

SUBJECT: Raising compensation awarded to the wrongfully imprisoned

COMMITTEE: Civil Practices — committee substitute recommended

VOTE: 7 ayes — Bosse, Janek, Clark, Dutton, Hope, Nixon, Zbranek
0 nays
2 absent — Martinez Fischer, Smithee

SENATE VOTE: On final passage, April 17 — by voice vote

WITNESSES: For — Anthony Robinson
Against — None

BACKGROUND: Civil Practice and Remedies Code, ch. 103 allows a person to receive compensation for a prison sentence if the person:

- ! served the sentence in whole or in part;
- ! pleaded “not guilty” to the charge that led to imprisonment;
- ! is not guilty of the crime for which he or she was sentenced; and
- ! has received a full pardon for the crime and its punishment.

The claimant must prove these factors by a preponderance of the evidence. If the jury or judge finds that the claimant is entitled to compensation, they can assess damages to compensate the claimant for physical and mental pain, and for suffering and medical expenses incurred as a result of the conviction or imprisonment. Damages for pain and suffering cannot exceed \$25,000; total damages cannot exceed \$50,000.

According to the Comptroller’s Office, the state has paid two claims totaling \$50,970 to wrongfully-convicted Texans since the law was enacted in 1985. Four other claims are pending.

DIGEST: CSSB 536 would amend the Civil Practice and Remedies Code to expand eligibility for compensation and increase the maximum compensation available to a claimant.

The bill would strike and replace much of ch. 103, including the requirement that a claimant had pleaded “not guilty” to the charge that led to imprisonment. Also, a person would be eligible to make a claim if he or she had spent time in prison for a crime of which the person was not guilty and received a full pardon on the basis of innocence for the crime or were granted relief on the basis of actual innocence of the crime. The person would not be entitled to receive compensation for prison time served during which the person also was serving a concurrent sentence for a crime of which the person was not determined to be innocent.

As part of the pardon or court order issued to an eligible claimant, the governor or court, as applicable, would have to state in writing that a claimant who met the requirements for compensation was entitled to that compensation. The claimant would have to file an application for the compensation and a verified copy of the pardon or court order with the Board of Pardons and Paroles. The board could consult with the attorney general (AG) to determine the claimant’s eligibility and the amount of compensation owed to him or her. The board would have to make this determination not later than the 90th day after receiving the application.

CSSB 536 would entitle anyone to compensation who met the requirements in the bill. Those qualifying would be entitled to \$20,000 for each year spent in prison if it were less than 10 years, or \$250,000 if the time served were 10 years or more. Anyone entitled to compensation greater than \$40,000 would have to be paid in four equal annual installments. If the person were convicted of a new felony, compensation would end on the date of conviction.

The Board of Pardons and Paroles would have to provide a list of claimants and amounts due to them to the governor, lieutenant governor, and chairs of the appropriate committee in the House and Senate by November 1 of each even-numbered year so that the Legislature could appropriate the amount needed to pay each claimant the money owed. The comptroller then would have to pay the required amount to each claimant not later than September 1

of the year in which an appropriation was made.

A person seeking compensation would have to file an application with the board not later than the second anniversary of the date the person received the pardon or was found not guilty. Persons receiving compensation could not bring civil action involving their arrest, conviction, or length of confinement against any state or local governmental unit or employee of such a unit.

Any person who had not already received compensation under ch. 103, including those with lawsuits pending regarding their incarceration, could file an application for compensation. A person who obtained a pardon or was found not guilty in a new trial before the bill's effective date could apply to the governor or the court for a written statement to comply with this bill's requirements for reimbursement. A person could not obtain compensation under both ch. 103 as it currently exists and the chapter as it would be amended by CSSB 536.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2001.

**SUPPORTERS
SAY:**

When the state makes a mistake and imprisons someone wrongfully, the state has a responsibility to help that person put his or her life back together. The cap of \$50,000 under current law is insufficient for the falsely imprisoned, who lose years of their working lives and potential income. This bill would allow the wrongfully imprisoned to collect up to \$250,000, an amount that would go a long way toward helping them and their families compensate for their lost years.

This bill would decrease the burden of proof required of the wrongfully convicted to obtain compensation. For example, some defendants are scared into pleading guilty to a crime they have not committed to get a shorter sentence because of a prosecutor's threats of a long prison term if they go to trial. These people are not eligible for compensation under current law. This bill would allow those who were wrongfully imprisoned but do not meet the stringent standards under current law to be eligible for compensation.

CSSB 536 would be fairer than current law to innocent defendants who did not receive a pardon from the governor. Governors seldom grant pardons – since 1990, only 10 have been granted based on innocence. A pardon is an unreasonably high requirement to be eligible for compensation. If a court had granted a defendant relief on the basis of actual innocence, that should provide be sufficient for the person to qualify for compensation.

This bill would not create an additional burden on the Board of Pardons and Paroles. The board is better suited than the AG's office to verify the amount of time served in prison, and the amount of compensation to be awarded would be based directly on the amount of time served. In addition, the board would not have to vet applicants because persons would not be eligible to apply unless the governor or a court, as applicable, had stated in writing that they met the requirements and were entitled to compensation. The board also could consult with the AG's office in determining the applicant's eligibility and the compensation due.

The 90-day requirement for determining eligibility and making an award would be more than enough time for the parole board to accomplish its duties. It would have information about prison time served readily available, and the volume of applications it would have to process would be very low – estimated to be only four to five per biennium. Persons who have been wrongfully imprisoned often have waited years already for that wrong to be righted, and they should not be forced to endure more than another 90 days of waiting after submitting a valid application for compensation.

OPPONENTS
SAY:

CSSB 536 would be too expensive. Although the fiscal note only estimates that four or five lawsuits per legislative session would be filed, this bill would expand eligibility for compensation to a point that many more people could apply.

OTHER
OPPONENTS
SAY:

Although this bill would serve a good purpose by raising the compensation to persons wrongfully imprisoned, it incorrectly would remove the AG's authority to determine eligibility and compensation and would move it to the Board of Pardons and Paroles. The board's role is to determine parole and pardon eligibility, not to set compensation. The board has no experience in this area, and it may not have authority under the Texas Constitution to act

as an agent of the state in compensation cases. Constitutionally, the AG is the state's representative in court matters; this bill should allow that office to continue fulfilling its duty by determining compensation in these cases.

The 90-day time period required by the bill in which the board would have to make its decision would be too brief. The board should be allowed more time to vet applicants properly, particularly in cases where a pardon based on actual innocence was not granted.

The jump between payment for less than 10 years of incarceration versus 10 years or more should be more fluid. In accordance with the bill, a person who served 9 ½ years in prison would be entitled to \$190,000, but a person who served exactly 10 years would get \$250,000. There is no justification for this \$60,000 difference for only six months.

The bill should be cleaned up to make language in sec. 103.005 (page 3, lines 22-23) and Section 2(b) of the bill (page 6, lines 15-16) consistent with that found earlier in the bill. Earlier language requires an applicant to have received a full pardon on the basis of innocence or to have been granted relief on the basis of actual innocence. The latter sections, which place a limitation on the time to file an application and allow the person to apply to the governor or the court for a statement of entitlement to compensation, stipulate that the person must have received a pardon or have been found not guilty.

NOTES:

The Senate-passed version of SB 536 would strike the requirement that the claimant be not guilty of the crime for which the claimant was sentenced. Claimants serving a concurrent sentence for a non-qualifying crime would not be excluded from applying for compensation for that imprisonment when also serving a sentence for a crime of which they were innocent. The Senate bill would not strike secs. 103.002 through 103.007 of the code.

In the Senate-passed bill, the claimant's compensation would be as follows:

- ! expenses incurred in connection with criminal proceedings, appeals, and obtaining discharge from prison, including fines or court costs paid and reasonable attorney's fees, including reasonable attorney's fees for a lawsuit filed under this chapter;

- ! wages, salary, or other earned income lost as a direct result of the arrest, prosecution, conviction, or wrongful imprisonment; and
- ! \$25,000 for each full year the claimant was wrongfully imprisoned and a prorated share of \$25,000 for each part of a year the claimant was wrongfully imprisoned.

The trier of fact (judge or jury) would determine the amount owed to the claimant and could not deduct any expenses incurred by the state or its political subdivisions in connection with the arrest, prosecution, conviction, and wrongful imprisonment of the claimant, including expenses for food, clothing, shelter, and medical care.

The Senate-passed bill would allow the court to admit as evidence during the suit the record of the trial at which the claimant was convicted and, if applicable, the pardon or proclamation issued by the governor. It also would allow anyone claiming compensation for a sentence served before August 30, 1965, to bring the action within three years after the person discovered or should have discovered evidence substantiating his or her innocence.

The Senate-passed bill would apply to any actions begun on or after its effective date, or actions that were pending on that date and in which the trial or new trial began on or after that date.