

## Department of Planning and Budget 2022 Fiscal Impact Statement

**1. Bill Number:** HB397

House of Origin	<input type="checkbox"/> Introduced	<input checked="" type="checkbox"/> Substitute	<input type="checkbox"/> Engrossed
Second House	<input type="checkbox"/> In Committee	<input type="checkbox"/> Substitute	<input type="checkbox"/> Enrolled

**2. Patron:** Sullivan

**3. Committee:** Appropriations

**4. Title:** Compensation for wrongful incarceration.

**5. Summary:** Allows a wrongfully incarcerated person who submitted an Alford plea to receive compensation for such wrongful incarceration. The bill also requires an eligible person to be compensated in an amount equal to \$55,000 adjusted for inflation per year of incarceration or portion thereof. The bill exempts relief for wrongful incarceration from gross income pursuant to taxation.

**6. Budget Amendment Necessary:** See Item 8.

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

**8. Fiscal Implications:** This legislation alters the formula and eligibility criteria for determining relief provided to wrongfully incarcerated persons. This bill exempts relief awards from income taxation and allows for reimbursement of certain costs. This bill also increases the amount of the award that may be paid upfront from 20% to 25%, and allows the remainder of the relief to be awarded through an annuity providing payments over 10 years rather than 25 years. The Department of the Treasury has determined that the changes to the lump sum and annuity payments in this bill will not impose a fiscal impact.

The fiscal impact of this legislation is indeterminate because the number of and characteristics of eligible recipients in future years are unknown at this time. However, the following aspects of this bill will impact spending on relief for wrongfully incarcerated persons. The formula in this bill awards \$55,000 per year of incarceration, or portion thereof, adjusted for inflation. Current law entitles a recipient to ninety percent of Virginia per capita personal income. According to the Bureau of Labor Statistics, per capita personal income in Virginia in 2020 was \$61,958. Ninety percent of this figure is \$55,762. Using calendar year 2020 data, this bill causes a decreased award amount, but comparisons to future years are indeterminate at this time. This bill widens the criteria for relief eligibility by allowing a wrongfully incarcerated person who submitted an Alford plea to qualify, which may lead to an increase in the number of individuals seeking relief. This bill also stipulates that the General Assembly may provide relief covering court fees, reasonable attorney fees, and other legal fees. Finally, this bill excludes relief compensation from gross income subject to taxation.

HB 30, as introduced, appropriates funds to compensate three wrongfully incarcerated individuals. The funding included in HB 30 assumes an update to the formula determining relief for wrongful incarceration in line with the original version of this legislation. Seven bills providing relief to wrongfully incarcerated individuals have been introduced in the General Assembly this session. The amounts in those relief bills align with the code as it currently exists. A budget amendment will be necessary to provide relief to these seven individuals in line with the determination in this bill, should it pass.

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

**10. Technical Amendment Necessary:** No

**11. Other Comments:** HB 30 funds relief for three individuals using amounts calculated assuming the passage of the original version of this bill. The individual relief bills for those three eligible recipients are HB 383, HB 385, and HB 394. Four relief bills have been filed that do not have funds appropriated in HB 30 at this time. Those bills are HB 1254, HB 1255, HB 1263, and HB 1358. This bill is similar to SB 755.