

Department of Planning and Budget 2022 Fiscal Impact Statement

1. Bill Number: HB397

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

2. Patron: Sullivan

3. Committee: Finance and Appropriations

4. Title: Compensation for wrongful incarceration.

5. Summary: Restructures how a wrongfully incarcerated person is compensated. Under current law, a person receives 90 percent of per capita income for each year he was incarcerated. Under the bill, compensation is linked to median household income, and a person receives additional amounts if he was sentenced to death, served on parole, or was required to register as a sex offender. The bill directs the compensation to be awarded to the person as a lump sum, rather than, as under current law, awarding 20 percent as a lump sum and using the remaining 80 percent to purchase an annuity. The bill creates an income tax subtraction starting in taxable year 2022 for compensation received under the bill and enables the estate or personal representative of a decedent who was wrongfully incarcerated to seek compensation. The bill eliminates provisions of current law that require a person to forfeit unpaid compensation if the person is subsequently convicted. The bill removes the following requirements for a person to receive compensation for 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.

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. This 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. This bill further allows wrongfully incarcerated individuals who plead guilty to qualify for relief.

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.

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.

HB/SB30, as introduced, appropriates funds to compensate three wrongfully incarcerated individuals. The funding included in HB/SB30 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.

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 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.

Under existing law, compensation to wrongfully incarcerated individuals is at the discretion of the General Assembly, which is subsequently paid by the State Comptroller “by his warrant on the State Treasurer in favor of the person found to have been wrongfully incarcerated.” The substitute version of this bill removes that discretion and states that any such person “*shall* be award compensation...” While this discretion is removed, the General Assembly would still need to provide an appropriation in order for these funds to be paid.

The substitute version of this bill shifts the responsibility for determining the award amount for a wrongfully incarcerated person from Treasury to the Department of Planning and Budget. There is no fiscal impact to the Department of Planning and Budget caused by this change.

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,
Department of Planning and Budget

10. Technical Amendment Necessary: No

11. Other Comments: The Senate substitute version of this bill makes it identical to SB 755 as it passed the Senate. HB/SB 30 as introduced funds relief for three individuals using amounts calculated assuming the passage of the original version of HB 397. 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/SB 30 as introduced. Those bills are HB 1254, HB 1255, HB 1263, and HB 1358.