

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 585 CS

Inmate Litigation Costs

**SPONSOR(S):** Hukill

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 1622

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Criminal Justice Committee</u>	<u>6 Y, 0 N, w/CS</u>	<u>Cunningham</u>	<u>Kramer</u>
2) <u>Criminal Justice Appropriations Committee</u>	<u>6 Y, 0 N</u>	<u>Sneed</u>	<u>DeBeaugrine</u>
3) <u>Justice Council</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>

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### SUMMARY ANALYSIS

Rule 33-210.102, F.A.C., entitled "Legal Documents and Legal Mail," requires the Department of Corrections to furnish postage for mail to courts and attorneys and for pleadings to be served upon each of the parties to a lawsuit for those inmates who have insufficient funds to cover the cost.

Rule 33-501.302, F.A.C., entitled "Copying Services for Inmates," outlines how photocopying will be conducted in prison institutions. Currently, section (4) of the rule states that the Department of Corrections may charge \$.15 per page for copies, while section (5) authorizes the Department of Corrections to collect the cost of providing copies from an inmate's trust fund account. In 2004, the First District Court of Appeal held that the above sections of Rule 33-501.302, F.A.C., were invalid because they were not supported by a specific grant of legislative authority.

This bill creates a specific grant of legislative authority for the Department of Corrections to charge inmates for certain services (copying and postage), to place liens on an inmate's trust fund account to collect the cost of such services, and to adopt rules relative thereto. This bill would likely negate the effect of the First District Court of Appeals' decision.

See "Fiscal" section for fiscal impact.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Increase personal responsibility → This bill requires inmates to pay costs of certain services provided on their behalf.

#### B. EFFECT OF PROPOSED CHANGES:

Currently, the Department of Corrections (Department) has statutory authority to accept and administer as a trust any money or other property received for the personal use or benefit of any inmate.<sup>1</sup> These “inmate trust fund accounts” are generally used by inmates for canteen purchases and other expenses. The Department, as trustee, is also entitled to use (i.e. withdraw, deposit, invest, commingle, etc...) funds contained in an inmate’s trust fund account in certain circumstances.<sup>2</sup>

#### **Postage**

Currently, the Department has the authority to adopt rules relating to mail to and from inmates, including rules specifying the circumstances under which an inmate must pay for the cost of postage for mail that the inmate sends.<sup>3</sup> The department may not adopt a rule that requires an inmate to pay any postage costs that the state is constitutionally required to pay.<sup>4</sup> In 1976, the Department promulgated rule 33-210.102, F.A.C., which provides:

The institution shall furnish postage for mail to courts and attorneys and for pleadings to be served upon each of the parties to a lawsuit for those inmates who have insufficient funds to cover the cost of mailing the documents at the time the mail is submitted to the mailroom, but not to exceed payment for the original and two copies except when additional copies are legally required.

Although the above rule provides that the Department is required to pay for postage for legal mail for inmates who have insufficient funds, the rule does not specify that the Department may charge an inmate for such service nor does it authorize the Department to place a lien upon the inmate’s trust fund account for postage costs.

#### **Copying Costs**

In 1983, in response to federal court decisions involving an inmate’s federal constitutional right of access to the courts, rule 33-501.302, F.A.C., entitled “Copying Services for Inmates”, was promulgated.<sup>5</sup> The rule currently contains seven sections that outline how photocopying will be conducted in prison institutions.<sup>6</sup> Pertinent to the proposed legislation is section (4), which states that “inmates will be charged \$0.15 per page for standard legal or letter size copies, or if special equipment or paper is required, the institution is authorized to charge up to the estimated actual cost of making the copies.”<sup>7</sup> Additionally, section (5) provides that:

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<sup>1</sup> s. 944.516, F.S.

<sup>2</sup> *Id.*

<sup>3</sup> s. 944.09, F.S.

<sup>4</sup> *Id.*

<sup>5</sup> *Smith v. Fl. Dept. of Corrections*, 30 Fla. L. Weekly D1299 (Fla. 1<sup>st</sup> DCA May 23, 2005).

<sup>6</sup> See Rule 33-501.302, F.A.C.

<sup>7</sup> *Id.*

“Inmates who are without funds shall not be denied copying services for documents and accompanying evidentiary materials needed to initiate a legal or administrative action or which must be filed or served in a pending action that challenges convictions and sentences or prison conditions, or are required to be filed or served per order of the court or administrative body. However, the cost of providing copies for documents to be filed or served is a debt owed by the inmate that shall be collected as follows: At the time the inmate submits his request for copies, 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.”<sup>8</sup>

In past years, the Department of Corrections has used the above authority to charge inmates for copying costs related to litigation. However, in 2004, a Department inmate filed an appeal with Florida’s First District Court of Appeal seeking to have the above sections of Rule 33-501.302, F.A.C., declared invalid.<sup>9</sup> Specifically, the inmate alleged that the portions of the rule establishing the amount to be charged prison inmates for photocopying services and authorizing deductions from and liens imposed upon inmate trust accounts to cover incurred costs for photocopying services were invalid because they exceeded the Legislature’s grant of rulemaking authority to the Department.<sup>10</sup> The Department argued that ss. 20.315<sup>11</sup>, 945.04<sup>12</sup>, and 944.09<sup>13</sup> F.S., provided statutory authority for the rule.<sup>14</sup> The court held that because none of the statutes cited by the Department contained a specific grant of legislative authority authorizing the Department to charge for copies and to place liens in inmate accounts,<sup>15</sup> those portions of the rule exceeded the legislature’s grant of rulemaking authority to the Department and were thus invalid.<sup>16</sup>

This bill requires the Department to charge an inmate for:

- costs of duplication of documents and accompanying evidentiary materials needed to *initiate* proceedings in judicial or administrative forums,
- costs of duplication of documents and accompanying evidentiary materials which must be filed or served in a *pending* judicial or administrative proceeding,
- postage and any special delivery charges, if required by law or rule, for mail to courts, attorneys, parties, and other persons required to be served.

The bill authorizes the following copying fees:

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<sup>8</sup> *Id.*

<sup>9</sup> See *Smith* at 1.

<sup>10</sup> *Id.*

<sup>11</sup> s. 20.315, F.S., creates the Department of Corrections and defines its organizational structure and purpose. Among the listed goals of the Department is the duty to ensure that inmates work while they are incarcerated and that the Department make every effort to collect restitution and other monetary assessments from inmates while they are incarcerated or under supervision.

<sup>12</sup> s. 945.04, F.S., sets forth the general functions of the Department. In 2004, the Department amended rule 33-501.302, F.A.C., deleting the reference to s. 945.04, F.S., as statutory authority for the rule, and replaced it with a citation to s. 944.09, F.S.

<sup>13</sup> s. 944.09, F.S., sets forth the general rulemaking authority of the Department with regard to, among other things, the rights of inmates, the operation and management of the correctional institution or facility and its personnel and functions, visiting hours and privileges, and the determination of restitution.

<sup>14</sup> See *Smith* at 3.

<sup>15</sup> Section 120.52, F.S., provides standards to be used when determining whether a particular rule constitutes an invalid exercise of legislative authority. The court in *Southwest Florida Water Management District v. Save the Manatee Club, Inc.*, 773 So.2d 594 (Fla. 1<sup>st</sup> DCA 2000) interpreted these standards and held that the question is “whether the statute contains a specific grant of legislative authority for the rule.”

<sup>16</sup> See *Smith* at 4-5. A petition for review is currently pending before the Florida Supreme Court.

- up to \$.15 per one-sided copy for documents no bigger than 14 x 8 ½ inches,
- for all other copies, the actual cost of duplication.

The bill also requires the Department to place a lien on the inmate's trust fund account if the inmate does not have sufficient funds at the time the charges are imposed and to adopt rules to implement the bill's provisions.

By creating a statute that specifically requires the Department to charge inmates for copies and postage, place liens upon an inmate's trust fund account, and adopt rules to implement these functions, this bill would likely negate the effect of the decision in the *Smith* case.

C. SECTION DIRECTORY:

**Section 1.** Creates s. 945.6038, F.S., requiring the Department of Corrections to charge inmates for specified costs relating to inmate litigation and to place liens on inmate trust fund accounts; requiring the Department to adopt rules.

**Section 2.** This act takes effect July 1, 2006.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Prior to the 1<sup>st</sup> DCA's ruling, the Department collected approximately \$150,000 annually for legal copies and postage. Since the 1<sup>st</sup> DCA's ruling, the Department does not have the authority to make these collections. This bill would give the Department the authority to make such collections.

The Department states that they have accumulated nearly \$800,000 in liens against inmates over a six-year period. Since the 1<sup>st</sup> DCA's ruling, the Department does not have the authority to collect these funds. This bill would give the Department the authority to collect these funds.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

In its analysis of this bill, the Department states that the photocopying rule helped in preventing inmate's from filing frivolous lawsuits. Now that the 1<sup>st</sup> DCA has deemed the rule invalid, the Department anticipates that more frivolous lawsuits will be filed. This bill would authorize the Department to effectively reinstate the photocopying rule, thus helping prevent the filing of frivolous lawsuits.

### 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 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:

##### Prisoner's Right of Access to the Courts

The federal constitution does not contain a specific clause providing an inmate a right of access to courts. Nonetheless, the United States Supreme Court has held that there is such a right arising from several constitutional provisions including the First Amendment, the Due Process Clause, and the Equal Protection Clause.<sup>17</sup> In reaching this conclusion, the Supreme Court stated, in dicta, that "[i]t is indisputable that indigent inmates must be provided at state expense with paper and pen to draft legal documents[,] with notarial services to authenticate them, and with stamps to mail them."<sup>18</sup> Inmates nationwide used this dicta to argue that that the federal constitutional right of access to the courts required the provision of free and unlimited photocopies for purposes of litigation.<sup>19</sup> Federal courts disagree and have held that although the right of access to courts requires that an inmate be provided access to photocopying services, inmates may be charged a fee for such services.<sup>20</sup>

Florida's constitution specifically guarantees a citizen's access to courts.<sup>21</sup> As such, the Florida constitution grants inmates a right of access to the courts that is broader than the federal constitution.<sup>22</sup> Florida courts have recognized this difference, but nevertheless have held that it is "unlikely that inmate access to photocopying services would need to be greater than that required by the federal right in order to conform to the broader state constitutional right of access to the courts."<sup>23</sup>

The bill requires the Department to charge inmates for photocopying services and postage and to place liens on inmate accounts. The bill does not deny indigent inmates photocopying services or postage. Given the above, it does not appear that the bill would violate an inmate's federal or state constitutional right of access to courts.

#### B. RULE-MAKING AUTHORITY:

This bill provides a general grant of rulemaking power to the Department of Corrections to implement the bill's provisions (lines 24-25). The bill appears to give sufficient rule making authority that is appropriately limited.

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<sup>17</sup> See *Bounds v. Smith*, 430 U.S. 817, 825 (1977) ("It is now established beyond doubt that prisoners have a constitutional right of access to the courts.").

<sup>18</sup> *Id.*

<sup>19</sup> See *Smith* at 1.

<sup>20</sup> See, e.g., *Allen v. Sakaj*, 48 F.3d 1082 (9<sup>th</sup> Cir. 1995); see also *Johnson v. Moore*, 948 F.2d 517 (9<sup>th</sup> Cir. 1991).

<sup>21</sup> See Art. I, s. 21, Fla. Const.

<sup>22</sup> See *Henderson v. Crosby*, 883 So.2d 847, 850-854 (Fla. 1<sup>st</sup> DCA 2004).

<sup>23</sup> *Smith* at 5; see also *Henderson* at 857, ("We cannot conceive that the access-to-courts provision was intended to require the state to provide inmates with mechanical equipment to facilitate their research and preparation of legal papers.").

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

On February 22, 2006, the Criminal Justice Committee adopted one amendment to the bill and reported the bill favorably with committee substitute. The amendment *requires* (instead of *authorizes*) the Department of Corrections to charge inmates for specified costs relating to inmate litigation, place liens on inmate trust fund accounts, and adopt rules relating thereto. Additionally, the amendment authorizes specific copying costs and provides that the Department must charge inmates for postage costs to courts, attorneys, parties, and other persons required to be served.