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BILL



ANALYSIS

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Senate Bill 291 (Substitute S-3 as reported by the Committee of the Whole)
Sponsor: Senator Steven Bieda
Committee: Judiciary

CONTENT

The bill would create the "Wrongful Imprisonment Compensation Act" to allow a person to bring an action for compensation against the State if he or she had been wrongfully convicted under Michigan law and imprisoned in a State correctional facility for a crime he or she did not commit. The bill would do the following:

- Establish procedures for such an action.
- Require a copy of the complaint to be served on the Attorney General and the office of the prosecuting attorney who prosecuted the crime.
- Require the prosecuting attorney to notify the victim of the crime that an application for compensation had been filed, if the plaintiff's conviction were for an assaultive crime or a serious misdemeanor.
- Specify that the victim, or his or her representative, would have the right to appear at a proceeding under the Act and to make a statement.
- Specify that the plaintiff, Attorney General, and county prosecuting attorney could conduct discovery in an action under the Act.
- Require the court to award compensation if it found that a plaintiff was wrongfully convicted and imprisoned.
- Require compensation to include \$50,000 per year for the period of incarceration, prorated daily for incarceration of less than one year; reasonable attorney fees; and reimbursement of any amount collected from the plaintiff by the State under the State Correctional Facility Reimbursement Act.
- Prohibit compensation from being awarded for any time during which the plaintiff was imprisoned under a concurrent or consecutive sentence for another conviction, or for any injury sustained during imprisonment.
- Specify that, in the court's discretion, an award could be paid in a single payment or multiple payments, with the initial payment being 20% of the award and the remainder paid over not more than 10 years.
- Specify that an award under the proposed Act would not be a finding of wrongdoing against anyone and would not be admissible in evidence in a civil action related to the investigation, prosecution, or conviction that gave rise to the wrongful conviction or imprisonment.
- Provide that a plaintiff's acceptance of an award or settlement would bar any further action by the plaintiff against the State based on the same matter.
- Provide that an award under the Act would not be subject to income taxes.
- Provide that a plaintiff would remain liable for any child support payments or arrearages, except those erroneously accrued while he or she was imprisoned.
- Require child support to be deducted from an award before the plaintiff received any of the money from it.
- Specify that the Act would not impair or limit the right of a State or local government to collect a debt from the plaintiff's award.
- Specify that an award under the Act would be subject to setoff or reimbursement for damages obtained for wrongful conviction or imprisonment from any other person.

- Require a court that determined a plaintiff had been wrongfully convicted and imprisoned to expunge records from the person's criminal history.
- Create the "Wrongful Imprisonment Compensation Fund" and require the State Treasurer to spend money from the Fund to pay claims under the Act.
- Require the Treasurer, if there were insufficient money in the Fund to pay ordered claims, to pay those claims if money became available in the Fund before paying new claims.
- Require the Treasurer to notify the Legislature that money in the Fund could be insufficient to cover future claims.
- Require an action for compensation to begin within three years after entry of a verdict, order, or judgment reversing or vacating a wrongful conviction.
- Specify that an individual convicted, imprisoned, and released from custody before the Act's effective date would have to commence an action within 18 months after that date.

The bill is tie-barred to Senate Bill 860. (Senate Bill 860 would amend the Income Tax Act to exclude an award under the proposed Wrongful Imprisonment Compensation Act from taxable income.)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would have no fiscal impact on local government and a significant but indeterminate cost to State government. According to the National Registry of Exonerations (NRE) maintained by the University of Michigan Law School, 60 exonerations have occurred in Michigan to date. Of those 60 documented exonerations, according to the University of Michigan Law School's Innocence Project, 26 individuals would be eligible for the compensation. According to the Innocence Project's dataset, the average number of years of wrongful imprisonment per exoneration is 10.1 for the 26 documented cases. If all payments were made under the conditions in the Innocence Project's dataset, the total minimum costs would be approximately \$13.1 million paid from the Wrongful Imprisonment Compensation Fund either in a single payment or multiple payments over not more than 10 years. If the compensation were made over multiple payments, the initial payments would have to be at least 20% of the total amount awarded.

The figure of approximately \$13.1 million in total minimum costs is based on the fixed amounts taken from the bill; however, there are other variables that could increase the figure on a per-case basis given that the compensation could include attorney's fees and other reimbursable amounts. Attorney's fees would be capped at 10% of the total amount awarded or \$50,000, whichever was less, plus expenses. Additionally, the bill would allow future claims to be made for exonerations. Since the facts of those cases are currently unknowable, a fiscal impact cannot be determined.

As this bill relates exclusively to wrongful imprisonment in a State correctional facility and claims against the State, there would be no fiscal impact on local government.

Date Completed: 6-9-16

Fiscal Analyst: John Maxwell

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.