

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Judiciary Committee

BILL: SB 12-B

INTRODUCER: Senators Webster and Haridopolos

SUBJECT: Wilton Dedge Compensation

DATE: December 6, 2005

REVISED: 12/07/05

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cibula</u>	<u>Maclure</u>	<u>JU</u>	<u>Fav/1 amendment</u>
2.	<u></u>	<u></u>	<u>WM</u>	<u></u>
3.	<u></u>	<u></u>	<u></u>	<u></u>
4.	<u></u>	<u></u>	<u></u>	<u></u>
5.	<u></u>	<u></u>	<u></u>	<u></u>
6.	<u></u>	<u></u>	<u></u>	<u></u>

Please see last section for Summary of Amendments

- Technical amendments were recommended
- Amendments were recommended
- Significant amendments were recommended

I. Summary:

This bill appropriates \$2 million to compensate Wilton Dedge for his losses resulting from his wrongful conviction and incarceration. The appropriation under the bill is made to the State Board of Administration (SBA). Payment to Mr. Dedge is contingent on Mr. Dedge and his parents satisfying the following conditions by March 6, 2006:

- the dismissal with prejudice of the lawsuit that Wilton Dedge and his parents have filed against the state; and
- the waiver of any claims against the state and its employees that Wilton Dedge and his parents may have as a result of this wrongful conviction and incarceration.

If the conditions above are satisfied, payments shall be made from the appropriated funds in accordance with the terms of a letter of agreement between Wilton Dedge, his parents, and the SBA.

Additionally, the bill permits Mr. Dedge to attend free of charge any state education program to which he is admitted. Lastly, the bill directs the SBA, the State Division of Retirement, and the State Department of Management Services to provide support and assistance as directed by the letter of agreement. The bill does not specify the scope or duration of the support and assistance

that may be required by the letter of agreement. However, the support and assistance expressly includes the provision of health insurance at Mr. Dedge's expense.

This bill creates unspecified sections of the Laws of Florida.

II. Present Situation:

On August 11, 2004, Wilton Dedge was released from prison after serving more than 22 years for a rape that he did not commit.¹ The results of DNA testing on semen from the rape scene showed that Mr. Dedge could not have been the perpetrator of the crime.²

Dedge Conviction Information

The Crime

On December 8, 1981, a woman was vaginally and anally raped in her home.³ The attacker also cut the victim on her face, neck, chest, stomach, arms, back, crotch area, and legs numerous times with a small knife.⁴ Additionally, the attacker struck the victim in the face, leaving her with a bloody nose.⁵

The Convictions

Wilton Dedge was convicted in two trials for the crimes related to the rape. Mr. Dedge appealed his first conviction because the judge disqualified his expert witness on human scent discrimination and admitted hearsay testimony on the reliability of harass II, a police dog.⁶ In ordering the case retried, the Fifth District Court of Appeal noted that the victim's testimony identifying Mr. Dedge was "equivocal."⁷ The appellate court also stated:

The state offered three means of identifying Dedge as the perpetrator: the victim's testimony, a hair analysis, and a dog scent lineup. Shortly after her attack, the victim described her assailant as standing six feet to six feet two inches tall, and weighing one hundred sixty to two hundred pounds. Dedge's height is approximately five feet five, and he weighs one hundred twenty-five pounds. A microanalyst for the Florida Department of Law Enforcement examined and compared hair samples found on the victim's pillowcase and bed sheets with samples from Dedge. Although similarities were found, the expert witness could not say that the hair found on the sheets came from Dedge, but merely that Dedge "cannot be eliminated" as a suspect.

¹ According to the Department of Corrections, Mr. Dedge was incarcerated for 22 years, 3 months, and 28 days, or a total of 8,148 days.

² See State's Motion to Grant Defendant's 3.850 Motion, Dismiss Pending Charges and Discharge the Defendant from Custody, *State of Florida v. Dedge* (Fla. 18th Cir. Ct. Aug. 11, 2004); Order, *State of Florida v. Dedge* (Fla. 18th Cir. Ct. Aug. 11, 2004); and Reliagene Technologies, Inc., Forensic Test Results Report #2 (August 11, 2004).

³ E.A. Brooks, Brevard County Sheriff's Department, Case Report, Case Report Number 61090 (typed December 9, 1981).

⁴ *Id.*

⁵ *Id.*

⁶ *Dedge v. State*, 442 So. 2d 429 (Fla. 5th DCA 1983).

⁷ *Id.* at 430. According to Merriam-Webster Online, the word "equivocal" can be defined as "uncertain as an indication."

The primary identification of Dedge as the perpetrator of the crimes came through the activities of harass II, a highly trained and experienced police dog.⁸

After the retrial in 1984, Mr. Dedge was convicted again on two counts of sexual battery, one count of aggravated battery, and one count of burglary.^{9 10} He was sentenced to two concurrent life sentences for sexual battery, plus consecutive 15-year sentences for aggravated battery and burglary.¹¹

The Exoneration

At the time of Wilton Dedge's 1983 and 1984 trials, DNA testing was not available. DNA testing "was not in use in commercial laboratories until 1987."¹² On August 11, 2004, test results from an advanced type of DNA test, known as Y-Chromosome testing, were presented to a court. The test had been performed on sperm from the 1981 rape.¹³ The results showed that Wilton Dedge could not have been the perpetrator of the crimes for which he was convicted.¹⁴ The court immediately released Wilton Dedge from prison and dismissed the charges for which he was convicted.¹⁵ The court, however, did not expressly state that Mr. Dedge is innocent.¹⁶ However, in a letter to Wilton Dedge after his release, the State Attorney for the Eighteenth Judicial Circuit acknowledged Mr. Dedge's innocence.¹⁷

Dedge's Criminal Records

This past summer Judiciary Committee staff received a copy of the records a person would receive from Florida Department of Law Enforcement (FDLE) as the result of a criminal background check on Wilton Dedge. The records show Mr. Dedge's convictions for the crimes related to the rapes. The records do not contain any reference to Mr. Dedge's exoneration. A process exists under s. 943.0585, F.S., by which Mr. Dedge may request a court to order the expunction of his criminal records held by the executive branch.

Dedge Lawsuit

Wilton Dedge and his parents recently pursued a novel approach to obtain compensation for his wrongful incarceration.¹⁸ In a lawsuit against the state, Mr. Dedge alleged in part that the state

⁸ *Dedge v. State*, 442 So. 2d 429, 430 (Fla. 5th DCA 1983).

⁹ *Dedge v. State*, 723 So. 2d 322, note 2 (Fla. 5th DCA 1998) (Sharp, J., dissenting).

¹⁰ In the retrial, an inmate who had his sentence reduced from 180 years to 60 years testified that Dedge confessed to the crimes. *Id.* at 322-323.

¹¹ *Id.* at 322.

¹² *Id.* at 323.

¹³ State's Motion to Grant Defendant's 3.850 Motion, Dismiss Pending Charges and Discharge the Defendant from Custody, *State of Florida v. Dedge* (Fla. 18th Cir. Ct. Aug. 11, 2004).

¹⁴ *Id.* and Reliagene Technologies, Inc., Forensic Test Results Report #2 (August 11, 2004).

¹⁵ Order, *State of Florida v. Dedge* (Fla. 18th Cir. Ct. Aug. 11, 2004).

¹⁶ How Dedge could be anything other than innocent based on the results of the DNA test is unknown. See *Mitchell v. City of Boston*, 130 F. Supp. 2d 201, note 7 (D. Mass. 2001).

¹⁷ The letter states, "There is . . . no way that I can give back to you the precious time you lost in prison as an innocent man . . ." Norman R. Wolfinger, State Attorney, Office of the State Attorney, Eighteenth Judicial Circuit of Florida (August 12, 2004).

¹⁸ *Dedge v. Crosby* (Fla. 2nd Cir. Ct. Aug. 29, 2005).

took a constitutionally protected liberty interest from him. The trial court dismissed the lawsuit on the grounds that the suit was barred by the doctrine of sovereign immunity.¹⁹ Further, the court stated that “only the Legislature can address the issue of compensation under existing law.”²⁰ The ruling was appealed to the First District Court of Appeal, but the appeal was dismissed on technical grounds last week.²¹ The trial court must first properly enter a final order dismissing the case before it can be appealed.

Prior Legislative Compensation for Wrongful Incarceration

The Legislature has previously compensated persons who have undergone experiences similar to those experienced by Wilton Dedge. Some of the laws authorizing the compensation are discussed below.

- Under ch. 98-431, L.O.F., the Legislature created a process by which an administrative law judge would determine whether the trial at which Freddie Pitts and Wilbert Lee were imprisoned for murder was fundamentally unfair. If the trial was judged to be unfair, they were to be awarded \$1,250,000. Mr. Pitts and Mr. Lee were imprisoned for 12 years until they were pardoned in 1975 by the Governor.
- Under ch. 96-438, L.O.F., the Legislature appropriated \$250,000 to Jesse Hill for injuries and damages suffered as the result of his false arrest and imprisonment. A jury verdict, which was partially satisfied, ordered the Department of Corrections to pay Mr. Hill \$750,000. Mr. Hill was imprisoned for seven and one-half days without cause. The conditions of Mr. Hill’s imprisonment aggravated an existing neck injury.
- Under ch. 95-468, L.O.F., the Legislature directed the City of Fort Lauderdale to pay \$85,000 to Tyler Fontaine. Mr. Fontaine had been unlawfully arrested, incarcerated, prosecuted, and ultimately acquitted. Mr. Fontaine had already recovered \$100,000 of a \$150,000 jury verdict in his favor from the City of Fort Lauderdale.
- Under ch. 92-253, L.O.F., the Legislature ordered the State Attorney for the Nineteenth Judicial Circuit to pay \$150,000 to Edith and Lewis Crosley to compensate them for losses incurred in the criminal defense of their son. Todd Neely, the son of the Crosley’s, was convicted on the basis of evidence suppressed by the state. After four and one-half years, the Office of the State Attorney for the Nineteenth Judicial Circuit dismissed the charges against Todd Neely, concluding he was innocent.
- Under ch. 76-309, L.O.F., the Legislature paid \$15,000 to Michael Burbank to compensate him for lost wages, mental anguish, and deep hurt he suffered while wrongfully deprived of his freedom. Mr. Burbank had been sentenced to 20 years in prison for armed robbery of a convenience store. Mr. Burbank was exonerated after nine months in prison.

¹⁹ Order Granting Amended Motion to Dismiss, *Dedge v. Crosby* (Fla. 2nd Cir. Ct. Aug. 29, 2005).

²⁰ *Id.*

²¹ *Dedge v. Crosby*, 2005 WL 3159616 (Fla. 1st DCA 2005).

- Under ch. 74-404, L.O.F., the Legislature paid \$75,000 to Jesse Daniels as compensation for lost earnings, mental anguish, and other injuries he suffered while wrongfully imprisoned for 14 years in the Florida State Hospital. Mr. Daniels was “charged with the crime of rape . . . in spite of the statement of the alleged victim that she had been raped by a husky Negro man and not by Jesse Daniels, who was at that time a 19-year-old, slightly built white boy”
- In 1929, under ch. 14541-(No. 59), the Legislature appropriated \$2,492 to be paid to J. B. Brown in installments of \$25 per month. Mr. Brown had been pardoned for murder after serving 12 years in prison and found innocent by the Legislature.

III. Effect of Proposed Changes:

This bill compensates Wilton Dedge for his wrongful incarceration by appropriating \$2 million for payment to him, provides a tuition waiver, and makes other support and assistance available.

Compensation

This bill appropriates \$2 million to compensate Wilton Dedge for his losses resulting from his wrongful conviction and incarceration. The appropriation under the bill is made to the State Board of Administration (SBA). Payment to Mr. Dedge is contingent on Mr. Dedge and his parents satisfying the following conditions by March 6, 2006:

- the dismissal with prejudice of the lawsuit that Wilton Dedge and his parents have filed against the state; and
- the waiver of any claims against the state and its employees that Wilton Dedge and his parents may have as a result of his wrongful conviction and incarceration.

If the conditions above are satisfied, payments shall be made from the appropriated funds in accordance with the terms of a letter of agreement between Wilton Dedge, his parents, and the SBA.

Additionally, the bill permits Mr. Dedge to attend free of charge any state education program to which he is admitted. Lastly, the bill directs the SBA, the State Division of Retirement, and the State Department of Management Services to provide support and assistance as directed by the letter of agreement. However, the tuition waiver and other assistance to be provided by the state are not contingent on the Dedge family dismissing their lawsuit and waiving any claims they may have.

Letter of Agreement

The letter of agreement described by the bill is not currently in existence. As such, the duties that could be imposed on the state through the agreement are unknown.

Health Insurance

The support and services that may be required of the state by the letter of agreement appear to be unlimited in scope or duration. However, the support and services that may be required expressly

include providing for health insurance for Mr. Dedge at Mr. Dedge's expense. The bill does not clearly state whether the Legislature intends to allow Mr. Dedge to participate in the state employee's health insurance plan. If Mr. Dedge, as a non-state employee, were to participate in the state employee's health insurance plan, funds paid by the state for employee health insurance may become taxable income to all state employees.²²

Tax Planning

According to Professor Talbot "Sandy" D'Alemberte, a representative of Mr. Dedge, the letter of agreement will likely provide, at least in part, that the funds appropriated by the bill will be paid to the Dedge family over time in a manner that will minimize the impact of federal income taxes.²³

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill provides an appropriation of \$2,000,000 to compensate Wilton Dedge for his wrongful incarceration. This bill also authorizes Wilton Dedge to attend any state education program free of charge. Additionally, this bill requires the State Board of Administration, the State Division of Retirement, and the Department of Management Services to provide unspecified support and assistance to Wilton Dedge for an indefinite period of time.

C. Government Sector Impact:

This bill provides an appropriation of \$2,000,000 to compensate Wilton Dedge for his wrongful incarceration. This bill also authorizes Wilton Dedge to attend any state education program free of charge. Additionally, this bill requires the State Board of

²² See 26 U.S.C. s. 125(d)(1) (defining a cafeteria plan as a plan under which "all participants are employees").

²³ Committee staff expresses no legal opinion on the effectiveness of the letter of agreement as a tax-planning device.

Administration, the State Division of Retirement, and the Department of Management Services to provide unspecified support and assistance to Wilton Dedge for an indefinite period of time. As such, the cost of these services is unknown.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Under the bill, the appropriated funds flow first from the Chief Financial Officer (CFO), then to the State Board of Administration (SBA), and then as specified by a letter of agreement. The bill further provides that the CFO is not authorized to draw the warrant for Mr. Dedge's benefit after March 6, 2006. However, the SBA may not make payments for Mr. Dedge's benefit unless Mr. Dedge and his parents first dismiss their lawsuit and waive any claims they may have. The Legislature may wish to amend this bill to provide that the act of drawing the warrant, rather than payment by the SBA, is conditioned on the satisfaction of the contingencies in the bill by March 6, 2006.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

VIII. Summary of Amendments:

112810 by Judiciary Committee:

Replaces the provisions of the bill with new text. Under the amendment, the Legislature appropriates \$2 million as compensation for Wilton Dedge. The payment, however, is contingent on the satisfaction of several conditions before March 6, 2006. These conditions require the Dedge family to dismiss with prejudice the lawsuit that they have filed against the state and waive any other claims that they may have. The Department of Financial Services will use the appropriated funds to purchase an annuity for Wilton Dedge from an insurance company or other financial institution of his choice.

The amendment also waives tuition requirements for Mr. Dedge for up to 120 hours of instruction at state career centers, community colleges, and state universities. The tuition benefit under the amendment is similar to the benefits received by children of police officers who were killed in the line of duty.

The main distinctions between the bill and this amendment are that this amendment:

- Removes the letter of agreement concept;
- Eliminates the imposition of duties on the State Board of Administration, the Division of Retirement Services, and the Department of Management Services; and
- Provides for the purchase of an annuity rather than the distribution of funds by the SBA pursuant to the terms of a letter of agreement.

(WITH TITLE AMENDMENT)

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