

Department of Planning and Budget

2022 Fiscal Impact Statement

1. Bill Number: HB397

House of Origin ☒ Introduced ☐ Substitute ☐ Engrossed
 Second House ☐ In Committee ☐ Substitute ☐ Enrolled

2. Patron: Sullivan

3. Committee: Courts of Justice

4. Title: Compensation for wrongful incarceration.

5. Summary: Removes the following requirements for a wrongfully incarcerated person to receive compensation for such wrongful incarceration: (i) that the person shall have entered a final plea of not guilty, or, regardless of the plea, the person incarcerated was convicted of a Class 1 felony, a Class 2 felony, or any felony for which the maximum penalty is imprisonment for life and (ii) that the person incarcerated did not by any act or omission on his part intentionally contribute to his conviction for the felony for which he was incarcerated. The bill also requires the person to be compensated in an amount equal to the product of the total number of days that the person was wrongfully incarcerated following a wrongful conviction multiplied by the daily rate of the Commonwealth's most recent annual median household income as published in the American Community Survey of the United States Census Bureau in the year the court finds the claimant eligible and divided by 365 days to the nearest whole cent, in addition to other possible compensation.

6. Budget Amendment Necessary: See Item 8.

7. Fiscal Impact Estimates: Indeterminate. See Item 8.

8. Fiscal Implications: This legislation alters the formula for calculating relief provided to wrongfully incarcerated people, resulting in larger relief amounts. The bill also permits the payment of the award in full as a lump sum, rather than limiting the lump sum payment to 20% of the total award and providing the remaining amount in the form of an annuity.

The fiscal impact of the new formula is indeterminate because the number of and characteristics of eligible recipients in future years are unknown at this time.

HB30, as introduced, appropriates funds to compensate three wrongfully incarcerated individuals. The funding included in HB30 assumes an update to the formula determining relief for wrongful incarceration. After comparing the amount included in the budget bill and the formula outlined in this legislation, the Department of the Treasury (Treasury) indicates that a cumulative \$272,806 would be needed in addition to the amounts provided in the budget bill to fully compensate those three individuals, should this legislation and all three of those relief bills be enacted into law.

Seven bills providing relief to wrongfully incarcerated individuals have been introduced in the General Assembly this session. For those seven recipients, the average increase in payment as a result of this legislation compared to existing law is \$672,586 or 76.27%. As indicated above, this comparison is dependent on the unique circumstances of each wrongfully incarcerated individual.

The following components of the proposed formula are the most significant factors driving increased award amounts under this legislation. First, this bill determines relief using median household income in Virginia in the year a recipient was found to be wrongfully incarcerated, rather than using the inflation adjusted per capita personal income for each year of incarceration. Second, this bill removes the provision calculating relief using 90% of median income, setting it at 100%. In addition to this compensation, the bill also awards \$25,000 for each year of imprisonment after being sentenced to death and \$25,000 for each year served on parole or postrelease supervision, or each year the claimant was required to register with the Sex Offender and Crimes Against Minors Registry. This bill also stipulates that an eligible recipient shall be entitled to court fees, reasonable attorney fees, counseling, housing assistance, employment assistance, health and dental care, and personal financial literacy assistance, as appropriate. Finally, this bill excludes relief compensation from gross income subject to taxation.

The bill would allow the estate of an eligible deceased individual to be compensated. Under existing law, no estate of or personal representative for a decedent is entitled to seek a claim for compensation for wrongful incarceration.

The Department of the Treasury has determined that the payment of relief as a full lump sum will not cause a fiscal impact.

9. Specific Agency or Political Subdivisions Affected: Department of the Treasury

10. Technical Amendment Necessary: No

11. Other Comments: This revised fiscal impact statement provides additional information regarding the funding provided for the relief of three wrongfully incarcerated individuals in HB30, as introduced. HB 30 funds relief for three individuals using amounts calculated assuming the passage of this legislation. The individual relief bills for those three eligible recipients are HB 383, HB 385, and HB 394. This bill is very similar to SB 755.