

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 damages 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 Department of Financial Services, which is authorized to execute a qualified assignment of the liability within the meaning of section 130(c) of the Internal Revenue Code¹³, to an insurer which will enter into a structured settlement agreement with Mr. Dedge. After March 6, 2006, the Chief Financial Officer (CFO) is no longer authorized to draw the warrant.

The CFO is directed to execute the qualified assignment agreement upon delivery by Wilton Dedge to the CFO, the Department of Financial Services, 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, or declaratory relief arising out of the factual situation in connection with the conviction for which compensation is awarded (declaratory action to obtain judicial expungement of Mr. Dedge's executive and judicial branch records as otherwise provided by law, is not prohibited by the act); and

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 Title 26, section 130(c) of the Internal Revenue Code provides that amounts received for agreeing to a qualified assignment shall not be included in gross income. A qualified assignment is an assignment of a liability to make periodic payments as damages on account of personal injury or sickness if the assignee assumes the liability from a party to the agreement and periodic payments are fixed and determinable; such periodic payments cannot be accelerated, deferred, increased, or decreased by the recipient; the assignee's obligation is no greater than the obligation of the person who assigned the liability; and the compensation is provided on account of personal physical injuries or physical sickness.

- An order from the court having jurisdiction over the legal claim dismissing the claim with prejudice.¹⁴

The bill also requires tuition and fees be waived up to a total of 120 hours of instruction at any career center, community college, or state university, provided that Mr. Dedge is required to meet and maintain the regular admission requirements of, and be registered at, such state educational program.

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 Department of Financial Services, and provides for the expiration of that authority.

Section 4 requires the Department of Financial Services to execute a qualified assignment.

Section 5 waives tuition and fees to specified educational institutions.

Section 6 requires the CFO to execute the qualified assignment upon delivery of a specified release and order of dismissal;

Section 7 provides that the Legislature is not deemed to have waived any defense of sovereign immunity or to have increased the limits of liability.

Section 8 provides that the award is intended to provide sole compensation for any and all present and future claims.

Section 9 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:

¹⁴ 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.

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,¹⁵ 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:

None.

¹⁵ 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.”

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

At the Fiscal Council meeting on December 6, 2005, the Council adopted a strike-all amendment that made the following changes:

- Makes the appropriation to the Department of Financial Services, rather than to the State Board of Administration, and requires the Department to execute a qualified assignment of the liability.
- Removes the requirement that health insurance be provided, at Mr. Dedge's request.
- Corrects the expiration date to March 6, 2006.
- Specifies which educational institutions are required to waive tuition and fees, and specifies that the waiver is for a total of 120 hours of instruction.
- Requires Mr. Dedge to release and waive the government from any declaratory relief he might have, and provides that declaratory action to obtain judicial expungement of judicial and executive branch records is not prohibited.

This analysis is drafted to the bill as amended.