

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: Criminal Justice Committee

BILL: CS/SB 1622

INTRODUCER: Criminal Justice Committee and Senator Haridopolos

SUBJECT: Inmate Litigation Costs

DATE: March 22, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cannon	CJ	Fav/CS
2.	_____	_____	JU	_____
3.	_____	_____	JA	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill creates a specific grant of legislative authority to the Department of Corrections to charge inmates for copying and postage costs and place liens on their accounts to recover those costs. This specific grant is necessary to create administrative rules which were recently held invalid by an appellate court.

This bill amends section 945.6038 of the Florida Statutes.

II. Present Situation:

The Department of Corrections has historically relied on several statutory provisions and administrative rules for its authority to recover duplicating and postage costs from inmates. Costs are often recovered by placing liens on inmate's trust accounts. A recent First District Court of Appeals decision¹ held that the administrative rule² which allowed the department to charge inmates for copying services and recover those costs was not supported by a specific grant of legislative authority and was, therefore, invalid. Since this decision was rendered the department is without authority to recover those copying costs from inmates which can amount to a substantial amount of money.³ The department is of the opinion that the ability to recover copying costs from inmates helps prevent inmates from filing frivolous law suits.

¹ *Smith v. Florida Department of Corrections*, 30 Fla. L. Weekly D 1299 (Fla. 1st D.C.A. May 23, 2005).

² Rule 33-501.302, F.A.C.

³ The Department of Corrections estimates that it would lose approximately \$150,000 annually if it were not permitted to recover from inmates the permitted costs of copying and postage.

Inmate Trust Accounts

In protecting the financial interest of the state with respect to inmates, the department is authorized to administer money and property received for the benefit of the inmates.⁴ This is usually done in the form of inmate trust fund accounts which are often used by inmates to purchase items from the prison canteen or pay for other expenses during incarceration.

Postage Expenses

The department is authorized by statute⁵ to adopt rules relating to when an inmate must pay for the cost of postage for mail which the inmate sends. However, the department is prohibited from adopting a rule that requires an inmate to pay postage costs which the state is constitutionally required to pay. The department promulgated Rule 33-210.102 in 1976. The rule provides that postage will be supplied for mail to courts and attorneys and for pleadings that will be served on parties to a suit for inmates who do not have sufficient funds when the mail is submitted to the mailroom. That supplied postage is not to exceed the payment for the original document and two copies unless additional copies are legally required.

Duplicating Costs

In 1983 the department promulgated a rule⁶ in response to federal decisions which held that inmates should be provided access to copying services, to the extent it is necessary for the inmate to present his or her legal claims in court, and the inmates could be charged a fee.⁷ This rule sets forth the circumstances under which documents are to be copied and what the costs will be.

Subsection (4) states that inmates will be charged 15 cents per page for legal or letter size copies and if special equipment or paper is needed then the facility may charge up to the estimated actual cost of making the copies.

Subsection (5) states that inmates who do not have sufficient funds will not be denied copying services for the necessary documents. The rule does provide, however, that the cost for copying the documents is a “debt owed by the inmate” and to collect that fee the department shall place a hold on the inmate’s account for the estimated cost of providing the copies. The cost of providing the copies shall be collected from any existing balance in the inmate’s bank trust fund account. If the account balance is insufficient to cover the cost, the account shall be reduced to zero. If costs remain unpaid, a hold will be placed on the inmate’s account and all subsequent deposits to the inmate’s account will be applied against the unpaid costs until the debt has been paid. Copies shall be provided at a rate of 15 cents per page.⁸

This administrative rule, which the department had relied on for years, was determined to be invalid by the First District Court of Appeal in May 2005. The court found that nowhere in s. 945.04(1), F.S., or in s. 944.09, F.S., were there specific grants of legislative authority for the department to enact Rule 33-501.302. Accordingly, the provisions of that rule establishing (1) the amount to be charged to inmates for copying services, and (2) the authorization for deductions from and liens imposed upon inmate trust accounts to cover copying costs were not

⁴ Section 944.516, F.S.

⁵ Section 944.09(1)(o), F.S.

⁶ Rule 33-501.302, F.A.C, Copying Services for Inmates.

⁷ See *Smith*

⁸ Rule 33-501.301, F.A.C.

supported by specific legislative authority. This has had the effect of denying the department the ability to charge inmates for copying costs.

III. Effect of Proposed Changes:

Liens

The department is required to place a lien on the inmate's trust fund account if the inmate does not have sufficient funds in his or her trust fund account when the following charges are imposed.

Costs

The bill creates a specific grant of legislative authority for the Department of Corrections to charge inmates for certain duplicating and postage services. The duplicating and lien provisions are written to overcome the effect of the legal decision mentioned earlier. The postage provision is written to clarify that the department has a specific grant of legislative authority to collect postage costs. Specifically, the bill requires the department to charge the inmate for:

Duplicating Costs

- Duplicating costs for documents and evidentiary materials needed to initiate proceedings in judicial or administrative forums, or
- For materials that must be filed or served in a pending proceeding.

The department may charge up to 15 cents for one-sided copies that are no larger than 14 inches by 8 ½ inches or the actual cost of duplication for all other copies.

Postage

- Postage and any special delivery charges if they are required by law or rule, for mail to courts, attorneys, parties, and other persons who are required to be served.

Rulemaking Authority

Section 945.6038(2), F.S., is created in this bill and requires the department to adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., to administer this section. In creating this statute which specifically requires the department to charge inmates for copies and postage, place liens on inmate's accounts, and adopt rules to implement these provisions, the legislation should have the effect of overcoming the *Smith* decision mentioned earlier and the inadequacies the court held were inherent in the current law.

No New Legal Rights

Subsection(3) provides that no new legal rights or obligations are created under this legislation. The subsection also provides that this provision does not limit or preclude the department from charging for duplication of its records as permitted under ch. 119, F.S. Additionally, it does not create a right for an inmate to substitute a lien in lieu of payment for those public records.

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:

None.

C. Government Sector Impact:

This legislation should have a positive fiscal impact on the Department of Corrections. The department will be able to recover copying costs again and perhaps have a positive effect on preventing inmates from filing frivolous lawsuits which generate unnecessary copying and postage costs.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

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