

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 47B Appropriation to Compensate Wilton Dedge
SPONSOR(S): Goodlette and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 12B

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Fiscal Council		Overton	Kelly
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

Wilton Dedge was convicted of burglary with assault, sexual battery with a weapon, and aggravated battery and imprisoned for 22 years. During that time he was convicted twice: his first conviction was reversed and remanded. His second trial resulted in a conviction that was upheld on appeal. Wilton Dedge was released from imprisonment in 2004 based on DNA evidence that excluded him as the perpetrator of the crimes. In the 2005 session of the Legislature, attempts to compensate Wilton Dedge did not pass.

Wilton Dedge has filed suit against the State of Florida and James Crosby, the Secretary of the Florida Department of Corrections, alleging both tort and constitutional violations (see section entitled 'Pending Lawsuit' in the Effect of Proposed Changes section herein). The Second Circuit Court dismissed the claim, acknowledging that "while everyone is in agreement that what happened to Wilton Dedge is tragic, only the Legislature can address the issue of compensation under existing law." The ruling of the Second Circuit Court was appealed by Mr. Dedge in the First District Court of Appeal, and was dismissed on jurisdictional grounds on November 29, 2005.

This bill appropriates \$ 2 million from the General Revenue Fund to compensate Wilton Dedge under the following conditions:

- Delivery of an executed release and waiver of all present and future claims against the state of Florida, and any agency, instrumentality, officer, employee, or political subdivision thereof; and
- An order dismissing Mr. Dedge's current legal case with prejudice.

The authority of the Chief Financial Officer to draw a warrant to compensate Wilton Dedge expires on March 6, 2006. The bill requires that the \$2 million be paid to the State Board of Administration, which will distribute the funds as provided in a letter of agreement between Wilton Dedge and his parents and the State Board of Administration. The bill also requires that health care insurance be provided **at Mr. Dedge's** expense, and that he be provided access to state education programs on a scholarship basis.

The award is intended to provide compensation for any and all present and future claims arising out of the factual situation in connection with Wilton Dedge's conviction and imprisonment. The bill provides that no further award will be made by the state. The bill also provides that the defense of sovereign immunity is not waived by the act.

The act also expresses legislative intent that compensation is based on a moral desire to acknowledge Wilton Dedge's actual innocence, and not on a recognition of a constitutional right or violation, and makes an apology on behalf of the state.

The bill provides for a conditional appropriation of \$2 million to be paid out of the General Revenue Fund.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – this bill affirms that it is the constitutional role of the Legislature to appropriate state funds.

B. EFFECT OF PROPOSED CHANGES:

Wilton Dedge - In January, 1982, Wilton Dedge was arrested and ultimately adjudicated guilty of burglary with assault, two counts of sexual battery, and aggravated battery. Those judgments were reversed and remanded based on trial court errors regarding the disqualification of an expert witness and improper admission of hearsay evidence.¹ Upon remand, Wilton Dedge was again convicted. That conviction was affirmed on appeal.² He was sentenced to two concurrent life sentences, plus consecutive 15-year sentences.

Ten years after his convictions, Wilton Dedge filed a motion pursuant to Florida Rule of Criminal Procedure 3.850³ seeking DNA testing. The trial court denied that motion as time-barred, which was affirmed on appeal.⁴ Mr. Dedge then filed a motion for release of DNA evidence, which motion was granted. Mr. Dedge then filed another 3.850 motion arguing that the DNA test results constituted newly discovered evidence which established that he was not guilty. The trial court denied the motion as time-barred, which was also affirmed on appeal.⁵

Ultimately the State moved for Y-Chromosome testing which was granted by order of the court. That test excluded Wilton Dedge as the perpetrator of the crimes. The Eighteenth Circuit Court in Brevard County granted the State's 3.850 motion to dismiss the charges and to discharge Mr. Dedge from custody on August 11, 2004.⁶ He was released the following day, after spending 22 years in prison.

Pending Lawsuit – Following his release, Wilton Dedge sought compensation from the Legislature in the 2005 session. Both chambers filed bills which attempted to create a policy under which the wrongfully incarcerated would be compensated. Both bills ultimately failed.⁷

Wilton Dedge and his parents then petitioned the circuit court for declaratory relief, equitable relief, damages, and expungement of his record. The request for damages included damages for taking of Mr. Dedge's liberty and for wrongful imprisonment, damages for the taking of Mr. Dedge's property interests, damages for the state's unjust enrichment resulting from his provision of services to the state without compensation, and damages for his parents who paid for his legal defense.⁸ The Second Circuit court dismissed the petition, making the following findings:

¹ Dedge v. State, 442 So.2d 429 (Fla. 5th DCA 1983).

² Dedge v. State, 479 So.2d 882 (Fla. 5th DCA 1985). The judgments were affirmed on all points, but the minimum mandatory portions of Dedge's sexual battery sentences were reversed and remanded for the trial court to delete the minimum mandatory provisions.

³ Rule 3.850 of the Florida Rules of Criminal Procedure allows a person to claim that judgment was entered or that the sentence was imposed in violation of the Constitution or laws of the United States or of Florida, that the court was without jurisdiction to enter the judgment or to impose the sentence, that the sentence was in excess of the maximum authorized by law, that the plea was given involuntarily, or that the judgment or sentence is otherwise subject to collateral attack. Such prisoner may move that the sentence be vacated, set aside, or corrected. The motion must be filed within two years after the judgment and sentence became final in non-capital cases. There are enumerated exceptions to the time limitation, none of which were found to apply in Mr. Dedge's case.

⁴ Dedge v. State, 723 So.2d 322 (Fla. 5th DCA 1998).

⁵ Facts recited in Dedge v. State, 832 So.2d 835, 836 (Fla. 5th DCA 2002).

⁶ Order, Case No. 05-1982-00135, Eighteenth Judicial Circuit, August 11, 2004. Based on the earlier denials of Mr. Dedge's 3.850 motions as time-barred, it would appear that Mr. Dedge's release on the instant 3.850 motion was granted based on the joint nature of the motion, rather than a strict application of the rule.

⁷ HCR 1879 and CS/CS/SB 1964 (second engrossed).

⁸ Wilton Dedge, Walter Gary Dedge, Sr., and Mary Dedge v. James Crosby, Secretary of the Department of Corrections, and the State of Florida, Petition for the Expungement of Record, Factual Findings and other Relief Including Actions for Declaratory Relief and

- Wilton Dedge's parents have no standing to recover damages suffered by their adult child under existing Florida law;
- Wilton Dedge failed to comply with Florida statutes relating to the expunction of Mr. Dedge's criminal records;⁹
- Wilton Dedge's claims for damages are banned by sovereign immunity;
- Wilton Dedge seeks to have the court rule on matters which are clearly the province of the legislative branch of government, not the judicial branch; and
- Only the Legislature can address the issue of compensation under existing law.¹⁰

The order dismissing the petition was appealed to the First District Court of Appeal,¹¹ and was dismissed for lack of jurisdiction on November 29, 2005.¹² Mr. Dedge made two arguments on appeal: 1) the trial court erred in holding that there is no judicial remedy for the wrongful taking of liberty; and 2) the trial court erred in dismissing the claim of Walter and Mary Dedge (Wilton Dedge's parents).

Compensation – This bill acknowledges that Mr. Dedge incurred significant losses as a result of his conviction and physical confinement, that he provided valuable services for the state while imprisoned, and that his parents incurred significant expenses related to his legal defense. The bill expresses legislative intent that compensation provided is based on a moral desire to acknowledge his actual innocence, and not on a recognition of a constitutional right or violation. The bill also issues an apology to Wilton Dedge on behalf of the state.

The bill appropriates \$2 million from the General Revenue Fund to be paid to the State Board of Administration and authorizes the Chief Financial Officer (CFO) to draw a warrant upon funds in the State Treasury. After March 6, 2006, the CFO is no longer authorized to draw the warrant.

The warrant is payable to the State Board of Administration upon delivery by Wilton Dedge to the CFO, the State Board of Administration, the President of the Senate, and the Speaker of the House of Representatives of all of the following:

- An executed release and waiver on behalf of Wilton Dedge, and his parents, heirs, successors, and assigns, forever releasing the State of Florida and any agency, instrumentality, officer, employee, or political subdivision thereof, or any other entity subject to the provisions of s. 768.28, Florida Statutes, from any and all present or future claims arising out of the factual situation in connection with the conviction for which compensation is awarded; and
- An order from the court having jurisdiction over the legal claim dismissing the claim with prejudice.¹³

The State Board of Administration is directed to distribute funds to Mr. Dedge in accordance with the letter of agreement between the Wilton Dedge, his parents, and the State Board of Administration. The bill requires the State Board of Administration, the State Division of Retirement, and the State Department of Management Services to provide such support and assistance as directed by the terms of the letter of agreement, and are authorized and directed to provide for health care insurance, including mental health and dental coverage for Wilton Dedge, at his expense. The bill also requires that Mr. Dedge be provided access to state education programs on a scholarship basis without tuition or fees, provided that he is required to meet and maintain the regular admission requirements of, and be registered at, such state educational program.

Damages and Equitable Relief under Extraordinary Writ Authority; filed in the Eighteenth Circuit Court and transferred to the Second Circuit Court, case no. 37 2005 CA 001807, filed in June 2005.

⁹ Section 943.0585, F.S.

¹⁰ Dedge et al v. Crosby and State, Order Granting Amended Motion to Dismiss, Second Circuit Court, case no. 2005-CA-001807, filed August 29, 2005.

¹¹ Dedge et al v. Crosby and State, First District Court of Appeal, case no. 1D05-4288.

¹² Dismissal for lack of jurisdiction based on the non-final nature of the underlying trial court order.

¹³ The term "dismissal with prejudice" generally means that the dismissal is conclusive of the rights of the parties as if the action had been prosecuted to final adjudication adverse to the plaintiff. Black's Law Dictionary, 5th Edition, p. 1438.

The bill provides that passage of this act shall not be deemed to waive the defense of sovereign immunity, nor to increase the statutory limits of liability. Further, the bill is intended to provide sole compensation for any and all present and future claims arising out of the factual situation in connection with Wilton Dedge's conviction and imprisonment.

The act takes effect upon becoming a law.

C. SECTION DIRECTORY:

Section 1 provides that the facts stated in the preamble are found and declared to be true.

Section 2 appropriates \$2 million from the General Revenue Fund.

Section 3 directs the Chief Financial Officer to draw the warrant to the State Board of Administration, which is directed to disburse the funds in accordance with the specified letter of agreement. Section 3 also directs that health care insurance be provided as specified, and that access to state educational programs be provided.

Section 4 requires the State Board of Administration to disburse the funds upon delivery of an executed release and waiver of governmental liability, and an order of dismissal with prejudice.

Section 5 provides that the Legislature is not deemed to have waived any defense of sovereign immunity or to have increased the limits of liability.

Section 6 provides that the award is intended to provide sole compensation for any and all present and future claims.

Section 7 provides that the act shall become effective upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

This bill authorizes the payment of \$2 million out of the General Revenue Fund, if specific conditions are met.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

Suits Against the State – Article X, section 13 of the Florida Constitution provides that, “Provision may be made by general law for bringing suit against the state as to all liabilities now existing or hereafter originating.” If passed, this bill would be a general law.

Separation of Powers – Article II, section 3 of the Florida Constitution provides that, “No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.” By acting upon its unique constitutional authority to make appropriations,¹⁴ the Legislature expresses its intent that compensation of Wilton Dedge belongs squarely within the Legislature’s constitutional authority. The bill further adheres to the Separation of Powers doctrine by requiring the dismissal of any pending court case prior to making the appropriation, thus avoiding a legislative encroachment in an ongoing judicial matter.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The date on line 97 should be “March 6, 2006” rather than “2005.”

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

¹⁴ The power to appropriate state funds is legislative and to be exercised only through duly enacted statutes. *Chiles v. Children A, B, C, D, E, and F*, 589 So.2d 260 (Fla. 1991) and Article VII, section 1(c) of the Florida Constitution which provides that “no money shall be drawn from the treasury except in pursuance of appropriation made by law.”