

Legislative Analysis



WRONGFUL IMPRISONMENT COMPENSATION FUND

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House Bill 4286 as introduced
Sponsor: Rep. Steven Johnson
Committee: Appropriations
Complete to 3-4-19

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 4286 would amend the Wrongful Imprisonment Compensation Act to require a quarterly report on the Wrongful Imprisonment Compensation Fund and to make an appropriation to the fund.

The bill would require the Department of Attorney General to report quarterly to the House and Senate Appropriations Committees, the House and Senate Fiscal Agencies, and the State Budget Office on the following:

- All payments made from the fund, as of the end of the quarter, and whether each payment was for a new compensation award or for continued payment on compensation awarded previously.
- Any compensation payments ordered but not made.
- The number of known wrongful imprisonment compensation claims awaiting settlement or award determination and the dollar amount sought for each claim, if known.
- The balance of the fund.

The bill would also appropriate \$10.0 million GF/GP to the fund for FY 2018-19.

BACKGROUND INFORMATION:

The Wrongful Imprisonment Compensation Act, 2016 PA 343, allows individuals who were wrongfully convicted under a state law and imprisoned in a state correctional facility to make a claim against the state in the Court of Claims seeking compensation for their wrongful imprisonment. The act requires claimants to commence their claims within certain time periods. Claimants who were exonerated before the date the act took effect were required to bring action against the state within 18 months after that date, and those exonerated after the act took effect are required to do so within three years after having their convictions reversed.

Compensation

Upon a final determination of compensation, courts must award an exoneree \$50,000 for each year he or she was imprisoned, attorney fees, and reimbursements for any money collected by the state from the prisoner for a share of his or her cost of care as provided under the State Correctional Facility Reimbursement Act, 1935 PA 253. Exonerees imprisoned for less than one year are compensated 1/365 of \$50,000 for every day they are wrongfully incarcerated. Attorney fees must not be deducted from the compensation

awarded to the claimant and are capped at 10% of the amount the claimant receives for his or her length of imprisonment and any amount he or she receives for reimbursed care costs.

Courts have discretion to compensate exonerees in a single payment or in multiple payments. If the court orders compensation to be paid in multiple payments, the initial payment must be 20% or more of the total amount awarded, and the remainder of the payments must be made over a period of not more than 10 years.

Wrongful Imprisonment Compensation Fund

The act created the Wrongful Imprisonment Compensation Fund within the Department of Treasury. Any compensation for wrongful imprisonment must be paid from the fund and not from any other department's or agency's budget or funding. Money in the fund cannot be expended for any purpose other than paying wrongful imprisonment claims and costs of administration. The State Treasurer must pay money for compensation from the fund in amounts and at the times as ordered by the courts. Money in the fund at the close of the fiscal year must remain in the fund and not lapse to the General Fund.

The State Treasurer is required to develop and implement a process to notify the Legislature when the balance of the fund is not expected to be sufficient to cover future claims after 60 days. The process is required, at a minimum, to identify a specific date by which the money in the fund will become insufficient to pay claims and to outline a process indicating the order in which pending claims will be paid, including claims that can be paid with available money and claims that were pending when money became insufficient.

Since its creation, \$6.5 million GF/GP has been appropriated to the fund: \$5.0 million in 2017 PA 107, and another \$1.5 million in 2018 PA 618. The balance of the fund as of March 4, 2019, is \$323,800.

Pending Claims

Currently, there are 39 wrongful imprisonment claims made against the state that have not received compensation. Eleven of these claims have been dismissed by the Court of Claims for not being made in accordance with the Revised Judicature Act, which requires all actions brought against the state to file a claim, or notice of intent to file a claim, within six months after the event that gave rise to the claim. The Wrongful Imprisonment Compensation Act gave exonerees either 18 months after the act took effect or 36 months after their convictions were reversed to file a claim, depending on whether they were exonerated before or after the act took effect. Senate Bills 68 and 69, which have been referred to the Senate Judiciary and Public Safety Committee, would amend the Revised Judicature Act to allow the periods provided by the Wrongful Imprisonment Compensation Act to apply to wrongful imprisonment compensation claims. The amount of compensation claimed by the 11 dismissed cases is approximately \$2.7 million.

Total estimated liability to the state is presented below in **Table 1**. The table shows totals due for compensation for all cases that have not been dismissed, as well as totals for dismissed cases. Attorney fees and reimbursement costs are estimated and included below. Based on a small sample of known attorney fees and costs, attorney fees are estimated at

5% of each claimed compensation, but not more than \$50,000, and reimbursement costs are estimated at 0.02% of each claimed compensation.

Table 1.
Potential State Liability From Wrongful Imprisonment Claims
Including Dismissed and Non-Dismissed Claims

Claims - Not Including Dismissed			Claims - Including Dismissed		
<u>Compensation</u>	<u>Fees + Costs</u>	<u>Total</u>	<u>Compensation</u>	<u>Fees + Costs</u>	<u>Total</u>
\$20,494,400	\$841,600	\$21,336,000	\$23,184,300	\$976,100	\$24,160,400

Liability from claims would be distributed over the current fiscal year and subsequent fiscal years and would eventually stabilize once the initial backlog of claims is paid. It is estimated that there are approximately eight exonerations per year. The median compensation amount is approximately \$370,000. The Department of Attorney General estimates that 45% of the existing claims may be resolved in FY 2018-19.

FISCAL IMPACT:

The bill would cost the state \$10.0 million in general fund/general purpose revenue, but would not have a fiscal impact on local units of government. Money in the Wrongful Imprisonment Compensation Fund at the close of the fiscal year must remain in the fund and not lapse to the General Fund.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.