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BILL ANALYSIS



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Senate Bills 60 and 61 (as introduced 1-25-11)
Sponsor: Senator Steven Bieda
Committee: Judiciary

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CONTENT

Senate Bill 60 would amend the Income Tax Act to allow a deduction from a taxpayer's adjusted gross income for compensation received under the Wrongful Imprisonment Compensation Act, proposed by Senate Bill 61.

Senate Bill 61 would create the "Wrongful Imprisonment Compensation Act" to do the following:

- Allow a person who had been wrongfully convicted under Michigan law and imprisoned in a State correctional facility for a crime he or she did not commit to bring an action for compensation against the State.
- Establish documentation requirements for bringing an action.
- Specify that a plaintiff would be entitled to a favorable judgment if he or she provided certain evidence.
- Require the court to award compensation if it found that a plaintiff was wrongfully convicted and imprisoned.
- Require compensation to include up to \$40,000 per year for the period of incarceration, economic damages, and reasonable attorney fees.
- Prohibit an award from including attorney fees or expenses from a previous action that was dismissed.
- Prohibit attorney fees from being deducted from the compensation awarded, and prohibit the plaintiff's attorney from receiving additional fees from the plaintiff.
- Specify that an award under the Act would not be subject to income taxes.
- Provide that a plaintiff's acceptance of an award or settlement would be final and conclusive and would bar any further action by the plaintiff against the State based on the same matter.
- Require a plaintiff who recovered damages for wrongful conviction or imprisonment from any other person to reimburse the State for compensation paid under the Act.
- Require a court that determined a plaintiff had been wrongfully convicted and imprisoned to expunge records from the person's criminal history.
- Establish filing deadlines for pursuing compensation under the Act.

The bills are tie-barred.

Senate Bill 60

The Income Tax Act defines "taxable income", for a person other than a corporation, estate, or trust, as adjusted gross income as defined in the Internal Revenue Code, subject to

certain adjustments. Under the bill, for tax years beginning after December 31, 2010, one of those adjustments would be the deduction of compensation received in the tax year pursuant to the proposed Wrongful Imprisonment Compensation Act, to the extent that the compensation was included in adjusted gross income.

Senate Bill 61

Action for Compensation

Under the proposed Wrongful Imprisonment Compensation Act, an individual convicted under Michigan law and subsequently imprisoned in a State correctional facility for one or more crimes that he or she did not commit could bring an action for compensation against the State in the Court of Claims. For purposes of the Act, a conviction would not include the acceptance by the court of a guilty plea or a plea of nolo contendere (no contest).

The plaintiff would have to attach to the complaint documentation that established all of the following:

- He or she was convicted of one or more crimes under State law, was sentenced to a term of imprisonment in a State correctional facility, and served at least part of that sentence.
- The plaintiff's judgment of conviction was reversed or vacated and either the charges were dismissed or, on retrial, the plaintiff was found to be not guilty.
- DNA or other evidence of similar importance showing that the plaintiff was not the perpetrator of the crime supported the reversal or vacation of the judgment of conviction, dismissal of the charges, or finding of not guilty on retrial.

The complaint would have to be verified by the plaintiff.

The plaintiff would be entitled to judgment in his or her favor if he or she provided evidence to prove all of the following:

- The plaintiff was convicted of one or more crimes under State law, was sentenced to a term of imprisonment in a State correctional facility, and served at least part of that sentence.
- The plaintiff's judgment of conviction was vacated and either the charges were dismissed or the plaintiff was determined upon retrial to be not guilty.
- DNA or other evidence of similar importance supported a finding that the plaintiff did not perpetrate and was not an accessory to the acts that were the basis of the conviction.

Compensation

If a court found that a plaintiff was wrongfully convicted and imprisoned, it would have to award compensation. The compensation would have to include up to \$40,000 for each year from the date the plaintiff was imprisoned until the date he or she was released from the custody of the Department of Corrections, the judgment of conviction was vacated, the charges were dismissed, or the plaintiff was found not guilty, whichever was later. The plaintiff would be entitled to compensation for that period regardless of whether he or she was released from imprisonment on parole or because the maximum sentence was served.

The compensation also would have to include both of the following:

- Economic damages, including lost wages, costs associated with the plaintiff's criminal defense and efforts to prove his or her innocence, and medical expenses required after release that were related to the imprisonment.
- Reasonable attorney fees.

The award for reasonable attorney fees could not include any attorney fees or expenses incurred in bringing a previous action that was dismissed. An award for attorney fees also could not be deducted from the compensation awarded the plaintiff, and the plaintiff's attorney would not be entitled to receive additional fees from the plaintiff.

The award would not be subject to income taxes or a limit on the amount of damages, except as stated in the Act.

Compensation could not be awarded for any time the plaintiff was imprisoned under a concurrent sentence for another conviction. Compensation also could not be awarded for injuries sustained by the plaintiff while imprisoned. Making a claim or receiving compensation under the Act, however, would not preclude a claim or action for compensation because of such an injury.

A plaintiff's acceptance of an award under the Act, or of a compromise or settlement of the claim, would have to be in writing. Unless it were procured by fraud, the acceptance of an award, compromise, or settlement would be final and conclusive on the plaintiff, would constitute a complete release of all claims against the State, and would be a complete bar to any action by the plaintiff against the State based on the same subject matter.

A compensation award under the Act could not be offset by any of the following:

- Expenses incurred by the State or any political subdivision of the State, including expenses incurred to secure the plaintiff's custody or to feed, clothe, or provide medical services for the plaintiff while imprisoned.
- The value of any services awarded to the plaintiff under the Act.
- The value of any reduction in fees for services awarded to the plaintiff.

If a plaintiff who was awarded compensation under the Act recovered damages for the wrongful conviction or imprisonment from any other person, the plaintiff would have to reimburse the State for compensation paid under the Act to the extent of those damages.

Records & Filing Deadlines

If a court determined that a plaintiff was wrongfully convicted and imprisoned, the court would have to enter an order that required any record of the arrest, fingerprints, conviction, and sentence of the plaintiff related to the wrongful conviction to be expunged from the criminal history record. A document that was the subject of such an order would be exempt from disclosure under the Freedom of Information Act.

An action for compensation under the proposed Act would have to be commenced within three years after entry of a verdict, order, or judgment as the result of the vacation of a conviction. Any action by the State challenging or appealing such a verdict, order, or judgment would toll the three-year period.

An individual convicted, imprisoned, and released from custody before the Act's effective date would have to commence an action under the Act within five years after that date.

MCL 206.30 (S.B. 60)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

Payment of Compensation

Senate Bill 61 would have an indeterminate fiscal impact on State government. In at least one previous wrongful imprisonment case, action was brought against the State and the

State settled for \$600,000. Therefore, this bill would not necessarily create a new potential liability for the State, but would formalize the structure under which these compensation lawsuits can proceed. The impact the bill would have on the magnitude of a potential payout relative to the status quo is ambiguous. The formalization could, however, help expedite the proceedings.

The frequency of wrongful convictions that are vacated in the manner detailed in the bill is quite low. Since 2001 when a DNA postconviction testing statute went into effect, three individuals have been exonerated by DNA, according to The Innocence Project at Cooley Law School. In addition to the DNA exonerations, there have been 31 exonerations in Michigan since 1989, according to a data set compiled by University of Michigan Law School and Northwestern Law School faculty members. However, this bill would not apply to all exonerations for various reasons, such as if an individual served probation only, or if a conviction was vacated based on evidence that was not DNA or of similar importance.

Despite the low frequency, the compensation awarded in such cases can be several million dollars. Therefore, the budgetary impact could be nontrivial, but it would be highly variable based on whether a case occurred in a given year.

The bill would not have an impact on local government (apart from any potential impact on tax revenue, as discussed below). This does not mean that local government does not have liability in wrongful imprisonment cases; it just means that the status quo would be maintained. In fact, in two DNA-based cases in which compensation has been awarded, the local entities, the City of Detroit and Clinton Township, have paid out \$3.25 million and \$3.7 million, respectively.

Income Tax Deduction

Senate Bill 60 would reduce General Fund and School Aid Fund revenue by an unknown, and likely negligible amount. It is unknown how many individuals would qualify under the bill, but based on the historical data for wrongful imprisonments, it is unclear if the average would ever exceed more than one or two people per year. It is also unknown how long any affected individuals would have been incarcerated. Assuming an average incarceration of 10 years, and that lost wages paid would approximately equal the State average, the bill would exempt approximately \$1.0 million from the income tax, reducing revenue by approximately \$43,000 in the year of the award, per affected individual.

While Senate Bill 61 indicates that payments under the bill would be exempt from income tax, it is unclear if this exemption would extend to locally levied income taxes or if the adjustments in Senate Bill 60 would flow through to income subject to tax by local units. To the extent that the bills did affect locally levied income taxes, local unit income could be reduced by an unknown amount.

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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.