Wisconsin Department of Administration
Division of Executive Budget and Finance

Fiscal Estimate - 2015 Session

☒ Original ☐ Updated ☐ Corrected ☐ Supplemental

LRB Number **15-3201/3**	Introduction Number **AB-0460**

Description
Resolution of claims against the state for wrongful imprisonment of innocent persons, exempting from taxation certain amounts an individual receives from the claims board or legislature, health benefits for wrongfully imprisoned persons, and making appropriations

Fiscal Effect

State:

☐ No State Fiscal Effect
☐ Indeterminate
- ☐ Increase Existing Appropriations
- ☐ Decrease Existing Appropriations
- ☐ Create New Appropriations
- ☐ Increase Existing Revenues
- ☐ Decrease Existing Revenues
- ☒ Increase Costs - May be possible to absorb within agency's budget ☐ Yes ☒ No
- ☐ Decrease Costs

Local:

☐ No Local Government Costs
☒ Indeterminate
1. ☐ Increase Costs ☐ Permissive ☐ Mandatory
2. ☐ Decrease Costs ☐ Permissive ☐ Mandatory
3. ☐ Increase Revenue ☐ Permissive ☐ Mandatory
4. ☐ Decrease Revenue ☐ Permissive ☐ Mandatory
5. Types of Local Government Units Affected
   - ☐ Towns ☐ Village ☐ Cities
   - ☐ Counties ☐ Others
   - ☐ School Districts ☐ WTCS Districts

Fund Sources Affected

☒ GPR ☐ FED ☐ PRO ☒ PRS ☐ SEG ☐ SEGS

Affected Ch. 20 Appropriations

20.505(4)(d) (GPR) / 20.505(4)(kp) & (1)(kr) (PRS)

Agency/Prepared By	Authorized Signature	Date
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Fiscal Estimate Narratives

DOA 2/8/2016

LRB Number **15-3201/3**	Introduction Number **AB-0460**	Estimate Type **Original**
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Assumptions Used in Arriving at Fiscal Estimate

2015 AB 460 modifies the process, standards and award levels for individuals making claims against the state for wrongful imprisonment. Under current law, the State Claims Board, supported by the Department of Administration (DOA), is directed to hear petitions for compensation by individuals released from imprisonment for crimes of which they claim to be innocent. The standard of proof is clear and convincing evidence. The total maximum claim award is $25,000, and not more than $5,000 per year of imprisonment. The award amount must include expenses for attorney fees, costs, and disbursements incurred by the claimant.

Under the bill, when the Claims Board receives a wrongful imprisonment claim filed by a claimant who has been released from prison, and who claims to be innocent of the crime, the Board must refer the petition to the Department of Administration's Division of Hearings and Appeals (DHA). The bill allows DOA or the prosecuting attorney's office that prosecuted the claimant to file a request for hearing. If a hearing request is filed or DHA determines that it cannot make a finding without a hearing, a hearing must be scheduled within 60 days following the filing of the petition. In addition, DHA cannot deny the petition without holding a hearing. DHA appoints a hearing examiner who will hear the evidence, make findings and enter a ruling on whether the claimant is entitled to compensation. The evidentiary standard under the bill is preponderance of the evidence. If the hearing examiner finds the person was wrongfully incarcerated, the examiner must determine the compensation at the fixed rate of $50,000 per year of imprisonment, subject to an annual cost of living adjustment. There is a $1,000,000 limit on the award included in the bill, and the hearing examiner must award attorney fees and costs, as well as fees, surcharges or restitution paid by the claimant as a result of the arrest or wrongful imprisonment. Any settlement or judgment received from a third party is to be subtracted from the compensation awarded, and any petition submitted to the Claims Board must assign any future settlement or judgment against a third party to the Claims Board. The bill provides insurance coverage, temporary financial support, and specific relief from taxation to successful claimants. Finally, the bill makes the findings and award subject to judicial review under Chapter 227.

The bill would apply to individuals released from incarceration on or after January 1, 1990. If the individual has already received a compensation award from the State Claims Board, the person may make a claim for additional compensation under the higher limits.

Division of Hearings and Appeals Costs

The Department estimates that the provisions of the bill would generate additional workload, but would not require additional staffing. DHA estimates the additional costs, including staff time, for assembling the case record in order to undertake a review to be approximately $40,000 annually. The legislation provides no mechanism or additional budget authority for DHA to recover these costs. Given the number of cases and current limited budget authority, it would be difficult for DHA to accommodate these costs within its current budget.

It is anticipated that because the standard of evidence is less, potential awards are higher, and claimants would be able to request attorney fees and costs above the award for wrongful imprisonment, there would be an increase in the number of claims filed. The bill creates short deadlines which would exacerbate the Division's current need for additional staff. In addition, there is a potential backlog of claimants that would file shortly after the change in law because the bill allows individuals released five to six years earlier to file and allows individuals who have already received an award to file a claim to be awarded additional funds.

The requirement that a hearing must be held before a claim is dismissed means that even if a claim with little chance of success is filed, the costs of going to hearing must be incurred before the case can be

dismissed. Because of the possibility of a judicial review both parties would need to develop a complete record, and in the event the decision is appealed, the costs of a transcript and additional attorney fees would be additional costs to the state. DHA estimates the additional costs, including staff time, for assembling the case record in order to undertake a review to be approximately $40,000 annually. Given the number of cases and current limited budget authority, it would be difficult for DHA to accommodate these costs within its current budget.

2015 Wisconsin Act 55 (the 2015-17 Biennial Budget bill) eliminated DHA general purpose revenue funding and replaced it with program revenue-service. This bill does not provide DHA with statutory authority under s. 227.43 (3), Wis. Stats., to set fees to be charged for services under the bill, nor does it provide the Claims Board an appropriation to pay for those services. DHA could be required to pay back to the federal government amounts related to the cost of providing the services under this bill in proportion to the percentage of all DHA hearing costs paid by federal sources.

Claims Board Costs

It is estimated that the change in the compensation cap would result in an increase in the number of claims filed annually by approximately 14 accepted claims and 10 rejected claims. The current Claims Board staff cost for processing claims is approximately $225 per accepted claim and $28 per rejected claim, or $3,430 per year, for a total cost (including fringe at 38.24%) of $4,742.

Legal Services Staffing

The State Claims Board is supported by staff in DOA's Division of Legal Services. The Department's obligation to support the Board continues and the workload may increase if the number of claims rises as a result of the changes in the bill noted above.

In addition, the bill requires DOA to represent the interests of the state in any hearing before DHA. The Office of Legal Counsel would experience a workload increase for its attorneys as a result of the new responsibility. Each hearing takes approximately one day, and it is assumed that each hearing would require one day for a DOA attorney to review, assess and prepare the case for hearing, and an additional day to research and write applicable hearing briefs, for a total of three staff days per hearing. Assuming one hearing per year associated with the changes in this legislation, the total increased DOA staff cost for the single hearing would be $990 per year (24 hours @ $41.26/hour), plus fringe (38.24%) for a total cost of $1,369.

Claims Payments

It is difficult to estimate the impact on the number and level of claims that would occur under this bill, and the ongoing impact of the bill on the number of wrongful imprisonment claims filed and the size of the awards is indeterminate. It is anticipated that because the standard of evidence is less, the potential awards are higher, and attorney fees and costs could be awarded, there would be an increase in the level of payments awarded to claimants. In addition, the retroactive portion of the bill allows previously compensated claimants to petition the Claims Board for additional compensation under the new dollar amounts. There are currently 13 claimants who would be eligible for additional compensation. If the maximum additional compensation was awarded to all of the claimants, the total cost would be in excess of $3.9 million. It is assumed that most of these claimants would file quickly. Therefore, it is anticipated that these claims would come before the Board within the first two years after the effective date of this legislation.

Local Costs

The bill provides that the district attorney's office responsible for prosecuting the claimant may file a request for an evidentiary hearing with DHA. The district attorney's office would incur costs associated with participation in the hearing process. As the number of hearing requests is unknown, the associated costs are indeterminate.

Long-Range Fiscal Implications

Indeterminate.

Wisconsin Department of Administration
Division of Executive Budget and Finance

Fiscal Estimate Worksheet - 2015 Session

Detailed Estimate of Annual Fiscal Effect

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Description
Resolution of claims against the state for wrongful imprisonment of innocent persons, exempting from taxation certain amounts an individual receives from the claims board or legislature, health benefits for wrongfully imprisoned persons, and making appropriations

I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

The retroactive portion of the bill allows previously compensated claimants to petition the Claims Board for additional compensation under the new dollar amounts. There are currently 13 claimants who would be eligible for additional compensation. If the maximum additional compensation was awarded to all of the claimants, the total cost would be in excess of $3.9 million.

II. Annualized Costs:	**Annualized Fiscal Impact on funds from:**	
	Increased Costs	Decreased Costs
A. State Costs by Category		
State Operations - Salaries and Fringes	$6,111	$
(FTE Position Changes)	(0.0 FTE)	
State Operations - Other Costs	40,000	
Local Assistance	0	
Aids to Individuals or Organizations	0	
TOTAL State Costs by Category	**$46,111**	**$**
B. State Costs by Source of Funds		
GPR	4,742	
FED		
PRO/PRS (20.505(4)(kp)&(1)kr)	41,369	
SEG/SEG-S		

III. State Revenues - Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, ets.)

	Increased Rev	Decreased Rev
GPR Taxes	$	$
GPR Earned		
FED		
PRO/PRS		
SEG/SEG-S		
TOTAL State Revenues	**$**	**$**

NET ANNUALIZED FISCAL IMPACT

	State	Local
NET CHANGE IN COSTS	$46,111	$
NET CHANGE IN REVENUE	$	$

Agency/Prepared By	**Authorized Signature**	**Date**
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