

2013 DRAFTING REQUEST

Bill

Received: 11/14/2013 Received By: jkuesel
Wanted: Soon Same as LRB:
For: Glenn Grothman (608) 266-7513 By/Representing: Rachek VerVelde
May Contact: Drafter: jkuesel
Subject: State Finance - claims agnst st Addl. Drafters: phurley

Extra Copies:

Submit via email: YES
Requester's email: Sen.Grothman@legis.wisconsin.gov
Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Claims by innocent convicted persons

Instructions:

Per LRB-3395/1, with permission of Rep. Strachota (Heather Moore EM, 11/14/13).

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	jkuesel 11/14/2013	scalvin 11/15/2013	rschluet 11/15/2013	_____			
/1				_____	mbarman 11/15/2013	mbarman 1/10/2014	

FE Sent For:

↳ Not Needed

<END>

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12/1	jkuesel/ 11/14/13	1 sac 11/15/2013		_____	_____		

FE Sent For:

<END>

Kuesel, Jeffery

To: Moore, Heather
Subject: RE: LRB-3395/1 - Claims board bill

Heather,
We will take care of the request.

Jeff Kuesel

From: Moore, Heather
Sent: Thursday, November 14, 2013 11:57 AM
To: Kuesel, Jeffery; VerVelde, Rachel
Subject: Claims board bill

Hi Jeff,

Can I please get a Senate companion bill drafted of LRB 3395/1 for Sen. Grothman? He would like to be the Senate lead on this bill. I have included Rachel from his office in on this email.

Thanks again for all your help!

Heather Moore
Office of Pat Strachota
Office (608) 264-8486
Toll-Free (888) 534-0058



State of Wisconsin
2013 - 2014 LEGISLATURE

-3649/1
LRB-9995/1
JTK&PJH:kjf&sac: [signature]
stays

Fri 11/15

2013 BILL

gen cat

1 **AN ACT** *to renumber and amend* 775.05 (2) and 775.05 (3); *to amend* 20.505
2 (4) (d), 227.03 (5), 775.05 (4), 775.05 (5) and 775.06 (7); and *to create* 301.051,
3 775.05 (2) (b), 775.05 (2m), 775.05 (3) (b) and 808.085 of the statutes; **relating**
4 **to:** the procedure for deciding certain claims against the state filed with the
5 claims board and making appropriations.

Analysis by the Legislative Reference Bureau

Currently, the claims board is directed to hear claims against the state for compensation by persons who are convicted of and imprisoned for crimes of which they claim to be innocent after their release from imprisonment. After a hearing on a petition, the board must find either that the evidence is clear and convincing that the petitioner was innocent of the crime for which he or she was imprisoned or that the evidence is not clear and convincing. The claims board may only award compensation to a petitioner if it finds that the petitioner did not by his or her act or failure to act contribute to or bring about the conviction and imprisonment for which he or she seeks compensation.

This bill provides, in addition, that the claims board shall award compensation only if the board determines that a petitioner's claim for compensation is one which, on the basis of equitable principles, this state should assume and pay. Under the bill, in order to be eligible for compensation, a person must have been wrongfully confined in a prison or county jail facility. A person who is placed on probation or who is subject only to electronic monitoring in his or her home is not eligible for compensation. The

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bill provides that a finding of innocence is not substantiated based solely on the fact that a petitioner was found not guilty of the crime of which he or she was convicted. The bill also directs the claims board, before awarding or recommending the payment of compensation to a petitioner, to find that the petitioner has presented clear and convincing evidence that the petitioner did not by his or her act or failure to act contribute to bring about the conviction and imprisonment for which he or she seeks compensation. The bill provides that no person may file a claim for wrongful imprisonment or be paid an award for such imprisonment if the person is convicted of a crime (an offense that is prohibited by state law and punishable with a fine or imprisonment, or both) after his or her release from imprisonment.

Currently, the maximum amount that the claims board may award to a petitioner is \$5,000 for each year of imprisonment, not to exceed a total of \$25,000. This bill increases the maximum to \$15,000 for each year of imprisonment, not to exceed a total of \$200,000.

Under the bill, if a person's conviction for a crime is reversed, set aside, or vacated on grounds consistent with the person's innocence, and the person is ordered released from prison by a trial court, the court is required to grant the person, upon request, temporary financial assistance, transition assistance from the department of corrections and local aid agencies, and sealing of all records related to his or her conviction. If the person pursues a successful petition for wrongful imprisonment, any temporary financial assistance he or she received upon release from prison is subtracted from any compensation he or she receives for wrongful imprisonment.

Current law does not specifically address the situation where a petitioner who would have been entitled to receive compensation for wrongful imprisonment dies before the claims board awards compensation. This bill provides that if a petitioner dies before the claims board makes a compensation award, the petitioner's claim for compensation is extinguished with his or her death. However, the bill permits the personal representative or special administrator for a petitioner's estate, no later than one year after the date of the petitioner's death, to petition the board for reimbursement of any costs, disbursements, or reasonable attorney fees incurred by the petitioner in pursuing his or her claim, and the bill provides that if the deceased petitioner qualified to receive an award for wrongful imprisonment but did not receive an award, the board may pay to the petitioner's estate the amount that the board finds to have been incurred by the petitioner for costs, disbursements, and reasonable attorney fees in connection with his or her petition. Under the bill, a petitioner's estate is not eligible to receive any reimbursement if the claims board determines that the petitioner died as a direct result of his or her own deliberate or negligent action.

Currently, the decisions of the claims board with respect to compensation of innocent persons who are convicted of a crime, compensation of law enforcement officers who have judgments entered against them for damages resulting from actions taken in the line of duty, and compensation of state employees who incur legal expenses in successfully defending criminal charges of mistreatment of a person in a place of confinement are subject to appeal through the court system in the same manner as administrative decisions of state agencies. If a court finds that a decision

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of the claims board is outside the range of discretion delegated to the board by law, that a decision of the board is based upon an erroneous interpretation of the law and a correct interpretation would lead to a different result, or that a decision of the board is not supported by substantial evidence, the court may reverse the decision and may remand the matter to the board for further proceedings consistent with its decision. This bill deletes the procedure for judicial review of these decisions of the claims board.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 20.505 (4) (d) of the statutes is amended to read:

2 20.505 (4) (d) *Claims awards.* A sum sufficient for payment of awards made
3 by the claims board or department of administration under ss. 16.007, 775.05 (2m)
4 and (4), 775.06, and 775.11, awards of financial assistance under s. 808.085, and
5 awards made by an act of the legislature arising from a claim filed with the claims
6 board which are not directed by law or under s. 16.007 (6m) to be paid from another
7 appropriation.

8 **SECTION 2.** 227.03 (5) of the statutes is amended to read:

9 227.03 (5) This chapter does not apply to proceedings of the claims board,
10 ~~except as provided in ss. 775.05 (5), 775.06 (7) and 775.11 (2).~~

11 **SECTION 3.** 301.051 of the statutes is created to read:

12 **301.051 Wrongful conviction; transition plan.** Not more than 5 days after
13 a court issues an order for a plan requested by an inmate pursuant to 808.085 (1) (a),
14 the department shall create a transition to release plan for the inmate. The plan shall
15 do all of the following:

16 (1) Provide the inmate with a written list of community resources available to
17 the inmate upon his or her release from prison, including temporary housing and
18 emergency shelters, food banks, education and job assistance, and health care

BILL**SECTION 3**

1 services in the county into which the inmate will be released. The department shall
2 maintain up-to-date lists with contact information for each county in the state.

3 (2) Provide the inmate with an individual counseling session with a person
4 trained by the department or the county into which the inmate will be released to
5 assist inmates in the transition to release from prison.

6 (3) Schedule an appointment, set for not later than 2 weeks after the inmate's
7 date of release, for the inmate to meet with a social worker or aid program
8 administrator for the county into which the inmate will be released.

9 **SECTION 4.** 775.05 (2) of the statutes is renumbered 775.05 (2) (a) and amended
10 to read:

11 775.05 (2) (a) Any Except as provided in par. (b), any person who is imprisoned
12 as the result of his or her conviction for a crime in any court of this state, of which
13 crime the person claims to be innocent, and who is released from imprisonment for
14 that crime after March 13, 1980, may petition the claims board for compensation for
15 such imprisonment. Upon receipt of the petition, the claims board shall transmit a
16 copy thereof to the prosecutor who prosecuted the petitioner and the judge who
17 sentenced the petitioner for the conviction which is the subject of the claim, or their
18 successors in office, for the information of these persons. In this paragraph,
19 "imprisoned" means confined in a prison, as described in s. 302.01, a county jail, a
20 rehabilitation facility established by s. 59.53 (8), a Huber facility under s. 303.09, or
21 a county house of correction under s. 303.16. A person is not imprisoned, for the
22 purposes of this section, if he or she is placed on probation with no period of
23 confinement imposed, or if he or she is confined in a correctional institution under
24 s. 301.046 (1) and the institution is the prisoner's place of residence.

25 **SECTION 5.** 775.05 (2) (b) of the statutes is created to read:

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1 775.05 (2) (b) Paragraph (a) does not apply to a person who is convicted of a
2 crime after his or her release from imprisonment. A person who is ineligible to
3 petition for compensation under this paragraph is also ineligible to receive any
4 award of compensation that has not been paid.

5 **SECTION 6.** 775.05 (2m) of the statutes is created to read:

6 775.05 (2m) (a) Except as provided in par. (b), if a person who files a petition
7 under sub. (2) dies before the claims board awards compensation to the person, the
8 person's claim for compensation is extinguished with his or her death. No later than
9 one year after the date of death of a person whose claim is extinguished under this
10 paragraph, the personal representative or special administrator for the estate of
11 such a person may petition the claims board for payment of any costs, disbursements,
12 and reasonable attorney fees incurred by the deceased person in pursuing a claim
13 under sub. (2). If the board determines that the deceased person qualified for
14 payment of an award under this section but did not receive an award, the board may
15 pay to the petitioner's estate the amount that the board finds to have been incurred
16 by the petitioner for costs, disbursements and reasonable attorney fees in connection
17 with his or her petition.

18 (b) No person's estate is eligible to receive a payment under par. (a) if the claims
19 board determines that the person died as a direct result of his or her own deliberate
20 or negligent action.

21 **SECTION 7.** 775.05 (3) of the statutes is renumbered 775.05 (3) (a) and amended
22 to read:

23 775.05 (3) (a) After hearing the evidence on the petition, the claims board shall
24 find either that the evidence is clear and convincing that the petitioner was innocent
25 of the crime for which he or she suffered imprisonment, or that the evidence is not

BILL**SECTION 7**

1 clear and convincing that he or she was innocent. A finding of innocence under this
2 paragraph is not substantiated based solely on the fact that the petitioner was found
3 not guilty of the crime of which he or she was convicted. The claims board shall award
4 compensation to the petitioner if the board determines that the petitioner's claim for
5 compensation is one which, on the basis of equitable principles, the state should in
6 good conscience assume and pay.

7 **SECTION 8.** 775.05 (3) (b) of the statutes is created to read:

8 775.05 (3) (b) After hearing the evidence on the petition, the claims board shall
9 also find that the petitioner either has or has not presented clear and convincing
10 evidence that the petitioner did not by his or her act or failure to act contribute to
11 bring about the conviction and imprisonment for which he or she seeks
12 compensation.

13 **SECTION 9.** 775.05 (4) of the statutes is amended to read:

14 775.05 (4) If, pursuant to sub. (3), the claims board finds that the petitioner was
15 innocent and should be compensated, and that he or she the claims board finds that
16 the petitioner did not by his or her act or failure to act contribute to bring about the
17 conviction and imprisonment for which he or she seeks compensation, then the
18 claims board shall find the amount which will equitably compensate the petitioner,
19 not to exceed \$25,000 \$200,000 and at a rate of compensation not greater than \$5,000
20 \$15,000 per year for the imprisonment. Compensation awarded by the claims board
21 ~~shall~~ may include any amount to which the board finds the petitioner is entitled for
22 attorney fees, costs and disbursements. The claims board shall subtract any moneys
23 received by the petitioner under s. 808.085. If the claims board finds that the amount
24 it is able to award is not an adequate compensation, it shall submit a report

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1 specifying an amount which it considers adequate to the chief clerk of each house of
2 the legislature, for distribution to the legislature under s. 13.172 (2).

3 **SECTION 10.** 775.05 (5) of the statutes is amended to read:

4 775.05 (5) The claims board shall keep a complete record of its proceedings in
5 each case and of all the evidence. ~~The findings and the award of the claims board~~
6 ~~shall be subject to review as provided in ch. 227.~~

7 **SECTION 11.** 775.06 (7) of the statutes is amended to read:

8 775.06 (7) The claims board shall keep a complete record of its proceedings in
9 each case and of all the evidence. ~~The findings, conclusions, determination and~~
10 ~~award shall be subject to review as provided in ch. 227.~~

11 **SECTION 12.** 808.085 of the statutes is created to read:

12 **808.085 Wrongful conviction; relief.** (1) If a court acts under s. 808.08 to
13 release a person from confinement in a prison, the person may petition the court for
14 any or all of the following:

15 (a) A court order directing the department of corrections to create a transition
16 to release plan.

17 (b) A financial assistance award not to exceed 133 percent of the federal poverty
18 level for up to 14 months, or while proceedings under s. 775.05 are pending,
19 whichever is shorter.

20 (c) Sealing of all records related to the case. Records sealed under this section
21 shall be accessible to the person but may not be available for public inspection or
22 through the consolidated court automation program case management system.

23 (2) The court shall, within 10 days after it receives the petition under sub. (1),
24 grant the relief sought if the person's criminal conviction was reversed, set aside, or

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1 vacated for reasons not inconsistent with the person's innocence of the crime for
2 which he or she was convicted.

3 (3) If a person who is granted relief under this section is subsequently convicted
4 of the same charges for which he or she was granted relief, or if his or her conviction
5 is reinstated, the person shall repay any financial assistance award granted under
6 this section and all records related to the case shall be unsealed.

7 (4) To the extent it is not contrary to or inconsistent with federal law, financial
8 assistance a person receives pursuant to this section may not be included as income
9 for the purpose of determining whether the person is indigent under rules
10 promulgated under ch. 977 or for the purpose of determining the person's eligibility
11 for any program for which the department of health services or the department of
12 children and families provides services, benefits, or other assistance under ch. 49.

SECTION 13. Initial applicability.

13
14 (1) This act first applies with respect to claims for compensation of innocent
15 persons filed on the effective date of this subsection.

16 (END)

Barman, Mike

From: Sen.Grothman
Sent: Friday, January 10, 2014 9:50 AM
To: LRB.Legal
Subject: Draft Review: LRB -3649/1 Topic: Claims by innocent convicted persons

Please Jacket LRB -3649/1 for the SENATE.