

## **BILL ANALYSIS**

Senate Research Center

H.B. 638  
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State Affairs  
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Engrossed

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

In 2009, the Texas Legislature passed the Tim Cole Act, which entitles a wrongfully convicted person to a lump sum payment equal to \$80,000 for each year incarcerated and a monthly annuity payment that is guaranteed for his or her lifetime. Although Texas is a trailblazer in compensating persons who are wrongfully imprisoned, this provision falls just short of fully recompensing exonerees and their families. H.B. 638 extends annuity payments provided under the Tim Cole Act to the surviving spouses or designated beneficiaries of wrongfully imprisoned persons upon their death.

Under H.B. 638, the wrongfully imprisoned person or exoneree would have the option of selecting to receive a standard annuity payment (i.e., what is currently authorized under the Tim Cole Act) or an alternative annuity payment for his lifetime. If the alternative annuity payment is selected, the exoneree's annuity payment would be reduced from the standard annuity payment to its actuarial equivalent in accordance with the beneficiary option selected by the exoneree.

Exonerees would select among five beneficiary options:

- Joint and 100 percent; Joint and 75 percent; or Joint and 50 percent: A reduced payment made for the life of the exoneree, with 100 percent, 75 percent, or 50 percent of the reduced payment made to the surviving spouse upon death of the exoneree; and
- 120 Months Certain and Life or 180 Months Certain and Life: A reduced payment for the life of the exoneree, with a guarantee of 120 months (10 years) of payments or 180 months (15 years). Should the exoneree die within the first 120 months, the remainder of the 120 months are paid to the designated beneficiary.

The alternative payment option introduced by H.B. 638 is designed to have no additional cost. The upfront reduction in the annuity benefit paid out to the exoneree under H.B. 638 allows for the alternative payment option to have the same present value as the life annuity that the state has already committed to pay the exoneree for his lifetime.

H.B. 638 amends current law relating to annuity payments to surviving spouses and designated beneficiaries 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. Amends Section 103.053, Civil Practice and Remedies Code, as follows:

Sec. 103.053. New heading: ANNUITY COMPENSATION GENERALLY; STANDARD ANNUITY PAYMENTS. (a) Entitles a person entitled to compensation under Section 103.001(a) (relating to persons entitled to compensation), Civil Practices and Remedies Code, to standard annuity payments under this section unless the person

elects to receive alternative annuity payments under Section 103.0535, Civil Practices and Remedies Code.

(a-1) Creates this subsection from existing text. Provides that standard annuity payments are based on a present value sum equal to the amount to which the person is entitled under Sections 103.052(a)(1) (relating to lump-sum compensation for a person on parole) and (b) (relating to lump-sum compensation for a person on parole).

(b) Provides that standard annuity payments are payable in equal monthly installments for the life of the claimant.

Deletes existing text providing that annuity payments under this section are payable in equal monthly installments for the life of the claimant.

(c) Requires that annuity payments under this chapter be based on a five percent per annum interest rate and other actuarial factors within the discretion of the comptroller of public accounts of the State of Texas (comptroller). Prohibits annuity payments under this chapter from being accelerated, deferred, increased, or decreased. Prohibits a person entitled to annuity payments under this chapter, including a claimant's spouse or designated beneficiary entitled to payments under Section 103.0535, rather than prohibits the applicant, from selling, mortgaging or otherwise encumbering, or anticipating the payments, wholly or partly, by assignment or otherwise.

SECTION 2. Amends Subchapter B, Chapter 103, Civil Practice and Remedies Code, by adding Sections 103.0535 and 103.0536, as follows:

Sec. 103.0535. ALTERNATIVE ANNUITY COMPENSATION. (a) Authorizes a person entitled to compensation under Section 103.001(a) to elect to receive reduced alternative annuity payments under this section instead of standard annuity payments.

(b) Provides that alternative annuity payments are payable throughout the life of the claimant and are actuarially reduced from the standard annuity payments to their actuarial equivalent under the option selected under Subsection (c).

(c) Authorizes a claimant to select one of the following options, which provide that:

(1) after the claimant's death, the alternative annuity payments are payable to and throughout the life of the claimant's spouse;

(2) after the claimant's death, three-fourths of the initial alternative annuity payment amount is payable to and throughout the life of the claimant's spouse;

(3) after the claimant's death, one-half of the initial alternative annuity payment amount is payable to and throughout the life of the claimant's spouse;

(4) if the claimant dies before 180 monthly alternative annuity payments have been made, the remainder of the 180 payments are payable to the claimant's spouse or designated beneficiary; or

(5) if the claimant dies before 120 monthly alternative annuity payments have been made, the remainder of the 120 payments are payable to the claimant's spouse or designated beneficiary.

(d) Requires that an election under this section be made not later than the 45th day after the date on which the claimant files with the comptroller the application required by Section 103.051 on a form prescribed by the comptroller that:

(1) identifies the claimant's spouse or designated beneficiary according to Section 103.0536; and

(2) specifies the option selected under Subsection (c).

(e) Entitles a claimant who elects to receive alternative annuity payments under this section that are payable to the claimant and the claimant's spouse and survives the claimant's spouse to an increase in the amount of the claimant's monthly annuity payments so that the claimant's monthly payments equal the monthly payments the claimant would have received had the claimant not elected to receive the alternative annuity payments. Entitles the claimant to the increased payments beginning the month after the month in which the claimant's spouse dies and ending on the date of the claimant's death.

Sec. 103.0536. DESIGNATED BENEFICIARY. (a) Authorizes a claimant who selects a designated beneficiary to receive the remainder of the alternative annuity payments payable under Section 103.0535(c)(4) or (5) to designate:

(1) one designated beneficiary to receive the remainder of the annuity payments;

(2) two or more designated beneficiaries to receive the remainder of the annuity payments in equal amounts; or

(3) a primary designated beneficiary to receive the remainder of the annuity payments and an additional beneficiary.

(b) Requires the comptroller to recalculate the payments so that the remaining designated beneficiaries receive the remainder of the annuity payments in equal amounts if a designated beneficiary designated under Subsection (a)(2) dies before the remainder of the annuity payments are paid.

(c) Provides that an additional beneficiary designated under Subsection (a)(3) takes the place of the primary beneficiary if the primary beneficiary dies before the remainder of the annuity payments are paid. Provides that a claimant may select not more than four additional beneficiaries and shall determine the order in which the additional beneficiaries are to succeed the primary beneficiary. Provides that the remainder of the annuity payments under this subsection are paid to one beneficiary at a time until the beneficiary dies or the remaining annuity payments are paid. Provides that, if each additional beneficiary dies before the remainder of the annuity payments are paid, the remainder of the annuity payments are payable to the claimant's estate.

(d) Requires a designated beneficiary under this section to be a dependent of the claimant. Defines "dependent."

SECTION 3. Amends Section 103.151(b), Civil Practice and Remedies Code, to require the comptroller to begin making annuity payments under Section 103.053(a) or 103.0535 on the first anniversary of the date of payment of the compensation due under Section 103.052.

Deletes existing text requiring 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.

SECTION 4. Amends Sections 103.154(a) and (b), Civil Practice and Remedies Code, as follows:

(a) Provides that, except as provided by Subsection (c), compensation payments under this chapter terminate if, after the date the claimant becomes eligible for compensation under Section 103.001 (Claimants Entitled to Compensation and Health Benefits Coverage), the claimant is convicted of a crime punishable as a felony. Provides that annuity payments to a claimant's spouse or designated beneficiary under this chapter terminate if, after the date the spouse or designated beneficiary begins receiving annuity payments, the spouse or designated beneficiary is convicted of a crime punishable as a felony. Provides that payments, rather than compensation payments, terminate under this subsection on the date of the felony, rather than subsequent, conviction. Provides that, if annuity payments to a designated beneficiary are terminated under this subsection, the remainder of the annuity payments are payable under Section 103.0536 as if the beneficiary died on the date of termination.

Deletes existing text providing that, except as provided by Subsection (c), compensation payments to a person under this chapter terminate if, after the date the person becomes eligible for compensation under Section 103.001, the person is convicted of a crime punishable as a felony.

(b) Provides that, except as provided by Sections 103.0535 and 103.0536:

(1) annuity payments to a person under this chapter, rather than under Section 103.151(b), terminate on the date of the person's death; and

(2) Creates this subdivision from existing text and makes a nonsubstantive change.

SECTION 5. (a) Requires the comptroller, not later than December 1, 2015, to develop and make available the form described by Section 103.0535(d), Civil Practice and Remedies Code, as added by this Act.

(b) Authorizes a person entitled to compensation under Section 103.001(a), Civil Practice and Remedies Code, who started receiving annuity payments before the effective date of this Act to elect to receive any remaining payments as alternative annuity payments under Section 103.0535, Civil Practice and Remedies Code, as added by this Act, by filing the form described by Section 103.0535(d), Civil Practice and Remedies Code, as added by this Act, with the comptroller not later than the 45th day after the date the comptroller makes the form available. Requires that the value of alternative annuity payments elected under this section be actuarially equivalent to the remaining value of the annuity payments the person would receive absent the election.

SECTION 6. Effective date: September 1, 2015.