

By: Representatives Perkins, Coleman (65th), To: Corrections;  
Bailey, Burnett, Campbell (72nd), Ellis, Appropriations  
Myers, Thomas, Watson

## HOUSE BILL NO. 640

1 AN ACT TO CREATE COMPENSATION FOR THE WRONGFULLY  
2 INCARCERATED; TO CREATE THE COMMITTEE ON COMPENSATION FOR WRONGFUL  
3 INCARCERATION AND TO PROVIDE ITS MEMBERSHIP; TO GIVE SUCH  
4 COMMITTEE IMMUNITY FROM CIVIL LIABILITY FOR CERTAIN ACTS; TO  
5 PROVIDE THE OFFICE OF FISCAL MANAGEMENT OF THE DEPARTMENT OF  
6 FINANCE AND ADMINISTRATION SHALL ASSIST IN VERIFYING THAT A PERSON  
7 IS ELIGIBLE FOR COMPENSATION DUE TO BEING WRONGFULLY INCARCERATED;  
8 TO PROVIDE THE ELIGIBILITY CRITERIA FOR INDIVIDUALS WHO HAVE BEEN  
9 WRONGFULLY INCARCERATED; TO PROVIDE THE EVIDENCE THAT AN  
10 INDIVIDUAL MUST HAVE IN ORDER TO APPLY FOR COMPENSATION; TO  
11 PROVIDE THE APPLICATION AND NOTICE PROCESS FOR THOSE APPLYING FOR  
12 COMPENSATION; TO PROVIDE THE AMOUNTS THAT WRONGFULLY INCARCERATED  
13 PERSONS ARE ELIGIBLE FOR COMPENSATION; TO PROVIDE THAT CERTAIN  
14 INDIVIDUALS ARE NOT ELIGIBLE FOR COMPENSATION; TO PROVIDE THE  
15 METHODS OF PAYMENT AND THE ELIGIBILITY OF INDIVIDUALS' ESTATES TO  
16 RECEIVE COMPENSATION; TO AMEND SECTION 27-104-103, MISSISSIPPI  
17 CODE OF 1972; TO AUTHORIZE THE DEPARTMENT OF FINANCE AND  
18 ADMINISTRATION TO ASSIST IN THE ADMINISTERING OF THE COMPENSATION  
19 FOR THE WRONGFULLY INCARCERATED ACT; AND FOR RELATED PURPOSES.

20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

21 **SECTION 1.** This act shall be known as the "Compensation for  
22 the Wrongfully Incarcerated Act," and it shall serve as the method  
23 of compensating certain innocent persons who have been wrongfully  
24 incarcerated by the State of Mississippi.

25 **SECTION 2.** There is hereby created the Committee on  
26 Compensation for Wrongful Incarceration. The Committee on  
27 Compensation for Wrongful Incarceration may hereinafter be  
28 referred to as the "committee." The committee shall certify  
29 applications that have met the eligibility criteria for payment  
30 pursuant to this act and may recommend to the Legislature an  
31 amount of additional compensation to be paid by the state as  
32 authorized under Section 7 of this act.

33 **SECTION 3.** (1) The Committee on Compensation for Wrongful  
34 Incarceration shall consist of the following seven members:



(a) The Chair of the House Ways and Means Committee;  
(b) The Chair of the Senate Finance Committee;  
(c) The Chair of the House Judiciary A Committee;  
(d) The Chair of the Senate, Division B Committee;  
(e) The Speaker of the House of Representatives or his or her designee;  
(f) The Lieutenant Governor or his or her designee; and  
(g) The Executive Director of the Department of Finance and Administration or his or her designee.

(2) Each year the committee shall elect a chair and vice chair from its membership. From time to time the committee shall establish rules and regulations for the administration of its duties and responsibilities as well as those of the Office of Fiscal Management of the Department of Finance and Administration as they relate to this act.

(3) Any four (4) members of the committee shall be required to be in attendance for the purpose of transacting the business of the committee and a vote of four members in favor of a motion shall be necessary for any decision regarding certification of compensation pursuant to this act or a recommendation for additional compensation pursuant to Section 7 of this act. The term of service on this committee shall be the same as the term of service for the Legislature.

(4) The committee shall meet as often as necessary but at least quarterly if an applicant's eligibility for compensation has been verified by the Office of Fiscal Management of the Department of Finance and Administration. The Office of Fiscal Management shall make a record of and file in such office a history of each case, together with the findings of the office and certification of awards by the committee. Such office shall also provide the necessary administrative and legal support to the committee.



(5) Members of the committee shall not receive any compensation or per diem, but may receive travel reimbursement provided for under Section 25-3-41, except that legislators shall receive per diem and expenses which shall be paid from the contingent expense funds of their respective houses in the same amounts as provided for committee meetings when the Legislature is not in session; however, no per diem and expenses for attending meetings of the board shall be paid while the legislature is in session. The nonlegislative member shall be paid from funds made available by the Department of Finance and Administration or from any other funds made available to the committee for that purpose.

**SECTION 4.** No civil action may be brought against the committee or any of its members, for providing any reports, records, opinions, or any actions or recommendations pursuant to this act. In addition, any persons acting in good faith and without negligence or malicious intent in providing information to the committee in furtherance of this act shall have immunity from civil liability that might otherwise be incurred or imposed.

**SECTION 5.** (1) In order to be eligible to receive compensation for wrongful incarceration, a person must:

(a) Have been convicted by the state of one or more felony offenses, all of which the person was innocent, and have served time in prison as a result of the conviction or convictions; or

(b) Have been incarcerated pretrial on a state felony charge, for at least two (2) years through no fault of his or her own, before having charges dismissed based on innocence.

(2) For purposes of determination of eligibility for compensation for wrongful incarceration, innocence shall be evidenced by at least one of the following:

(a) The conviction vacated or reversed and the accusatory instrument dismissed on grounds of innocence; or



(b) The accusatory instrument dismissed on a ground consistent with innocence.

**SECTION 6.** (1) Any person who meets the eligibility criteria established in this act and desires compensation shall submit an application to the Office of Fiscal Management of the Department of Finance and Administration which shall immediately provide notice to the members of the committee.

(2) An application for compensation shall include a full statement of the facts upon which the claim is based, which shall be verified by the Office of Fiscal Management in the manner provided for verifying complaints in civil actions, and may be supported by affidavits substantiating such claim. If the Office of Fiscal Management of the Department of Finance and Administration verifies that a person is eligible to receive compensation under this act, notification of that fact shall be made to the committee within one hundred twenty (120) days of such verification. The committee shall within ninety (90) days of such notification meet to certify the award. If after receiving verification of compensation over the amount designated in Section 7 of this act, the committee shall fix a time and place for a hearing, and shall mail notice to the applicant, and shall notify the Attorney General and the appropriate district attorney, at least 30 days before the time fixed for such hearing.

**SECTION 7.** (1) If an applicant's eligibility is verified by the Department of Finance and Administration, the committee shall certify to the applicant an amount equal to the value of any lost wages, salary, or other earned income which directly resulted from the applicant's conviction and wrongful imprisonment, with a maximum payment of Fifty Thousand Dollars (\$50,000.00) for each year of imprisonment, but no less than Twenty-five Thousand Dollars (\$25,000.00) for each year of imprisonment.

(2) The committee, after hearing testimony, shall have the authority to recommend some discretionary amount in addition to



the base amount if circumstances warrant such a supplemental award. Any such supplemental amount shall be in the form of a bill to be presented to the Legislature.

(3) At the hearing on additional compensation the applicant may introduce evidence in the form of affidavits or testimony to support the additional compensation as provided in this section and the Attorney General or the local prosecutor's office under whose jurisdiction the case was prosecuted may introduce counter affidavits or testimony in refutation. If the committee finds from the evidence that the applicant warrants additional compensation, it shall recommend the amount the applicant is eligible to be paid over the base amount and shall make a recommendation to the Legislature.

(4) The State Comptroller upon proper certification from the committee shall pay the amount of the base award to the applicant out of any available state funds appropriated by the Legislature for such purpose. Any amounts for additional compensation passed by the Legislature shall be paid as provided for in such Legislation.

(5) The committee shall give written notice of its certification within 10 days to all parties involved in the process as well as the appropriate state officials charged with processing the compensation. The determination shall not be subject to review upon appeal of the claimant or the state.

**SECTION 8.** (1) A person serving a term of imprisonment for a crime other than a crime for which the person was wrongfully incarcerated shall not be eligible to receive compensation pursuant to this act.

(2) A person shall not be eligible to receive compensation pursuant to this act if the sentence for the crime of which the person was mistakenly convicted was served concurrently with the sentence for the conviction of another crime.



164 (3) A person shall not be eligible for compensation if he or  
165 she was convicted of any of the acts charged with in conjunction  
166 with the charge which resulted in the wrongful conviction or his  
167 or her acts or omissions constituted a felony or misdemeanor  
168 against the state.

169 (4) To be eligible to recover a sum of money as described in  
170 this act because of his or her wrongful incarceration, an  
171 individual shall not have been the subject of an act of the  
172 Legislature that authorized an award of compensation for his or  
173 her wrongful incarceration.

174 (5) A person awarded compensation and subsequently convicted  
175 of a felony crime will not be eligible to receive any unpaid  
176 amounts from any compensation authorized by this act.

177 **SECTION 9.** (1) The committee in its discretion may direct  
178 that payment of compensation claims be in a lump sum or in such  
179 installments as it deems appropriate, but no part of such claim  
180 shall be directed by the committee to any person other than the  
181 person so pardoned or exonerated, nor shall have the person so  
182 pardoned or exonerated pay any part of the sum received to any  
183 person for services rendered in connection with its collection.  
184 Notwithstanding this subsection, in the event that a person  
185 awarded compensation dies before receiving the full amount of his  
186 or her compensation, such person's estate shall be eligible to  
187 receive any remaining compensation.

188 (2) Any right to apply for compensation under this act shall  
189 cease upon the death of the claimant.

190 (3) If a person has submitted an application for  
191 compensation to the Department of Finance and Administration, but  
192 dies prior to the application being certified for compensation,  
193 the estate of the person shall be eligible to receive the  
194 compensation.

195 (4) In awarding compensation under this act, the committee  
196 shall not offset the award by any expenses incurred by the state



or any political subdivision of the state in connection with the arrest, prosecution, and imprisonment of the individual, including, but not limited to, expenses for food, clothing, shelter and medical care.

**SECTION 10.** Any person applying for compensation under this act based on exoneration that was granted before July 1, 2008, or the dismissal of an accusatory instrument that occurred before July 1, 2008, shall file his or her application within two (2) years after July 1, 2008. Any persons applying for compensation under this act based on exoneration that was granted on or after July 1, 2008, or the dismissal of any accusatory instrument that occurred on or after July 1, 2008, shall file his or her application within two (2) years after the exoneration or dismissal.

**SECTION 11.** The Office of Fiscal Management of the Department of Finance and Administration shall be responsible for verifying all information submitted by an applicant meeting the criteria established in Section 7 of this act, and shall verify that the applicant is not ineligible due to any of the exceptions provided in Sections 8 and 9 of this act.

**SECTION 12.** Agencies of state government shall cooperate with the committee and the staff of the Office of Fiscal Management of the Department of Finance and Administration as necessary for the committee and the department to carry out its responsibilities. Upon the request of the committee or the division, each agency and department of the state shall make its services, equipment, personnel, facilities, and information available to the greatest practicable extent to the committee in the execution of its functions without cost to the committee.

**SECTION 13.** Notwithstanding any other provisions of this act, payment and receipt of any base or supplemental compensation as provided by Section 7 of this act is contingent upon the Legislature appropriating funds for that purpose. This act does



not provide an entitlement to compensation to persons determined to have been wrongfully incarcerated, and it does not require that the Legislature appropriate funds for payment of the base or supplemental compensation, and it does not require or authorize the State Comptroller to pay any such compensation until funds have been appropriated by the Legislature for that purpose.

**SECTION 14.** Section 27-104-103, Mississippi Code of 1972, is amended as follows:

27-104-103. (1) The Department of Finance and Administration shall have the following duties and powers:

(a) To provide administrative guidance to the various departments and agencies of state government;

(b) To facilitate the expedient delivery of services and programs for the benefit of the citizens of the state;

(c) To analyze and develop efficient management practices and assist departments and agencies in implementing effective and efficient work management systems;

(d) To conduct management review of state agencies and departments and recommend a management plan to state departments and agencies when corrective action is required;

(e) To, at least annually, report to the Governor and the Legislature on programs and actions taken to improve the conduct of state operations and to prepare and recommend management programs for effective and efficient management of the operations of state government;

(f) To allocate the federal-state programs funds to the departments responsible for the delivery of the programs and services for which the appropriation was made;

(g) To coordinate the planning functions of all agencies in the executive branch of government and review any and all plans which are developed by those agencies and departments;

(h) To collect and maintain the necessary data on which to base budget and policy development issues;





(i) To develop and analyze policy recommendations to the Governor;

(j) To develop and manage the executive budget process;

(k) To prepare the executive branch budget recommendations;

(l) To review and monitor the expenditures of the executive agencies and departments of government;

(m) To manage the state's fiscal affairs;

(n) To administer programs relating to general services, public procurement, insurance and the Bond Advisory Division;

(o) To administer the state's aircraft operation;

(p) To help administer the Compensation for the Wrongfully Incarcerated Act as provided in Sections 1 through 13 of this act.

(2) The department shall have the following additional powers and duties under Chapter 18 of Title 17:

(a) It shall acquire the site submitted by the Mississippi Hazardous Waste Facility Siting Authority and, if determined necessary, design, finance, construct and operate a state commercial hazardous waste management facility;

(b) It may acquire by deed, purchase, lease, contract, gift, devise or otherwise any real or personal property, structures, rights-of-way, franchises, easements and other interest in land which is necessary and convenient for the construction or operation of the state commercial hazardous waste management facility, upon such terms and conditions as it deems advisable, hold, mortgage, pledge or otherwise encumber the same, and lease, sell, convey or otherwise dispose of the same in such a manner as may be necessary or advisable to carry out the purposes of Chapter 18 of Title 17;

(c) It shall develop and implement, in consultation with the Department of Environmental Quality, schedules of user



fees, franchise fees and other charges, including nonregulatory penalties and surcharges applicable to the state commercial hazardous waste management facility;

(d) It may employ consultants and contractors to provide services including site acquisition, design, construction, operation, closure, post-closure and perpetual care of the state commercial hazardous waste management facility;

(e) It may apply for and accept loans, grants and gifts from any federal or state agency or any political subdivision or any private or public organization;

(f) It shall make plans, surveys, studies and investigations as may be necessary or desirable with respect to the acquisition, development and use of real property and the design, construction, operation, closure and long-term care of the state commercial hazardous waste management facility;

(g) It shall have the authority to preempt any local ordinance or restriction which prohibits or has the effect of prohibiting the establishment or operation of the state commercial hazardous waste management facility;

(h) It may negotiate any agreement for site acquisition, design, construction, operation, closure, post-closure and perpetual care of the state commercial hazardous waste management facility and may negotiate any agreement with any local governmental unit pursuant to Chapter 18 of Title 17;

(i) It may promulgate rules and regulations necessary to effectuate the purposes of Chapter 18 of Title 17 not inconsistent therewith;

(j) If funds are not appropriated or if the appropriated funds are insufficient to carry out the provisions of Chapter 18 of Title 17, the department shall expend any funds available to it from any source to defray its costs to implement Chapter 18 of Title 17 through February 1, 1991.



328           **SECTION 15.** This act shall take effect and be in force from  
329 and after July 1, 2008.

