

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 5075 PCB SSC 08-09 Reorganization of the Parole Commission

SPONSOR(S): Safety & Security Council; Needelman

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
<u>Orig. Comm.: Safety & Security Council</u>	<u>11 Y, 4 N</u>	<u>Hogge/Davis</u>	<u>Havlicak</u>
<u>1) Policy & Budget Council</u>	<u>20 Y, 11 N</u>	<u>Leznoff</u>	<u>Hansen</u>
<u>2) _____</u>	<u>_____</u>	<u>_____</u>	<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>

SUMMARY ANALYSIS

The Parole Commission is a constitutionally authorized decision-making body. It administers the orders of release and revocation for parole, conditional release, conditional medical release, control release, and addiction recovery supervision to all eligible criminal offenders. The community supervision of offenders released to these programs is performed by the department of Corrections. The Commission also functions as the investigatory arm of the Executive Clemency Board and investigates seaport security waivers for the Florida Department of Law Enforcement. The Department of Corrections (DOC) manages the state prison system.

Effective October 1, 2008, the bill would rename the Parole Commission the "Parole Board" and transfer it to the DOC for administrative purposes. All of the statutory powers, duties and functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds for the administration of the Parole Commission would be transferred to the DOC. The DOC would be directed to provide administrative support and services to the Board. The members of the Parole Board would not be subject to DOC control, supervision, or direction. The DOC Secretary would be responsible for providing appropriate staff support for the Board, office space and other administrative support. It also would include legislative intent that the DOC give the greatest possible consideration to qualified former employees of the Parole Commission when filling vacancies related to parole or probation. The subject matter jurisdiction of the Commission (Board) would remain virtually unchanged.

The bill would make a number of administrative and operational changes, such as eliminating the position of Commission (Board) Vice-Chair and Commission (Board) use of two-member subpanels.

The bill would repeal several sections of law related to the Parole Commission and make numerous conforming changes.

This bill is anticipated to result in a recurring positive fiscal impact on state government. The proposed General Appropriations Act includes a \$1.7 million savings associated with this consolidation.

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—The bill implicates this principle by transferring the Parole Commission to the Department of Corrections (DOC) and gaining administrative efficiencies.

B. EFFECT OF PROPOSED CHANGES:

General Background

Parole Commission

The Parole Commission is a constitutionally authorized decision-making body.

There may be created by law a parole and probation commission with power to supervise persons on probation and to grant paroles or conditional releases to persons under sentences for crime. The qualifications, method of selection and terms, not to exceed six years, of members of the commission shall be prescribed by law.¹

The Florida Parole Commission administers the orders of release and revocation for parole,² conditional release,³ conditional medical release,⁴ control release,⁵ and addiction recovery supervision⁶

¹ Art IV, Section 8(c), Fla. Const. The Parole and Probation Commission is continued and renamed the Parole Commission pursuant to s. 20.32, F.S. (2007).

² Chapter 947, F.S. (2007). Inmates who have been granted parole may serve the remainder of their prison sentence outside the confines of the institution. Once released, the parolee is subject to conditions of supervision, and if those conditions are violated, the Commission may return the parolee to prison. The decision of the Commission to parole an inmate represents an act of grace of the State and should not be considered a right. [See intent in s. 947.002(5), F.S.] Parole has experienced a number of changes over the years. In 1978, the Florida Legislature enacted "Objective Parole Guidelines," requiring the Commission to develop and implement rules and criteria upon which parole decisions were to be made. These criteria were based on risk assessment, and combined historical Commission decision-making experience with individual case elements. The most significant change, however, came in 1983. In that year, sentencing guidelines were enacted, effectively abolishing parole for those offenders sentenced for crimes committed on or after October 1, 1983. Currently, all inmates who committed a capital felony murder prior to May 25, 1994, and all inmates who committed all other capital felonies, including sexual battery prior to October 1, 1995, are also parole eligible. As of July 1, 2007, there were 5,112 inmates still eligible for parole consideration and approximately 797 offenders still under parole supervision. Some inmates will not become parole eligible until the year 2020. Florida Parole Commission "Parole and Post-release," at www.fpc.state.fl.us; Florida Parole Commission, Long Range Program Plan, at 7, September 30, 2007. In Fiscal Year 2006-07, the Commission scheduled 289 hearings for parole consideration, and 27 offenders were granted parole. An additional 840 hearings were scheduled for the setting or review of a presumptive parole release date, or the initial date at which an inmate will be considered for parole. OPPAGA, *Florida Government Accountability Report profile*.

³ s. 947.1405, F.S. (2007). Created in 1988, this program provides that inmates convicted of certain crimes committed on or after October 1, 1988, and who have served at least one prior felony commitment, or have been sentenced as a habitual offender, shall be released under supervision on their expiration date subject to specified terms and conditions established by the Commission. Florida Parole Commission, "History," at www.fpc.state.fl.us. Unlike parole, conditional release is not a discretionary release. Upon release from prison, inmates who are subject to conditional release are supervised for a period of time equal to the gain-time that they received in prison. These offenders are subject to strict conditions of supervision set by the Commission and this supervision can be revoked and the releasee returned to prison if the Commission determines that a violation of supervision has occurred. During FY 2006-2007, there were 5,378 offenders placed on conditional release supervision. Florida Parole Commission, Long Range Program Plan, at 14, September 30, 2007.

⁴ s. 947.149, F.S. (2007). Created in 1992, this program authorizes the DOC to recommend to the Commission terminally ill or permanently incapacitated inmates for early release due to their medical conditions. It is the Commission's responsibility to determine which inmates will be released. The DOC is responsible for supervising the offender in the community. Florida Parole Commission "History," at www.fpc.state.fl.us.

⁵ s. 947.146, F.S. (2007). The Control Release Program became effective September 1, 1990. This program was a prison population management system administered by the Commission to keep the prison population at its lawful capacity. The Commission does not currently review the inmate population for discretionary release under this authority as there are sufficient prison beds for the current prison population. There are, however, a small number of control releasees who are still under supervision. The Commission is

to all eligible criminal offenders.⁷ The Commission also functions as the investigatory arm of the Executive Clemency⁸ Board⁹ and investigates seaport security waivers for the Florida Department of Law Enforcement.

Parole constitutes just a fraction of the docketed cases. The overwhelming majority of cases involve conditional release, followed by addiction recovery, parole, and control release.

The Commission is composed of 3 members¹⁰ serving terms of 6 years.¹¹ Commissioners are appointed by the Governor and Cabinet from a list of eligible applicants submitted by a parole qualifications committee. They are subject to Senate confirmation.¹² The Governor and Cabinet appoint a Chair and Vice-Chair. It has a central office in Tallahassee and five regional offices.

For FY 2007-08, the Parole Commission has an operating budget of \$9.69M and 148 positions. All Parole Commission revenue is General Revenue.

Department of Corrections

As of June 30, 2007 the Department of Corrections provided supervision to 153,692 offenders in the community. Of these 3,854 are under orders of the Florida Parole Commission.¹³ According to the DOC, the DOC operates the third largest state prison system in the country with a FY 2007-08, operating budget of \$2.27B and 28,376 positions. The DOC has 137 facilities statewide, including 60 prisons, 41 work/forestry camps, one treatment center, 30 work release centers and five road prisons. About three quarters of its staff are either certified correctional officers or probation officers.

Proposed Changes

Renaming and transfer of the Parole Commission

Effective October 1, 2008, the bill would rename the "Parole Commission" the "Parole Board" and transfer it to the DOC for administrative purposes (ss. 2, 45). The bill would provide that this act "does not abolish the Parole Commission" (s. 99). Specifically, all of the statutory powers, duties and functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds for the administration of the Parole Commission would be transferred to the DOC by a Type

responsible for monitoring the progress of these releasees and conducting revocation hearings when alleged violations are reported. Florida Parole Commission, Long Range Program Plan, at 7, September 30, 2007.

⁶ s. 944.4731, F.S. (2007). In 2001, the Legislature created the Addiction Recovery Supervision Program and placed it under Commission administration. This program requires mandatory post-prison supervision for offenders released from a state correctional facility who are convicted of a crime committed on or after July 1, 2001, have a history of substance abuse or addiction or have participated in any drug treatment, and have not been convicted of a disqualifying offense. The law requires the Commission to set the terms and conditions of supervision, and to revoke that supervision if the offender fails to abide by the conditions of supervision. Florida Parole Commission, "History," at www.fpc.state.fl.us. The first offender eligible for the program was released from prison in June 2002. During FY 2006-2007, 1,938 offenders were placed in the program, a 39% increase from FY 2005-06. Florida Parole Commission, Long Range Program Plan, at 10, September 30, 2007.

⁷ Florida Parole Commission home page, at www.fpc.state.fl.us.

⁸ Clemency functions include restoration of voting rights and other civil rights, pardons, commutation of sentence, relief from fines and forfeitures, firearm authority, capital case review, restoration of firearm authority, and alien status under Florida law.

⁹ The Governor and Cabinet sit as the Florida Board of Executive Clemency. The Board is staffed by the Office of Executive Clemency. The Office of Executive Clemency reports directly to the Governor and Cabinet and is co-located with the Florida Parole Commission. In addition to processing applications for restoration of civil rights and alien status, full pardons, remission of fines, waiver requests, commutations of sentence and specific authority to own, possess or use firearms, the office also provides verification and/or certification of restoration of civil rights, and other forms of clemency granted, to law enforcement agencies, state attorneys, public defenders, licensing agencies, and supervisors of elections. See Chapters 925, 940, 944, 947, and 960, F.S., and U.S.C. s. 921 (a)(20) and s. 922 (g)(1).

¹⁰ s. 947.01, F.S. (2007). In 1996, the Legislature reduced the number of commissioners from 6 to 3.

¹¹ s. 947.03(1), F.S. (2007).

¹² s. 947.02(1), F.S. (2007).

¹³ Department of Corrections 2006-2007 Annual Report, Community Supervision Population

Two transfer (s. 98).¹⁴ The DOC would be directed to provide administrative support and services to the Board. The members of the Parole Board would not be subject to DOC control, supervision, or direction (ss. 3, 45). The DOC Secretary would be responsible for providing appropriate staff support for the Board, office space and other administrative support. It would include legislative intent that the DOC give the greatest possible consideration to qualified former employees of the Parole Commission when filling vacancies related to parole or probation (s. 98). The bill also would eliminate intent language holding the Board chair accountable for all administrative policy decisions (s. 43). The bill would specifically provide that the Board is not a department of the Executive Branch¹⁵ and not a department for purposes of the Paperwork Reduction Act (s.3).¹⁶

Commission jurisdiction

The subject matter jurisdiction of the Commission would remain virtually unchanged as the Board, although the DOC would be assigned responsibility for investigations related to executive clemency applications (s.2).

Administrative and operational changes

The bill would eliminate the position of Commission (Board) Vice-Chair, Commission (Board) use of two-member subpanels (ss. 36, 62, 67, 70-71, 73, 79, 83), the authority to maintain Commission (Board) field offices (s. 49), and the authority to hold parole hearings in different locations throughout the state (instead the Board would be authorized to take testimony via electronic video conferencing)(s. 53).

The Commission (Board) Chair would no longer be authorized to use documents, seminars, programs or otherwise to disseminate information about parole (s. 49). The bill would repeal the requirement that the Commission (Board) include a financial statement as part of its annual report of Board activities. The report could be submitted as a separate report or as part of another DOC report. In addition, instead of being submitted to the Governor and Cabinet and those officials and persons it “may deem advisable (s. 66),” the report would also have to be submitted to the Senate President and House Speaker.

As they are currently, Commission (Board) members would be compensated as provided in the General Appropriations Act (s. 3).

Repealed sections

The bill would repeal several sections of law, including ss. 921.20 (s.21), 947.001 (s. 42), 947.021 (s. 47), 947.045 (s. 51), 947.135 (s. 60), and 958.15 (s. 61).

Conforming and other technical changes

Finally, the bill would make numerous conforming changes, including name changes and statutory cross references, and eliminate unnecessary or redundant language (e.g., s. 58, relating to board member expenses).

C. SECTION DIRECTORY:

Section 1: Amending s. 11.905, F.S., relating to schedule for reviewing state agencies and advisory committees.

¹⁴ s. 20.06(2), F.S. (2007). A Type Two transfer is one of two methods for reorganizing or transferring specified agencies, programs, and functions. A Type Two transfer is “the merging into another agency or department of an existing agency or department or a program, activity, or function thereof....”

¹⁵ s. 20.32(3), F.S. (2007).

¹⁶ s. 23.21(1), F.S. (2007).

Section 2: Amending s. 20.315, F.S., relating to the Department of Corrections.

Section 3: Amending s. 20.32, F.S., relating to the Parole Board.

Section 4: Amending s. 23.21, F.S., relating to definitions.

Section 5: Amending s. 112.011, F.S., relating to felons; removal of disqualifications for employment; exceptions.

Section 6: Amending s. 186.005, F.S., relating to designation of departmental planning officer.

Section 7: Amending s. 255.502, F.S., relating to definitions; ss. 255.501-255.525.

Section 8: Amending s. 311.12, F.S., relating to seaport security standards; inspections; compliance; appeals.

Section 9: Amending s. 322.16, F.S., relating to license restrictions.

Section 10: Amending s. 394.926, F.S., relating to notice to victims of release of persons committed as sexually violent predators; notice to Department of Corrections and Parole Board.

Section 11: Amending s. 394.927, F.S., relating to escape while in lawful custody; notice to victim; notice to the Department of Corrections and Parole Board.

Section 12: Amending s. 775.089, F.S., relating to restitution.

Section 13: Amending s. 775.16, F.S., relating to drug offenses; additional penalties.

Section 14: Amending s. 784.07, F.S., relating to assault or battery of law enforcement officers, firefighters, emergency medical care providers, public transit employees or agents, or other specified officers; reclassification of offenses; minimum sentences.

Section 15: Amending s. 784.078, F.S., relating to battery of facility employee by throwing, tossing, or expelling certain fluids or materials.

Section 16: Amending s. 843.01, F.S., relating to resisting officer with violence to his or her person.

Section 17: Amending s. 843.02, F.S., relating to resisting officer without violence to his or her person.

Section 18: Amending s. 843.08, F.S., relating to falsely personating officer.

Section 19: Amending s. 893.11, F.S., relating to suspension, revocation, and reinstatement of business and professional licenses.

Section 20: Amending s. 921.16, F.S., relating to when sentences to be concurrent and when consecutive.

Section 21: Repealing s. 921.20, F.S., relating to classification summary; Parole Commission.

Section 22: Amending s. 921.21, F.S., relating to progress reports to Parole Board.

Section 23: Amending s. 921.22, F.S., relating to determination of exact period of imprisonment by Parole Board.

- Section 24:** Amending s. 940.03, F.S., relating to application for executive clemency.
- Section 25:** Amending s. 940.05, F.S., relating to restoration of civil rights.
- Section 26:** Amending s. 941.23, F.S., relating to application for issuance of requisition; by whom made; contents.
- Section 27:** Amending s. 943.0311, F.S., relating to Chief of Domestic Security; duties of the department with respect to domestic security.
- Section 28:** Amending s. 943.06, F.S., relating to Criminal and Juvenile Justice Information System Council.
- Section 29:** Amending s. 943.325, F.S., relating to blood or other biological specimen testing for DNA analysis.
- Section 30:** Amending s. 944.012, F.S., relating to legislative intent.
- Section 31:** Amending s. 944.02, F.S., relating to definitions.
- Section 32:** Amending s. 944.024, F.S., relating to adult intake and evaluation.
- Section 33:** Amending s. 944.091, F.S., relating to United States prisoners, housing authorized.
- Section 34:** Amending s. 944.23, F.S., relating to persons authorized to visit state prisons.
- Section 35:** Amending s. 944.291, F.S., relating to prisoner released by reason of gain-time allowances or attainment of provisional release date.
- Section 36:** Amending s. 944.4731, F.S., relating to Addiction-Recovery Supervision Program.
- Section 37:** Amending s. 945.091, F.S., relating to extension of the limits of confinement; restitution by employed inmates.
- Section 38:** Amending s. 945.10, F.S., relating to confidential information.
- Section 39:** Amending s. 945.25, F.S., relating to records.
- Section 40:** Amending s. 945.47, F.S., relating to discharge of inmate from mental health treatment.
- Section 41:** Amending s. 945.73, F.S., relating to inmate training program operation.
- Section 42:** Repealing s. 947.001, F.S., relating to short title.
- Section 43:** Amending s. 947.002, F.S., relating to intent.
- Section 44:** Amending s. 947.005, F.S., relating to definitions.
- Section 45:** Amending s. 947.01, F.S., relating to Parole Board; creation; number of members.
- Section 46:** Amending s. 947.02, F.S., relating to Parole Board; members, appointment.
- Section 47:** Repealing s. 947.021, F.S., relating to Parole Commission; expedited appointments.
- Section 48:** Amending s. 947.03, F.S., relating to Parole Board members; tenure and removal.

- Section 49:** Amending s. 947.04, F.S., relating to organization of board; officers; offices.
- Section 50:** Providing for conforming terminology.
- Section 51:** Repealing s. 947.045, F.S., relating to Federal Grants Trust Fund.
- Section 52:** Amending s. 947.05, F.S., relating to seal.
- Section 53:** Amending s. 947.06, F.S., relating to meeting; quorum; when board may act.
- Section 54:** Amending s. 947.07, F.S., relating to rules.
- Section 55:** Amending s. 947.071, F.S., relating to rulemaking procedures; indexing of orders.
- Section 56:** Amending s. 947.10, F.S., relating to business and political activity of members of Parole Board.
- Section 57:** Amending s. 947.11, F.S., relating to legal adviser.
- Section 58:** Amending s. 947.12, F.S., relating to members, employees, expenses.
- Section 59:** Amending s. 947.13, F.S., relating to powers and duties of the board.
- Section 60:** Repealing s. 947.135, F.S., relating to mutual participation program.
- Section 61:** Repealing 958.15, F.S., relating to mutual participation agreements.
- Section 62:** Amending s. 947.1405, F.S., relating to conditional release program.
- Section 63:** Amending s. 947.141, F.S., relating to violations of conditional release, control release, or conditional medical release or addiction-recovery supervision.
- Section 64:** Amending s. 947.146, F.S., relating to Control Release Authority.
- Section 65:** Amending s. 947.149, F.S., relating to conditional medical release.
- Section 66:** Amending s. 947.15, F.S., relating to reports.
- Section 67:** Amending s. 947.16, F.S., relating to eligibility for parole; initial parole interviews; powers and duties of board.
- Section 68:** Amending s. 947.165, F.S., relating to objective parole guidelines.
- Section 69:** Amending s. 947.168, F.S., relating to consideration for persons service parole-eligible and parole-ineligible sentences.
- Section 70:** Amending s. 947.172, F.S., relating to establishment of presumptive parole release date.
- Section 71:** Amending s. 947.173, F.S., relating to review of presumptive parole release date.
- Section 72:** Amending s. 947.174, F.S., relating to subsequent interviews.
- Section 73:** Amending s. 947.1745, F.S., relating to establishment of effective parole release date.

- Section 74:** Amending s. 947.1746, F.S., relating to establishment of effective parole release date.
- Section 75:** Amending s. 947.1747, F.S., relating to community control as a special condition of parole.
- Section 76:** Amending s. 947.18, F.S., relating to conditions of parole.
- Section 77:** Amending s. 947.181, F.S., relating to victim restitution as condition of parole.
- Section 78:** Amending s. 947.185, F.S., relating to application for mental retardation services as condition of parole.
- Section 79:** Amending s. 947.19, F.S., relating to terms of parole.
- Section 80:** Amending s. 947.20, F.S., relating to rules of board related to terms and conditions of parole.
- Section 81:** Amending s. 947.21, F.S., relating to violations of parole.
- Section 82:** Amending s. 947.22, F.S., relating to authority to arrest parole violators with or without warrant.
- Section 83:** Amending s. 947.23, F.S., relating to action of board upon arrest of parolee.
- Section 84:** Amending s. 947.24, F.S., relating to discharge from parole supervision or release supervision.
- Section 85:** Amending s. 947.26, F.S., relating to cooperation of custodian of prisoner; right of access.
- Section 86:** Amending s. 948.09, F.S., relating to payment for cost of supervision and rehabilitation.
- Section 87:** Amending s. 948.10, F.S., relating to community control programs.
- Section 88:** Amending s. 949.05, F.S., relating to constitutionality.
- Section 89:** Amending s. 951.29, F.S., relating to procedure for requesting restoration of civil rights of county prisoners convicted of felonies.
- Section 90:** Amending s. 957.06, F.S., relating to powers and duties not delegable to contractor.
- Section 91:** Amending s. 958.045, F.S., relating to youthful offender basic training program.
- Section 92:** Amending s. 960.001, F.S., relating to guidelines for fair treatment of victims and witnesses in the criminal justice and juvenile justice systems.
- Section 93:** Amending s. 960.17, F.S., relating to award constitutes debt owed to state.
- Section 94:** Amending s. 985.04, F.S., relating to oaths; records; confidential information.
- Section 95:** Amending s. 985.045, F.S., relating to court records.
- Section 96:** Reenacts s. 948.06(6), F.S., relating to violation of probation or community control; revocation; modification; continuance; failure to pay restitution or cost of supervision.
- Section 97:** Redesignating title language.

Section 98: Providing for transfer of powers, duties, functions, records, personnel, property and funds, from the Parole Commission to the DOC; provides intent. .

Section 99: Providing intent language and continuance of certain orders and rules.

Section 100: Providing an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill will have a positive fiscal impact on the Department of Corrections. See Fiscal Comments.

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

This bill is anticipated to have a recurring positive fiscal impact on state government because of increased opportunities for achieving greater operational efficiencies as a result of DOC assumption of administrative responsibilities for the Parole Commission. These efficiencies are anticipated to result in savings of approximately \$1.7 million in recurring General Revenue Funds associated with Parole Commission responsibilities beginning in FY 2008-09. This savings has been incorporated in the proposed House General Appropriations Act.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None

B. RULE-MAKING AUTHORITY:

Section 54 replaces a general grant of rulemaking authority for the Parole Commission with a more specific grant for the Parole Board. With respect to Commission rules governing particular cases, Section 80 eliminates certain permissible content.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

D. STATEMENT OF THE SPONSOR

None

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES