill provides that a claimant is not eligible for compensation if the claimant:

- was convicted of a crime before the wrongful incarceration;
- was convicted of a crime while incarcerated;
- was convicted of a crime after the wrongful incarceration and before the claim is submitted;
- was also serving a concurrent felony sentence; or
- submits the claim to the Department of Legal Affairs more than two years after the order vacating, reversing, or dismissing the sentence.[22]

PROCESS

The bill requires the claimant to submit to the Department of Legal Affairs (the Department) a complete package of documents, proving eligibility for compensation. The package must include a certified copy of the judgment and sentence in the case, including fingerprints; a set of fingerprints prepared by the sheriff in the county in which the claimant resides within 6 months before filing the claim; a recent photograph; a certified copy of the order vacating, dismissing, or reversing the conviction; a record from the Department of Corrections showing the actual dates of incarceration and a photograph of the person taken by the Department of Corrections; and a brief, sworn statement reciting the facts upon which the claim is based,

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[19] Five other states require that the claimant did not plead guilty: Iowa (Iowa Code s. 663A.1); Massachusetts (Ma. Ch. 258D ss 1-9); Ohio (Ohio Rev. Code s. 2305.02 & 2743.48); Oklahoma (Ok. Stat. s. 51-154); and Virginia (Va. Code s. 8.01-195.11). Virginia makes an exception for a person charged with a capital offense.

[20] Five other states and the federal government require that the claimant show that he or she did not, by his or her misconduct or neglect, bring about the prosecution: Federal (28 USC 1495 & 2513); California (Cal. Pen. Code s. 4900-4906); Washington DC (DC Code s. 2-421); New Jersey (NJ Stat. 52:4C1-4C-6); West Virginia (W.Va. Code s. 14-2-13a); and Wisconsin (Wis. Stat. s. 775.05).

[21] Eleven other states and the federal government require innocence to be found by a court: Alabama (Al. Stat. s. 29-2-150 – 165); Washington D.C., Iowa, Massachusetts, Montana (MT Code s. 53-1-214), New York (NY Ct. of Claims Act s. 8b), Ohio, Oklahoma, Texas (Tex. Code ss. 103.001-103.052), Virginia, and West Virginia. Eleven states also allow compensation for a person who was pardoned for innocence.

[22] A majority of the other states with wrongful conviction compensation statutes include a 2-year time limit for filing the claim.

showing that the claimant is actually innocent and in compliance with all requirements of the Act.

Upon receiving the package, the Department is required to process the claim within 90 days. If the Department determines that the claim is supported by sufficient proof and recommends payment of the claim, the Department shall then forward the recommendation to the Chief Financial Officer for payment.

The Chief Financial Officer (CFO) is required to pay the claim within a reasonable time after receiving the recommendation from the Department, but not to exceed 90 days. Payment is made pursuant to specific appropriation from the Legislature. Before payment is tendered, the CFO must receive positive proof of identity of the claimant and an executed release and waiver on behalf of the claimant or his or her heirs, successors, and/or assigns forever releasing any state agency or employee from any and all present or future claims arising out of the factual situation in connection with the conviction for which compensation is awarded.

RELIEF

The bill provides that a claimant that is wrongfully incarcerated and actually innocent, and who meets the requirement of the Act shall be paid $50,000 for each year of wrongful incarceration, prorated as necessary to compensate for portions of complete years. For sums that exceed $500,000, payments shall be made in equal annual installments prorated over 5 years. The conviction of a subsequent felony shall result in forfeiture of any unpaid amounts of benefits, which shall revert to the General Revenue Fund.

It has been argued that a model system of compensation would include not only financial compensation, but also holistic benefits that address the financial, educational, and health problems inherent in spending years in prison.[23] In Florida, 25% of the inmates housed in the Department of Corrections were enrolled in education programs in fiscal year 2003-2004,[24] and only 4.6% of those inmates received their GED.[25] In recognition of the need for educational benefits, the bill also waives tuition and fees for any claimant compensated by the Act, for up to 120 hours of instruction at any career center, community college, or state university as defined by the bill.[26] The claimant is required to meet and maintain the regular admission requirements of, and be registered at, such educational institution and to make satisfactory academic progress as defined by the educational institution.

Lastly, the Legislature is authorized to issue an official apology on behalf of the State.

MISCELLANEOUS PROVISIONS

The bill provides that the Legislature shall not be deemed by the Act or payment of any claim to have waived any defense of sovereign immunity or to have increased the limits of liability on behalf of the state or any person or entity subject to the provisions of s. 768.28, F.S.[27]

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[23] Shawn Armbrust, "When Money Isn't Enough: The Case for Holistic Compensation of the Wrongfully Convicted", 41 Am.Crim.L. Rev. 157, Winter 2004, p.5.

[24] Office of Program Policy Analysis and Government Accountability (OPPAGA), report on Department of Corrections Inmate Programs, last updated 10/13/04.

[25] Id.

[26] Three other states offer educational benefits to the wrongfully incarcerated: Louisiana, Montana, and Virginia.

[27] Section 768.28, F.S., is the legislative enactment which waives the state's immunity and provides a cap on collectability of $100,000 per person/$200,000 per incident. Amounts in excess of the caps may be paid by the Legislature through the claim bill process.

The bill provides that any amount awarded by the Act is intended to provide the sole compensation for any and all present and future claims in connection with the wrongful incarceration, and that no further award for attorney's fees, lobbying fees, costs, or other similar expenses shall be made by the state.

The "whereas" clauses in the bill recognize that the justice system is imperfect and that the Constitution does not guarantee a perfect trial;[28] acknowledge that the state's system of justice infrequently yields imperfect results that can have tragic consequences; evinces that the Act is based on a moral desire to acknowledge the actually innocent, and not on a recognition of a constitutional right or violation; and intends that any compensation made be the sole compensation to be provided by the state.

B. SECTION DIRECTORY:

Section 1 provides a definition of "actually innocent", eligibility criteria, process for submission and payment of claims, requires specified waiver of state liability, provides for compensation and educational benefits, and legislative intent regarding the compensation of the wrongfully incarcerated.

Section 2 provides an effective date of October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   It is expected that there will be very few people who are actually innocent and have been wrongfully incarcerated. There are three men who have been recently exonerated who have not been compensated, though it is unknown whether each would meet the stringent requirements provided in the Act.[29]

   It is expected that any additional workload on the Department of Legal Affairs or on the Chief Financial Officer would be minimal.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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[28] United States v. Hasting, 461 U.S. 499, 509 (1983).

[29] Luis Diaz was incarcerated 25 years, Allen Crotzer was incarcerated 24 years, and Jerry Frank Townsend was incarcerated 22 years.

Sovereign immunity does not protect the state for the following actions:

- Taking of property;[35]
- Civil rights actions;[36]
- Breach of contract;[37]
- Counterclaims against the state.[38]

The doctrine of sovereign immunity clearly provides protection for the government against tort liability. As a matter of equity, the Legislature has the authority to compensate individuals who have been injured by governmental negligence, without waiving sovereign immunity, through the claim bill process.[39] The bill explicitly provides that the Legislature shall not be deemed by the Act nor by payment of any claim to have waived any defense of sovereign immunity nor increased the limits of liability on behalf of the state or any person subject to the provisions of s. 768.28, F.S., or any other law.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

[34] Where the government owes a general duty to all citizens, but no particular duty to the injured party, sovereign immunity remains in effect. Everton v. Willard, 468 So.2d 936 (Fla. 1985).
[35] State Road Department v. Tharp, 1 So.2d 868 (Fla. 1941).
[36] Howlett by and Through Howlett v. Rose, 496 U.S. 356 (1990) and s. 760.07, F.S.
[37] Pan-Am Tobacco Corp. v. State Department of Corrections, 471 So.2d 4 (Fla. 1984), rehearing denied (July 1, 1985).
[38] Section 768.14, F.S.
[39] See s. 768.28(5), F.S., Rule 5.6 of the Rules of the Florida House of Representatives (2004-2006), and Rule 4.81 of the Rules of the Florida Senate (2004-2006).