

*Colorado Legislative Council Staff Fiscal Note*  
**STATE and LOCAL**  
**REVISED FISCAL IMPACT**  
(replaces fiscal note dated March 26, 2013)

|   |   |
|---|---|
| <b>Drafting Number:</b> LLS 13-0022           | <b>Date:</b> April 22, 2013                       |
| <b>Prime Sponsor(s):</b> Rep. Williams; Pabon | <b>Bill Status:</b> Senate Judiciary              |
| Sen. Guzman                                   | <b>Fiscal Analyst:</b> Kerry White (303-866-3469) |

**TITLE:** CONCERNING COMPENSATION FOR PERSONS WHO ARE EXONERATED OF THEIR CRIMES AFTER A PERIOD OF INCARCERATION, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

| Fiscal Impact Summary  | FY 2013-2014 | FY 2014-2015 |
|--|--------------|--------------|
| <b>State Revenue</b>   |              |              |
| <b>State Expenditures</b>  |              |              |
| General Fund   | \$228,662    | \$224,959    |
| General Fund appropriation to the College Opportunity Fund   | \$1,920      | \$1,920      |
| <b>FTE Position Change</b>   | 1.4 FTE      | 1.4 FTE      |
| <b>Effective Date:</b> Upon signature of the Governor, or upon becoming law without his signature. |              |              |
| <b>Appropriation Summary for FY 2013-2014:</b> See State Appropriations section.                   |              |              |
| <b>Local Government Impact:</b> See Local Government Impact section.                               |              |              |

**Summary of Legislation**

This *reengrossed* bill creates a state compensation program for persons who are found actually innocent of felony crimes after serving time in jail, prison, or juvenile placement.

To become eligible for state funds, the exonerated person, or his or her immediate family members, must submit a petition and supporting documentation to the district court in the county that heard the original case. The Attorney General and district attorney may concur or contest the petition. If contested, the district court may order for evidence to be retested and is authorized to consider new evidence, whether or not it was part of the original trial. If a petition is contested, the burden to prove actual innocence is upon the petitioner. Either the Attorney General or the district attorney may contest a finding of actual innocence, but payments are to be made while the appeal is pending. If the outcome of the appeal is favorable to the state, the court is authorized to take the necessary steps to recover any monies disbursed.

If found actually innocent, the exonerated person is eligible to receive the following benefits:

- monetary compensation in the amount of \$70,000 for each year incarcerated, plus an additional \$25,000 for each year he or she served on parole and \$50,000 for each year he or she was incarcerated and awaited execution;

- tuition waivers at state institutions of higher education, if the exonerated person was incarcerated for at least 3 years;
- compensation for child support payments and associated interest owed by the exonerated person that were incurred during his or her incarceration;
- reasonable attorney fees; and
- the amount of any fine, penalty, court costs, or restitution imposed as a result of the exonerated person's wrongful conviction.

The bill allows for prorated compensation and for reductions to be made for certain reasons. No compensation is allowed for periods of incarceration that were served as a result of a concurrent sentence for another crime. Reductions in compensation are required if the exonerated person fails to provide proof of enrollment in a qualified health plan. No payments are allowed if the exonerated person prevails in a civil action and is awarded monetary damages that equal or exceed the state's obligation, the exonerated person is convicted of a class 1 or class 2 felony after the court issues the order of compensation, or the person has not yet completed a personal financial management instruction course. Compensation is not subject to civil lawsuit caps or state income tax, although the portion awarded as attorney's fees are subject to taxation. The state court administrator within the Judicial Branch administers annual payments.

### **State Expenditures**

This bill will increase state expenditures by up to \$230,582 and 1.4 FTE in FY 2013-14 and \$226,879 and 1.4 FTE in FY 2014-15. Costs are based on the assumption that 8 petitions will be filed, there will be 1 trial as a result of the Attorney General contesting a petition, and one disbursement order every 5 years.

***Department of Law.*** The Attorney General is tasked with responding to petitions, and if appropriate, contesting the petition in district court. Costs will increase by \$128,662 and 1.4 FTE in FY 2013-14 and \$124,959 and 1.4 FTE in FY 2014-15. These costs are based on the assumption that each of the 8 petitions will take 20 hours for review and response, and that an annual trial will require 1,600 hours of attorney time (1.0 FTE total) to conduct. Additional staff are needed to provide legal assistance (0.2 FTE) and to conduct investigations (0.2 FTE). First year costs include capital outlay costs of \$8,900 and one-time investigator costs of \$4,884. Both years require operating costs of \$1,330 and investigator travel costs of \$1,692. Personal services costs are \$120,977, prorated to \$110,896 in the first year to account for the General Fund paydate shift.

***Judicial Department.*** Costs for state courts will increase in order to hear petitions and to hear trials resulting from either the Attorney General or a district attorney contesting a petition. Costs will also increase as a result of expunging records for persons exonerated of their crimes. These costs are anticipated to be minimal and can be addressed within existing appropriations.

The state court administrator is required to manage disbursements, verify enrollment in a qualified health plan, and verify completion of a personal financial management instruction course. It is assumed the workload increase will be between 20 and 50 hours, per approved order, per year. For FY 2013-14 and FY 2014-15, the fiscal note assumes this work can be performed within existing

appropriations. However, in future years, depending on the number of orders approved and the actual workload incurred, an increase in appropriations may be required. If this occurs, such a request will be addressed through the annual budget process. Disbursements will increase by up to \$100,000 per year for the first 5 fiscal years, paid from the General Fund. As it is unknown how many persons will be eligible for disbursements, this amount cannot be quantified. However, given a recent high profile case, this analysis assumes at least 1 person will qualify for disbursements every 5 years and that funding for additional disbursement orders within a fiscal year will be requested through the annual budget process.

**Department of Higher Education.** The bill requires the Colorado Commission on Higher Education to develop and implement a policy for granting tuition waivers by September 1, 2013. The development of the policy will increase workload by a minimal amount. Issuing tuition waivers will also increase costs for state institutions of higher education. Depending on the timing of enrollment, number of affected individuals, number of credit hours enrolled, and the school selected, costs per person will increase by between \$1,770 and \$14,454 per year. As it is unknown how many individuals will become eligible for and request tuition waivers, it is not possible to determine the increase in costs for state institutions of higher education.

The fiscal note assumes that 1 person will enroll in a state institution of higher education under this bill and also be eligible for a College Opportunity Fund (COF) stipend. The COF stipend is anticipated to be \$1,920 for 30 credit hours in FY 2013-14. This analysis assumes that if more than 1 person is eligible for a COF stipend in a fiscal year, the Department of Higher Education will request additional appropriations through the annual budget process.

**Department of Public Safety.** This bill allows the court to order retesting of evidence in contested cases. To the extent that this occurs, costs for the Department of Public Safety may increase. This amount is anticipated to be minimal and not require an increase in appropriations.

**Expenditures Not Included**

Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. The centrally appropriated costs subject to this policy are summarized in Table 1.

| <b>Table 1. Expenditures Not Included Under HB13-1230*</b>           |                   |                   |
|--|-------------------|-------------------|
| <b>Cost Components</b>   | <b>FY 2013-14</b> | <b>FY 2014-15</b> |
| Employee Insurance (Health, Life, Dental, and Short-term Disability) | \$9,480           | \$9,480           |
| Supplemental Employee Retirement Payments                            | 7,426             | 8,401             |
| <b>TOTAL</b>   | <b>\$16,906</b>   | <b>\$17,881</b>   |

\*More information is available at: <http://colorado.gov/fiscalnotes>

**Local Government Impact**

Similar to the Department of Law, district attorneys are required to review petitions from persons who have been exonerated of their crimes. This analysis assumes costs will increase by a similar amount for counties.

**State Appropriations**

For FY 2013-14, the Department of Law is appropriated \$128,662 General Fund and allocated 1.4 FTE. The Judicial Branch is appropriated \$100,000 General Fund. Finally, \$1,920 General Fund is appropriated to the Department of Higher Education and allocated to the College Opportunity Fund.

**Departments Contacted**

Corrections  
Human Services  
Local Affairs  
Treasury

District Attorneys  
Judicial  
Personnel and Administration

Higher Education  
Law  
Revenue