

## **BILL ANALYSIS**

Senate Research Center  
81R23463 AJA-D

H.B. 1736  
By: Anchia et al. (Duncan)  
State Affairs  
4/29/2009  
Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

There have been approximately 40 people in Texas exonerated for crimes they did not commit. Together, these individuals served a total of 500 years in prison. Currently, Texas law allows those individuals to be compensated \$50,000 per year for each year the person spent in prison. However, according to the Innocence Project, of those who were exonerated after being wrongfully convicted, "most...leave prison without immediate financial support; it can take months or years before restitution is forthcoming, and some exonerees are never compensated." Those who do receive some financial compensation for their wrongful convictions are left to live on a small amount of their compensation money after incurring various expenses due to the often extended legal proceedings required to prove their innocence.

H.B. 1736 relates to compensation of persons wrongfully imprisoned.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Requires that this Act be known as the Tim Cole Act.

SECTION 2. Amends Section 103.001, Civil Practice and Remedies Code, by adding Subsection (c), to entitle the person's heirs, legal representatives, and estate, if a deceased person would be entitled to compensation under Subsection (a)(2) (relating to the requirements for entitlement to compensation) if living, including a person who received a posthumous pardon, to lump-sum compensation under Section 103.052 (Amount and Timing of Compensation).

SECTION 3. Amends Section 103.003, Civil Practice and Remedies Code, to require a person seeking compensation under this chapter, not later than the third anniversary of the date the person on whose imprisonment the claim is based received the pardon or was granted relief, rather than found not guilty, as required by Section 103.001 (Claimants Entitled to Compensation), to file an application with the comptroller of public accounts (comptroller) for compensation under Subchapter B (Administrative Hearing). Deletes existing text requiring a person seeking compensation under this chapter to file suit against the state for compensation under Subchapter C (Filing Suit) not later than the third anniversary of the date the person received the pardon or was found not guilty. Makes nonsubstantive changes.

SECTION 4. Reenacts Section 103.051(a), Civil Practice and Remedies Code, as amended by Chapters 1190 (H.B. 814) and 1388 (S.B. 1719), Acts of the 80th Legislature, Regular Session, 2007, and amends it to require the claimant, to apply for compensation under this subchapter, to file with the comptroller's judiciary section certain information including a statement provided by the Texas Department of Criminal Justice (TDCJ) and any county or municipality that incarcerated the person on whose imprisonment the claim is based in connection with the relevant sentence verifying the length of incarceration; if applicable, a statement from the Department of Public Safety verifying registration as a sex offender and length of registration; and if applicable, a statement from TDCJ verifying the length of time spent on parole. Makes nonsubstantive changes.

SECTION 5. Amends Section 103.052, Civil Practice and Remedies Code, as follows:

Sec. 103.052. New heading: LUMP-SUM AND CERTAIN OTHER COMPENSATION. (a) Entitles a person who meets the requirements of Section 103.001 to compensation in an amount equal to \$80,000, rather than \$50,000, multiplied by the number of years served in prison, expressed as a fraction to reflect partial years, and compensation for child support payments owed by the person on whose imprisonment the claim is based that became due and interest on child support arrearages that accrued during the time served in prison but were not paid. Deletes existing Subsection (a-1), entitling a person sentenced to death who meets the requirements of Section 103.001, notwithstanding Subsection (a)(1) (relating to a person entitled to compensation of \$80,000 multiplied by the number of years served in prison, expressed as a fraction to reflect partial years), to compensation in an amount equal to \$100,000 multiplied by the number of years served in prison, expressed as a fraction to reflect partial years.

(b) Entitles a person who, after serving a sentence in a Texas prison for which the person is entitled to compensation under Subsection (a)(1) (relating to a person entitled to compensation of \$80,000 multiplied by the number of years served in prison, expressed as a fraction to reflect partial years), was released on parole or required to register as a sex offender under Chapter 62 (Sex Offender Registration Program), Code of Criminal Procedure, to compensation in an amount equal to \$25,000 multiplied by the number of years served either on parole or as a registered sex offender, expressed as a fraction to reflect partial years. Deletes existing text requiring a person who is owed an amount of compensation under Subsection (a)(1) or (a-1) equal to or greater than \$50,000 to be paid that compensation in two equal annual installments.

(c) Authorizes a claimant, who is entitled to compensation under Section 103.001(a) (relating to the requirements for entitlement to compensation), on application by the claimant in a manner prescribed by the board of trustees of the Employees Retirement System of Texas, to participate in the group benefits program under Chapter 1551 (Texas Employees Group Benefits Act), Insurance Code, and provides that the claimant is automatically covered by the basic coverage for annuitants provided under that chapter. Entitles a claimant who participates in the group benefits program to receive state contributions for the full cost of the premiums. Deletes existing text requiring that, if requested by the claimant, the Texas Department of Mental Health and Mental Retardation provide appropriate counseling for one year to the claimant at a mutually agreed-on location at no charge to the claimant.

(d) Makes no changes to this subsection.

(e) Requires that, if requested by the claimant, up to 120 hours of tuition at a career center, community college, or state university be paid on behalf of the claimant.

SECTION 6. Amends Subchapter B, Chapter 103, Civil Practice and Remedies Code, by adding Section 103.053, as follows:

Sec. 103.053. ANNUITY COMPENSATION. (a) Entitles a person entitled to compensation under Section 103.001(a) to annuity payments, based on a present value sum equal to the amount to which the person is entitled under Sections 103.052(a)(1) and (b).

(b) Provides that the annuity payments under this section are payable in equal monthly installments for the life of the claimant and are required to be based on a five percent per annum interest rate and other actuarial factors within the discretion of the comptroller.

(c) Prohibits the annuity payments from being accelerated, deferred, increased, or decreased. Prohibits the applicant from selling, mortgaging, or otherwise

encumbering, or anticipating the payments, wholly or partly, by assignment or otherwise.

SECTION 7. Amends Section 103.151, Civil Practice and Remedies Code, as follows:

Sec. 103.151. ADMINISTRATIVE PAYMENT OF COMPENSATION. (a) Requires the comptroller of public accounts (comptroller) to make the compensation, rather than first installment payment, due a claimant under Section 103.052, rather than due an applicant, and the lump-sum payment, if any, to be paid to the state disbursement unit, as defined by Section 101.0302 (State Disbursement Unit), Family Code, under Subchapter B, to the extent that funds are available and appropriated for that purpose, not later than the 30th day after the date the comptroller grants the application. Requires that a claim for lump-sum compensation payable under Section 103.052(a) or (b) survive the death of the claimant in favor of the heirs, legal representatives, and estate of the claimant.

(b) Requires the comptroller to begin making annuity payments to a claimant under Section 103.053(a) on the first anniversary of the date of payment of the compensation due under Section 103.052, rather than pay the amount of the second installment payment on the first anniversary of the date of the first installment.

(c) Requires that the money, if appropriated funds are insufficient to pay the amount due a claimant, rather than an applicant, and the amount to be paid to the state disbursement unit, as defined by Section 101.0302, Family Code, be paid under the procedure described by Section 103.152.

SECTION 8. Amends Section 103.152(a), Civil Practice and Remedies Code, to require the comptroller, not later than November 1 of each even-numbered year, to provide a list of claimants entitled to payment under Subchapter B, rather than Subchapter B or C, and the amounts due for each claimant to the governor, the lieutenant governor, and the chair of the appropriate committee in each house of the legislature so that the legislature may appropriate the amount needed to pay the amount owed to each claimant and the amount to be paid to the state disbursement unit, as defined by Section 101.0302, Family Code, on the claimant's behalf.

SECTION 9. Amends Section 103.154(b), Civil Practice and Remedies Code, to provide that annuity payments to a person under Section 103.151(b) terminate on the date of the person's death. Deletes existing text providing that, except as provided by Subsection (c) (relating to payments not qualifying to compensation for child support payments and interest on child support arrearages to paid on a person's behalf), compensation payments to a person under this chapter terminate on the date of the person's death.

SECTION 10. Repealers: Section 103.002 (Choice of Compensation Method); Subchapter C, Chapter 103 (Compensation to Persons Wrongfully Imprisoned); and Section 103.152(c) (relating to the amount of compensation awarded to a claimant being required to be paid on the claimant's behalf in a lump-sum payment for distribution to the obligee under the child support order), Civil Practice and Remedies Code.

SECTION 11. (a) Provides that the change in law made by this Act applies only to an application for compensation for wrongful imprisonment that is filed on or after the effective date of this Act. Provides that an application filed or action commenced under Chapter 103, Civil Practice and Remedies Code, before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

(b) Entitles a person, notwithstanding Section 103.003, Civil Practice and Remedies Code, as amended by this Act, who received compensation under Chapter 103, Civil Practice and Remedies Code, before September 1, 2009, to annuity payments under Section 103.053, Civil Practice and Remedies Code, based on a present value sum equal to the amount the person would receive under Sections 103.052(a)(1) and (b), Civil Practice and Remedies Code, as amended by this Act, if the person were to receive compensation under those sections on September 1, 2009. Requires the comptroller to

begin making payments to a claimant under this section not later than the 30th day after the date the comptroller determines the claimant is eligible to receive compensation under this section.

SECTION 12. Effective date: September 1, 2009.