Senate Committee On

JUSTICE APPROPRIATIONS

Victor D. Crist, Chair
Rod Smith, Vice Chair

Meeting Packet

Monday, April 24, 2006
1:30 p.m. (or 15 minutes after adjournment of Ways & Means - whichever is later) – 5:00 p.m.
37 Senate Office Building

(Please bring this packet to the committee meeting. Duplicate materials will not be available.)

E X P A N D E D A G E N D A

COMMITTEE ON JUSTICE APPROPRIATIONS

Senator Crist, CHAIR
Senator Smith, VICE-CHAIR

DATE: Monday, April 24, 2006
TIME: 1:30 p.m. (or 15 minutes after Ways & Means) -- 5:00 p.m.
PLACE: Room 37, Senate Office Building

(MEMBERS: Senators Argenziano, Aronberg and Villalobos)

TAB	BILL NO. AND INTRODUCER	BILL DESCRIPTION AND SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	CS/CS/SB 0166 Banking and Insurance / Campbell ET AL (Similar H 0065)	Foreclosure Proceedings; adding required statement for inclusion into final judgment of foreclosure; establishes presumption of entitlement to surplus funds in certain filings; provides civil penalty for knowingly using unfair or deceptive homeowner victimization methods, acts, or practices in residential foreclosure proceedings; limits costs chargeable in foreclosure proceeding, etc. Amends 45.031, 702.035; creates 45.032, -.035, 501.2078. JU 01/25/06 CS BI 03/28/06 CS/CS JA 04/24/06	
2	CS/SB 1622 Criminal Justice / Haridopolos (Similar H 0585)	Inmate Litigation Costs; requires DOC to charge inmates for specified costs re inmate litigation; authorizes liens on inmate trust funds; requires rulemaking; provides for application of act. Creates 945.6038. CJ 03/22/06 CS JU 04/04/06 FAVORABLE JA 04/18/06 Temporarily postponed JA 04/24/06	
3	CS/CS/CS/SB 0114 & SB 444 Criminal Justice / Lynn ET AL (Similar H 0175, S 0444)	Drug Court Programs; (THIS BILL COMBINES S114 & 444) provides additional legislative purposes & intent re treatment of substance abuse, including use of drug court program model; authorizes court to order specified persons to submit to substance abuse assessment upon showing of good cause in connection with shelter petition or petition for dependency; authorizes court to require participation in treatment-based drug court program, etc. Amends FS. CF 12/06/05 CS JU 01/11/06 CS/CS CJ 02/08/06 CS/CS/CS JA 04/24/06	

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DATE: Monday, April 24, 2006
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TAB	BILL NO. AND INTRODUCER	BILL DESCRIPTION AND SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 0186 Villalobos ET AL (Compare H 0061, H 0071)	Postsentence DNA Testing; revises circumstances under which person who has been sentenced for committing felony may petition court for postsentence testing of DNA evidence; abolishes certain time limitations imposed upon such testing; authorizes governmental entity to dispose of physical evidence if sentence imposed has expired & another law or rule does not require that evidence be retained; provides for retroactive application. Amends 925.11. CJ 01/25/06 FAVORABLE JU 02/08/06 FAVORABLE JA 04/24/06	
5	CS/SB 0436 Governmental Oversight and Productivity / Wilson ET AL (Similar H 0021)	Social Status/Black Men & Boys; creates Council on Social Status of Black Men & Boys; requires council to make systematic study of conditions affecting black men & boys; requires Attorney General's Office to provide administrative support; requires council to submit annual report to Governor & Legislature; provides for reimbursement for per diem & travel expenses; requires Attorney General to organize initial meeting of council, etc. CF 01/10/06 FAVORABLE WITH AMEND 5 GO 03/22/06 CS JA 04/24/06	
6	CS/CS/SB 0190 Commerce and Consumer Services / Wise ET AL (Similar H 7145, Compare H 7147)	Seaport Security; requires seaport authority or governing board of certain seaports to designate & identify security areas, access requirements, & security-enforcement authorizations on seaport premises & in seaport security plans; requires Drug Control Off. to convene advisory council to review statewide min. standards for said security; authorizes each seaport in state to create seaport law enforcement agency for its facility, etc. Amends FS. DS 02/08/06 FAVORABLE CJ 03/22/06 Not considered CJ 03/29/06 CS CM 04/05/06 CS/CS JA 04/24/06	

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COMMITTEE ON JUSTICE APPROPRIATIONS

DATE: Monday, April 24, 2006
TIME: 1:30 p.m. (or 15 minutes after Ways & Means)
-- 5:00 p.m.

TAB	BILL NO. AND INTRODUCER	BILL DESCRIPTION AND SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	CS/SB 0192 Governmental Oversight and Productivity / Wise (Similar H 0829)	Prison Industries; creates Prison Industries Task Force within Office of Legislative Services; requires task force to determine how well prison industries program has fulfilled its statutory mission & purpose; specifies duties of task force re taking testimony; abolishes task force on future date; clarifies state's reversionary interest in facilities, property, & assets of corporation operating correctional work program, etc. Amends 946.505. CJ 01/25/06 FAVORABLE WITH AMEND 1 GO 02/15/06 CS JA 04/24/06	

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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: Justice Appropriations Committee

BILL: CS/CS/SB 166

INTRODUCER: Banking and Insurance Committee, Judiciary Committee and Senator Campbell

SUBJECT: Residential Foreclosure Proceedings

DATE: April 19, 2006 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cibula	Maclure	JU	**Fav/CS**
2.	Knudson	Deffenbaugh	BI	**Fav/CS**
3.	Hendon	Sadberry	JA	**Pre-meeting**
4.				
5.				
6.				

I. Summary:

Surplus funds may exist after a foreclosure sale, if property is sold for more than the amount of all disbursements required by a foreclosure order. The bill creates a presumption that these surplus funds belong to the owner of the real property on the date of the filing of a *lis pendens*.[1] The presumption, however, can be rebutted with a properly executed assignment of the funds. The bill directs the clerk of court include information regarding surplus funds in the final judgment, certificate of sale, and certificate of disbursements. The funds will be paid to the former owner of the property, unless an objection to the payment is filed. If an objection is filed by a subordinate lienholder or assignee, a court must determine who is entitled to the surplus funds.

The bill creates the position of surplus trustee to find the owner of real property as of the *lis pendens* date if no claims of surplus funds are made. The surplus trustee is entitled to an advance of 2 percent of the surplus for his services, and 10 percent of the surplus upon obtaining a court order disbursing the surplus to the owner of record.

The bill also authorizes penalties of up to $15,000 for unspecified conduct that "victimizes or attempts to victimize" a homeowner during the course of a residential foreclosure proceeding.

This bill substantially amends sections 45.031 and 702.035, Florida Statutes. This bill creates the following sections of the Florida Statutes: 45.032, 45.033, and 501.2078.

[1] A *lis pendens* is a "notice, recorded in the chain of title to real property, . . . to warn all persons that certain property is the subject matter of litigation, and that any interests acquired during the pendency of the suit are subject to its outcome." BLACK'S LAW DICTIONARY (8th ed. 2004).

II. Present Situation:

According to news articles, "surplus chasers" or "foreclosure vultures" locate real estate foreclosures in which the price paid at a foreclosure auction exceeds the owner's outstanding indebtedness.[2] These individuals will help the former owners of foreclosed property claim the surplus funds. The fees charged for recovering the surplus may be up to 40 percent of the funds recovered.

Foreclosures on homestead property can result from causes including the failure to make mortgage payments,[3] failure to pay certain taxes,[4] and failure to satisfy mechanics liens.[5] If the selling price of real estate exceeds the debt that led to the foreclosure, a surplus exists. After a foreclosure sale, surplus funds are deposited in the registry of the court. These funds may remain unclaimed if the persons entitled to the funds cannot be located. According to the Florida Association of Court Clerks and Comptroller, the bulk of surplus or unclaimed funds in court registries result from mortgage foreclosure sales and tax foreclosure sales.

Surplus funds from a foreclosure sale belong to the former owner or lien holders of the property at the time of the sale.[6] However, only after lien holders have been paid may any surplus be disbursed to the owner.[7] To obtain release of the surplus funds, a person must petition the court for the funds, and the court must order the release of the funds.[8]

III. Effect of Proposed Changes:

Procedure for Release of Surplus Funds and Notice Requirements
Surplus funds may exist after a foreclosure sale, if property is sold for more than the amount of all disbursements required by a foreclosure order. The bill creates a presumption that these surplus funds belong to the owner of the real property on the date of the filing of a *lis pendens*[9] after payment has been made to subordinate lienholders who have timely filed a claim within 60 days of the sale. That presumption, however, can be rebutted with a properly executed assignment of the funds.

The final judgment from a foreclosure proceeding must include a statement notifying the property owner and subordinate lien holders that there may be additional money from the foreclosure sale and notifying the property owner that he or she may claim such additional funds without representation by a lawyer or other person. The sale must be conducted at public auction at the time and place set forth in the final judgment. After the sale, the Certificate of Sale filed by the Clerk of Court must include the amount the property was sold for. The Clerk is required to

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[2] *See* Natalie P. McNeal, *'Surplus chasers' make the most of rising home prices,* MIAMIHERALD.COM, Jul. 24, 2005; *Proposed Florida law targets 'foreclosure vultures,'* INMAN NEWS, Feb. 11, 2005; Julie Kay, *Lawyer Accused in Mortgage Scam is Suspended*, DAILY BUSINESS REVIEW, Feb. 11, 2005.
[3] *See* ch. 702, F.S.
[4] *See, e.g.,* ch. 173, F.S.; ch. 197, F.S.
[5] *See* ch. 713, F.S.
[6] *Jelic v. Sears Mtg. Corp.*, 614 So. 2d 1149, 1150 (Fla. 4th DCA 1993) (quoting *Rosen v. Dorn-Korthe, Inc.*, 171 So. 646 (Fla. 1936)).
[7] *Garcia v. Stewart*, 906 So. 2d 1117, 1121 (Fla. 4th DCA 2005).
[8] Section 43.19, F.S.; s. 173.11, F.S.
[9] See note 1, *supra*.

serve all parties with a copy of the Certificate of Disbursements detailing the total amount of payments made to parties pursuant to the sale and any remaining surplus. The Certificate of Disbursement must notify person's claiming a right to excess funds to make a claim within 60 days, or forfeit the right to make a claim to the owner of record at the *lis pendens* date. The funds will be paid to the owner at the *lis pendens* date, unless another person (such as a subordinate lienholder or assignee of the right to collect the funds) claims an interest in the proceeds during the 60 day period. If such a claim is made, the court shall set an evidentiary hearing to determine entitlement to the surplus.

Assignment of Surplus Funds
Under existing law, surplus funds from a foreclosure sale belong to the former owner of the property at the time of the sale. This bill, however, creates a presumption that the funds belong to the record owner on the date of the filing of the *lis pendens* after payment is made to appropriate secondary lienholders. This presumption can be rebutted by a properly executed assignment.

An assignee of the rights of the owner of record claiming a legal right to the surplus must prove their entitlement to the surplus funds. The assignee must either show that a voluntary transfer of the right to collect the surplus funds was made in accordance with the following requirements, or that an involuntary transfer occurred (such as pursuant to an inheritance or the appointment of a guardian). If the transfer was voluntary, the assignment must:

- Be in writing;
- Be executed before the foreclosure sale, or if executed after the foreclosure include the foreclosure sale price and the amount of the surplus;
- Include a financial disclosure of the assessed values of the property, a statement that the assessed value may be lower than the actual value of the property, and statement of the approximate amount of debt encumbering the property and the approximate amount of equity in the property;
- State that the owner does not need an attorney or other representative to recover surplus funds; and
- Specify all forms of consideration paid for the rights to the property or the assignment of the right to surplus funds.

Nonconforming assignments may be set aside by a court. The bill implies that if a nonconforming assignment was made in good faith, the assignor seeking to set aside the assignment may be liable for damages. The bill, however, does not clearly identify what constitutes a nonconforming, bad-faith assignment. The Legislature may wish to revise the bill to more clearly identify what is a nonconforming, bad-faith assignment.

Surplus Trustees
Under the bill, if no claim for the surplus from a foreclosure sale is made, a surplus trustee shall be appointed by the Florida Clerks of Court Operations Corporation within 10 days of a request by the Clerk of Court. The surplus trustee shall attempt to locate the owner of record entitled to the surplus for 1 year. If the owner of record cannot be located, the surplus trustee appointment terminates. Thirty days after termination of the appointment of surplus trustee, the remaining funds are treated as unclaimed property and deposited with the Chief Financial Officer pursuant to chapter 717, F.S.

The bill creates requirements for serving as a surplus trustee. The surplus trustee must be willing to accept cases on a statewide basis, but may employ subcontractors who are not surplus trustees so long as the trustee remains primarily responsible for compliance with required duties. The surplus trustee is entitled to a cash advance of 2 percent of the surplus at appointment, and 10 percent of the surplus upon obtaining a court order disbursing the surplus to the owner of record. The surplus trustee must be certified with the Florida Clerks of Court Operations Corporation. The requirements for certification include:

- A certificate of good standing from the Secretary of State that the entity is a Florida entity;
- Twelve months experience in the recovery of surplus funds in foreclosure proceedings;
- A valid class"A" private investigators license or a letter from a licensed attorney that the attorney is a principal or employee of the entity seeking certification and will supervise the management of the entity; and
- Liability insurance coverage, cash reserves or bonding of $500,000.

Penalties
The bill provides that a person violates the Florida Deceptive and Unfair Trade Practices Act by conduct that victimizes or attempts to victimize homeowners in the course of a residential foreclosure proceeding, if the person knew or should have known that such conduct was unfair or deceptive. For such conduct, a civil penalty of up to $15,000 for each violation may be imposed.

Effective Date
This bill takes effect on July 1, 2006.

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:

A clerk of court shall receive $60 for services in making, recording, and certifying the sale and title, to be assessed as costs and advanced by the plaintiff before the foreclosure sale.

A clerk of court shall receive $10 for notifying a surplus trustee of his or her appointment.

A clerk of court shall receive $10 for each disbursement of surplus proceeds.

A court clerk may collect $25 from the surplus funds remaining after each foreclosure sale to be used to educate the public on their rights during foreclosures.

B. Private Sector Impact:

Persons in foreclosure proceedings may have the information to better calculate the implications of some choices they may have during a foreclosure proceeding. Persons who attempt to purchase an assignment of surplus funds or real property under foreclosure may have to provide the property owner with more financial information.

C. Government Sector Impact:

The bill places additional requirements on clerks of court regarding the notification and payment of surplus funds.

Penalties for conduct that victimizes or attempts to victimize a person in a foreclosure proceeding must be used by the Department of Legal Affairs to educate the public on their rights in foreclosure proceedings.

Court workloads may be reduced because surplus funds can be disbursed without a hearing if no objection to paying the funds to a former property owner is made.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Concerns have been raised that the Florida Clerks of Court Operations Corporation may not have the expertise to properly certify trustees. The Legislature may wish to consider moving such responsibilities to another body with expertise in locating owners of property, such as the Bureau of Unclaimed Property in the Department of Financial Services.

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

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.

CHAMBER ACTION

Senate House

JUSTICE APPROPRIATIONS
DATE: 4-21-06
TIME: 1:30 P.M.

The Committee on Justice Appropriations (Aronberg) recommended the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

Section 1. Section 45.031, Florida Statutes, is amended to read:

45.031 Judicial sales procedure.--In any sale of real or personal property under an order or judgment, the procedures provided in ss. 45.031-45.035 ~~following procedure~~ may be followed as an alternative to any other sale procedure if so ordered by the court.~~:~~

(1) FINAL JUDGMENT ~~SALE BY CLERK~~.--In the order or final judgment, the court shall direct the clerk to sell the property at public sale on a specified day that shall be not less than 20 days or more than 35 days after the date thereof, on terms and conditions specified in the order or judgment. A sale may be held more than 35 days after the date of final judgment or order if the plaintiff or plaintiff's attorney

1 consents to such time. The final judgment shall contain the
2 following statement in conspicuous type:
3
4 IF THIS PROPERTY IS SOLD AT PUBLIC AUCTION, THERE MAY BE
5 ADDITIONAL MONEY FROM THE SALE AFTER PAYMENT OF PERSONS WHO
6 ARE ENTITLED TO BE PAID FROM THE SALE PROCEEDS PURSUANT TO
7 THIS FINAL JUDGMENT.
8
9 IF YOU ARE A SUBORDINATE LIENHOLDER CLAIMING A RIGHT TO FUNDS
10 REMAINING AFTER THE SALE, YOU MUST FILE A CLAIM WITH THE CLERK
11 NO LATER THAN 60 DAYS AFTER THE SALE. IF YOU FAIL TO FILE A
12 CLAIM, YOU WILL NOT BE ENTITLED TO ANY REMAINING FUNDS.
13
14 (b) If the property being foreclosed on has qualified for the
15 homestead tax exemption in the most recent approved tax roll,
16 the final judgment shall additionally contain the following
17 statement in conspicuous type:
18
19 IF YOU ARE THE PROPERTY OWNER, YOU MAY CLAIM THESE FUNDS
20 YOURSELF. YOU ARE NOT REQUIRED TO HAVE A LAWYER OR ANY OTHER
21 REPRESENTATION AND YOU DO NOT HAVE TO ASSIGN YOUR RIGHTS TO
22 ANYONE ELSE IN ORDER FOR YOU TO CLAIM ANY MONEY TO WHICH YOU
23 ARE ENTITLED. PLEASE CHECK WITH THE CLERK OF THE COURT,
24 [INSERT INFORMATION FOR APPLICABLE COURT] WITHIN TEN (10) DAYS
25 AFTER THE SALE TO SEE IF THERE IS ADDITIONAL MONEY FROM THE
26 FORECLOSURE SALE THAT THE CLERK HAS IN THE REGISTRY OF THE
27 COURT.
28
29 IF YOU DECIDE TO SELL YOUR HOME OR HIRE SOMEONE TO HELP YOU
30 CLAIM THE ADDITIONAL MONEY, YOU SHOULD READ VERY CAREFULLY ALL
31 PAPERS YOU ARE REQUIRED TO SIGN, ASK SOMEONE ELSE, PREFERABLY

1 AN ATTORNEY WHO IS NOT RELATED TO THE PERSON OFFERING TO HELP
2 YOU, TO MAKE SURE THAT YOU UNDERSTAND WHAT YOU ARE SIGNING AND
3 THAT YOU ARE NOT TRANSFERRING YOUR PROPERTY OR THE EQUITY IN
4 YOUR PROPERTY WITHOUT THE PROPER INFORMATION. IF YOU CANNOT
5 AFFORD TO PAY AN ATTORNEY, YOU MAY CONTACT (INSERT LOCAL OR
6 NEAREST LEGAL AID OFFICE AND TELEPHONE PHONE NUMBER) TO SEE IF
7 YOU QUALIFY FINANCIALLY FOR THEIR SERVICES. IF THEY CANNOT
8 ASSIST YOU, THEY MAY BE ABLE TO REFER YOU TO A LOCAL BAR
9 REFERRAL AGENCY OR SUGGEST OTHER OPTIONS. IF YOU CHOOSE TO
10 CONTACT (NAME OF LOCAL OR NEAREST LEGAL AID OFFICE) FOR
11 ASSISTANCE, YOU SHOULD DO SO AS SOON AS POSSIBLE AFTER RECEIPT
12 OF THIS NOTICE.
13 (c) A copy of the final judgment shall be furnished by
14 the clerk by first class mail to the last known address of
15 every party to the action or to the attorney of record for
16 such party. Any irregularity in such mailing, including the
17 failure to include this statement in any final judgment or
18 order, shall not affect the validity or finality of the final
19 judgment or order or any sale held pursuant to the final
20 judgment or order. Any sale held more than 35 days after the
21 final judgment or order shall not affect the validity or
22 finality of the final judgment or order or any sale held
23 pursuant to such judgment or order ~~thereto~~.
24 (2) PUBLICATION OF SALE.--Notice of sale shall be
25 published once a week for 2 consecutive weeks in a newspaper
26 of general circulation, as defined in chapter 50, published in
27 the county where the sale is to be held. The second
28 publication shall be at least 5 days before the sale. The
29 notice shall contain:
30 (a) A description of the property to be sold.
31 (b) The time and place of sale.

1 (c) A statement that the sale will be made pursuant to
2 the order or final judgment.
3 (d) The caption of the action.
4 (e) The name of the clerk making the sale.
5 (f) A statement that any person claiming an interest
6 in the surplus from the sale, if any, other than the property
7 owner as of the date of the lis pendens must file a claim
8 within 60 days after the sale.
9
10 ~~The clerk shall receive a service charge of up to $60 for~~
11 ~~services in making, recording, and certifying the sale and~~
12 ~~title that shall be assessed as costs.~~ The court, in its
13 discretion, may enlarge the time of the sale. Notice of the
14 changed time of sale shall be published as provided herein.
15 (3) ~~(2)~~ CONDUCT OF SALE; DEPOSIT REQUIRED.--The sale
16 shall be conducted at public auction at the time and place set
17 forth in the final judgment. The clerk shall receive the
18 service charge imposed in s. 45.035 for services in making,
19 recording, and certifying the sale and title that shall be
20 assessed as costs. At the time of the sale, the successful
21 high bidder shall post with the clerk a deposit equal to 5
22 percent of the final bid. The deposit shall be applied to the
23 sale price at the time of payment. If final payment is not
24 made within the prescribed period, the clerk shall readvertise
25 the sale as provided in this section and pay all costs of the
26 sale from the deposit. Any remaining funds shall be applied
27 toward the judgment.
28 (4) ~~(3)~~ CERTIFICATION OF SALE.--After a sale of the
29 property the clerk shall promptly file a certificate of sale
30 and serve a copy of it on each party ~~not in default~~ in
31 substantially the following form:

1
2 (Caption of Action)
3
4 CERTIFICATE OF SALE
5 The undersigned clerk of the court certifies that
6 notice of public sale of the property described in the order
7 or final judgment was published in _____, a newspaper
8 circulated in _____ County, Florida, in the manner shown by
9 the proof of publication attached, and on _____, (year) ,
10 the property was offered for public sale to the highest and
11 best bidder for cash. The highest and best bid received for
12 the property in the amount of $_____was submitted by _____,
13 to whom the property was sold. The proceeds of the sale are
14 retained for distribution in accordance with the order or
15 final judgment or law . WITNESS my hand and the seal of this
16 court on _____, (year) .
17 (Clerk)
18 By (Deputy Clerk)
19 (5) ~~(4)~~ CERTIFICATE OF TITLE.--If no objections to the
20 sale are filed within 10 days after filing the certificate of
21 sale, the clerk shall file a certificate of title and serve a
22 copy of it on each party ~~not in default~~ in substantially the
23 following form:
24
25 (Caption of Action)
26
27 CERTIFICATE OF TITLE
28 The undersigned clerk of the court certifies that he or
29 she executed and filed a certificate of sale in this action on
30 _____, (year) , for the property described herein and that
31 no objections to

the sale have been filed within the time allowed for filing objections.

The following property in _____ County, Florida:

(description)

was sold to .

WITNESS my hand and the seal of the court on _____, (year) .

(Clerk)

By (Deputy Clerk)

(6) ~~(5)~~ CONFIRMATION; RECORDING.--When the certificate of title is filed the sale shall stand confirmed, and title to the property shall pass to the purchaser named in the certificate without the necessity of any further proceedings or instruments.

~~(6)--RECORDING.--~~The certificate of title shall be recorded by the clerk.

(7) DISBURSEMENTS OF PROCEEDS.--

(a) On filing a certificate of title, the clerk shall disburse the proceeds of the sale in accordance with the order or final judgment and shall file a report of such disbursements and serve a copy of it on each party ~~not in default~~, and on the Department of Revenue if the department was named as a defendant in the action or if the Agency for Workforce Innovation or the former Department of Labor and Employment Security was named as a defendant while the Department of Revenue was providing unemployment tax collection services under contract with the Agency for Workforce Innovation through an interagency agreement pursuant to s. 443.1316.

(b) The certificate of disbursements shall be~~,~~ in substantially the following form:

1
2 (Caption of Action)
3 CERTIFICATE OF DISBURSEMENTS
4 The undersigned clerk of the court certifies that he or
5 she disbursed the proceeds received from the sale of the
6 property as provided in the order or final judgment to the
7 persons and in the amounts as follows:
8 Name Amount
9 Total disbursements: $_____
10 Surplus retained by clerk, if any: $_____
11
12 IF YOU ARE A PERSON CLAIMING A RIGHT TO FUNDS REMAINING AFTER
13 THE SALE, YOU MUST FILE A CLAIM WITH THE CLERK NO LATER THAN
14 60 DAYS AFTER THE SALE. IF YOU FAIL TO FILE A CLAIM, YOU WILL
15 NOT BE ENTITLED TO ANY REMAINING FUNDS. AFTER 60 DAYS, ONLY
16 THE OWNER OF RECORD AS OF THE DATE OF THE LIS PENDENS MAY
17 CLAIM THE SURPLUS.
18
19 WITNESS my hand and the seal of the court on _____, (year) .
20 (Clerk)
21 By (Deputy Clerk)
22 (c) If no objections to the report are served within
23 10 days after it is filed, the disbursements by the clerk
24 shall stand approved as reported. If timely objections to the
25 report are served, they shall be heard by the court. Service
26 of objections to the report does not affect or cloud the title
27 of the purchaser of the property in any manner.
28 (d) If there are funds remaining after payment of all
29 disbursements required by the final judgment of foreclosure
30 and shown on the certificate of disbursements, the surplus
31 shall be distributed as provided ss. 45.031-45.035.

1 (8) VALUE OF PROPERTY.--The amount of the bid for the
2 property at the sale shall be conclusively presumed to be
3 sufficient consideration for the sale. Any party may serve an
4 objection to the amount of the bid within 10 days after the
5 clerk files the certificate of sale. If timely objections to
6 the bid are served, the objections shall be heard by the
7 court. Service of objections to the amount of the bid does not
8 affect or cloud the title of the purchaser in any manner. If
9 the case is one in which a deficiency judgment may be sought
10 and application is made for a deficiency, the amount bid at
11 the sale may be considered by the court as one of the factors
12 in determining a deficiency under the usual equitable
13 principles.
14 (9) EXECUTION SALES.--This section shall not apply to
15 property sold under executions.
16 Section 2. Section 45.032, Florida Statutes, is
17 created to read:
18 45.032 Disbursement of surplus funds after judicial
19 sale.--
20 (1) For purposes of ss. 45.031-45.035, the term:
21 (a) "Owner of record" means the person or persons who
22 appear to be the owner of the property that is the subject of
23 the foreclosure proceeding on the date of the filing of the
24 lis pendens. In determining an owner of record, a person need
25 not perform a title search and examination but may rely on the
26 plaintiff's allegation of ownership in the complaint when
27 determining the owner of record.
28 (b) "Subordinate lienholder" means the holder of a
29 subordinate lien shown on the face of the pleadings as an
30 encumbrance on the property. The lien held by the party filing
31 the foreclosure lawsuit is not a subordinate lien. A

1 subordinate lienholder includes, but is not limited to, a
2 subordinate mortgage, judgment, assessment lien, or
3 construction lien. However, the holder of a subordinate lien
4 shall not be deemed a subordinate lienholder if the holder was
5 paid in full from the proceeds of the sale.
6 (c) "Surplus funds" or "surplus" means the funds
7 remaining after payment of all disbursements required by the
8 final judgment of foreclosure and shown on the certificate of
9 disbursements.
10 (d) "Surplus trustee" means a person qualifying as a
11 surplus trustee pursuant to s. 45.034.
12 (2) There is established a rebuttable legal
13 presumption that the owner of record on the date of the filing
14 of a lis pendens is the person entitled to surplus funds after
15 payment of subordinate lienholders who have timely filed a
16 claim. A person claiming a legal right to the surplus as an
17 assignee of the rights of the owner of record must prove to
18 the court that such person is entitled to the funds. At any
19 hearing regarding such entitlement, the court shall consider
20 the factors set forth in s. 45.033 in determining whether an
21 assignment is sufficient to overcome the presumption. It is
22 the intent of the Legislature to abrogate the common law rule
23 that surplus proceeds in a foreclosure case are the property
24 of the owner of the property on the date of the foreclosure
25 sale.
26 (3) During the 60 days after the clerk issues a
27 certificate of disbursements, the clerk shall hold the surplus
28 pending a court order.
29 (a) If the owner of record claims the surplus during
30 the 60-day period and there is no subordinate lienholder, the
31 court shall order the clerk to deduct any applicable service

1 charges from the surplus and pay the remainder to the owner of
2 record. The clerk may establish a reasonable requirement that
3 the owner of record prove his or her identity before receiving
4 the disbursement. The clerk may assist an owner of record in
5 making a claim. An owner of record may use the following form
6 in making a claim:
7
8 (Caption of Action)
9 OWNER'S CLAIM FOR MORTGAGE FORECLOSURE SURPLUS
10
11 State of _____
12 County of _____
13 Under penalty of perjury, I (we) hereby certify that:
14 1. I was (we were) the owner of the following
15 described real property in _____ County, Florida, prior to the
16 foreclosure sale and as of the date of the filing of the lis
17 pendens:
18
19 (Legal description of real property)
20 2. I (we) do not owe any money on any mortgage on the
21 property that was foreclosed other than the one that was paid
22 off by the foreclosure.
23 3. I (we) do not owe any money that is the subject of
24 an unpaid judgment, condominium lien, cooperative lien, or
25 homeowners' association.
26 4. I am (we are) not currently in bankruptcy.
27 5. I (we) have not sold or assigned my (our) right to
28 the mortgage surplus.
29 6. My (our) new address is: _____.
30 7. If there is more than one owner entitled to the
31 surplus, we have agreed that the surplus should be paid _____

1 jointly, or to : _____, at the following address: _____.
2 8. I (WE) UNDERSTAND THAT I (WE) AM (ARE) NOT REQUIRED
3 TO HAVE A LAWYER OR ANY OTHER REPRESENTATION AND I (WE) DO NOT
4 HAVE TO ASSIGN MY (OUR) RIGHTS TO ANYONE ELSE IN ORDER TO
5 CLAIM ANY MONEY TO WHICH I (WE) MAY BE ENTITLED.
6 9. I (WE) UNDERSTAND THAT THIS STATEMENT IS GIVEN
7 UNDER OATH, AND IF ANY STATEMENTS ARE UNTRUE THAT I (WE) MAY
8 BE PROSECUTED CRIMINALLY FOR PERJURY.
9
10 (Signatures)
11 Sworn to (or affirmed) and subscribed before me this
12 _____ day of _____, _____ (year) _____, by
13 _____ (name of person making statement) _____.
14 (Signature of Notary Public - State of Florida)
15 (Print, Type, or Stamp Commissioned Name of Notary
16 Public)
17 Personally Known _____ OR Produced Identification _____
18 Type of Identification Produced _____
19 (b) If any person other than the owner of record
20 claims an interest in the proceeds during the 60-day period or
21 if the owner of record files a claim for the surplus but
22 acknowledges that one or more other persons may be entitled to
23 part or all of the surplus, the court shall set an evidentiary
24 hearing to determine entitlement to the surplus. At the
25 evidentiary hearing, an equity assignee has the burden of
26 proving that he or she is entitled to some or all of the
27 surplus funds. The court may grant summary judgment to a
28 subordinate lienholder prior to or at the evidentiary hearing.
29 The court shall consider the factors in s. 45.033 when hearing
30 a claim that any person other than a subordinate lienholder or
31 the owner of record is entitled to the surplus funds.

1 (c) If no claim is filed during the 60-day period, the
2 clerk shall appoint a surplus trustee from a list of qualified
3 surplus trustees as authorized in s. 45.034. Upon such
4 appointment, the clerk shall prepare a notice of appointment
5 of surplus trustee and shall furnish a copy to the surplus
6 trustee. The form of the notice may be as follows:
7
8 (Caption of Action)
9 NOTICE OF APPOINTMENT OF SURPLUS TRUSTEE
10 The undersigned clerk of the court certifies that he or
11 she disbursed the proceeds received from the sale of the
12 property as provided in the order or final judgment to the
13 persons named in the certificate of disbursements, and that
14 surplus funds of $_____ remain and are subject to
15 disbursement to the owner of record. You have been appointed
16 as surplus trustee for the purpose of finding the owner of
17 record in order for the clerk to disburse the surplus, after
18 deducting costs, to the owner of record.
19 WITNESS my hand and the seal of the court on _____,
20 _____ (year) .
21 (Clerk)
22 By _____ (Deputy Clerk)
23 (4) If the surplus trustee is unable to locate the
24 owner of record entitled to the surplus within 1 year after
25 appointment, the appointment shall terminate and the clerk
26 shall notify the surplus trustee that his or her appointment
27 was terminated. Thirty days after termination of the
28 appointment of the surplus trustee, the clerk shall treat the
29 remaining funds as unclaimed property to be deposited with the
30 Chief Financial Officer pursuant to chapter 717.
31 (5) Proceedings regarding surplus funds in a

1 foreclosure case do not in any manner affect or cloud the
2 title of the purchaser at the foreclosure sale of the
3 property.
4 Section 3. Section 45.033, Florida Statutes, is
5 created to read:
6 45.033 Sale or assignment of rights to surplus funds
7 in a property subject to foreclosure.--
8 (1) There is established a rebuttable presumption that
9 the owner of record of real property on the date of the filing
10 of a lis pendens is the person entitled to surplus funds after
11 payment of subordinate lienholders who have timely filed a
12 claim. A person claiming a legal right to the surplus as an
13 assignee of the rights of the owner of record must prove
14 entitlement to the surplus funds pursuant to this section. It
15 is the intent of the Legislature to abrogate the common law
16 rule that surplus proceeds in a foreclosure case are the
17 property of the owner of the property on the date of the
18 foreclosure sale.
19 (2) The presumption may be rebutted only by:
20 (a) The grantee or assignee of a voluntary transfer or
21 assignment establishing a right to collect the surplus funds
22 or any portion or percentage of the surplus funds by proving
23 that the transfer or assignment qualifies as a voluntary
24 transfer or assignment as provided in subsection (3); or
25 (b) The grantee or assignee proving that the grantee
26 or assignee is a grantee or assignee by virtue of an
27 involuntary transfer or assignment of the right to collect the
28 surplus. An involuntary transfer or assignment may be as a
29 result of inheritance or as a result of the appointment of a
30 guardian.
31 (3) A voluntary transfer or assignment shall be a

1 transfer or assignment qualified under this subsection,
2 thereby entitling the transferee or assignee to the surplus
3 funds or a portion or percentage of the surplus funds, if:
4 (a) The transfer or assignment is in writing and the
5 instrument:
6 1. If executed prior to the foreclosure sale, includes
7 a financial disclosure that specifies the assessed value of
8 the property, a statement that the assessed value may be lower
9 than the actual value of the property, the approximate amount
10 of any debt encumbering the property, and the approximate
11 amount of any equity in the property. If the instrument was
12 executed after the foreclosure sale, the instrument must also
13 specify the foreclosure sale price and the amount of the
14 surplus.
15 2. Includes a statement that the owner does not need
16 an attorney or other representative to recover surplus funds
17 in a foreclosure.
18 3. Specifies all forms of consideration paid for the
19 rights to the property or the assignment of the rights to any
20 surplus funds.
21 (b) The transfer or assignment is filed with the court
22 on or before 60 days after the filing of the certificate of
23 disbursements.
24 (c) There are funds available to pay the transfer or
25 assignment after payment of timely filed claims of subordinate
26 lienholders.
27 (d) The transferor or assignee is qualified as a
28 surplus trustee, or could qualify as a surplus trustee,
29 pursuant to s. 45.034.
30 (e) The total compensation paid or payable, or earned
31 or expected to be earned, by the transferee or assignee does

1 not exceed 12 percent of the surplus.
2 (4) The court shall honor a transfer or assignment
3 that complies with the requirements of subsection (3), in
4 which case the court shall order the clerk to pay the
5 transferor or assignee from the surplus.
6 (5) If the court finds that a voluntary transfer or
7 assignment does not qualify under subsection (3) but that the
8 transfer or assignment was procured in good faith and with no
9 intent to defraud the transferor or assignor, the court may
10 order the clerk to pay the claim of the transferee or assignee
11 after payment of timely filed claims of subordinate
12 lienholders.
13 (6) If a voluntary transfer or assignment of the
14 surplus is set aside, the owner of record shall be entitled to
15 payment of the surplus after payment of timely filed claims of
16 subordinate lienholders, but the transferee or assignee may
17 seek in a separate proceeding repayment of any consideration
18 paid for the transfer or assignment.
19 (7) This section does not apply to a deed, mortgage,
20 or deed in lieu of foreclosure unless a person other than the
21 owner of record is claiming that a deed or mortgage entitles
22 the person to surplus funds. Nothing in this section affects
23 the title or marketability of the real property that is the
24 subject of the deed or other instrument. Nothing in this
25 section affects the validity of a lien evidenced by a
26 mortgage.
27 Section 4. Effective upon this act becoming a law,
28 section 45.034, Florida Statutes, is created to read:
29 45.034 Qualifications and appointment of a surplus
30 trustee in foreclosure actions.--
31 (1) A surplus trustee is a third-party trustee

1 approved pursuant to this section by the Department of
2 Financial Services. A surplus trustee must be willing to
3 accept cases on a statewide basis; however, a surplus trustee
4 may employ subcontractors that are not qualified as a surplus
5 trustee provided the surplus trustee remains primarily
6 responsible for the duties set forth in this section.
7 (2) A surplus trustee is an entity that holds and
8 administers surplus proceeds from a foreclosure pursuant to
9 ss. 45.031-45.035.
10 (3) To be a surplus trustee, an entity must apply for
11 certification with the Department of Financial Services. The
12 application must contain:
13 (a) The name and address of the entity and of one or
14 more principals of the entity.
15 (b) A certificate of good standing from the Secretary
16 of State indicating that the entity is an entity registered in
17 this state.
18 (c) A statement under oath by a principal of the
19 entity certifying that the entity, or a principal of the
20 entity, has a minimum of 12 months' experience in the recovery
21 of surplus funds in foreclosure actions.
22 (d) Proof that the entity holds a valid Class "A"
23 private investigator license pursuant to chapter 493.
24 (e) Proof that the entity carries a minimum of
25 $500,000 in liability insurance, cash reserves, or bonding.
26 (f) A statement from an attorney licensed to practice
27 in this state certifying that the attorney is a principal of
28 the entity or is employed by the entity on a full-time basis
29 and that the attorney will supervise the management of the
30 entity during the entity's tenure as a surplus trustee.
31 (g) A statement under oath by a principal of the

1 entity certifying that the principal understands his or her
2 duty to immediately notify the department if the principal
3 ever fails to qualify as an entity entitled to be a surplus
4 trustee.
5 (h) A nonrefundable application fee of $25.
6 (4) The Department of Financial Services shall certify
7 any surplus trustee that applies and qualifies. Applications
8 must be filed by June 1, and all applications that qualify
9 shall be certified by the department by June 30 and shall be
10 effective for 1 year commencing July 1. The department shall
11 renew a certification upon receipt of the $25 fee and a
12 statement under oath from a principal of the surplus trustee
13 certifying that the surplus trustee continues to qualify under
14 this section.
15 (5) The Department of Financial Services shall develop
16 a rotation system for assignment of cases to all qualified
17 surplus trustees.
18 (6) The primary duty of a surplus trustee is to locate
19 the owner of record within 1 year after appointment. Upon
20 locating the owner of record, the surplus trustee shall file a
21 petition with the court on behalf of the owner of record
22 seeking disbursement of the surplus funds. If more than one
23 person appears to be the owner of record, the surplus trustee
24 shall obtain agreement between such persons as to the payment
25 of the surplus, or file an interpleader. The interpleader may
26 be filed as part of the foreclosure case.
27 (7) A surplus trustee is entitled to the following
28 service charges and fees which shall be disbursed by the clerk
29 and payable from the surplus:
30 (a) Upon obtaining a court order, a cost advance of 2
31 percent of the surplus.

1 (b) Upon obtaining a court order disbursing the
2 surplus to the owner of record, a service charge of 10 percent
3 of the surplus.
4 Section 5. Section 45.035, Florida Statutes, is
5 created to read:
6 45.035 Clerk's fees.--In addition to other fees or
7 service charges authorized by law, the clerk shall receive
8 service charges related to the judicial sales procedure set
9 forth in ss. 45.031-45.034 and this section:
10 (1) The clerk shall receive a service charge of $60
11 for services in making, recording, and certifying the sale and
12 title, which service charge shall be assessed as costs and
13 shall be advanced by the plaintiff before the sale.
14 (2) If there is a surplus resulting from the sale, the
15 clerk may receive the following service charges, which shall
16 be deducted from the surplus:
17 (a) The clerk may withhold the sum of $25 from the
18 surplus which may only be used for purposes of educating the
19 public as to the rights of homeowners regarding foreclosure
20 proceedings.
21 (b) The clerk is entitled to a service charge of $10
22 for notifying a surplus trustee of his or her appointment.
23 (c) The clerk is entitled to a service charge of $10
24 for each disbursement of surplus proceeds.
25 (d) The clerk is entitled to a service charge of $10
26 for appointing a surplus trustee, furnishing the surplus
27 trustee with a copy of the final judgment and the certificate
28 of disbursements, and disbursing to the surplus trustee the
29 trustee's cost advance.
30 Section 6. Section 501.2078, Florida Statutes, is
31 created to read:

1 501.2078 Violations involving individual homeowners
2 during the course of residential foreclosure proceedings;
3 civil penalties.--
4 (1) As used in this section:
5 (a) "Homeowner" means any individual who is the owner
6 of the property subject to a residential foreclosure
7 proceeding.
8 (b) "Residential foreclosure proceeding" means any
9 action in a court of this state in which a party seeks to
10 foreclose on a mortgage encumbering the mortgagor's primary
11 dwelling.
12 (c) "Victimize" means any course of action intended to
13 dupe, swindle, or cheat a homeowner subject to a residential
14 foreclosure proceeding. The factors that a court shall review
15 when determining whether a course of action is victimizing a
16 homeowner are:
17 1. The compensation received relative to the risk and
18 the amount of work involved.
19 2. The number of homeowners involved.
20 3. The relative bargaining position of the parties.
21 4. The relative knowledge and sophistication of the
22 parties.
23 5. Representations made in the inducement.
24 6. The timing of the agreement.
25 (2) Any person, other than a financial institution as
26 defined in s. 655.005, who willfully uses, or has willfully
27 used, a method, act, or practice in violation of this part,
28 which method, act, or practice victimizes or attempts to
29 victimize homeowners during the course of a residential
30 foreclosure proceeding, and in committing such violation knew
31 or should have known that such conduct was unfair or

1 deceptive, is liable for a civil penalty of not more than
2 $15,000 for each such violation.
3 (3) Any order of restitution or reimbursement based on
4 a violation of this part committed against a homeowner in a
5 residential foreclosure proceeding has priority over the
6 imposition of any civil penalty for such violation pursuant to
7 this section.
8 (4) Civil penalties collected pursuant to this section
9 shall be deposited into the Legal Affairs Revolving Trust Fund
10 of the Department of Legal Affairs and allocated solely to the
11 Department of Legal Affairs for the purpose of preparing and
12 distributing consumer education materials, programs, and
13 seminars to benefit homeowners in residential foreclosure
14 proceedings or to further enforcement efforts.
15 (5) This section does not apply to:
16 (a) The act of encumbering the dwelling subject to a
17 residential foreclosure proceeding with a substitute or
18 additional lien.
19 (b) A deed in lieu of foreclosure, a workout
20 agreement, a bankruptcy plan, or any other agreement between a
21 foreclosing lender and a homeowner.
22 (c) A foreclosure sale, eminent domain proceeding,
23 forfeiture, or any other legal process.
24 Section 7. Section 702.035, Florida Statutes, is
25 amended to read:
26 702.035 Legal notice concerning foreclosure
27 proceedings.--Whenever a legal advertisement, publication, or
28 notice relating to a foreclosure proceeding is required to be
29 placed in a newspaper, it is the responsibility of the
30 petitioner or petitioner's attorney to place such
31 advertisement, publication, or notice. For counties with more

1 than 1 million total population as reflected in the most
2 recent official decennial census of the United States Census
3 Bureau as shown on the official website of the United States
4 Census Bureau, any notice of publication required by this
5 section shall be deemed to have been published in accordance
6 with the law if the notice is published in a newspaper that
7 has been entered as periodical matter at a post office in the
8 county in which the newspaper is published, is published a
9 minimum of 5 days a week, and has been in existence and
10 published a minimum of 5 days a week for 1 year or is a direct
11 successor to a newspaper that has been in existence for 1 year
12 and has been published a minimum of 5 days a week. The
13 advertisement, publication, or notice shall be placed directly
14 by the attorney for the petitioner, by the petitioner if
15 acting pro se, or by the clerk of the court. Only the actual
16 costs charged by the newspaper for the advertisement,
17 publication, or notice may be charged as costs in the action.
18 Section 8. Subsection (9) of section 201.02, Florida
19 Statutes, is amended to read:
20 201.02 Tax on deeds and other instruments relating to
21 real property or interests in real property.--
22 (9) A certificate of title issued by the clerk of
23 court under s. 45.031(5)~~(4)~~ in a judicial sale of real
24 property under an order or final judgment issued pursuant to a
25 foreclosure proceeding is subject to the tax imposed by
26 subsection (1). However, the amount of the tax shall be
27 computed based solely on the amount of the highest and best
28 bid received for the property at the foreclosure sale. This
29 subsection is intended to clarify existing law and shall be
30 applied retroactively.
31 Section 9. This act shall take effect July 1, 2006.

1 ========== T I T L E A M E N D M E N T ==========
2 And the title is amended as follows:
3 Delete everything before the enacting clause
4
5 and insert:
6 A bill to be entitled
7 An act relating to foreclosure proceedings;
8 amending s. 45.031, F.S.; revising procedures
9 and requirements for judicial sales; creating
10 s. 45.032, F.S.; providing for disbursement of
11 surplus funds after a judicial sale; providing
12 definitions; establishing a rebuttable
13 presumption of entitlement to surplus funds in
14 certain filings; providing legislative intent;
15 providing requirements and procedures for
16 disbursement of surplus funds by the clerk of
17 court; providing for appointment of a surplus
18 trustee under certain circumstances; providing
19 for notice of appointment; providing for
20 termination of appointment; providing for
21 treatment of surplus funds as unclaimed
22 property under certain circumstances; providing
23 construction relating to title of property in a
24 foreclosure sale; creating s. 45.033, F.S.;
25 providing for a sale or assignment of rights to
26 surplus funds in a property subject to
27 foreclosure; establishing a rebuttable
28 presumption of entitlement to surplus funds;
29 providing requirements for proof; providing
30 legislative intent; providing requirements for
31 rebutting the presumption; providing

1 requirements for transfers or assignments of
2 surplus funds; providing duties and authority
3 of a court in payment of surplus funds under a
4 transfer or assignment; providing for
5 nonapplication to certain instruments;
6 specifying absence of effect on title or
7 marketability of certain property or validity
8 of certain liens; creating s. 45.034, F.S.;
9 providing qualifications for appointment as a
10 surplus trustee by the Department of Financial
11 Services; providing requirements for
12 appointment as a surplus trustee; providing for
13 application and renewal fees; providing duties
14 of the department in certifying surplus
15 trustees; requiring the department to establish
16 a rotation system for assignment of cases to
17 surplus trustees; providing duties of a surplus
18 trustee; providing entitlement of a surplus
19 trustee to certain service charges and fees;
20 creating s. 45.035, F.S.; specifying service
21 charges for clerks of court for administering
22 judicial sales and surplus funds; creating s.
23 501.2078, F.S.; providing definitions;
24 providing a civil penalty for knowingly using
25 unfair or deceptive homeowner victimization
26 methods, acts, or practices in residential
27 foreclosure proceedings; specifying higher
28 priority of an order of restitution or
29 reimbursement over imposition of a civil
30 penalty; providing for deposit of civil
31 penalties into the Legal Affairs Revolving

1 Trust Fund of the Department of Legal Affairs;
2 allocating such funds for certain purposes;
3 specifying nonapplication to certain
4 encumbrances, deeds, or actions; amending s.
5 702.035, F.S.; specifying different
6 requirements relating to newspaper legal
7 notices and process requirements for counties
8 of different population sizes; limiting certain
9 costs chargeable in a foreclosure proceeding;
10 amending s. 201.02, F.S.; correcting a
11 cross-reference; providing an effective date.
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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: Justice Appropriations Committee

BILL: CS/SB 1622

INTRODUCER: Criminal Justice Committee and Senator Haridopolos

SUBJECT: Inmate Litigation Costs

DATE: April 11, 2006 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cannon	CJ	**Fav/CS**
2.	Cibula	Maclure	JU	**Favorable**
3.	Sadberry	Sadberry	JA	**Pre-meeting**
4.				
5.				
6.				

I. Summary:

This bill requires the Department of Corrections to promulgate a rule that imposes charges on inmates for postage and special delivery costs and duplicating costs in legal proceedings. The department's existing rule providing for copying charges was recently invalidated for lack of legislative authority to promulgate the rule.

This bill creates section 945.6038, Florida Statutes.

II. Present Situation:

The Department of Corrections (department) 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 trust accounts. A recent decision by the First District Court of Appeal[1] held that an administrative rule[2] that allowed the department to charge inmates for copying services and recover those costs was not supported by a specific grant of legislative authority. As a result, the rule was not valid. Since this decision was rendered, the department is without authority to recover those copying costs from inmates. The department is of the opinion that the ability to recover copying costs from inmates helps prevent inmates from filing frivolous lawsuits.

[1] *Smith v. Florida Department of Corrections*, 920 So. 2d 638 (Fla. 1st DCA 2005).
[2] Rule 33-501.302, F.A.C.

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.[3] This is usually done in the form of inmate trust fund accounts. These accounts 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 statute[4] to adopt rules relating to when an inmate must pay for the cost of postage for mail that the inmate sends. However, the department is prohibited from adopting a rule that requires an inmate to pay postage costs that 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 rule[5] providing inmates with access to copying services, to the extent it is necessary for the inmate to present his or her legal claims in court. The rule also imposes charges for the copies. This rule sets forth the circumstances under which documents are to be copied and what the costs will be.

The rule imposes a charge of 15 cents per page for legal or letter size copies. If special equipment or paper is needed, then the facility may charge up to the estimated actual cost of making the copies.

The rule also 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." The department is authorized to collect that fee by placing 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.[6]

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 none of the statutes cited by the department authorized 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 supported by specific legislative authority. This

[3] Section 944.516, F.S.
[4] Section 944.09(1)(o), F.S.
[5] Rule 33-501.302, F.A.C, Copying Services for Inmates.
[6] Rule 33-501.302(5), F.A.C.

ruling has had the effect of denying the department the ability to charge inmates for copying costs.

III. Effect of Proposed Changes:

This bill requires the Department of Corrections (department) to promulgate a rule that imposes charges on inmates for postage and special delivery charges and duplicating costs in legal proceedings. The bill specifies the charge of 15 cents per page for letter or legal size copies. The department's existing rule providing for copying charges was recently invalidated for lack of legislative authority to promulgate the rule. The department's rule that authorizes the provision of postage to indigent inmates in legal proceedings does not authorize the department to impose a lien on the inmate's funds for the amount of the postage. Under the bill, if an inmate has insufficient funds to pay postage and duplicating costs, a lien will be placed on the inmate's trust account.

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:

This bill authorizes the Department of Corrections to impose charges on inmates for postage and duplicating costs in legal proceedings.

B. Private Sector Impact:

This bill authorizes the Department of Corrections to impose charges on inmates for postage and duplicating costs in legal proceedings.

C. Government Sector Impact:

The Department of Corrections estimates that this bill will allow it to recover $150,000 per year. The bill may also reduce the number of inmate lawsuits.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

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.

#1

CHAMBER ACTION

Senate House

JUSTICE APPROPRIATIONS
DATE: 4-20-06
TIME: 2:50 P.M.

The Committee on Justice Appropriations (Crist) recommended the following amendment:

Senate Amendment (with title amendment)

On page 1, lines 20-22, delete those lines

and insert: evidentiary materials needed to initiate civil proceedings in judicial or administrative forums or that must be filed or served in a pending civil proceeding. The following costs are

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

On page 1, line 5, after the word "inmate"

insert:

civil

3

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: Justice Appropriations Committee

BILL: CS/CS/CS/SB'S 114 & 444

INTRODUCER: Criminal Justice Committee, Judiciary Committee, Children and Families Committee, and Senators Lynn, Campbell, Miller, and Smith

SUBJECT: Drug Court Programs

DATE: April 19, 2006 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Goltry	Whiddon	CF	**Fav/Combined CS**
2.	Luczynski	Maclure	JU	**Fav/CS**
3.	Cellon	Cannon	CJ	**Fav/CS**
4.	Hendon	Sadberry	JA	**Pre-meeting**
5.				
6.				

I. Summary:

This bill modifies laws regarding treatment-based drug court[1] programs in dependency, criminal, and delinquency proceedings. The bill authorizes a court, in a dependency case, to order a child or a person who has custody or is requesting custody of the child to be evaluated for drug or alcohol problems at any time after a shelter petition or petition for dependency is filed. Additionally, it allows the court, after an adjudication of dependency or a finding of dependency where adjudication is withheld, to require participation in and compliance with treatment-based drug court programs. Individuals involved in a dependency case may voluntarily enter drug court prior to an adjudication of dependency or a finding of dependency where adjudication is withheld.

In adult criminal and juvenile delinquency courts, treatment-based drug court programs have traditionally been structured as pretrial intervention programs. This bill requires that entry into any **pretrial** treatment-based drug court program must be voluntary. Additionally, voluntary participants must acknowledge in writing that they understand the requirements of the program and the potential sanctions for noncompliance. This bill also provides that counties with treatment-based drug court programs may adopt a protocol of sanctions for noncompliance with program rules. If a protocol of sanctions is adopted, it may include, but is not limited to: (a) placement in a substance abuse treatment program offered by a licensed service provider; (b) placement in a jail-based treatment program; or (c) serving a period of secure detention if a child or a period of incarceration within the time limits established for contempt of court if an adult.

[1] The term "drug court" refers to a process by which substance abusers entering the court system are placed into treatment and proactively monitored by the judge and a team of justice-system and treatment professionals.

These provisions of the bill address recent case law holding that incarceration or a licensed substance abuse treatment program may not be imposed for noncompliance with pretrial drug court programs as such sanctions are not authorized by current law.[2]

The fiscal impact to state and local governments of this bill is indeterminate. The language of the bill is permissive (i.e., creation of a treatment-based drug court program is at the counties' discretion). However, should a county choose to create such a program, an individual participating in the program will be subject to a coordinated strategy developed by a drug court team which may include a protocol of sanctions that may have some fiscal impact.

The bill substantially amends the following sections of the Florida Statutes: 39.001, 39.407, 39.507, 39.521, 397.334, 910.035, 948.08, 948.16, and 985.306.

II. Present Situation:

Proceedings Related to Children (Chapter 39, F.S.)
Chapter 39, F.S., governs proceedings relating to children, including those for dependency, protective investigations, custody, permanency (such as adoption), appointment of guardian advocates, and termination of parental rights. Chapter 39, F.S., incorporates the due process provisions contained in the Florida Rules of Juvenile Procedure (Fl.R.Juv.P.), such as those requiring a hearing for children and parents, the opportunity to be heard, and the right to counsel, including appointed counsel.[3]

Current law authorizes the court to order a physical or mental examination by a qualified professional, upon good cause and in accordance with Rule 8.675, (Fl.R.Juv.P.), whenever the mental or physical condition of a parent or legal custodian is controverted (s. 39.407(15), F.S.). No requirement exists in ch. 39, F.S., for a child or the child's parent, caregiver, legal custodian, or other person requesting custody of the child to be evaluated for substance abuse problems.

In January 1999, the National Center on Addiction and Substance Abuse at Columbia University (CASA) published a report detailing its two-year analysis of the connection between substance abuse and child maltreatment.[4] The Center estimates that substance abuse causes or contributes to seven out of 10 cases of child maltreatment and accounts for nearly $10 billion in federal, state, and local spending, exclusive of costs relating to healthcare, operating judicial systems, law enforcement, special education, lost productivity, and privately incurred costs.

In April 1999, the Department of Health and Human Services issued a report to Congress that highlighted the necessity of prioritizing the identification and treatment of parental substance abuse and its relationship to children in foster care.[5] It stated that children in substance-abusing households were more likely than others to be served in foster care, spent longer periods in foster care than other children, and were less likely to have left foster care within a year.

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[2] *Diaz v. State*, 884 So. 2d 299, 300 (Fla. 2d DCA 2004); *T.N. v. Portesy*, 30 FLW D2369 (Fla. 2d DCA Oct. 7, 2005).
[3] See Rules 8.290 – 8.695, (Fl.R.Juv.P.)
[4] National Center on Addiction and Substance Abuse, *No Safe Haven: Children of Substance Abusing Parents,* Columbia University, New York, January 1999.
[5] U.S. Department of Health and Human Services, *Blending Perspectives and Building Common Ground: A Report to Congress on Substance Abuse and Child Protection,* U.S. Government Printing Office, Washington, D.C., April 1999.

Drug Court
In Florida, in 2002, approximately 10,200 offenders were referred to drug court. Studies show that drug court graduates experience a significantly reduced rate of recidivism, and that drug courts are a cost-effective alternative to incarceration of drug offenders.[6] Section 397.334, F.S., authorizes counties to fund treatment-based drug court programs. The intent of the Legislature, as stated in s. 397.334(1), F.S., is to encourage other state agencies to support the creation and establishment of drug court programs. These programs attempt to integrate judicial supervision, treatment, accountability, and sanctions to reduce recidivism in drug-related crimes. As originally enacted in 2001, s. 397.334, F.S., directed each judicial circuit to establish a model of a drug court program, and currently each of the 20 judicial circuits has a drug court program in place. Section 397.334, F.S., authorized the establishment of drug court programs in misdemeanor, felony, family, or other court divisions. There are dependency drug courts operating in 12 of the 20 judicial circuits. Treatment-based drug court programs may include pre-trial intervention programs as provided for in ss. 948.08, 948.16, and 985.306, F.S.

Recently, the Second District Court of Appeal has ruled that because there is no statutory authorization for the imposition of incarceration or a licensed substance abuse treatment program (specifically an Addiction Receiving Facility) upon violation of a drug court program, such sanctions may not be imposed.[7]

Pretrial Intervention Programs
Section 948.08(6), F.S., allows defendants charged with certain drug purchase or possession felonies, prostitution, or tampering with evidence to be admitted into a pretrial substance abuse education and treatment intervention program if the defendant has not previously been convicted of a felony and has not previously been referred to pretrial intervention. If the state attorney establishes, by a preponderance of the evidence, that the defendant was involved in dealing or selling drugs, the court must deny admission into the pretrial intervention program. If the defendant successfully completes the program, the case is dismissed. If the defendant does not complete the program, the prosecution proceeds.

Section 910.035, F.S., relates to transfer orders for a defendant out of county. This section provides for transfer to a drug court program in another county where the defendant is eligible for participation in a drug court program under s. 948.08(6), F.S., and certain conditions have been met.[8]

Under s. 948.16, F.S., a defendant charged with a misdemeanor for possession of a controlled substance or drug paraphernalia under ch. 893, F.S., and who has not previously been convicted of a felony and who has not previously been admitted to a pretrial intervention program is eligible for admission into a misdemeanor pretrial substance abuse education and treatment program. If the defendant successfully completes the program, the charges will be dismissed. If the defendant does not complete the program, the prosecution proceeds.

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[6] *Id.*
[7] *Diaz v. State*, 884 So. 2d 299 (Fla. 2d DCA 2004); *T.N. v. Portesy*, 30 FLW D2369 (Fla. 2d DCA Oct. 7, 2005).
[8] Section 910.035(5), F.S.

Delinquency Pretrial Intervention
Section 985.306, F.S., provides for a pretrial intervention program in the juvenile justice system. To the extent that funds are available, a child who is charged under ch. 893, F.S., with a felony of the second or third degree for purchase or possession of a controlled substance and who has not previously been adjudicated for a felony nor been admitted to a delinquency pretrial intervention program is eligible for admission into a delinquency pretrial substance abuse education and treatment intervention program for at least a year when approved by the chief judge or alternative sanctions coordinator of the circuit. If the child successfully completes the program, the court may dismiss the charges.

Contempt of Court
Section 38.22, Florida Statutes states: "Every court may punish contempts against it whether such contempts be direct, indirect, or constructive, and in any such proceeding the court shall proceed to hear and determine all questions of law and fact." Contempts are defined in s. 38.23, F.S. as follows: "A refusal to obey any legal order, mandate or decree, made or given by any judge either in term time or in vacation relative to any of the business of said court, after due notice thereof, shall be considered a contempt, and punished accordingly."

Courts have the inherent power to punish contempts, by appropriate fine, imprisonment, or both. *Wilson v. Sandstrom*, 317 So.2d 732 (Fla. 1975), cert. den. 423 U.S. 1053.

In the case of an indirect criminal contempt, which are contempts of the court committed outside the court's presence, an alleged contemnor must be given notice of the alleged contempt, and be given an opportunity to be heard why he or she should not be held in contempt. It is likely that indirect criminal contempt, for failure to abide by the conditions of the drug court treatment program, would be one alternative available to a court in cases that originate in the drug court setting contemplated by the bill.

Direct or indirect criminal contempt of court is a common law crime in Florida, and is not designated as a felony or a misdemeanor offense. Therefore, s. 775.02, F.S., applies: "When there exists no such provision by statute, the court shall proceed to punish such offense by fine or imprisonment, but the fine shall not exceed $500, nor the imprisonment 12 months." (see also *Thomas A. Edison College v. State Board of Independent Colleges and Universities,* 411 So.2d 257 (Fla. 4th DCA, 1982); *Kramer v. State,* 800 So.2d 319 (Fla. 2nd DCA, 2001).

III. Effect of Proposed Changes:

This bill creates the "Robert J. Koch Drug Court Intervention Act" and amends several sections of statute that relate to the dependency system, referral to treatment-based drug courts, and referral for pretrial intervention.

Dependency Court – Referrals to Drug Court
The bill amends s. 39.001, F.S., adding legislative intent to encourage the use of the drug court program model and to authorize courts to assess children and persons who have custody or are requesting custody of children for substance abuse problems and to address those problems at every stage of the dependency process. It establishes the following legislative goals for the state regarding substance abuse treatment in the dependency system:

- ensure the safety of children;
- prevent and remediate the consequences of substance abuse;
- expedite permanency for children and reunify healthy, intact families when appropriate; and
- support families in recovery.

This bill authorizes a dependency court, upon a showing of good cause, to order a child, or person who has custody or is requesting custody of the child, to submit to substance abuse assessment or evaluation at any time after a shelter petition or petition for dependency has been filed. The assessment or evaluation must be made by a qualified professional, as defined by s. 397.311, F.S.[9]

After an adjudication of dependency, or finding of dependency where adjudication is withheld, the court may require a child or a person who has custody or is requesting custody of the child to participate in and comply with treatment and services identified as necessary, including, when appropriate and available, participation in and compliance with a treatment-based drug court program established under s. 397.334, F.S. The bill includes similar authority in ss. 39.507 and 39.521, F.S.

A legislative intent provision of the bill provides that prior to adjudication participation in treatment is voluntary. Although, the language does not specifically provide that voluntary participation in treatment includes a treatment-based drug court program, it is implied by language in the intent provision related to court-ordered participation in a treatment-based drug court program following adjudication. The bill does not require a written agreement for voluntary or court-ordered participation in a treatment-based drug court program. This raises due process concerns related to the voluntary participation. To address the due process concerns, the Legislature may wish to consider adding a provision for voluntary participation that requires a written agreement by the individual, which includes a statement that the individual understands the requirements of the program and the potential sanctions for noncompliance.

The court, in conjunction with other public agencies, may oversee progress and compliance with treatment and may impose appropriate available sanctions for noncompliance. The court may also make a finding of noncompliance for consideration in determining whether an alternate placement of the child is in the child's best interests.

A person enrolled in a treatment-based drug court program established under s. 397.334. F.S., is subject to a coordinated strategy developed by the drug court team that may include a protocol of sanctions for noncompliance with dependency drug court program rules. If a protocol of sanctions is adopted, it may include, but is not limited to: (a) placement in a substance abuse

[9] Section 397.311(25), F.S., defines "qualified professional" to mean "a physician licensed under chapter 458 or chapter 459; a professional licensed under chapter 490 or chapter 491; or a person who is certified through a department-recognized certification process for substance abuse treatment services and who holds, at a minimum, a bachelor's degree. A person who is certified in substance abuse treatment services by a state-recognized certification process in another state at the time of employment with a licensed substance abuse provider in this state may perform the functions of a qualified professional as defined in this chapter but must meet certification requirements contained in this subsection no later than 1 year after his or her date of employment."

treatment program offered by a licensed service provider; (b) placement in a jail-based treatment program; or (c) serving a period of secure detention if a child or a period of incarceration within the time limits established for contempt of court if an adult.

Criminal and Juvenile Delinquency Proceedings

Drug court programs typically provide services and monitoring in the pretrial stage of a criminal case. This bill provides that pretrial treatment-based drug court programs may include certain pretrial intervention programs, treatment-based drug court programs authorized under ch. 39, F.S., postadjudicatory programs, and the monitoring of sentenced offenders through a treatment-based drug court program. Entry into any pretrial treatment-based drug court program is voluntary and requires a written agreement by the individual, which includes a statement that the individual understands the requirements of the program and the potential sanctions for noncompliance. A recent court ruling indicates that a participating individual may be allowed to "opt out" of the program if there is an administrative order stating that *participation* in the program is voluntary.[10]

As with chapter 39 (dependency) authorized treatment-based drug court programs, a person enrolled in a treatment-based drug court program established under s. 397.334, F.S., as authorized by a criminal or juvenile delinquency statute[11] is subject to a coordinated strategy developed by the drug court team that may include a protocol of sanctions for noncompliance with the drug court program rules. If a protocol of sanctions is adopted, it may include, but is not limited to: (a) placement in a substance abuse treatment program offered by a licensed service provider; (b) placement in a jail-based treatment program; or (c) serving a period of secure detention if a child or a period of incarceration within the time limits established for contempt of court if an adult. The bill also provides that any person whose charges are dismissed after successfully completing a drug court program, if otherwise eligible, may have his or her arrest record and plea of nolo contendere to the dismissed charges expunged.

This bill requires, contingent upon an annual appropriation, each judicial circuit to establish at least one coordinator position for the treatment-based drug court program.[12]

Current law provides that any person eligible for participation in a drug court treatment program pursuant to s. 948.08(6), F.S., may be eligible to have his or her case transferred to a county

[10] Subsection 948.08(6), F.S., (and ss. 948.16 and 985.06 F.S.) requires that pretrial substance abuse education and treatment intervention programs be approved by the chief judge of the circuit. The court in *Mullin v. Jenne*, 890 So. 2d 543 (Fla. 4th DCA 2005), referenced s. 948.08(6), F.S., and held that where a chief judge's administrative order defining the parameters of the program stated that *participation* (rather than *entry*) in the program was voluntary, a court could not require a defendant to remain in a drug court treatment program. The court noted that had the administrative order stated that "entry" into the program was voluntary, a different result may have occurred. Although this bill provides that entry, rather than participation, is voluntary, pretrial substance abuse intervention programs are still, by statute, subject to approval by the chief judge of the circuit. Thus, should a chief judge issue an administrative order stating that participation in a program is voluntary, participating individuals may opt out of the program. Furthermore, s. 948.08(2), F.S., currently provides that a defendant may not be released to the pretrial intervention program unless he or she has voluntarily agreed to such a program. Therefore, even if a chief judge issues an administrative order stating that participation in a program is voluntary, there is still the potential for a court to hold that by statute all participants in a pretrial intervention program under s. 948.08, F.S., have voluntarily agreed to participate and may opt out of the program.

[11] This refers to the criminal authorized treatment-based drug court programs authorized under ss. 948.08(6) and 948.16, F.S., and the juvenile delinquency authorized treatment-based drug court program authorized under s. 985.306, F.S.

[12] These positions were established in prior budgets and are currently staffed and funded.

other than that in which the charge arose if the drug court program agrees and specific conditions are met.[13] The bill specifies that if approval for transfer is received from all parties, the trial court must accept a plea of nolo contendere. The bill further specifies that the jurisdiction to which a case has been transferred is responsible for disposition of the case.

This bill amends ss. 948.08(6), 948.16, and 985.306, F.S., to specify that pretrial intervention programs must require that each participant who is enrolled in a felony, misdemeanor, or delinquency pretrial intervention program be subject to a coordinated strategy developed by a drug court team under s. 397.334(3), F.S. The bill also provides that the coordinated strategy may include a protocol of sanctions that may be imposed on the participant and specifies that the coordinated strategy must be provided in writing to the participant at the time the individual enters into a pretrial drug court program.

Upon a finding that a person has not successfully completed the pretrial program, ss. 948.08(6)(c), 948.16(2), and 985.306(3), F.S., currently permit the court to order (i) a person to continue in education and treatment or (ii) the charges to revert to normal channels for prosecution. However, in s. 948.08(6)(c), F.S., the bill provides that continuing in education and treatment may include substance abuse treatment programs offered by licensed service providers as defined in s. 397.311, F.S., or jail-based treatment programs.

The bill provides that under s. 985.306, F.S., the protocol of sanctions for noncompliance may include, but is not limited to, placement in a substance abuse treatment program or serving a period of secure detention. This language does not mirror the similar provisions related to adult sanctions, which include a specific reference to a term of incarceration within the limits of a contempt of court violation (up to 12 months). It appears, however, that the Department of Juvenile Justice has assumed that the court would use its contempt powers in such cases of noncompliance, when the department calculated the potential fiscal impact of the bill.

It should be noted that the time period a court may order a child held in secure detention when he or she is found to be in contempt of court is restricted under, s. 985.216, F.S. [14] The imposition of the protocol of sanctions within the drug court setting makes no reference to the contempt provisions in s. 985.216, F.S., nor to the general detention criteria set forth in s. 985.215, F.S. It also appears that a child who meets the criteria for participation in the drug court program would not fit the standard detention criteria.

Finally, the bill adds tampering with evidence, solicitation for purchase of a controlled substance, and obtaining a prescription by fraud to the list of offenses that make a child eligible for admission into a delinquency pretrial substance abuse education and treatment intervention program.

The bill takes effect upon becoming a law.

[13] Section 910.035(5), F.S.
[14] Section 985.216(1), F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Legal staff in the Department of Children and Families has expressed concern relating to utilizing potentially criminal sanctions in dependency proceedings, which are civil proceedings. This could occur when a civil proceeding results in incarceration, albeit through contempt findings, and otherwise raises questions of whether certain due process rights pertaining to criminal matters were afforded in the civil proceeding. Additionally, they note that the bill proposes to subject nonparties in the dependency proceeding to the jurisdiction of the drug court established by the bill (for dependency matters).

Other constitutional concerns expressed by the department include subjecting a nonparty to contempt sanctions, failure to distinguish whether the contempt is civil or criminal, and failure to define which juvenile procedural rule applies.

Proposed s. 397.334(4), F.S., provides that treatment-based drug court programs may include postadjudicatory programs and the monitoring of sentenced offenders. Although the precise meaning of "postadjudicatory programs" and "the monitoring of sentenced offenders" is not clear from the bill, the ex post facto and double jeopardy clauses may prohibit a court from compelling such a referral for an offender whose offense was committed prior to the effective date of this bill.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may have a fiscal impact on children and their families for whom the court orders substance abuse assessment and treatment services, in that they are required to contribute pursuant to s. 397.431(2), F.S.

Private insurance companies may be affected if additional persons are referred for treatment for which insurance reimbursement is sought.

Treatment and community providers may experience an increase in the number of persons receiving services if additional persons are referred to treatment and other types of services under this proposal.

C. Government Sector Impact:

Department of Juvenile Justice
The Department of Juvenile Justice indicates that the amendment to s. 985.306, F.S., would allow the court to place youth who do not comply with the conditions and sanction of the drug court program in secure detention up to five days for a first violation and up to 15 days for subsequent violations, thus increasing the number of youth eligible for placement in secure detention.

According to Office of the State Courts Administrator, there were 1,798 youth placed in drug court programs statewide during calendar year 2004, not including Broward and Seminole counties. Although no data was provided in reference to the number of youth who violated the conditions of the program, the Department of Juvenile Justice used the assumption that the rate of violation for drug court would be similar to that experienced in other departmental diversion programs. Using that estimate, 17 percent of the 1,798 youth would violate, and 306 youth would be eligible for placement in secure detention up to five days due to a first noncompliance. Assuming five percent of the first time violators are noncompliant a second time, 15 youth would be eligible for placement in secure detention up to 15 days due to a second noncompliance.

Using the projections described, the following formula was used to determine projected costs.

1,798 youth x 17% violations =	306 first time violators	
306 1st violators x 5 days =	1,530 resident days at $115/day =	$175,950
306 1st violators x 5% 2nd violations =	15 second time violators	
15 2nd violators x 15 days =	225 resident days x $115/day =	$25,875
Total cost FY 2005-2006 12 months =		$201,825

The actual cost may be higher, as the data provided did not include Broward and Seminole counties, and no assumption was made about how many youth participate in the program in those counties.

It is assumed all of these youth would be post-disposition, as they would be placed in detention as contempt of court cases with the placement in detention being the disposition of the contempt case.

However, because the current law already provided for the same sanctions for contempt of court under s. 985.216, F.S., arguably the only increase in costs due to this bill would be attributable to the potential increase in participants from the addition of tampering with evidence, solicitation for purchase of a controlled substance, and obtaining a

prescription by fraud to the list of offenses that make a child eligible for admission into a delinquency pretrial substance abuse education and treatment intervention program. The additional cost, if any, is undetermined.

Department of Children and Families
The Department of Children and Families has indicated that the impact of the bill can be absorbed into the current substance abuse system of care that is provided for an estimated 8,602 adults and 2,200 children in the drug court system.

If placement in a secure licensed clinical treatment program is designated as a sanction of pretrial intervention programs, these facilities will need to be identified or developed, which may result in an undetermined fiscal impact on the Department of Children and Families.

Authorizing increased judicial oversight may result in an increase in the number and frequency of substance abuse assessments. It is not possible to determine whether there will be a fiscal impact as the language is permissive, and it is unknown whether additional assessments will be conducted. Therefore, it is unknown whether there will be additional costs to be incurred, as the court will have discretion regarding the assessments and any admissions to the program.

Counties
There may be an undetermined fiscal impact on counties associated with providing court ordered jail or detention-based treatment services to individuals who are noncompliant with the pretrial intervention program. Additionally, there may be an undetermined fiscal impact on counties associated with persons participating in a treatment-based drug court program under ch. 39, F.S., for noncompliant participants. However, for pretrial intervention programs and for preadjudication (or prior to a finding of dependency) participation under ch. 39, F.S., this impact is expected to be minimal as the language in the bill is permissive and participation in these contexts is voluntary.

Courts
All 20 judicial circuits have at least one drug court coordinator or a position fulfilling the function of a coordinator, so there should be no fiscal impact based upon this provision. However, the language allows additional coordinators to be requested and funded with legislative approval.

The chief judge in each judicial circuit is currently authorized in statute to appoint an advisory committee. Moving the authorizing language will not result in any additional costs.

VI. Technical Deficiencies:

There are several locations in the bill which contain the terms "participate in" or "participation." These terms should be amended to "entry into" or "entry" in order to maintain consistency throughout the bill, insofar as part of the apparent intent of the bill is to address the issue raised

in one recent appeals court case which ruled on the court's ability to enforce the drug court sanctions, and the defendant's ability to "opt out" of participating in the program.

VII. Related Issues:

None.

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

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.

495964

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CHAMBER ACTION

Senate House

06 APR 20 PM 3:13

SENT TO: CHAIRMAN
STAFF DIR. STAFF

4-20-06
3:13 P.M.

The Committee on Justice Appropriations (Argenziano) recommended the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

Section 1. This act may be cited as the "Robert J. Koch Drug Court Intervention Act."

Section 2. Subsection (4) of section 39.001, Florida Statutes, is amended to read:

39.001 Purposes and intent; personnel standards and screening.--

(4) SUBSTANCE ABUSE SERVICES.--

(a) The Legislature recognizes that early referral and comprehensive treatment can help combat substance abuse in families and that treatment is cost effective.

(b) The Legislature establishes the following goals for the state related to substance abuse treatment services in the dependency process:

1. To ensure the safety of children.

1 2. To prevent and remediate the consequences of
2 substance abuse on families involved in protective supervision
3 or foster care and reduce substance abuse, including alcohol
4 abuse, for families who are at risk of being involved in
5 protective supervision or foster care.
6 3. To expedite permanency for children and reunify
7 healthy, intact families, when appropriate.
8 4. To support families in recovery.
9 (c) The Legislature finds that children in the care of
10 the state's dependency system need appropriate health care
11 services, that the impact of substance abuse on health
12 indicates the need for health care services to include
13 substance abuse services to children and parents where
14 appropriate, and that it is in the state's best interest that
15 such children be provided the services they need to enable
16 them to become and remain independent of state care. In order
17 to provide these services, the state's dependency system must
18 have the ability to identify and provide appropriate
19 intervention and treatment for children with personal or
20 family-related substance abuse problems.
21 (d) It is the intent of the Legislature to encourage
22 the use of the drug court program model established by s.
23 397.334 and authorize courts to assess children and persons
24 who have custody or are requesting custody of children where
25 good cause is shown to identify and address substance abuse
26 problems as the court deems appropriate at every stage of the
27 dependency process. Participation in treatment, including a
28 treatment-based drug court program, may be required by the
29 court following adjudication. Participation in assessment and
30 treatment prior to adjudication shall be voluntary, except as
31 provided in s. 39.407(16).

1 (e) It is therefore the purpose of the Legislature to
2 provide authority for the state to contract with community
3 substance abuse treatment providers for the development and
4 operation of specialized support and overlay services for the
5 dependency system, which will be fully implemented and used
6 ~~utilized~~ as resources permit.
7 (f) Participation in the treatment-based drug court
8 program does not divest any public or private agency of its
9 responsibility for a child or adult, but is intended to enable
10 these agencies to better meet their needs through shared
11 responsibility and resources.
12 Section 3. Subsection (15) of section 39.407, Florida
13 Statutes, is amended, and subsection (16) is added to that
14 section, to read:
15 39.407 Medical, psychiatric, and psychological
16 examination and treatment of child; physical, ~~or~~ mental, or
17 substance abuse examination of ~~parent or~~ person with or
18 requesting child custody ~~of child~~.--
19 (15) At any time after the filing of a shelter
20 petition or petition for dependency, when the mental or
21 physical condition, including the blood group, of a parent,
22 caregiver, legal custodian, or other person who has custody or
23 is requesting custody of a child is in controversy, the court
24 may order the person to submit to a physical or mental
25 examination by a qualified professional. The order may be made
26 only upon good cause shown and pursuant to notice and
27 procedures as set forth by the Florida Rules of Juvenile
28 Procedure.
29 (16) At any time after a shelter petition or petition
30 for dependency is filed, the court may order a person who has
31 custody or is requesting custody of the child to submit to a

1 substance abuse assessment or evaluation. The assessment or
2 evaluation must be administered by a qualified professional,
3 as defined in s. 397.311. The order may be made only upon good
4 cause shown. This subsection does not authorize placement of a
5 child with a person seeking custody, other than the parent or
6 legal custodian, who requires substance abuse treatment.
7 Section 4. Subsection (9) is added to section 39.507,
8 Florida Statutes, to read:
9 39.507 Adjudicatory hearings; orders of
10 adjudication.--
11 (9) After an adjudication of dependency, or a finding
12 of dependency where adjudication is withheld, the court may
13 order a person who has custody or is requesting custody of the
14 child to submit to a substance abuse assessment or evaluation.
15 The assessment or evaluation must be administered by a
16 qualified professional, as defined in s. 397.311. The court
17 may also require such person to participate in and comply with
18 treatment and services identified as necessary, including,
19 when appropriate and available, participation in and
20 compliance with a treatment-based drug court program
21 established under s. 397.334. In addition to supervision by
22 the department, the court, including the treatment-based drug
23 court program, may oversee the progress and compliance with
24 treatment by a person who has custody or is requesting custody
25 of the child. The court may impose appropriate available
26 sanctions for noncompliance upon a person who has custody or
27 is requesting custody of the child or make a finding of
28 noncompliance for consideration in determining whether an
29 alternative placement of the child is in the child's best
30 interests. Any order entered under this subsection may be made
31 only upon good cause shown. This subsection does not authorize

1 placement of a child with a person seeking custody, other than
2 the parent or legal custodian, who requires substance abuse
3 treatment.
4 Section 5. Paragraph (b) of subsection (1) of section
5 39.521, Florida Statutes, is amended to read:
6 39.521 Disposition hearings; powers of disposition.--
7 (1) A disposition hearing shall be conducted by the
8 court, if the court finds that the facts alleged in the
9 petition for dependency were proven in the adjudicatory
10 hearing, or if the parents or legal custodians have consented
11 to the finding of dependency or admitted the allegations in
12 the petition, have failed to appear for the arraignment
13 hearing after proper notice, or have not been located despite
14 a diligent search having been conducted.
15 (b) When any child is adjudicated by a court to be
16 dependent, the court having jurisdiction of the child has the
17 power by order to:
18 1. Require the parent and, when appropriate, the legal
19 custodian and the child~~,~~ to participate in treatment and
20 services identified as necessary. The court may require the
21 person who has custody or who is requesting custody of the
22 child to submit to a substance abuse assessment or evaluation.
23 The assessment or evaluation must be administered by a
24 qualified professional, as defined in s. 397.311. The court
25 may also require such person to participate in and comply with
26 treatment and services identified as necessary, including,
27 when appropriate and available, participation in and
28 compliance with a treatment-based drug court program
29 established under s. 397.334. In addition to supervision by
30 the department, the court, including the treatment-based drug
31 court program, may oversee the progress and compliance with

1 treatment by a person who has custody or is requesting custody
2 of the child. The court may impose appropriate available
3 sanctions for noncompliance upon a person who has custody or
4 is requesting custody of the child or make a finding of
5 noncompliance for consideration in determining whether an
6 alternative placement of the child is in the child's best
7 interests. Any order entered under this subparagraph may be
8 made only upon good cause shown. This subparagraph does not
9 authorize placement of a child with a person seeking custody
10 of the child, other than the child's parent or legal
11 custodian, who requires substance abuse treatment.
12 2. Require, if the court deems necessary, the parties
13 to participate in dependency mediation.
14 3. Require placement of the child either under the
15 protective supervision of an authorized agent of the
16 department in the home of one or both of the child's parents
17 or in the home of a relative of the child or another adult
18 approved by the court, or in the custody of the department.
19 Protective supervision continues until the court terminates it
20 or until the child reaches the age of 18, whichever date is
21 first. Protective supervision shall be terminated by the court
22 whenever the court determines that permanency has been
23 achieved for the child, whether with a parent, another
24 relative, or a legal custodian, and that protective
25 supervision is no longer needed. The termination of
26 supervision may be with or without retaining jurisdiction, at
27 the court's discretion, and shall in either case be considered
28 a permanency option for the child. The order terminating
29 supervision by the department shall set forth the powers of
30 the custodian of the child and shall include the powers
31 ordinarily granted to a guardian of the person of a minor

1 unless otherwise specified. Upon the court's termination of
2 supervision by the department, no further judicial reviews are
3 required, so long as permanency has been established for the
4 child.
5 Section 6. Section 397.334, Florida Statutes, is
6 amended to read:
7 397.334 Treatment-based drug court programs.--
8 (1) Each county may fund a treatment-based drug court
9 program under which persons in the justice system assessed
10 with a substance abuse problem will be processed in such a
11 manner as to appropriately address the severity of the
12 identified substance abuse problem through treatment services
13 ~~plans~~ tailored to the individual needs of the participant. It
14 is the intent of the Legislature to encourage the Department
15 of Corrections, the Department of Children and Family
16 Services, the Department of Juvenile Justice, the Department
17 of Health, the Department of Law Enforcement, the Department
18 of Education, and such ~~other~~ agencies, local governments, law
19 enforcement agencies, ~~and~~ other interested public or private
20 sources, and individuals to support the creation and
21 establishment of these problem-solving court programs.
22 Participation in the treatment-based drug court programs does
23 not divest any public or private agency of its responsibility
24 for a child or adult, but enables ~~allows~~ these agencies to
25 better meet their needs through shared responsibility and
26 resources.
27 (2) Entry into any pretrial treatment-based drug court
28 program shall be voluntary. When neither s. 948.08(6)(a)1. nor
29 s. 948.08(6)(a)2. applies, the court may order an individual
30 to enter into a pretrial treatment-based drug court program
31 only upon written agreement by the individual, which shall

1 include a statement that the individual understands the
2 requirements of the program and the potential sanctions for
3 noncompliance.
4 (3) ~~(2)~~ The treatment-based drug court programs shall
5 include therapeutic jurisprudence principles and adhere to the
6 following 10 key components, recognized by the Drug Courts
7 Program Office of the Office of Justice Programs of the United
8 States Department of Justice and adopted by the Florida
9 Supreme Court Treatment-Based Drug Court Steering Committee:
10 (a) Drug court programs integrate alcohol and other
11 drug treatment services with justice system case processing.
12 (b) Using a nonadversarial approach, prosecution and
13 defense counsel promote public safety while protecting
14 participants' due process rights.
15 (c) Eligible participants are identified early and
16 promptly placed in the drug court program.
17 (d) Drug court programs provide access to a continuum
18 of alcohol, drug, and other related treatment and
19 rehabilitation services.
20 (e) Abstinence is monitored by frequent testing for
21 alcohol and other drugs.
22 (f) A coordinated strategy governs drug court program
23 responses to participants' compliance.
24 (g) Ongoing judicial interaction with each drug court
25 program participant is essential.
26 (h) Monitoring and evaluation measure the achievement
27 of program goals and gauge program effectiveness.
28 (i) Continuing interdisciplinary education promotes
29 effective drug court program planning, implementation, and
30 operations.
31 (j) Forging partnerships among drug court programs,

1 public agencies, and community-based organizations generates
2 local support and enhances drug court program effectiveness.
3 (4) ~~(3)~~ Treatment-based drug court programs may include
4 pretrial intervention programs as provided in ss. 948.08,
5 948.16, and 985.306, treatment-based drug court programs
6 authorized in chapter 39, postadjudicatory programs, and
7 review of the status of compliance or noncompliance of
8 sentenced offenders through a treatment-based drug court
9 program. While enrolled in a treatment-based drug court
10 program, the participant is subject to a coordinated strategy
11 developed by a drug court team under subsection (3). The
12 coordinated strategy may include a protocol of sanctions that
13 may be imposed upon the participant for noncompliance with
14 program rules. The protocol of sanctions may include, but is
15 not limited to, placement in a substance abuse treatment
16 program offered by a licensed service provider as defined in
17 s. 397.311 or in a jail-based treatment program or serving a
18 period of secure detention under chapter 985 if a child or a
19 period of incarceration within the time limits established for
20 contempt of court if an adult. The coordinated strategy must
21 be provided in writing to the participant before the
22 participant agrees to enter into a treatment-based drug court
23 program.
24 (5) Contingent upon an annual appropriation by the
25 Legislature, each judicial circuit shall establish, at a
26 minimum, one coordinator position for the treatment-based drug
27 court program within the state courts system to coordinate the
28 responsibilities of the participating agencies and service
29 providers. Each coordinator shall provide direct support to
30 the treatment-based drug court program by providing
31 coordination between the multidisciplinary team and the

1 judiciary, providing case management, monitoring compliance of
2 the participants in the treatment-based drug court program
3 with court requirements, and providing program evaluation and
4 accountability.
5 (6) ~~(4)~~ (a) The Florida Association of Drug Court
6 ~~Program~~ Professionals is created. The membership of the
7 association may consist of treatment-based drug court program
8 practitioners who comprise the multidisciplinary
9 treatment-based drug court program team, including, but not
10 limited to, judges, state attorneys, defense counsel,
11 treatment-based drug court program coordinators, probation
12 officers, law enforcement officers, community representatives,
13 members of the academic community, and treatment
14 professionals. Membership in the association shall be
15 voluntary.
16 (b) The association shall annually elect a chair whose
17 duty is to solicit recommendations from members on issues
18 relating to the expansion, operation, and institutionalization
19 of treatment-based drug court programs. The chair is
20 responsible for providing on or before October 1 of each year
21 the association's recommendations and an annual report to the
22 appropriate Supreme Court ~~Treatment-Based-Drug-Court-Steering~~
23 committee or to the appropriate personnel of the Office of the
24 State Courts Administrator~~,-and-shall-submit-a-report-each~~
25 ~~year,-on-or-before-October-1,-to-the-steering-committee~~.
26 (7) ~~(5)~~ If a county chooses to fund a treatment-based
27 drug court program, the county must secure funding from
28 sources other than the state for those costs not otherwise
29 assumed by the state pursuant to s. 29.004. However, this does
30 not preclude counties from using treatment and other service
31 dollars provided through state executive branch agencies.

1 Counties may provide, by interlocal agreement, for the
2 collective funding of these programs.
3 (8) The chief judge of each judicial circuit may
4 appoint an advisory committee for the treatment-based drug
5 court program. The committee shall be composed of the chief
6 judge, or his or her designee, who shall serve as chair; the
7 judge of the treatment-based drug court program, if not
8 otherwise designated by the chief judge as his or her
9 designee; the state attorney, or his or her designee; the
10 public defender, or his or her designee; the treatment-based
11 drug court program coordinators; community representatives;
12 treatment representatives; and any other persons the chair
13 finds are appropriate.
14 Section 7. Paragraphs (b) and (e) of subsection (5) of
15 section 910.035, Florida Statutes, are amended to read:
16 910.035 Transfer from county for plea and sentence.--
17 (5) Any person eligible for participation in a drug
18 court treatment program pursuant to s. 948.08(6) may be
19 eligible to have the case transferred to a county other than
20 that in which the charge arose if the drug court program
21 agrees and if the following conditions are met:
22 (b) If approval for transfer is received from all
23 parties, the trial court shall accept a plea of nolo
24 contendere and enter a transfer order directing the clerk to
25 transfer the case to the county which has accepted the
26 defendant into its drug court program.
27 (e) Upon successful completion of the drug court
28 program, the jurisdiction to which the case has been
29 transferred shall dispose of the case pursuant to s.
30 948.08(6). If the defendant does not complete the drug court
31 program successfully, the jurisdiction to which the case has

1 been transferred shall dispose of the case within the
2 guidelines of the Criminal Punishment Code ~~case shall be~~
3 ~~prosecuted as determined by the state attorneys of the sending~~
4 ~~and receiving counties~~.
5 Section 8. Subsections (6), (7), and (8) of section
6 948.08, Florida Statutes, are amended to read:
7 948.08 Pretrial intervention program.--
8 (6)(a) Notwithstanding any provision of this section,
9 a person who is charged with a felony of the second or third
10 degree for purchase or possession of a controlled substance
11 under chapter 893, prostitution, tampering with evidence,
12 solicitation for purchase of a controlled substance, or
13 obtaining a prescription by fraud; who has not been charged
14 with a crime involving violence, including, but not limited
15 to, murder, sexual battery, robbery, carjacking, home-invasion
16 robbery, or any other crime involving violence; and who has
17 not previously been convicted of a felony nor been admitted to
18 a felony pretrial program referred to in this section is
19 eligible for voluntary admission into a pretrial substance
20 abuse education and treatment intervention program, including
21 a treatment-based drug court program established pursuant to
22 s. 397.334, approved by the chief judge of the circuit, for a
23 period of not less than 1 year in duration, upon motion of
24 either party or the court's own motion, except:
25 1. If a defendant was previously offered admission to
26 a pretrial substance abuse education and treatment
27 intervention program at any time prior to trial and the
28 defendant rejected that offer on the record, then the court or
29 the state attorney may deny the defendant's admission to such
30 a program.
31 2. If the state attorney believes that the facts and

1 circumstances of the case suggest the defendant's involvement
2 in the dealing and selling of controlled substances, the court
3 shall hold a preadmission hearing. If the state attorney
4 establishes, by a preponderance of the evidence at such
5 hearing, that the defendant was involved in the dealing or
6 selling of controlled substances, the court shall deny the
7 defendant's admission into a pretrial intervention program.
8 (b) While enrolled in a pretrial intervention program
9 authorized by this subsection, the participant is subject to a
10 coordinated strategy developed by a drug court team under s.
11 397.334(3). The coordinated strategy may include a protocol of
12 sanctions that may be imposed upon the participant for
13 noncompliance with program rules. The protocol of sanctions
14 may include, but is not limited to, placement in a substance
15 abuse treatment program offered by a licensed service provider
16 as defined in s. 397.311 or in a jail-based treatment program
17 or serving a period of incarceration within the time limits
18 established for contempt of court. The coordinated strategy
19 must be provided in writing to the participant before the
20 participant agrees to enter into a pretrial treatment-based
21 drug court program or other pretrial intervention program. Any
22 person whose charges are dismissed after successful completion
23 of the treatment-based drug court program, if otherwise
24 eligible, may have his or her arrest record and plea of nolo
25 contendere to the dismissed charges expunged under s.
26 943.0585.
27 (c) ~~(b)~~ At the end of the pretrial intervention period,
28 the court shall consider the recommendation of the
29 administrator pursuant to subsection (5) and the
30 recommendation of the state attorney as to disposition of the
31 pending charges. The court shall determine, by written

1 finding, whether the defendant has successfully completed the
2 pretrial intervention program.
3 ~~(c)1.~~ Notwithstanding the coordinated strategy
4 developed by a drug court team pursuant to s. 397.334(3), if
5 the court finds that the defendant has not successfully
6 completed the pretrial intervention program, the court may
7 order the person to continue in education and treatment, which
8 may include substance abuse treatment programs offered by
9 licensed service providers as defined in s. 397.311 or
10 jail-based treatment programs, or order that the charges
11 revert to normal channels for prosecution.
12 ~~2.~~ The court shall dismiss the charges upon a finding
13 that the defendant has successfully completed the pretrial
14 intervention program.
15 (d) Any entity, whether public or private, providing a
16 pretrial substance abuse education and treatment intervention
17 program under this subsection must contract with the county or
18 appropriate governmental entity, and the terms of the contract
19 must include, but need not be limited to, the requirements
20 established for private entities under s. 948.15(3).
21 ~~(7)--The-chief-judge-in-each-circuit-may-appoint-an~~
22 ~~advisory-committee-for-the-pretrial-intervention-program~~
23 ~~composed-of-the-chief-judge-or-his-or-her-designee,-who-shall~~
24 ~~serve-as-chair,-the-state-attorney,-the-public-defender,-and~~
25 ~~the-program-administrator,-or-their-designees,-and-such-other~~
26 ~~persons-as-the-chair-deems-appropriate.-The-advisory-committee~~
27 ~~may-not-designate-any-defendant-eligible-for-a-pretrial~~
28 ~~intervention-program-for-any-offense-that-is-not-listed-under~~
29 ~~paragraph-(6)(a)-without-the-state-attorney's-recommendation~~
30 ~~and-approval.-The-committee-may-also-include-persons~~
31 ~~representing-any-other-agencies-to-which-persons-released-to~~

1 ~~the-pretrial-intervention-program-may-be-referred.~~
2 (7)~~(8)~~ The department may contract for the services
3 and facilities necessary to operate pretrial intervention
4 programs.
5 Section 9. Section 948.16, Florida Statutes, is
6 amended to read:
7 948.16 Misdemeanor pretrial substance abuse education
8 and treatment intervention program.--
9 (1)(a) A person who is charged with a misdemeanor for
10 possession of a controlled substance or drug paraphernalia
11 under chapter 893, and who has not previously been convicted
12 of a felony nor been admitted to a pretrial program, is
13 eligible for voluntary admission into a misdemeanor pretrial
14 substance abuse education and treatment intervention program,
15 including a treatment-based drug court program established
16 pursuant to s. 397.334, approved by the chief judge of the
17 circuit, for a period based on the program requirements and
18 the treatment plan for the offender, upon motion of either
19 party or the court's own motion, except, if the state attorney
20 believes the facts and circumstances of the case suggest the
21 defendant is involved in dealing and selling controlled
22 substances, the court shall hold a preadmission hearing. If
23 the state attorney establishes, by a preponderance of the
24 evidence at such hearing, that the defendant was involved in
25 dealing or selling controlled substances, the court shall deny
26 the defendant's admission into the pretrial intervention
27 program.
28 (b) While enrolled in a pretrial intervention program
29 authorized by this section, the participant is subject to a
30 coordinated strategy developed by a drug court team under s.
31 397.334(3). The coordinated strategy may include a protocol of

1 sanctions that may be imposed upon the participant for
2 noncompliance with program rules. The protocol of sanctions
3 may include, but is not limited to, placement in a substance
4 abuse treatment program offered by a licensed service provider
5 as defined in s. 397.311 or in a jail-based treatment program
6 or serving a period of incarceration within the time limits
7 established for contempt of court. The coordinated strategy
8 must be provided in writing to the participant before the
9 participant agrees to enter into a pretrial treatment-based
10 drug court program or other pretrial intervention program. Any
11 person whose charges are dismissed after successful completion
12 of the treatment-based drug court program, if otherwise
13 eligible, may have his or her arrest record and plea of nolo
14 contendere to the dismissed charges expunged under s.
15 943.0585.
16 (2) At the end of the pretrial intervention period,
17 the court shall consider the recommendation of the treatment
18 program and the recommendation of the state attorney as to
19 disposition of the pending charges. The court shall determine,
20 by written finding, whether the defendant successfully
21 completed the pretrial intervention program.
22 ~~(a)~~ Notwithstanding the coordinated strategy developed
23 by a drug court team pursuant to s. 397.334(3), if the court
24 finds that the defendant has not successfully completed the
25 pretrial intervention program, the court may order the person
26 to continue in education and treatment or return the charges
27 to the criminal docket for prosecution.
28 ~~(b)~~ The court shall dismiss the charges upon finding
29 that the defendant has successfully completed the pretrial
30 intervention program.
31 (3) Any public or private entity providing a pretrial

1 substance abuse education and treatment program under this
2 section shall contract with the county or appropriate
3 governmental entity. The terms of the contract shall include,
4 but not be limited to, the requirements established for
5 private entities under s. 948.15(3).
6 Section 10. Section 985.306, Florida Statutes, is
7 amended to read:
8 985.306 Delinquency pretrial intervention program.--
9 (1)~~(a)~~ Notwithstanding any provision of law to the
10 contrary, a child who is charged ~~under chapter 893~~ with a
11 felony of the second or third degree for purchase or
12 possession of a controlled substance under chapter 893;
13 tampering with evidence; solicitation for purchase of a
14 controlled substance; or obtaining a prescription by fraud,
15 and who has not previously been adjudicated for a felony ~~nor~~
16 ~~been admitted to a delinquency pretrial intervention program~~
17 ~~under this section~~, is eligible for voluntary admission into a
18 delinquency pretrial substance abuse education and treatment
19 intervention program, including a treatment-based drug court
20 program established pursuant to s. 397.334, approved by the
21 chief judge or alternative sanctions coordinator of the
22 circuit to the extent that funded programs are available, for
23 a period based on the program requirements and the treatment
24 services that are suitable for the offender ~~of not less than 1~~
25 ~~year in duration~~, upon motion of either party or the court's
26 own motion. However, if the state attorney believes that the
27 facts and circumstances of the case suggest the child's
28 involvement in the dealing and selling of controlled
29 substances, the court shall hold a preadmission hearing. If
30 the state attorney establishes by a preponderance of the
31 evidence at such hearing that the child was involved in the

1 dealing and selling of controlled substances, the court shall
2 deny the child's admission into a delinquency pretrial
3 intervention program.
4 (2) While enrolled in a delinquency pretrial
5 intervention program authorized by this section, a child is
6 subject to a coordinated strategy developed by a drug court
7 team under s. 397.334(3). The coordinated strategy may include
8 a protocol of sanctions that may be imposed upon the child for
9 noncompliance with program rules. The protocol of sanctions
10 may include, but is not limited to, placement in a substance
11 abuse treatment program offered by a licensed service provider
12 as defined in s. 397.311 or serving a period of secure
13 detention under this chapter. The coordinated strategy must be
14 provided in writing to the child before the child agrees to
15 enter the pretrial treatment-based drug court program or other
16 pretrial intervention program. Any child whose charges are
17 dismissed after successful completion of the treatment-based
18 drug court program, if otherwise eligible, may have his or her
19 arrest record and plea of nolo contendere to the dismissed
20 charges expunged under s. 943.0585.
21 (3) ~~(b)~~ At the end of the delinquency pretrial
22 intervention period, the court shall consider the
23 recommendation of the state attorney and the program
24 administrator as to disposition of the pending charges. The
25 court shall determine, by written finding, whether the child
26 has successfully completed the delinquency pretrial
27 intervention program.
28 ~~(c)1.~~ Notwithstanding the coordinated strategy
29 developed by a drug court team pursuant to s. 397.334(3), if
30 the court finds that the child has not successfully completed
31 the delinquency pretrial intervention program, the court may

1 order the child to continue in an education, treatment, or
2 urine monitoring program if resources and funding are
3 available or order that the charges revert to normal channels
4 for prosecution.
5 ~~2.~~ The court may dismiss the charges upon a finding
6 that the child has successfully completed the delinquency
7 pretrial intervention program.
8 (4) ~~(d)~~ Any entity, whether public or private,
9 providing pretrial substance abuse education, treatment
10 intervention, and a urine monitoring program under this
11 section must contract with the county or appropriate
12 governmental entity, and the terms of the contract must
13 include, but need not be limited to, the requirements
14 established for private entities under s. 948.15(3). It is the
15 intent of the Legislature that public or private entities
16 providing substance abuse education and treatment intervention
17 programs involve the active participation of parents, schools,
18 churches, businesses, law enforcement agencies, and the
19 department or its contract providers.
20 ~~(2)--The chief judge in each circuit may appoint an~~
21 ~~advisory committee for the delinquency pretrial intervention~~
22 ~~program composed of the chief judge or designee, who shall~~
23 ~~serve as chair, the state attorney, the public defender, and~~
24 ~~the program administrator, or their designees, and such other~~
25 ~~persons as the chair deems appropriate. The committee may also~~
26 ~~include persons representing any other agencies to which~~
27 ~~children released to the delinquency pretrial intervention~~
28 ~~program may be referred.~~
29 Section 11. This act shall take effect upon becoming a
30 law.
31

1 ========== T I T L E A M E N D M E N T ==========
2 And the title is amended as follows:
3 Delete everything before the enacting clause
4
5 and insert:
6 A bill to be entitled
7 An act relating to drug court programs;
8 providing a short title; amending s. 39.001,
9 F.S.; providing additional legislative purposes
10 and intent with respect to the treatment of
11 substance abuse, including the use of the drug
12 court program model; authorizing the court to
13 require certain persons to undergo treatment
14 following adjudication; amending s. 39.407,
15 F.S.; authorizing the court to order specified
16 persons to submit to a substance abuse
17 assessment or evaluation upon a showing of good
18 cause in connection with a shelter petition or
19 petition for dependency; amending ss. 39.507
20 and 39.521, F.S.; authorizing the court to
21 order specified persons to submit to a
22 substance abuse assessment as part of an
23 adjudicatory order or pursuant to a disposition
24 hearing; requiring a showing of good cause;
25 authorizing the court to require participation
26 in a treatment-based drug court program;
27 authorizing the court to impose sanctions for
28 noncompliance; amending s. 397.334, F.S.;
29 revising legislative intent with respect to
30 treatment-based drug court programs to reflect
31 participation by community support agencies,

1 the Department of Education, and other
2 individuals; including postadjudicatory
3 programs as part of treatment-based drug court
4 programs; providing requirements and sanctions,
5 including treatment by specified licensed
6 service providers, jail-based treatment, secure
7 detention, or incarceration, for the
8 coordinated strategy developed by the drug
9 court team to encourage participant compliance;
10 requiring each judicial circuit to establish a
11 position for a coordinator of the
12 treatment-based drug court program, subject to
13 annual appropriation by the Legislature;
14 authorizing the chief judge of each judicial
15 circuit to appoint an advisory committee for
16 the treatment-based drug court program;
17 providing for membership of the committee;
18 revising language with respect to an annual
19 report; amending s. 910.035, F.S.; revising
20 language with respect to conditions for the
21 transfer of a case in the drug court treatment
22 program to a county other than that in which
23 the charge arose; amending ss. 948.08, 948.16,
24 and 985.306, F.S., relating to felony,
25 misdemeanor, and delinquency pretrial substance
26 abuse education and treatment intervention
27 programs; providing for application of the
28 coordinated strategy developed by the drug
29 court team; providing for expungement of
30 certain records and pleas; removing provisions
31 authorizing appointment of an advisory

1 committee, to conform to changes made by the
2 act; providing an effective date.
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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: Justice Appropriations Committee

BILL: Senate Bill 186

INTRODUCER: Senators Villalobos and Lynn

SUBJECT: Postsentence DNA Testing

DATE: April 19, 2006 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	**Favorable**
2.	Chinn	Maclure	JU	**Favorable**
3.	Butler	Sadberry	JA	**Pre-meeting**
4.				
5.				
6.				

I. Summary:

Senate Bill 186 amends the existing postsentencing DNA testing statute in three significant ways: 1) it eliminates the deadline for filing postsentencing DNA testing petitions; 2) it eliminates the current requirement that a felon be convicted at trial in order to file a petition, allowing those pleading guilty or nolo contendere to file; and 3) it requires that evidence which is collected at the time of the crime for which testing may be requested be maintained until the term of the sentence in the case has expired.

The bill would become effective upon becoming a law, retroactive to the current deadline for filing petitions for postsentencing DNA testing, October 1, 2005.

This bill substantially amends section 925.11, Florida Statutes.

II. Present Situation:

When the Florida Legislature first addressed postsentencing DNA testing in 2001, it gave a person convicted at trial and sentenced a statutory right to petition for postsentencing DNA testing of physical evidence collected at the time of the crime.[1] Petitions for postsentencing DNA testing are based on the assertion that the DNA test results could exonerate that person or alternatively reduce the sentence.

[1] Chapter 2001-97, L.O.F.; ss. 925.11 and 943.3251, F.S.

In order to petition, the person must: 1) be convicted at trial and sentenced;[2] 2) show that his or her identity was a genuinely disputed issue in the case and why;[3] 3) claim to be innocent;[4] and 4) meet the reasonable probability standard that the person would have been acquitted or received a lesser sentence if the DNA testing had been done at the time of trial or done at the time of the petition under the evolving forensic DNA testing technologies.[5]

If the trial court determines that the facts are sufficiently alleged, the state attorney is required to respond within 30 days pursuant to court order.[6] If the court decides to hold a hearing, the court may appoint counsel for an indigent, if necessary.[7] The trial court must make a determination of whether to grant the petitioner's request for DNA testing based on a finding of whether:

- the physical evidence that may contain DNA still exists;
- the results of DNA testing of that evidence would have been admissible at trial and whether there is reliable proof that the evidence has not been materially altered and would be admissible at a future hearing; and
- a reasonable probability exists that the defendant would have been acquitted of the crime charged or received a lesser sentence if DNA test results had been admitted at trial.[8]

If the court denies the petition for DNA testing, a motion for rehearing must be filed within 15 days of the order, and the 30-day period of appeal is tolled until the court rules on the motion.[9] Otherwise, either party has 30 days to file an appeal of the ruling. The order denying relief must include notice of these time limitations. If the court grants the petition for DNA testing, the defendant is assessed the cost of the DNA testing unless the court finds that the defendant is indigent.[10] The Florida Department of Law Enforcement (FDLE) performs the DNA test pursuant to court order.[11] The results of the DNA testing are provided to the court, the defendant, and the prosecuting authority.[12]

Time Limitations

The Legislature amended s. 925.11, F.S., in 2004 to extend the original two-year time limitation during which time a person convicted at trial and sentenced must file a petition for post-conviction DNA testing of evidence to a four-year time limitation.[13] This extended the previous deadline of October 1, 2003, to October 1, 2005, for any petition that would otherwise be time-

[2] Section 925.11(1)(a), F.S.
[3] Section 925.11(2)(a)4., F.S.
[4] Section 925.11(2)(a)3., F.S.
[5] Section 925.11(2)(f)3., F.S.
[6] Section 925.11(2)(c), F.S.
[7] Section 925.11(2)(e), F.S.
[8] Section 925.11(2)(f), F.S.
[9] Section 925.11(3), F.S.
[10] Section 925.11(2)(g), F.S.
[11] Section 943.3251, F.S.
[12] Section 925.11(2)(i), F.S.
[13] Chapter 2004-67, L.O.F.

barred. The Florida Supreme Court adopted this new deadline in Rule 3.853, Florida Rules of Criminal Procedure, the rule that governs postconviction DNA court procedure.[14]

The time limit for filing a petition for postsentencing DNA testing is measured from *the later of the following dates*:

- Four years from the date the judgment and sentence became final;
- Four years from the date the conviction was affirmed on direct appeal;
- Four years from the date collateral counsel was appointed (applicable solely in death penalty cases); or
- October 1, 2005.

The law also provides a catch-all exception to the four-year time limitation. If the facts upon which the petition is based were unknown or could not have been known with the exercise of due diligence, then a person convicted at trial and sentenced could petition at any time for postsentencing DNA testing. This language mirrors the language of Rule 3.850(b)(1), Fl. R. Crim. P., commonly known as the "due diligence/newly discovered evidence" exception.

On September 29, 2005, the Florida Supreme Court amended Florida Rule of Criminal Procedure 3.853(d)(1). The amendment extended the time for filing petitions from October 1, 2005, to July 1, 2006.[15]

Preservation of Physical Evidence

Section 925.11(4), F.S., provides for preservation of physical evidence collected at the time of the crime for which postsentencing DNA testing may be requested. The length of time the governmental entity must preserve evidence directly relates to the length of time during which a petitioner may file for DNA testing. By virtue of the Legislature extending the petition filing deadline to allow petitioners four years to request testing, the requirements related to preservation of evidence are similarly extended.[16] Unchanged since the statute's enactment, however, evidence in death penalty cases must be maintained for 60 days after the execution of the sentence.

Physical evidence may be disposed of prior to the time limit for filing a petition for postsentencing DNA testing under certain conditions.[17] Prior to the disposition of the evidence, notice must be provided to the defendant and any counsel of record, the prosecuting authority, and the Attorney General. If the notifying governmental entity does not receive, within 90 days after notification, either a copy of a petition for postsentencing DNA testing or a request not to

[14] *Amendments to Florida Rule of Criminal Procedure 3.853(d)(1)(A)(Postconviction DNA Testing)*, 884 So. 2d 934 (Fla. 2004).
[15] *Emergency Recommendation and Report of the Florida Bar Criminal Procedure Rules Committee to Amend Rule 3.853(d), Florida Rules of Criminal Procedure*, SC 05-1702, September 29, 2005.
[16] Chapter 2004-67, L.O.F.; *see also, Amendments to Florida Rule of Criminal Procedure 3.853(d)(1)(A)(Postconviction DNA Testing)*, 884 So. 2d 934 (Fla. 2004) (approving similar extension language to rules of procedure for the court system).
[17] Section 925.11(4)(c), F.S.

dispose of the evidence because a petition will be filed, the evidence may be disposed of, unless some other provision of law or rule requires its preservation or retention.[18]

It should be pointed out that physical evidence in many older cases may have long since been destroyed as a matter of routine purging. If, however, the evidence existed and was under the control of a governmental entity at the time of the enactment of s. 925.11, F.S., it is highly unlikely that it has been destroyed. Given the advent of new testing DNA methods, governmental agencies are keenly aware of the potential usefulness of this evidence. Especially in the most serious cases, law enforcement actually has an interest in preserving the evidence until the inmate has served his or her sentence to completion. This is so because of the possibility a case could come back for a re-trial on some issue or the possibility that a convicted petitioner could be exonerated and the person who actually committed the crime may be arrested and stand trial.

Current statutory requirements for preserving evidence are also affected by an executive order issued by the Governor which extended the period of time law enforcement agencies must preserve evidence that may contain DNA. The order essentially eliminates any possibility that such evidence would be destroyed before postconviction testing could be performed, if requested and ordered by a court.[19]

Rights to Appeal, Generally

Under current law, a defendant who has been convicted has certain rights to appeal on direct appeal or on matters that are collateral to the conviction. Article V, Section 4(b) of the Florida Constitution has been construed to convey a constitutional protection of this right.[20]

Direct Appeals after Trial

Matters that are raised on direct appeal include evidentiary rulings made by the trial court during the course of the defendant's trial, and other matters objected to during the course of the trial such as the jury instructions, prosecutorial misconduct, and procedural rulings made by the trial court. The Legislature codified the "contemporaneous objection" rule, a procedural bar that prevented defendants from raising issues on appeal which had not been objected to at the trial level.[21] By requiring defendants to object to matters at the time of trial, the rule allows trial court judges to consider rulings carefully, perhaps correcting potential mistakes at the trial level.

Section 924.051(3), F.S., was enacted as part of the Criminal Appeal Reform Act of 1996 and reads as follows: "(3) An appeal may not be taken from a judgment or order of a trial court unless prejudicial error is alleged and is properly preserved or, if not properly preserved, would constitute fundamental error. A judgment or sentence may be reversed on appeal only when an appellate court determines after a review of the complete record that prejudicial error occurred and was properly preserved in the trial court or, if not properly preserved, would constitute fundamental error."[22]

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[18] *Id.*
[19] Executive Order 05-160, August 5, 2005.
[20] *Amendments to the Florida Rules of Appellate Procedure,* 696 So. 2d 1103, 1104 (Fla. 1996).
[21] Section 924.051, F.S.
[22] Section 4, ch. 96-248, L.O.F.

The Florida Supreme Court found in *State v. Jefferson* that the foregoing provision did not constitute a jurisdictional bar to appellate review in criminal cases, but rather that the Legislature acted within its power to "place reasonable conditions" upon the right to appeal.[23]

Collateral Review

Postconviction proceedings, also known as collateral review, usually involve claims that the defendant's trial counsel was ineffective, claims of newly discovered evidence, or claims that the prosecution failed to disclose exculpatory evidence. Procedurally, collateral review is generally governed by Florida Rule of Criminal Procedure 3.850. A rule 3.850 motion must be filed in the trial court where the defendant was tried and sentenced. According to rule 3.850, unless the record in the case conclusively shows that the defendant is entitled to no relief, the trial court must order the state attorney to respond to the motion and may then hold an evidentiary hearing.[24] If the trial court denies the motion for postconviction relief with or without holding an evidentiary hearing, the defendant is then entitled to an appeal of this denial to the District Court of Appeal that has jurisdiction over the circuit court where the motion was filed.

A rule 3.850 motion must be filed within two years of the defendant's judgment and sentence becoming final unless the motion alleges that the facts on which the claim is based were unknown to the defendant and could not have been ascertained by the exercise of due diligence.[25] In order to grant a new trial based on newly discovered evidence, the trial court must first find that the evidence was unknown and could not have been known at the time of trial through due diligence. Then, the trial court must find that the evidence is of such a nature that it would probably produce an acquittal on retrial.[26]

Motions for postconviction relief based on newly discovered evidence must be raised within two years of the discovery of such evidence.[27] The Florida Supreme Court has held that the two-year time limit for filing a 3.850 motion based on newly discovered evidence begins to run on a defendant's postsentencing request for DNA testing when the testing method became available. For example, in *Sireci v. State,* the Florida Supreme Court held that the defendant's postconviction claim filed on his 1976 conviction, which was filed in 1993, was time barred because "DNA typing was recognized in this state as a valid test as early as 1988."[28]

Appeal or Review After a Plea of Guilty or Nolo Contendere

When a defendant pleads guilty or nolo contendere (no contest), having elected not to take his or her case to trial, appeal rights are limited. Section 924.06(3), F.S., states: "A defendant who pleads guilty *with no express reservation of the right to appeal a legally dispositive issue*, or a

[23] *State v. Jefferson,* 758 So. 2d 661, 664 (Fla. 2000) (quoting from *Amendments to the Florida Rules of Appellate Procedure,* 696 So. 2d at 1104-1105).
[24] Fla. R. Crim P. 3.850(d).
[25] Fla. R. Crim. P. 3.850(b).
[26] *Torres-Arboleda v. Dugger,* 636 So. 2d 1321, 1324-1325 (Fla. 1994); *Jones v. State,* 709 So. 2d 512, 521 (Fla. 1998).
[27] *Adams v. State,* 543 So. 2d 1244, 1247 (Fla.1989).
[28] 773 So. 2d 34, 43 (Fla. 2000); *See also, Ziegler v. State,* 654 So. 2d 1162, 1164 (Fla. 1995).

defendant who pleads nolo contendere *with no express reservation of the right to appeal a legally dispositive issue*, shall have no right to a direct appeal" (emphasis added).

In *Robinson v. State,* the Florida Supreme Court was asked to review the constitutionality of the foregoing statutory language.[29] The court upheld the statute as applied in *Robinson*, making it clear that once a defendant pleads guilty the only issues that may be appealed are actions that took place contemporaneous with the plea. The court stated: "There is an exclusive and limited class of issues which occur contemporaneously with the entry of the plea that may be the proper subject of an appeal. To our knowledge, they would include only the following: (1) subject matter jurisdiction, (2) the illegality of the sentence, (3) the failure of the government to abide by the plea agreement, and (4) the voluntary and intelligent character of the plea."[30] These principles continue are still controlling with respect to pleas of guilt or nolo contendere.

Section 924.051(4), F.S., enacted as part of the Criminal Appeal Reform Act of 1996, states: "(4) If a defendant pleads nolo contendere without expressly reserving the right to appeal a legally dispositive issue, or if a defendant pleads guilty without expressly reserving the right to appeal a legally dispositive issue, the defendant may not appeal the judgment or sentence." The Florida Supreme Court was asked to review this statute in *Leonard v. State,* and noting its similarity to the statute reviewed in *Robinson*, found that the enactment of that statute basically codified the rule in *Robinson.*[31]

In the *Leonard* case the Court states the rule to be followed by the lower courts: "[t]he district courts should affirm summarily … when the court determines that an appeal does not present: (1) a legally dispositive issue that was expressly reserved for appellate review pursuant to section 924.051(4); (2) an issue concerning whether the trial court lacked subject matter jurisdiction as set forth in *Robinson*; or (3) a preserved sentencing error or a sentencing error that constitutes fundamental error as set forth in our opinion in *Maddox*."[32]

The general policy of the Florida Supreme Court is that where a defendant enters a plea of nolo contendere and reserves the right to appeal an issue that is dispositive of the case, it avoids an unnecessary trial and helps narrow the issues much like stipulations to the facts or law can do in a trial situation.[33] When the parties stipulate that an issue is dispositive, in that the state cannot or will not proceed with the prosecution of the case if the case is remanded because a crucial trial court ruling is reversed, the state may not argue otherwise on appeal.[34] The First District Court of Appeal has further held that no stipulation is necessary under certain circumstances, such as where the trial court ruled upon the constitutionality of the statute under which the defendant is charged. In a case where that lower court ruling is not upheld on appeal, it is not merely tactically infeasible for the state to go forward, it is legally impossible.[35]

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[29] 373 So. 2d 898 (Fla. 1979).
[30] *Id.* at 902.
[31] 760 So. 2d 114, 118 (Fla. 2000).
[32] *Leonard v. State,* 760 So. 2d 114, 119 (Fla. 2000); *see also*, *Maddox v. State*, 760 So. 2d 89, 101 (Fla. 2000). *Maddox v. State* explains that a claim that the sentence imposed exceeds the maximum sentence allowed by statute constitutes a fundamental error that can be raised on appeal, even when the defendant had pled guilty.
[33] See *State v. Ashby,* 245 So. 2d 225, 228 (Fla. 1971); *Brown v. State,* 376 So. 2d 382, 384 (Fla. 1979).
[34] *Phuagnong v. State,* 714 So. 2d 527, 529 (Fla. 1st DCA 1998).
[35] *Griffin v. State,* 753 So. 2d 676, 677-678 (Fla. 2000).

III. Effect of Proposed Changes:

Senate Bill 186 eliminates the necessity of a trial for a convicted person to be eligible to file a petition seeking postsentencing DNA testing. The practical effect of this change is that defendants who have pled guilty or nolo contendere and have been sentenced would be eligible to file a petition to request DNA testing on evidence related to the crime for which they were convicted (assuming they meet the other requirements set forth in statute). The bill also eliminates the current deadline for filing a petition for postsentencing DNA testing, providing that a petition may be filed at any time after the judgment and sentence becomes final.

The proposed revision would require that physical evidence for which postsentencing DNA testing may be requested must be retained by the governmental entity in possession of it. In cases where a defendant has entered a plea and been sentenced, rather than going to trial, the evidence will be maintained by the local law enforcement agency (e.g., police department, sheriff's department, etc.) that handled the case. Requiring the retention of evidence in plea cases for testing purposes effects a new requirement for local law enforcement under the statute because current retention of evidence for possible DNA testing only applies to evidence related to trials and was therefore usually in the possession of the clerk of the court.

The current requirement that evidence must be preserved for 60 days after the execution of the sentence in death penalty cases would remain unchanged, but the length of time for retention of evidence in all other cases would change to conform to the bill's removal of the deadline for requesting DNA testing. Law enforcement agencies would be required to preserve evidence for non-death penalty cases until the expiration of sentence if no other provision of law or rule requires the preservation or retention of the evidence.

This bill takes effect upon becoming a law, retroactive to October 1, 2005, the current statutory deadline for filing petitions.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The Legislature has the exclusive power to enact substantive laws while Article V, Section 2(a) of the Florida Constitution gives the Florida Supreme Court the power to "adopt rules for the practice and procedure in all courts including the time for seeking

appellate review." This bill may be challenged on a claim that it violates the separation of powers doctrine.[36]

The provisions of this bill may be distinguishable from other legislation that has raised separation of powers concerns, due to the fact that this bill expands a legislatively created substantive right to DNA testing.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The Florida Innocence Initiative (the Initiative) is a non-profit organization that assists inmates, who claim to be wrongfully convicted, with the process of requesting postsentencing DNA testing in the State of Florida. The Initiative has spent a total of almost $34,000 on DNA testing for Florida inmates since it was established in the state in 2003. The New York-based Innocence Project has spent an additional $32,692 on DNA testing in Florida since 2001, the year that the Legislature passed the state's postsentencing DNA testing statute.

The above figures represent the amount of funds spent on DNA testing by the Initiative and the Innocence Project based upon the current statute, which only allows such testing for inmates who were adjudicated guilty. According to staff at the Initiative, the organization has received requests for assistance in requesting postsentencing DNA testing from inmates who have pled guilty. The Initiative has rejected these requests in the past because convictions that are the result of a plea are currently not eligible for postsentencing DNA testing under the statute. If the proposed legislation is enacted, the Initiative would likely see an increase in the number of requests for assistance due to the increase in the pool of eligible inmates who are in prison as the result of a plea.

C. Government Sector Impact:

Local Law Enforcement

As previously noted, law enforcement agencies will be required to maintain physical evidence for which DNA testing may be requested until the expiration of the sentence in criminal cases where the defendant pleads guilty or nolo contendere. To date, primarily the clerks of the court have had this responsibility, due to the fact that testing has been limited to cases that have gone to trial. If this would create a fiscal impact for local law enforcement, it is indeterminate at this time.

[36] Art. II, Sect. 3, FLA. CONST.

Florida Department of Law Enforcement (FDLE)

The FDLE finds a minimal fiscal impact associated with the removal of the deadline for filing petitions in cases that have been tried, but it estimates a significant potential fiscal impact related to including plea cases under the postsentencing DNA testing umbrella.

Court records covering a period of three-and-a-half years show that approximately three to four percent of the crimes committed against persons actually result in a trial. The remaining cases result in a plea of guilt or nolo contendere. Translating these numbers to the current inmate population, 60,479, the FDLE believes approximately four percent of inmates sentenced for crimes that are more likely to produce a DNA sample are currently "eligible" for DNA testing under existing law. This figure, 2,419, is based upon an analysis of the types of crime and trial cases that resulted in a prison sentence. FDLE has received 100-150 cases for analysis, or about six percent of the eligible cases.

Assuming that the same rate of requests from inmates whose cases may have evidence that contains DNA are granted by the reviewing court, FDLE estimates approximately 3,483 new analysis requests from DOC inmates if the current law is amended to include plea cases. Dividing the total number estimated (3,483) over a five-year period equates to 696 cases per year.

The estimate of 696 cases per year, based upon the above calculations, represents the high end of the spectrum with respect to the number of DNA testing requests that the FDLE could be called upon to analyze. However, the actual number of DNA testing requests that could be encountered as a result of including inmates who pled guilty or nolo contendere may not be as predictable as these numbers might indicate. It must also be taken into account that DNA testing requests that stem from an adjudication of guilt could be more or less common than testing requests made by those who plead guilty or nolo contendere. In the former, the defendant argued his or her innocence to the point of adjudication while in the latter the defendant has pled out for one reason or another (e.g., guilty of crime charged, guilty of lesser crime than the one charged, or reasons unknown).

Also affecting the number of cases where DNA testing may be requested is the fact that some evidence containing DNA matter may have been purged by law enforcement before postsentencing DNA testing legislation required that such evidence be retained. Thus, the evidence that one might request to be tested no longer exists.

Based upon these concerns, a projection of the fiscal impact of SB 186 is somewhat indeterminate. The following calculations from FDLE provide an estimate of the fiscal impact if the number of cases where DNA testing is granted reaches the approximately 696 requests that the FDLE has projected.

FDLE Performs Analysis In-house

- FTE: 696 cases are approximately 4.8 FTE worth of cases. These analysts could be housed in a single unit to work only postsentencing testing. They would require one FTE for support. Cost for analysts would be $51,952.56 each (salary

plus benefits) Total: $259,762.80. Cost for Forensic Technologist: $37,975.08 (salary plus benefits). Total Cost for FTE: $297,738 (recurring).

- Cost for Kits and Expendables: Assuming each of these cases had 5 samples for DNA analysis, the number of samples would be 3,480 requiring 35 DNA kits @ $2,981 per Kit. Total Kit Cost: $104,335. There is approximately $50,000 for other expendables used in DNA analysis. Total: $154,335 (recurring).

- The unit would require OCO equipment listed below:

2 Thermal Cyclers ($8000 each)	Total: $ 16,000
1 Genetic Analyzer ($157,000)	Total: $157,000
1 Real Time PCR Instrument ($50,000)	Total: $ 50,000
5 Microscopes ($3,000 each)	Total: $ 15,000
5 Centrifuges ($2,000 each)	Total: $ 10,000
2 Biological Hoods ($15,000 each)	Total: $ 30,000
2 Incubators ($5,000 each)	Total: $ 10,000
(Non-recurring)	Total: $288,000

Therefore, FDLE estimates recurring costs for salaries, benefits, and expenses are $452,073, and non-recurring costs for equipment are $288,000.

FDLE Outsources Cases to Private Vendors

- The costs for outsourcing cases to a private vendor would be between $1,500 and $3,000 per case depending on the type of analysis and the size of the case. Therefore, total costs for outsourcing 696 cases would be between $1,044,000 and $2,088,000 each year for five years and perhaps beyond.

Additional Considerations

It appears that FDLE's estimates have only accounted for defendants who are in the custody of the Department of Corrections. Defendants who have pled and not received a prison sentence may also petition for testing under the provisions of the bill. Although the motivation for one to seek testing under those circumstances may be less strong than one who is in prison, the opportunity would exist nonetheless.

The FDLE estimate also does not take into consideration that the Florida Innocence Initiative (the Initiative) currently pays for testing in the vast majority of investigation and litigation of postsentencing DNA petitions in Florida. A spokesperson for the Initiative has explained to Criminal Justice Committee staff that in most cases, the courts are granting their request to have the DNA tested at private laboratories because of commonly-degraded state of the evidence requires testing that FDLE is unable to perform.

Additionally, the above estimates of the fiscal impact of SB 186 assume that the state would be responsible for payment in all cases where petitions for postsentencing DNA

testing are granted. Though the state would bear the cost for DNA testing in most postconviction cases, in cases where the defendant can afford to pay for testing the state would not be required to pay. This is because the statute actually instructs the court to assess the cost of testing to the defendant subject to a finding of indigency.[37]

VI. Technical Deficiencies:

None.

VII. Related Issues:

Innocence Projects

Postsentencing DNA testing was primarily publicized through the efforts of attorney Barry C. Scheck and Peter Neufeld who began studying and litigating the forensic evidence testing in 1988. Their efforts resulted in the establishment of the Innocence Project in 1992 at the Benjamin N. Cardozo School of Law. Since then a number of innocence projects have been established nationwide. Many of these projects are run by pro-bono organizations. These projects form the backbone of The Innocence Network, which incorporates law schools, journalism schools, and public defender offices to assist inmates trying to prove their innocence whether or not the cases involve biological evidence which can be subjected to DNA testing.

It is a labor-and time-intensive review process to investigate inmates' claims of innocence made to innocence projects. Time estimates by the Florida Innocence Initiative range from three to five years for investigating the claims and determining whether such convicted persons have a viable claim to assert for postsentencing DNA testing of evidence that could exonerate them or otherwise reduce their sentence.

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

[37] Section 925.11(2)(g), F.S.

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.

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: Justice Appropriations Committee

BILL: CS/SB 436

INTRODUCER: Governmental Oversight and Productivity Committee and Senators Wilson and Hill

SUBJECT: The Social Status of Black Men and Boys

DATE: April 19, 2006 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Goltry	Whiddon	CF	**Fav/5 amendments**
2.	Rhea	Wilson	GO	**Fav/CS**
3.	Butler	Sadberry	JA	**Pre-meeting**
4.				
5.				
6.				

I. Summary:

This bill creates the Council on the Social Status of Black Men and Boys adjunct to the Department of Legal Affairs and provides for the appointment and qualification of members. This bill requires the Attorney General to organize the initial meeting of the council and to provide staff and administrative support to the council. The council is directed to make a systematic study of the conditions affecting black men and boys, including the homicide rates, arrest and incarceration rates, poverty, violence, drug abuse, death rates, disparate annual income levels, and health issues.

The council is directed to propose measures to alleviate and correct the underlying causes of the conditions described above. The council is to issue its initial annual report by December 15, 2007, with its findings, conclusions, and recommendations and issue a report by December 15 of each year thereafter.

The bill appropriates $50,000 from the General Revenue Fund for the council.

The bill creates an undesignated section of law.

II. Present Situation:

For a number of reasons, several groups in Florida are concerned about the social status of black men and boys. It has been shown, for example, that black men and boys are disproportionately represented in Florida's correctional facilities. According to the Department of Corrections, on June 30, 2005, there were 84,901 inmates in the Florida prison system. The majority of these inmates were male (79,221 or 93.3 percent) and black (43,306 or 51.0 percent). The percentage

of black inmates in prison is, however, decreasing (58.0 percent in June 1994 to 51.0 percent in June 2005).[1]

There is also concern about the number of black students dropping out of high school. The Department of Education reports that dropout rates are highest among black and Hispanic students. The dropout rate for blacks fell from 5.5 percent in 1999-2000 to 4.1 percent in 2004-2005. Dropout rates also vary by gender group, with males having a higher parentage of dropouts than females. Although black students made up only 25 percent of the total students enrolled in grades 9-12 in 2004-2005 (899,353), they accounted for 32 percent (9,167) of the students who were counted as dropouts for that year.[2]

According to the 2000 census summary report, the median income for black males 15 and over was $18,601 compared to $27,763 for white males. For full-time, year-round workers, the median income was $22,364 for black males and $36,198 for white males.[3]

According to the Florida Department of Health (DOH), in 2004, 9,400 black males died in Florida. The age-adjusted death rate for non-whites was 8.6 per 1,000 people in 2004, which was an improvement from 2003 when the rate was 9.1 deaths per 1,000 people. In 2004, nonwhite males born in Florida had a life expectancy of 73 years. Life expectancy has increased since 2000 when it was 71.2 years. However, nonwhite males have the lowest life expectancy. The life expectancy for nonwhite males born in 2004 was 3.9 years less than for white males.[4] The HIV rate for black males was 46.4 per 100,000 in 2004.[5]

Organizational Structure of the Executive Branch - The State Constitution contemplates the separation of powers within state government among the legislative, executive, and judicial branches of the government. The legislative branch has the broad purpose of determining policies and programs and reviewing program performance. The executive branch has the purpose of executing the programs and policies adopted by the Legislature and of making policy recommendations to the Legislature. The judicial branch has the purpose of determining the constitutional propriety of the policies and programs and of adjudicating any conflicts arising from the interpretation or application of the laws.[6]

Structural reorganization is a continuing process under ch. 20, F.S., and requires careful executive and legislative appraisal of the placement of proposed new programs.[7] The responsibility for the implementation of programs must be clearly fixed and ascertainable.[8] Departments are to be organized along function or program lines, and overlapping activities are required to be eliminated.[9]

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[1] Florida Department of Corrections FY 2004-2005 Annual Report (Draft), page 20-21.
[2] Florida Department of Education, 2004-05 Dropout Rate Numerators and Denominators by District and Subgrouping, Unpublished data, December 15, 2005.
[3] U.S. Bureau of the Census, Census 2000 Summary File 4, Tables QT-P33 and PCT 130.
[4] Florida Department of Health, Florida Vital Statistics Annual Report 2004.
[5] Florida Department of Health, Bureau of HIV/AIDS, HIV/AIDS in Florida as of December 31, 2004.
[6] Section 20.02 (1), F.S.
[7] Section 20.02 (3), F.S.
[8] Section 20.02 (4), F.S.
[9] Section 20.02 (5), F.S.

Units within the executive branch are defined in ch. 20, F.S., in order to provide a uniform nomenclature. The chapter does not contain a general definition of the term "office."

Section 20.03(7), F.S., defines the term "council" or "advisory council" to mean "an advisory body created by specific statutory enactment and appointed to function on a continuing basis for the study of the problems arising in a specified functional or program area of state government and to provide recommendations and policy alternatives."

III. Effect of Proposed Changes:

This bill establishes the Council on the Social Status of Black Men and Boys, an advisory council as defined in ch. 20, F.S., adjunct to the Department of Legal Affairs. The purpose of the council is to study the conditions affecting black men and boys, including homicide rates, arrest and incarceration rates, poverty, violence, drug abuse, death rates, disparate annual income levels, and health issues. This bill specifies that the council must:

- Propose measures to alleviate and correct the underlying causes of the conditions described above;
- Study other topics suggested by the Legislature or as directed by the chairperson of the council;
- Receive suggestions or comments pertinent to the applicable issues from members of the Legislature, governmental agencies, public and private organizations, and private citizens;
- Issue its initial annual report by December 15, 2007, and by December 15th of each following year, stating the findings, conclusions, and recommendations of the council;
- Include in the initial report the findings of an investigation into factors causing black-on-black crime from the perspective of public health related to mental health, other health issues, cultural disconnection, and cultural identity trauma;
- Meet quarterly with additional meetings to be held at the call of the chairperson or a majority of the council members.

Each member of the council is appointed to a four-year term. Members of the council are allowed to receive per diem and travel reimbursement as provided in s. 112.061, F.S. The Office of the Attorney General is directed to provide staff and administrative support to the council. The council shall include:

- Two members of the Senate who are not members of the same political party, appointed by the President of the Senate with the advice of the minority leader of the Senate;
- Two members of the House of Representatives who are not members of the same political party, appointed by the Speaker of the House of Representatives with the advice of the minority leader of the House of Representatives;
- The Secretary of Children and Family Services or his or her designee;
- The Director of the Mental Health Program Office within the Department of Children and Family Services or his or her designee;
- The Secretary of Health or his or her designee;
- The Commissioner of Education or his or her designee;

- The Secretary of Corrections or his or her designee;
- The Attorney General or his or her designee;
- The Secretary of Management Services or his or her designee;
- The Director of Workforce Innovation or his or her designee;
- A business person of African-American origin appointed by the Governor;
- Two persons appointed by the President of the Senate who are not members of the Legislature or employed by state government. One of these appointments must be a clinical psychologist;
- Two persons appointed by the Speaker of the House of Representatives who are not members of the Legislature or employed by state government. One of these appointments must be an Africana studies professional;
- The Deputy Secretary for Medicaid in the Agency for Health Care Administration or his or her designee;
- The Secretary of Juvenile Justice or his or her designee.

The sum of $50,000 is appropriated from the General Revenue Fund to the council. The bill has an effective date of July 1, 2006.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

As an advisory council, the council is subject to open government requirements.

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:

The bill appropriates the sum of $50,000 from the General Revenue Fund to the Office of the Attorney General for reimbursement of council members for travel and per diem.

The Attorney General's office estimates the fiscal impact of this bill to be approximately $234,750 annually, with non-recurring costs of $18,000. This estimate includes salary and benefits for three full-time employees, other personnel services, expenses, and operating capital outlay to provide staff and administrative support to the council.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill requires one appointee who is appointed by the Speaker of the House to be an "Africana studies professional." This term is undefined and, therefore, the qualifications that are necessary to meet this requirement are uncertain.

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

VIII. Summary of Amendments:

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

CHAMBER ACTION

Senate House

JUSTICE APPROPRIATIONS
DATE: 4-19-06
TIME: 3:12 P.M.

The Committee on Justice Appropriations (Aronberg) recommended the following amendment:

Senate Amendment (with title amendment)

On page 3, between lines 14 and 15,

insert:

(2) A member of the council may be removed at any time by the member's appointing authority, who shall fill the resulting vacancy on the council.

(Redesignate subsequent subsections.)

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

On page 1, line 7, after the semicolon,

insert:

providing for the removal and replacement of members;

#2

CHAMBER ACTION

Senate House

JUSTICE APPROPRIATIONS
DATE: 4-19-06
TIME: 3:12 P.M.

The Committee on Justice Appropriations (Aronberg) recommended the following amendment:

Senate Amendment

On page 5, lines 6 through 9, delete those lines

and insert: (9) Members of the council shall serve without compensation. Members are entitled to reimbursement for per diem and travel expenses as provided in s. 112.061, Florida Statutes. State officers and employees shall be reimbursed from the budget of the agency through which they serve. Other members may be reimbursed by the Department of Legal Affairs.

#3

CHAMBER ACTION

Senate House

JUSTICE APPROPRIATIONS
DATE: 4-19-06
TIME: 3:12 P.M.

The Committee on Justice Appropriations (Aronberg) recommended the following amendment:

Senate Amendment (with title amendment)

On page 5, line 30, through page 6, line 2, delete those lines and redesignate subsequent sections.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

On page 1, line 18, delete that line

and insert:

providing an

#4

CHAMBER ACTION

Senate House

JUSTICE APPROPRIATIONS
DATE: 4-19-06
TIME: 3:12 P.M.

The Committee on Justice Appropriations (Aronberg) recommended the following amendment:

Senate Amendment

On page 6, line 3, delete that line

and insert:

Section 4. This act shall take effect January 1, 2007.

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: Justice Appropriations Committee

BILL: CS/CS/SB 190

INTRODUCER: Commerce and Consumer Services Committee, Criminal Justice Committee and Senator Wise

SUBJECT: Seaport Security

DATE: April 19, 2006 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Pardue	Skelton	DS	**Favorable**
2.	Erickson	Cannon	CJ	**Fav/CS**
3.	Earlywine	Cooper	CM	**Fav/CS**
4.	Butler	Sadberry	JA	**Pre-meeting**
5.				
6.				

I. Summary:

This committee substitute for committee substitute is intended to address a number of concerns relating to security at Florida's seaports. The major features of this committee substitute for committee substitute include:

- Establishing security area designations and access requirements for seaports which can be used by the seaport directors in their security plan and credentialing program.
- Establishing a five-year recurring review of seaport security plans by the seaport director with the assistance of the Regional Domestic Security Task Force and the Coast Guard.
- Providing for the use of a risk assessment by seaport directors in creating a security plan and determining the use of counter terrorism devices and initiatives.
- Requiring that each seaport security plan be inspected and adopted by the Office of Drug Control and the Florida Department of Law Enforcement based solely on the standards set forth in the Maritime Transportation Act (as revised) and the statewide minimum standards established in state law.
- Allowing a seaport to request review by the Domestic Security Oversight Council of the seaport's request to waive minimum statewide seaport security standards if this request is not approved by the Office of Drug Control and the Florida Department of Law Enforcement. Authorizing those agencies to modify or waive any physical facility requirement or other requirement contained in the security standards upon a finding or other determination that the purposes of the standards have been reasonably met or exceeded by the seaport requesting the modification or waiver.

- Providing that security improvements identified in a seaport risk assessment report as potential solutions for mitigation shall be presented to the appropriate regional domestic security task force and to the Domestic Security Oversight Council.
- Establishing a process to allow unescorted access to an individual who is found to be unqualified and denied employment by a seaport.
- Establishing a Seaport Security Standards Advisory Council to review the statewide seaport security standards for applicability to current narcotics and terrorist threats.
- Establishing a certification program for Seaport Security Officers and allowing seaport authorities and governing boards to require security officers working on a seaport to receive additional training and designation as a certified Seaport Security Officer.
- Providing authority to create a Seaport Law Enforcement Agency at the discretion of the seaport director.
- Establishing a maritime domain awareness training program for security awareness training of all seaport workers.
- Authorizing certified Seaport Security Officers to detain, based on probable cause, persons believed to be trespassing in designated seaport restricted access areas pending the immediate arrival of a law enforcement officer, and providing limited protection from liability.
- Providing that it is a third degree felony for a person to willfully and knowingly provide false information or attempting to obtain a seaport security identification card.

This committee substitute for committee substitute amends section 311.12 of the Florida Statutes. This committee substitute for committee substitute creates the following sections of the Florida Statutes: 311.111, 311.121, 311.122, 311.123, 311.124, and 817.021.

II. Present Situation:

Seaport Access

Section 311.12, F.S., establishes statewide minimum security standards for Florida's twelve currently active public seaports. Pursuant to this section, ports are required to create security plans that may create restricted access areas within the port. Persons allowed regular access to port restricted access areas are subject to a fingerprint-based criminal history check as a condition of access. Section 311.12, F.S., requires that any person who has been convicted within the past 7 years, regardless of whether adjudication was withheld, for a forcible felony, an act of terrorism, planting a hoax bomb, acts involving the attempted or threatened use of a weapon of mass destruction, dealing in stolen property, trafficking of a controlled substance, burglary, robbery, felony theft, any crime involving the use or possession of a firearm, or conviction for conspiracy to commit any of the above crimes shall not be qualified for initial employment within or regular access to a seaport or restricted access area.

Seaport Security Standards and Waivers
Seaports subject to this committee substitute for committee substitute are required to review their security plan once every four years and are subject to inspection by the Florida Department of Law Enforcement on a random and annual basis. Security plans developed by the seaports must conform to the standards set forth in the Office of Drug Control, Minimum Security Standards for Florida Seaports. In general, the Office of Drug Control and the Florida Department of Law Enforcement may modify or waive the standards as contained in the statewide minimum standards for seaport security.

Review of the Statewide Minimum Standards for Seaport Security
There are no provisions for review or modification of the statewide minimum standards for seaport security contained in s. 311.12, F.S.

Seaport Security Officer Training and Certification
Prior to 2000, seaport security in Florida was focused on supply chain theft prevention to protect the commercial interests of seaport tenants. Since 2001, considerable effort and resources have been devoted to improving physical security and security operations at Florida's commercial seaports to meet the ongoing concerns about drug trafficking and the emerging threat of terrorism. Florida pursued a successful strategy for seaport security improvements through grant funding now administered by the Transportation Security Administration of the Department of Homeland Security. However, these federal grants are restricted to pre-approved physical infrastructure improvements.

Improvements in security operations at Florida's seaports have been primarily funded through the Florida Seaport Transportation Economic Development Council (FSTED) and the commercial seaports individually. In order to accomplish these operational security improvements, the council has voluntarily foregone needed economic development infrastructure projects. Concern for long-term funding of operational security costs prompted a review of operational structures at several public seaports by the Senate Domestic Security Committee. The statutory authority to use FSTED funds for seaport security has expired, and there is no dedicated state funding source at this time.

Florida Senate Interim Project Report 2005-144, Seaport Security, November 2004, by the Domestic Security Committee describes and documents the above situation and identifies several possible methods to reduce or mitigate operational security costs including the training and certification of seaport security officers.

As a general rule, private security personnel working on Florida's public seaports are required to maintain at a minimum, a CLASS D private security officer license,[1] including at least 40 hours of professional education completed at a school or training facility licensed by the Florida Department of Agriculture and Consumer Services. At least one port employs CLASS G security officers as a part of its private security force. These officers are permitted to carry firearms and must undergo additional training requirements prior to obtaining a state CLASS G license.[2]

[1] Section 493.6303, F.S.
[2] Section 493.6115, F.S.

With the exception of Port Manatee, the state's county-operated ports appear to have operational security costs which are substantially higher than other public ports. The extensive use of government law enforcement employees, with the inherent costs of salary and benefits associated with those personnel may be a driving factor in those higher costs. In fact, ports using a blend of sworn law enforcement, non-sworn law enforcement, and private security forces had security operating costs of less than half that of the county operated facilities. One factor in the cost of security which is difficult to account for is the size of each port, both geographically and operationally. The two county-operated ports are the largest operationally, and thus have more activity requiring security presence on a daily basis. However, the extreme differences in security costs between Port Everglades and Port of Miami as compared to Jaxport and Port of Tampa point to the method of service delivery being the reason for higher costs.

Proper training of private security personnel employed to protect Florida's public seaports is an ongoing concern. Prevention, protection, and response procedures on seaports are quite unique and require specialized education and training. While CLASS D and CLASS G security officers must receive specialized patrol and firearms training, respectively, there is no required additional training, nor any additional specialized seaport security certification or separate class of security officers that have completed such training, recognized by the State of Florida.

Seaport Security Forces

Seaports in Florida utilize a combination of force structures to meet their human capital security needs. A contract between a seaport and local law enforcement agencies is a very popular approach to solving the security needs of seaports. Another is to contract with a private firm for security services. Still other seaports use a variation of employed labor and contracts to fulfill this requirement. Although seaports have the authority to contract for security service they are not authorized by statute to establish and maintain a seaport law enforcement agency under the sole control of the seaport director.

The Power to Detain

Florida Statute authorizes a law enforcement officer, a merchant, a farmer, or their employee or agent, who has probable cause to believe that a retail theft, farm theft, or trespass, has been committed by a person and, in the case of retail or farm theft, that the property can be recovered by taking the offender into custody may, for the purpose of attempting to effect such recovery or for prosecution, take the offender into custody and detain the offender in a reasonable manner for a reasonable length of time.[3] The subsection further prescribes that in the event the merchant, merchant's employee, farmer, or a transit agency's employee or agent takes the person into custody, a law enforcement officer shall be called to the scene immediately after the person has been taken into custody. The subsection is also applicable to transit fare evasion with respect to detention.

No similar authorization to detain exists in Florida Statute in the case of a trespass offender found in a restricted area on a seaport. A licensed seaport security officer is currently not authorized to detain such a person pending the arrival of a law enforcement officer.

[3] Section 812.015(3)(a), F.S.

Security Identification Card
State or federal law does not provide any penalty for the use of false information to obtain a seaport security identification card.

III. Effect of Proposed Changes:

Section 1 creates s. 311.111, F.S., which requires certain seaports to designate and identify security area designations, access requirements, and security enforcement authorizations on seaport premises.

Each seaport authority or governing board of a seaport identified in s. 311.09, F.S., that is subject to the statewide minimum seaport security standards in s. 311.12, F.S., shall clearly designate in seaport security plans and clearly identify with appropriate signs and markers on the premises of a seaport the following security area designations, access requirements, and corresponding security enforcement authorizations, which may include, but not be limited to, clear notice of the prohibition on possession of concealed weapons and other contraband material on the premises of the seaport: unrestricted public access area; restricted public access area; restricted access area; and secure restricted access area.

An "unrestricted public access area" is an area of a seaport open to the general public without a seaport identification card other than that required as a condition of employment by a seaport director. A "restricted public access area" is an area of a seaport open to the public for a specific purpose via restricted access and open to individuals working on the seaport, seaport employees, or guests who have business with the seaport. Any person found in these areas without the proper level of identification card is subject to being prosecuted for trespass. All persons and objects in these areas are subject to search by an on-duty sworn state-certified law enforcement officer, a Class D seaport officer certified under Maritime Transportation Security Act (MTSA) guidelines and s. 311.121, F.S., or an employee of the seaport security force certified under the MTSA and s. 311.121, F.S. A "restricted access area" is an area of a seaport open only to individuals working on the seaport, seaport employees, or guests who have business with the seaport. A "secure restricted access area" is an area of a seaport open only to individuals working on the seaport, seaport employees, or guests who have business with the seaport and is secured at each point of access at all times by a Class D security guard certified under the MTSA, a sworn state-certified law enforcement officer, or an employee of the port's security force certified under the MTSA. Trespass and search provisions pertaining to a restricted public access area also pertain to a restricted access area and a secure restricted access area.

During a period of high terrorist threat level designated by the United States Department of Homeland Security or the Florida Department of Law Enforcement (FDLE) or during an emergency declared by the seaport security director of a port due to events applicable to that particular port, the management or controlling authority of the port may temporarily designate any part of the port property as a restricted access area or a secured restricted access area. The duration of such designation is limited to the period in which the high terrorist threat level is in effect or port emergency exists. Provisions relevant to a restricted access area and a secure restricted access area do not limit the power of the managing or controlling authority of a seaport to designate any port property as a restricted access area or a secured restricted access area as otherwise provided by law.

Section 2 amends s. 311.12, F.S., which revises the purpose of seaport security plans; requires periodic plan revisions; requires plans to be inspected by the Office of Drug Control and the Department of Law Enforcement; provides requirements with respect to protection standards in specified restricted areas; requires delivery of the plan to specified entities; requires the Department of Law Enforcement to inspect seaports to determine if all security measures are in compliance with the seaport security standards; requires a report; provides procedures and requirements with respect to waiver of any physical facility requirement; provides a penalty for possession of a concealed weapon on seaport property; requires periodic review of statewide minimum standards for seaport security; and requires the Office of Drug Control to convene a Seaport Security Standards Advisory Council to review the statewide minimum standards.

Each seaport identified in s. 311.09, F.S., shall maintain a security plan to provide for a secure seaport infrastructure specific to that seaport that shall promote the safety and security of the residents and visitors of the state and promote the flow of legitimate trade and travel. Commencing January 1, 2007, and every 5 years thereafter, the seaport director of each seaport, with the assistance of the Regional Domestic Security Task Force with input from representatives of port business directly affected by the port security plan and in conjunction with the United States Coast Guard (USCG), shall revise the seaport security plan based on the results of continual, quarterly assessments by the seaport director of security risks and possible risks related to terrorist activities and the statewide minimum standards (established under the section).

Each plan adopted or revised shall be inspected and approved by the Office of Drug Control (ODC) and FDLE based solely upon the standards as set forth under the MTSA as revised July 2003, 33 C.F.R. s. 105.305, and the statewide minimum standards (established under the section). All such seaports shall allow unimpeded access by FDLE to the affected facilities for purposes of plan or compliance inspections or other operations authorized by this section.

Each seaport security plan shall establish unrestricted and restricted access areas within the seaport consistent with the requirements of the statewide minimum standards and the provisions of s. 311.111, F.S. Within 30 days after the completion of the seaport's security plan inspection by the FDLE, it shall be delivered to the USCG, Regional Domestic Security Task Force, and the Domestic Security Oversight Council (DSOC).

Consistent with legislative intent that Florida's seaports adhere to security practices that are consistent with risks assigned to each seaport through the risk assessment process established in

this section, the FDLE shall inspect every seaport within the state to determine if all security measures adopted by the seaport are in compliance with the standards set forth in ch. 311, F.S., and shall submit the department's findings within 30 days after the inspection in a report to the DSOC and the USCG for review, with requests to the USCG for any necessary corrective action.

Notwithstanding the provisions of ch. 120, F.S., a seaport may appeal to the DSOC for review and mediation of the findings in any FDLE inspection report relating to the requirements of this section. The DSOC shall establish a review process and may review only those findings under this section that are in specific dispute by the seaport. In reviewing the disputed findings, the council may concur in the findings of the department or the seaport or may recommend corrective action to the seaport. Findings of the council are final.

The FDLE shall establish a waiver process to allow unescorted access to an individual who is found to be unqualified (as provided in this section) and denied employment by a seaport. The waiver consideration shall be based on the circumstances of any disqualifying act or offense, restitution made by the individual, and other factors from which it may be determined that the individual does not pose a risk of engaging in theft, drug trafficking, or terrorism within the public seaports regulated under ch. 311, F.S., or of harming any person. This section specifies how the waiver process shall be conducted, which culminates in a final disposition of the waiver request by FDLE based on the factual findings of the investigation by the Parole Commission of the waiver applicant. The port authority that originally denied employment and the waiver applicant shall be notified of the final disposition of the waiver application by the FDLE. This review process is exempt from ch. 120, F.S.

The ODC and the executive director of FDLE may modify or waive any physical facility requirement or other requirement contained in the statewide minimum standards for seaport security upon a finding or other determination that the purposes of the standards have been reasonably met or exceeded by the seaport requesting the modification or waiver. Alternate means of compliance may not in any way diminish the safety or security of the seaport and shall be verified through an extensive risk analysis conducted by the port director. Waivers shall be submitted in writing with supporting documentation to the ODC and the FDLE, which shall have 90 days to jointly grant the waiver or reject the waiver in whole or in part. Waivers not granted within 90 days or jointly rejected shall be submitted by the seaport to the DSOC for consideration. The DSOC shall grant the waiver or reject the waiver in whole or in part. This decision is final. Waivers submitted for standards established under s. 311.122(3), F.S., may not be granted for percentages below 10 percent. Such modifications or waivers shall be noted in the annual report submitted by FDLE (as required by this section).

It is a first degree misdemeanor[4] for any person to possess a concealed weapon, or operate or have possession or control of a vehicle in or upon which a concealed weapon is placed or stored. Active-duty federal and state law enforcement personnel are excluded.

Commencing on January 15, 2007, and at least every 5 years thereafter, a review of the statewide minimum standards for seaport security shall be conducted under the ODC by the Seaport

[4] The maximum term of imprisonment for a first degree misdemeanor is one-year imprisonment (in a jail, not a state prison). Section 775.082, F.S.

Security Standards Advisory Council. The ODC shall convene the council to review such standards for applicability to, and effectiveness in combating current narcotics and terrorism threats to Florida's seaports. All sources of information allowed by law shall be utilized in assessing the applicability and effectiveness of such standards.

The council is required to review infrastructure standards for cruise passenger terminals or other buildings in a restricted-access area having a potential human occupancy of 50 persons or more to ensure that such standards provide protection from the most probable and creditable terrorist threat to human life by the use of like or similar standards as those set forth in the United States Department of Defense Minimum Antiterrorism Standard for Buildings, Unified Facilities Criteria 4-010-0. The council is also required to identify the state or federal funding sources that may be used to finance the costs of potential infrastructure or operational security measures.

This section sets forth the membership of the council, which includes FDLE, two seaport security directors and two seaport security directors appointed by the Governor and a representative of the USCG (as an ex officio member), and which is chaired by a designee of the ODC. Members are unpaid but may claim state per diem and travel allowances for official meetings. This section also specifies the members' terms, the filling of vacancies, and the minimum number of meetings (at least once every 5 years). Recommendations and findings of the council shall be transmitted to the Governor and the Legislature.

Section 3 creates s. 311.121, F.S., which requires certain seaports to impose specified requirements for certification as a seaport security officer; creates the Seaport Security Officer Qualification, Training, and Standards Coordinating Council under the Florida Department of Law Enforcement; requires the Department of Education to develop initial and continuing education and training programs for seaport security officer certification; provides requirements and procedures with respect to such training programs; and provides requirements for renewal of inactive or revoked certification.

This section provides legislative intent that seaports in the state be able to mitigate operational security costs without reducing security levels by employing a combination of certified law enforcement officers and certified private security service officers. In order to accomplish this intent, seaports shall have the option to recruit and employ seaport security officers who are trained and certified pursuant to the provisions of this section. The FDLE shall adhere to this intent in the approval and certification process for seaport security required under s. 311.12, F.S.

The authority or governing board of each seaport identified under s. 311.09, F.S., that is subject to the statewide minimum seaport security standards established in s. 311.12, F.S., shall require that a candidate for certification as a seaport security officer has received a Class D license as a security officer; successfully completed the certified training curriculum for a Class D license or has been determined by the Department of Agriculture and Consumer Services (DACS) to have equivalent experience as established by rule of the department; and completed the training or training equivalency and testing process established by this section for becoming a certified seaport security officer.

The Seaport Security Officer Qualification, Training, and Standards Coordinating Council is created under FDLE. This section specifies the membership of the council, which includes the

seaport administrator of FDLE, the administrator of the Florida Seaport Transportation and Economic Development Council, two seaport security directors from seaports designated under s. 311.09, F.S., and a representative of the USCG. Members are unpaid but may claim state per diem and travel allowances for official meetings. This section also specifies the members' terms and the minimum number of meetings (at least once a year).

By December 1, 2006, the council shall identify the qualifications, training, and standards for seaport security officer certification and recommend a curriculum for the seaport security officer training program that shall include no less than 218 hours of initial certification training and that conforms to or exceeds model courses approved by the Federal Maritime Act under Section 109 of the Federal Maritime Transportation Security Act of 2002 for facility personnel with specific security duties. The council shall also recommend a continuing education curriculum of no less than 8 hours of additional training for each annual licensing period. The council may recommend training equivalencies that may be substituted for portions of the required training.

The Department of Education shall develop the curriculum recommendations and classroom-hour specifications of the council into initial and continuing education and training programs for seaport security officer certification. Such training programs shall be used by schools licensed under s. 493.6304, F.S., and each instructor providing training must hold a Class D license. A seaport authority or other organization involved in seaport-related activities may apply to become a licensed school. The training programs shall include proficiency examinations that must be passed by each candidate for certification who successfully completes the required hours of training or provides proof of authorized training equivalencies.

A candidate for certification must be provided with a list of authorized training equivalencies in advance of training; however, each candidate for certification must successfully complete 20 hours of study specific to Florida Maritime Security and pass the related portion of the proficiency examination.

Seaport security officer certificates shall be provided by the Division of Licensing of DACS for issuance by a licensed school, which may issue the certificate to an applicant who has successfully completed the training program and which shall notify the division upon the issuance of each certificate. This section specifies what must be provided in the notification and how it may be provided to DACS.

Upon completion of the certification process, a person holding a Class D license must apply for a revised license pursuant to s. 493.6107(2), F.S., which license shall state that the licensee is certified as a seaport security officer. A person who has been issued a seaport security officer certificate is authorized to perform duties specifically required of a seaport security officer. This certificate is valid for the duration of the seaport security officer's Class D license and shall be renewed upon renewal of the license. This section specifies when this certificate becomes void, and the requirements for renewal of certification following licensure revocation or a lapse (as specified).

Section 4 creates s. 311.122, F.S., which authorizes the creation of a Seaport Law Enforcement Agency by the seaport director to satisfy the seaport's security force requirements; provides requirements of such an agency; provides requirements with respect to the composition of

agency personnel, and provides powers of seaport law enforcement agency officers and seaport security officers.

Each seaport in the state is authorized to create a seaport law enforcement agency for its facility, which authority in no way precludes the seaport from contracting with local governments or law enforcement agencies to comply with the security standards required by this chapter. Such agency shall meet all of the standards set by the state under certified law enforcement guidelines and requirements and shall be certified as provided under ch. 943, F.S. A minimum of 10 percent of the aggregate personnel of such agency shall be sworn state-certified law enforcement officers with additional MTSA seaport training; a minimum of 10 percent of on-duty personnel of such agency shall be sworn state-certified law enforcement officers with additional MTSA seaport training; and at least one on-duty supervisor of such agency shall be a sworn state-certified law enforcement officer with additional MTSA seaport training.

For the purposes of ch. 311, F.S., where applicable, seaport law enforcement agency officers shall have the same powers as university police officers under s. 1012.97, F.S.; however, such powers do not extend beyond the property of the seaport except in connection with an investigation initiated on seaport property or in connection with an immediate, imminent threat to the seaport. Also, for the purposes of this chapter, sworn state-certified seaport security officers shall have the same law enforcement powers with respect to the enforcement of traffic laws on seaport property as university police officers, community college police officers under s. 1012.88, F.S., and airport police officers under the provisions of s. 316.640(1)(a)1.d.(I)-(II), F.S. Certified seaport security officers shall also have the authority to immediately tow any vehicle parked illegally as indicated by an existing sign or during an emergency as deemed necessary to maintain seaport security.

Section 5 creates s. 311.123, F.S., which provides for the creation of a maritime domain security awareness training program; the purpose of the program and program training curriculum requirements.

The Florida Seaport Transportation and Economic Development Council, in conjunction with the FDLE and the ODC, shall create a maritime domain security awareness training program to instruct all personnel employed within a seaport's boundaries about the security procedures required of them for implementation of the seaport security plan. This training program must include security training required pursuant to 33 C.F.R. part 105 and must be designed to enable the seaports in this state to meet the training, drill, and exercise requirements of 33 C.F.R. part 105, and individual seaport security plans and to comply with the requirements of s. 311.12, F.S., relating to security awareness.

Section 6 creates s. 311.124, F.S., provides authority of seaport security officers to detain persons suspected of trespassing, and provides immunity from specified criminal and civil liability.

Any Class D or Class G seaport security officer certified under the MTSA guidelines and s. 311.121, F.S., or any employee of the seaport security force certified under the MTSA guidelines and s. 311.121, F.S., who has probable cause to believe that a person is trespassing in a designated restricted area is authorized to detain such person in a reasonable manner for a reasonable period of time pending the arrival of a law enforcement officer, and such action shall not render the security officer criminally or civilly liable for false arrest, false imprisonment, or unlawful detention. Upon detaining a person for trespass, the seaport security officer shall immediately call a certified law enforcement officer to the scene.

Section 7 creates s. 817.021, F.S., which provides that it is a third degree felony[5] for a person to willfully and knowingly provide false information in obtaining or attempting to obtain a seaport security identification card.

Section 8 provides an effective date of July 1, 2006.

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:

There may be a cost associated with providing additional training for certification. This cost may be borne by the individual applicant seeking upgraded skills and certification. The impact to private sector security agency employers seeking higher skill level security officers is unknown.

[5] The maximum term of imprisonment for a third degree felony is five years in state prison. s. 775.082, F.S.

The Department of Agriculture and Consumer Services states that:

> Since the number of applicants needing training has not been determined, we cannot estimate the fiscal impact on the private sector for costs associated with revised/duplicate license requests. These requests would be made upon completion of the certification process prior to the licensee's renewal period.

> We are unable to determine the fiscal impact on the private sector for Seaport Security training and testing as the required training hours is unknown at this time. The cost of training is directly proportionate to the number of individuals required to take the training: fewer students will cost more to train than a large population.

C. Government Sector Impact:

This committee substitute for committee substitute is permissive to seaport authorities and governing boards with regard to requiring certified seaport security officers. However, there are potential cost savings to public seaports given the ability to design an optimum security force mix of sworn and non-sworn law enforcement officers and certified seaport security officers.

This committee substitute for committee substitute requires that the Department of Education develop the curriculum recommendations and classroom-hour specifications of the Seaport Security Officer Qualifications, Training, and Standards Coordinating Council into initial and continuing education and training programs for seaport security officer certification. There may be an indeterminate costs associated with developing the recommendations and specifications.

The Department of Agriculture and Consumer Services estimates the fiscal impact of this bill to be approximately $195,200 to develop and integrate new database requirements into existing database and electronic document management system. The Division of Licensing; however, states that this non-recurring cost could be absorbed with existing revenues in the department. Also noted were recurring costs of approximately $2,000 for printing training certificates; however, revenues will be generated from the fee for revised/duplicate licenses.

The Department of Law Enforcement states that there is no fiscal impact to their department.

The fiscal impact of this bill on the Florida Parole Commission is indeterminate. The costs could be negligible, or could require funding for additional staff to handle a workload increase related to providing factual reviews of the waiver applications to determine whether individuals denied employment or regular unescorted access to restricted areas of a public seaport pose a risk of engaging in theft, drug trafficking, or terrorism. Based on the commission's analysis, the potential impact could be 5 FTE, $284,400 ($21,200 non-recurring). This is based on assumptions that one to two percent of the 30,000 applicants for initial employment (300 to 600 cases annually) at a seaport

are denied and could request a waiver for further factual review of their backgrounds based on information submitted by the applicant. The costs costs could be neglible should there be 100 cases or less per year requiring review.

The Criminal Justice Impact Conference (CJIC) has not yet met to consider the impact to the Department of Corrections, if any, of felony offenses created by the committee substitute for committee substitute. However, generally CJIC estimates that unranked third degree felony offenses have an insignificant prison bed impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

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.

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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: Justice Appropriations Committee

BILL: CS/SB 192

INTRODUCER: Governmental Oversight and Productivity Committee and Senator Wise

SUBJECT: Prison Industries

DATE: April 19, 2006 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cannon	CJ	**Fav/1 amendment**
2.	Wilson	Wilson	GO	**Fav/CS**
3.	Sadberry	Sadberry	JA	**Pre-meeting**
4.				
5.				
6.				

I. Summary:

This bill creates a task force to examine how well the prison industries program has fulfilled its purposes and missions and then report those findings to the Governor and the Legislature. It also amends s. 946.505, F.S., to clarify the state's reversionary interest in property owned by PRIDE.

The bill substantially amends section 946.505, Florida Statutes.

II. Present Situation:

PRIDE'S History

Prison Rehabilitative Industries and Diversified Enterprises, Inc. (PRIDE) was created by the Legislature in 1981 as a private, non-profit corporation. In 1983 the Legislature authorized PRIDE to lease and manage the state prison industries program which had been operated by the Department of Corrections. Section 946.501(1), F.S., notes that it is essential to the state that the correctional work programs provide inmates with activities that can then "lead to meaningful employment after release" to help reduce the number of inmates who return to the correctional system. Section 946.501, F.S., defines PRIDE's mission as:

- providing education, training, and post-release job placement to inmates to help reduce recommitment;
- enhancing security by reducing inmate idleness and providing an incentive for good behavior in prison;
- reducing the cost of state government by operating enterprises primarily with inmate labor while not unreasonably competing with private enterprise; and

- rehabilitating inmates by duplicating, as nearly as possible, the activities of a profit-making enterprise.

PRIDE was given several advantages to help offset some of its competitive disadvantages in the marketplace. It has sovereign immunity[1] and is not required to pay unemployment compensation for inmate workers. State agencies are required by statute to purchase products from PRIDE if the products are of similar quality and price to those offered by outside vendors.[2] Also, PRIDE is not under the authority of any state agency, although it is subject to the auditing and investigatory powers of the Legislature and the Governor.

PRIDE currently operates 36 industrial training programs in 20 state prisons and offers 366 on-the-job training programs. In 2004 alone, 3,794 inmates were trained in jobs and worked 3,702,290 hours in the 36 industries. Some of the industries operated by PRIDE are raising dairy calves, furniture manufacturing, agriculture, printing, binding, data entry, and document imaging services. PRIDE does not receive funding from the Legislature and is supported by the revenues it generates from selling its products. The State of Florida is its major purchaser, accounting for 51 percent of its revenues in 2004. Total revenues for that year were $65,694,450.[3]

PRIDE reports that its recidivism rate is lower than that of the general inmate population and that for fiscal years 2002, 2003, and 2004, that rate has steadily declined. PRIDE also reported that it offers a program which helps inmates begin making restitution payment while in prison so that their financial burden is reduced upon release from prison.[4]

Financial and Managerial Issues

In the late 1990's PRIDE developed a new business plan which involved the creation of separate but related business companies to help PRIDE find ways to increase the number of inmate jobs and expand its mission. PRIDE formed Industries Training Corporation (ITC) in July 1999, to enter into business relationships and manage work programs for PRIDE. However, the number of inmate workstations declined by more than 500 between 2000 and 2002, and there are no statistics indicating any increase in the subsequent two years.

In its 2002 Annual Report issued December 2, 2002, the Florida Corrections Commission extensively reviewed Pride's history and current operations. The report focused attention on Pride's fulfillment of its mission, particularly noting that the number of inmate workstations had not kept pace with the growth of the inmate population. The Corrections Commission also raised questions about the new corporate structure and affiliated entities.

In December 2003 OPPAGA issued Report No. 03-68, "PRIDE Benefits the State but Needs to Improve Transparency in Operations." OPPAGA focused on many of the same issues as the Corrections Commission, particularly concerning Pride's organizational structure. OPPAGA also noted some of the challenges faced by PRIDE in the current business operating environment, and that PRIDE sales had declined by more than $20 million over the preceding 5 years. The

[1] Section 946.5026, F.S.
[2] Section 946.515, F.S.
[3] PRIDE Enterprises Annual Report 2004.
[4] Id.

OPPAGA report prompted Governor Bush to request his Chief Inspector General to conduct an audit of PRIDE and its related entities.

On February 28, 2005, the Office of the Chief Inspector General issued its findings. In general, the audit noted the significant financial decline of PRIDE and its affiliates, was critical of PRIDE's internal controls and its business and organizational operation, a breakdown in accountability, as well as the Board of Director's lack of oversight.[5]

According to one published article, the PRIDE Board of Directors asked its attorneys in March 2005, to attempt to negotiate and collect up to $12.9 million from Industries Training Corporation, or ITC.[6]

In September 2005 PRIDE filed suit against ITC, two of its affiliates, and its Treasurer and Chief Financial Officer. The suit sought monetary damages for actions which allegedly promoted the financial interests of some of the management groups while compromising the financial interests of PRIDE. This case is pending and has not been resolved.[7]

Reversionary Interest
Section 946.505, F.S., provides for the reversion of certain PRIDE property to the state if PRIDE dissolves or if a correctional work program ceases to function. Unless PRIDE intends to use the property for another correctional work program, all buildings, land, furnishings, equipment, and other chattels originally leased from the department automatically revert to full ownership by the department. The state also has a reversionary interest in any facilities that are subsequently constructed or otherwise acquired in connection with the operation of the program. "Facilities" is defined in s. 946.503(4), F.S., to mean buildings and land used in the operation of an industry program on state property. In its report, OPPAGA noted that the statute does not provide for reversion of all PRIDE property to the state, nor address the state's interest in property that is transferred by PRIDE during its existence. In its response to the OPPAGA report, PRIDE noted that the state's reversionary interest is ensured in PRIDE's articles of incorporation and further protected by its designation as a 501(c)(3) organization under the Internal Revenue Code.

III. Effect of Proposed Changes:

Section 1 of the bill creates the Prison Industries Task Force to examine and report on the state's prison industries program. Previous reports concerning PRIDE have focused on structural and management issues, examining whether PRIDE is accomplishing its statutory missions. The bill provides a broader mission for the task force, which will determine: (1) how well the program has fulfilled its statutory missions and purposes; and (2) whether the program's statutory missions are still feasible and relevant and whether they will remain so in the future.

The task force will be housed within the Office of Legislative Services, with staff support provided by the Legislative Committee on Intergovernmental Relations. Its first meeting must be

[5] Audit Number 2004-4, Office of the Chief Inspector General, February 28, 2005.
[6] "Prison labor firm PRIDE to try to recoup millions," (sic) St. Petersburg Times, March 3, 2005.
[7] Prison Rehabilitation Industries and Diversified Enterprises, Inc., vs. Industries Training Corporation, Labor Line Services, Inc., Labor Line, Inc. and Robert M. Smith, individually, Case No. 05-006100CI-008, filed in the Circuit Court of the Sixth Judicial Circuit, Pinellas County, Florida.

held by July 15, 2006, and at least 3 public meetings must be held. The meetings will be open to the public and subject to the provisions of s. 286.011, F.S., the public meetings law. Task force records will be public records subject to the provisions of ch. 119, F.S., except as otherwise provided by law. The task force must submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives no later than February 15, 2007. The bill abolishes the task force on July 1, 2007.

The task force will consist of the following 13 members:

- The Secretary of the Department of Corrections, who shall serve as chair, and 2 wardens of institutions that have prison industries programs;
- A representative from the Agency for Workforce Innovation;
- A representative from the Department of Education's Office of Workforce Education;
- A member of the Senate, appointed by the President of the Senate;
- A member of the House of Representatives, appointed by the Speaker of the House;
- A representative from the PRIDE board of directors;
- A representative from a local governmental entity that purchases products produced by prison industries;
- A representative from a private industry that regularly employs former inmates;
- A representative from a private industry that regularly trains inmates;
- A representative from the academic community with expertise in research concerning reentry of prisoners into society and the employment of former felons; and
- A former inmate who worked in the prison industries program.

The President of the Senate and the Speaker of the House of Representatives must jointly appoint the representatives of PRIDE, local government, private industry, and academia by July 1, 2006.

The bill requires the task force to receive testimony from the Auditor General, the Governor's Inspector General, OPPAGA, PRIDE, and other appropriate officials to address a number of questions regarding the correctional work program's missions:

- Whether the statutory missions of the program, as defined in s. 946.501(2), F.S., are still valid; whether there are other valid missions that should be included; and whether any of the valid current or recommended missions are in conflict;
- Whether the missions should be ranked in order of priority and the extent to which accomplishment of a higher-priority mission can be reduced to accomplish a lower-priority mission;
- Whether duplicating a free-world operation as closely as possible is the most effective way of accomplishing the program's missions;
- Whether the program's management structure should be changed to facilitate accomplishment of the missions;
- Whether operating the program independently of state government is the most effective manner to accomplish its valid missions;
- Whether PRIDE can fulfill the legislative intent in s. 946.502(6), F.S., that correctional work programs use inmates in all levels of custody, with emphasis on reducing idleness among inmates in close custody;

- The extent to which privatization and market changes have reduced PRIDE's sales and impeded its ability to expand training; and
- What creative strategies could enhance the program's ability to accomplish its valid missions.

Section 2 of the bill addresses the concern raised in OPPAGA Report No. 03-68 that state property interests in reversion of PRIDE property to the state need to be clarified. Section 946.505(1), F.S., is amended to clarify that all property and assets related to a correctional work program will revert to state ownership if the program closes and PRIDE does not intend to use the property and assets in another correctional work program. Of course, the property and assets would also revert to the state if PRIDE were dissolved. The bill does not address the status of property that is sold or otherwise transferred by PRIDE. However, PRIDE does not have authority to transfer title to property originally leased from the department or the state, or to permanent enhancements to facilities or work programs.

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:

The fiscal impact to the government is expected to be insignificant. There will be some expense to the state for reimbursement of travel and per diem costs for task force members, but members are not authorized additional compensation. There will also be some administrative costs, although the task force will be supported by current state personnel.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

VIII. Summary of Amendments:

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

Senate Committee On

JUSTICE APPROPRIATIONS

Victor D. Crist, Chair
Rod Smith, Vice Chair

Supplemental Meeting Packet
Amendments filed before the 2-hour Deadline

Monday, April 24, 2006
1:30 p.m. (or 15 minutes upon completion of Ways & Means) – 5:00 p.m.
37 Senate Office Building

(Please bring this packet to the committee meeting. Duplicate materials will not be available.)

Florida Senate - 2006 COMMITTEE AMENDMENT

Bill No. CS for CS for SB 190

402364

#1

CHAMBER ACTION

Senate House

Consideration of this amendment requires a 2/3 vote of members present

JUSTICE APPROPRIATIONS
DATE: 4-22-06
TIME: 3:00 P.M.

The Committee on Justice Appropriations (Smith) recommended the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

Section 1. Section 311.111, Florida Statutes, is created to read:

311.111 Security area designations; access requirements; authority.--Each seaport authority or governing board of a seaport identified in s. 311.09 that is subject to the statewide minimum seaport security standards in s. 311.12 shall clearly designate in seaport security plans and clearly identify with appropriate signs and markers on the premises of a seaport the following security area designations, access requirements, and corresponding security enforcement authorizations, which may include, but not be limited to, clear notice of the prohibition on possession of concealed weapons and other contraband material on the premises of the seaport:

1 (1) UNRESTRICTED PUBLIC ACCESS AREA.--An unrestricted
2 public access area of a seaport is open to the general public
3 without a seaport identification card other than that required
4 as a condition of employment by a seaport director.
5 (2) RESTRICTED PUBLIC ACCESS AREA.--A restricted
6 public access area of a seaport is open to the public for a
7 specific purpose via restricted access and open to individuals
8 working on the seaport, seaport employees, or guests who have
9 business with the seaport. Any person found in these areas
10 without the proper level of identification card is subject to
11 the trespass provisions of ss. 810.08 and 810.09 and this
12 chapter. All persons and objects in these areas are subject to
13 search by a sworn state-certified law enforcement officer, a
14 Class D seaport security officer certified under Maritime
15 Transportation Security Act guidelines and s. 311.121, or an
16 employee of the seaport security force certified under the
17 Maritime Transportation Security Act guidelines and s.
18 311.121.
19 (3) RESTRICTED ACCESS AREA.--A restricted access area
20 of a seaport is open only to individuals working on the
21 seaport, seaport employees, or guests who have business with
22 the seaport. Any person found in these areas without the
23 proper level of identification card is subject to the trespass
24 provisions of ss. 810.08 and 810.09 and this chapter. All
25 persons and objects in these areas are subject to search by a
26 sworn state-certified law enforcement officer, a Class D
27 seaport security officer certified under Maritime
28 Transportation Security Act guidelines and s. 311.121, or an
29 employee of the seaport security force certified under the
30 Maritime Transportation Security Act guidelines and s.
31 311.121.

1 (4) SECURED RESTRICTED ACCESS AREA.--A secured
2 restricted access area of a seaport is open only to
3 individuals working on the seaport, seaport employees, or
4 guests who have business with the seaport and is secured at
5 each point of access at all times by a Class D seaport
6 security officer certified under the Maritime Transportation
7 Security Act, a sworn state-certified law enforcement officer,
8 or an employee of the port's security force certified under
9 the Maritime Transportation Security Act. Any person found in
10 these areas without the proper level of identification card is
11 subject to the trespass provisions of ss. 810.08 and 810.09
12 and this chapter. All persons and objects in these areas are
13 subject to search by a Class D seaport security officer
14 certified under Maritime Transportation Security Act
15 guidelines and s. 311.121, a sworn state-certified law
16 enforcement officer, or an employee of the seaport security
17 force certified under the Maritime Transportation Security Act
18 guidelines and s. 311.121.
19 (5) TEMPORARY DESIGNATION.--During a period of high
20 terrorist threat level designated by the United States
21 Department of Homeland Security or the Florida Department of
22 Law Enforcement or during an emergency declared at a port by
23 the seaport security director due to events applicable to that
24 particular port, the management or controlling authority of
25 the port may temporarily designate any part of the port
26 property as a restricted access area or a secured restricted
27 access area. The duration of such designation is limited to
28 the period in which the high terrorist threat level is in
29 effect or a port emergency exists. Subsections (3) and (4) do
30 not limit the power of the managing or controlling authority
31 of a seaport to designate any port property as a restricted

1 access area or a secured restricted access area as otherwise
2 provided by law.
3 Section 2. Subsection (2) and paragraph (b) of
4 subsection (4) of section 311.12, Florida Statutes, are
5 amended, paragraph (e) is added to subsection (3), and
6 subsections (7) and (8) are added to that section, to read:
7 311.12 Seaport security standards; inspections;
8 compliance; appeals.--
9 (2)(a) Each seaport identified in s. 311.09 shall
10 maintain a security plan to provide for a secure seaport
11 infrastructure specific to that seaport that shall promote the
12 safety and security of the residents and visitors of the state
13 and promote the flow of legitimate trade and travel.
14 Commencing January 1, 2007, and every 5 years thereafter, the
15 seaport director of each seaport, with the assistance of the
16 Regional Domestic Security Task Force and in conjunction with
17 the United States Coast Guard, shall revise the seaport
18 security plan based on the results of continual, quarterly
19 assessments by the seaport director of security risks and
20 possible risks related to terrorist activities and relating to
21 the specific and identifiable needs of the seaport which
22 assures that the seaport is in substantial compliance with the
23 statewide minimum standards established pursuant to subsection
24 (1).
25 (b) Each plan adopted or revised pursuant to this
26 subsection shall be inspected for compliance and must be
27 reviewed and approved by the Office of Drug Control and the
28 Department of Law Enforcement based solely upon the standards
29 as set forth under the most current Maritime Transportation
30 Security Act, 33 C.F.R. s. 105.305, and the statewide minimum
31 standards established pursuant to subsection (1). All such

1 seaports shall allow unimpeded access by the Department of Law
2 Enforcement to the affected facilities for purposes of plan or
3 compliance inspections or other operations authorized by this
4 section.
5 (c) Each seaport security plan shall may establish
6 unrestricted and restricted access areas within the seaport
7 consistent with the requirements of the statewide minimum
8 standards and the provisions of s. 311.111. In such cases, a
9 Uniform Port Access Credential Card, authorizing
10 restricted-area access, shall be required for any individual
11 working within or authorized to regularly enter a restricted
12 access area and the requirements in subsection (3) relating to
13 criminal history checks and employment restrictions shall be
14 applicable only to employees or other persons working within
15 or authorized to regularly enter a restricted access area.
16 Every seaport security plan shall set forth the conditions and
17 restrictions to be imposed upon others visiting the port or
18 any restricted access area sufficient to provide substantial
19 compliance with the statewide minimum standards. As determined
20 by the seaport director's most current risk assessment report,
21 any restricted access area with a potential human occupancy of
22 50 persons or more, any cruise terminal, or any business
23 operation that is adjacent to an unrestricted public access
24 area shall be protected from the most probable and creditable
25 terrorist threat to human life by the use of the methods and
26 principles contained within Federal Emergency Management
27 Agency, Risk Management Series, "Reference Manual to Mitigate
28 Potential Terrorist Attacks Against Buildings" (FEMA 426) and
29 the Federal Emergency Management Agency, Risk Management
30 Series, "Risk Assessment: A How-To Guide to Mitigate Potential
31 Terrorist Attacks Against Buildings" (FEMA 452).

1 (d) Within 30 days after the completion of the
2 seaport's security plan inspection by the Department of Law
3 Enforcement, it shall be delivered to the United States Coast
4 Guard, the Regional Domestic Security Task Force, and the
5 Domestic Security Oversight Council.
6 (e) It is the intent of the Legislature that Florida's
7 seaports adhere to security practices that are consistent with
8 risks assigned to each seaport through the risk assessment
9 process established in this subsection. Therefore, the
10 Department of Law Enforcement shall inspect every seaport
11 within the state to determine if all security measures adopted
12 by the seaport are in compliance with the standards set forth
13 in this chapter and shall submit the department's findings
14 within 30 days after the inspection in a report to the
15 Domestic Security Oversight Council and the United States
16 Coast Guard for review, with requests to the Coast Guard for
17 any necessary corrective action.
18 (f) A seaport may request review by the Domestic
19 Security Oversight Council of the findings in any Department
20 of Law Enforcement inspection report as they relate to the
21 requirements of this section. The Domestic Security Oversight
22 Council may review only those findings under this section that
23 are in specific dispute by the seaport. In reviewing the
24 disputed findings, the council may concur in the findings of
25 the department or the seaport or may recommend corrective
26 action to the seaport. The department and the seaport shall
27 give great weight to any findings and recommendations of the
28 council.
29 (3)
30 (e) The Department of Law Enforcement shall establish
31 by rule a waiver process to allow unescorted access to an

1 individual who is found to be unqualified under paragraph (c)
2 and denied employment by a seaport. The waiver consideration
3 shall be based on the circumstances of any disqualifying act
4 or offense, restitution made by the individual, and other
5 factors from which it may be determined that the individual
6 does not pose a risk of engaging in theft, drug trafficking,
7 or terrorism within the public seaports regulated under this
8 chapter or of harming any person. The waiver process shall
9 begin when an individual who has been denied initial
10 employment within or regular unescorted access to restricted
11 areas of a public seaport as described in paragraph (c)
12 submits an application for a waiver and notarized letter or
13 affidavit from the individual's employer or union
14 representative which states the mitigating reasons for
15 initiating the waiver process. No later than 90 days after
16 receipt of the application, the administrative staff of the
17 Parole Commission shall conduct a factual review of the waiver
18 application. Findings of fact shall be transmitted to the
19 Department of Law Enforcement for review. The department shall
20 make a copy of those findings available to the applicant
21 before final disposition of the waiver request. The department
22 shall make a final disposition of the waiver request based on
23 the factual findings of the investigation by the Parole
24 Commission. The department shall notify the waiver applicant
25 and the port authority that originally denied employment to
26 the applicant of the final disposition of the waiver.
27 (4)
28 (b) The Office of Drug Control and the executive
29 director of the Department of Law Enforcement may modify or
30 waive any physical facility requirement or other requirement
31 contained in the statewide minimum standards for seaport

1 security upon a finding or other determination that the
2 purposes of the standards have been reasonably met or exceeded
3 by the seaport requesting the modification or waiver.
4 Alternate means of compliance may not in any way diminish the
5 safety or security of the seaport and shall be verified
6 through an extensive risk analysis conducted by the port
7 director. Waivers shall be submitted in writing with
8 supporting documentation to the Office of Drug Control and the
9 Department of Law Enforcement. The Office of Drug Control and
10 the Department of Law Enforcement shall have 90 days to
11 jointly grant the waiver or reject the waiver in whole or in
12 part. Waivers not granted within 90 days or jointly rejected
13 shall be submitted by the seaport to the Domestic Security
14 Oversight Council for review. The Domestic Security Oversight
15 Council shall recommend that the Office of Drug Control and
16 the Department of Law Enforcement grant the waiver or reject
17 the waiver in whole or in part. The Office of Drug Control and
18 the Department of Law Enforcement shall give great weight to
19 any recommendations of the Domestic Security Oversight
20 Council. Waivers submitted for standards established under s.
21 311.122(3) shall not be granted for percentages below 10
22 percent. Such modifications or waivers shall be noted in the
23 annual report submitted by the Department of Law Enforcement
24 pursuant to this subsection.
25 (7) Any person who has in his or her possession a
26 concealed weapon, or who operates or has possession or control
27 of a vehicle in or upon which a concealed weapon is placed or
28 stored, while in a designated restricted area on seaport
29 property commits a misdemeanor of the first degree, punishable
30 as provided in s. 775.082 or s. 775.083. This subsection does
31 not apply to active-duty certified federal or state law

1 enforcement personnel, or persons so designated by the seaport
2 director in writing.
3 (8)(a) The Seaport Security Standards Advisory Council
4 is created under the Office of Drug Control. The council shall
5 serve as an advisory council under s. 20.03(7).
6 (b)1. The members of the Seaport Security Standards
7 Advisory Council shall be appointed by the Governor and
8 consist of the following:
9 a. Two seaport directors.
10 b. Two seaport security directors.
11 c. One designee from the Department of Law
12 Enforcement.
13 d. One designee from the Office of Motor Carrier
14 Compliance of the Department of Transportation.
15 e. One designee from the Attorney General's Office.
16 f. One designee from the Department of Agriculture and
17 Consumer Services.
18 g. One designee from the Office of Tourism, Trade, and
19 Economic Development.
20 h. One designee from the Office of Drug Control.
21 2. In addition to the members designated in
22 subparagraph 1., the council may invite a representative of
23 the United States Coast Guard to attend and participate in
24 council meetings as an ex officio, nonvoting member of the
25 council.
26 (c) Members of the council shall serve for terms of 4
27 years. A vacancy shall be filled by the original appointing
28 authority for the balance of the unexpired term.
29 (d) The Seaport Security Standards Advisory Council
30 shall be chaired by a designee from the Office of Drug
31 Control. The council shall meet upon the call of the chair and

1 at least once every 5 years.
2 (e) Commencing on January 15, 2007, and at least every
3 4 years thereafter, the Office of Drug Control shall convene
4 the Seaport Security Standards Advisory Council to review the
5 statewide minimum standards. The Seaport Security Standards
6 Advisory Council shall review the statewide minimum standards
7 for seaport security for applicability to and effectiveness in
8 combating current narcotics and terrorism threats to Florida's
9 seaports. All sources of information allowed by law shall be
10 utilized in assessing the applicability and effectiveness of
11 the standards.
12 (f) Seaport Security Standards Advisory Council
13 members shall serve without pay; however, per diem and travel
14 allowances may be claimed for attendance of officially called
15 meetings as provided by s. 112.061.
16 (g) The Seaport Security Standards Advisory Council
17 shall consult with the appropriate area maritime security
18 committees to assess possible impacts to commerce and trade
19 contained in the council's non-classified recommendations and
20 findings.
21 (h) Recommendations and findings of the council shall
22 be transmitted to the Governor, the Speaker of the House of
23 Representatives, and the President of the Senate.
24 Section 3. Section 311.121, Florida Statutes, is
25 created to read:
26 311.121 Qualifications, training, and certification of
27 licensed security officers at Florida seaports.--
28 (1) It is the intent of the Legislature that seaports
29 in the state be able to mitigate operational security costs
30 without reducing security levels by employing a combination of
31 certified law enforcement officers and certified private

1 security service officers. In order to accomplish this intent,
2 seaports shall have the option to recruit and employ seaport
3 security officers who are trained and certified pursuant to
4 the provisions of this section. The Department of Law
5 Enforcement shall adhere to this intent in the approval and
6 certification process for seaport security required under s.
7 311.12.
8 (2) The authority or governing board of each seaport
9 identified under s. 311.09 that is subject to the statewide
10 minimum seaport security standards established in s. 311.12
11 shall require that a candidate for certification as a seaport
12 security officer:
13 (a) Has received a Class D license as a security
14 officer under chapter 493.
15 (b) Has successfully completed the certified training
16 curriculum for a Class D license or has been determined by the
17 Department of Agriculture and Consumer Services to have
18 equivalent experience as established by rule of the
19 department.
20 (c) Has completed the training or training equivalency
21 and testing process established by this section for becoming a
22 certified seaport security officer.
23 (3)(a) The Seaport Security Officer Qualification,
24 Training, and Standards Coordinating Council is created under
25 the Department of Law Enforcement.
26 (b)1. The executive director of the Department of Law
27 Enforcement shall appoint 11 members to the council which
28 shall include:
29 a. The seaport administrator of the Department of Law
30 Enforcement.
31 b. The chancellor of the Community College System.

1 c. The director of the Division of Licensing of the
2 Department of Agriculture and Consumer Services.
3 d. The administrator of the Florida Seaport
4 Transportation and Economic Development Council.
5 e. Two seaport security directors from seaports
6 designated under s. 311.09.
7 f. One director of a state law enforcement academy.
8 g. One representative of a local law enforcement
9 agency.
10 h. Two representatives of contract security services.
11 i. One representative of the Division of Driver
12 Licenses of the Department of Highway Safety and Motor
13 Vehicles.
14 2. In addition to the members designated in
15 subparagraph 1., the executive director may invite a
16 representative of the United States Coast Guard to attend and
17 participate in council meetings as an ex officio, nonvoting
18 member of the council.
19 (c) Council members designated in sub-subparagraphs
20 (b)1.a.-d. shall serve for the duration of their employment or
21 appointment. Council members designated under
22 sub-subparagraphs (b)1.e.-i. shall serve 4-year terms, except
23 that the initial appointment for the representative of a local
24 law enforcement agency, one representative of a contract
25 security agency, and one seaport security director from a
26 seaport designated in s. 311.09 shall serve for terms of 2
27 years.
28 (d) The chancellor of the Community College System
29 shall serve as chair of the council.
30 (e) The council shall meet upon the call of the chair,
31 and at least once a year to update or modify curriculum

1 recommendations.
2 (f) Council members shall serve without pay; however,
3 per diem and travel allowances may be claimed for attendance
4 of officially called meetings as provided by s. 112.061.
5 (g) By December 1, 2006, the council shall identify
6 the qualifications, training, and standards for seaport
7 security officer certification and recommend a curriculum for
8 the seaport security officer training program that shall
9 include no less than 218 hours of initial certification
10 training and that conforms to or exceeds model courses
11 approved by the Federal Maritime Act under Section 109 of the
12 Federal Maritime Transportation Security Act of 2002 for
13 facility personnel with specific security duties.
14 (h) The council may recommend training equivalencies
15 that may be substituted for portions of the required training.
16 (i) The council shall recommend a continuing education
17 curriculum of no less than 8 hours of additional training for
18 each annual licensing period.
19 (4)(a) The Department of Education shall develop the
20 curriculum recommendations and classroom-hour specifications
21 of the Seaport Security Officer Qualifications, Training, and
22 Standards Coordinating Council into initial and continuing
23 education and training programs for seaport security officer
24 certification.
25 (b) Such training programs shall be used by schools
26 licensed under s. 493.6304, and each instructor providing
27 training must hold a Class D license pursuant to s. 493.6301.
28 (c) A seaport authority or other organization involved
29 in seaport-related activities may apply to become a school
30 licensed under s. 493.6304.
31 (d) The training programs shall include proficiency

1 examinations that must be passed by each candidate for
2 certification who successfully completes the required hours of
3 training or provides proof of authorized training
4 equivalencies.
5 (e) A candidate for certification must be provided
6 with a list of authorized training equivalencies in advance of
7 training; however, each candidate for certification must
8 successfully complete 20 hours of study specific to Florida
9 Maritime Security and pass the related portion of the
10 proficiency examination.
11 (5) Seaport security officer certificates shall be
12 provided by the Department of Agriculture and Consumer
13 Services for issuance by a school licensed under s. 493.6304
14 and such school may issue the certificate to an applicant who
15 has successfully completed the training program. A school
16 shall notify the Division of Licensing within the department
17 upon the issuance of each certificate. The notification must
18 include the name and Class D license number of the certificate
19 holder and a copy of the certificate. The department shall
20 place the notification with the licensee's file. Notification
21 may be provided by electronic or paper format pursuant to
22 instruction of the Department of Agriculture and Consumer
23 Services.
24 (6)(a) Upon completion of the certification process, a
25 person holding a Class D license must apply for a revised
26 license pursuant to s. 493.6107(2), which license shall state
27 that the licensee is certified as a seaport security officer.
28 (b) A person who has been issued a seaport security
29 officer certificate is authorized to perform duties
30 specifically required of a seaport security officer.
31 (c) The certificate is valid for the duration of the

1 seaport security officer's Class D license and shall be
2 renewed upon renewal of the license.
3 (d) The certificate shall become void if the seaport
4 security officer's Class D license is revoked or allowed to
5 lapse for more than 1 year or if the licensee fails to
6 complete the annual continuing education requirement prior to
7 expiration of the Class D license.
8 (e) Renewal of certification following licensure
9 revocation or a lapse of longer than 1 year requires, at a
10 minimum, 20 hours of recertification training and
11 reexamination of the applicant.
12 Section 4. Section 311.122, Florida Statutes, is
13 created to read:
14 311.122 Seaport law enforcement agency; authorization;
15 requirements; powers; training.--
16 (1) Each seaport in the state is authorized to create
17 a seaport law enforcement agency for its facility, which
18 authority in no way precludes the seaport from contracting
19 with local governments or law enforcement agencies to comply
20 with the security standards required by this chapter.
21 (2) Each seaport law enforcement agency shall meet all
22 of the standards set by the state under certified law
23 enforcement guidelines and requirements and shall be certified
24 as provided under chapter 943.
25 (3) If a seaport creates a seaport law enforcement
26 agency for its facility, a minimum of 30 percent of the
27 aggregate personnel of each seaport law enforcement agency
28 shall be sworn state-certified law enforcement officers with
29 additional Maritime Transportation Security Act seaport
30 training; a minimum of 30 percent of on-duty personnel of each
31 seaport law enforcement agency shall be sworn state-certified

1 law enforcement officers with additional Maritime
2 Transportation Security Act seaport training; and at least one
3 on-duty supervisor must be a sworn state-certified law
4 enforcement officer with additional Maritime Transportation
5 Security Act seaport training.
6 (4) For the purposes of this chapter, where
7 applicable, seaport law enforcement agency officers shall have
8 the same powers as university police officers as provided in
9 s. 1012.97; however, such powers do not extend beyond the
10 property of the seaport except in connection with an
11 investigation initiated on seaport property or in connection
12 with an immediate, imminent threat to the seaport.
13 (5) For the purposes of this chapter, sworn
14 state-certified seaport security officers shall have the same
15 law enforcement powers with respect to the enforcement of
16 traffic laws on seaport property as university police officers
17 under s. 1012.97, community college police officers under s.
18 1012.88, and airport police officers under the provisions of
19 s. 316.640(1)(a)1.d.(I)-(II).
20 (6) Certified seaport security officers shall have the
21 authority to immediately tow any vehicle parked illegally as
22 indicated by an existing sign or during an emergency as deemed
23 necessary to maintain seaport security.
24 Section 5. Section 311.123, Florida Statutes, is
25 created to read:
26 311.123 Maritime domain security awareness training
27 program.--
28 (1) The Florida Seaport Transportation and Economic
29 Development Council, in conjunction with the Department of Law
30 Enforcement and the Office of Drug Control within the
31 Executive Office of the Governor, shall create a maritime

1 domain security awareness training program to instruct all
2 personnel employed within a seaport's boundaries about the
3 security procedures required of them for implementation of the
4 seaport security plan.
5 (2) The training program curriculum must include
6 security training required pursuant to 33 C.F.R. part 105 and
7 must be designed to enable the seaports in this state to meet
8 the training, drill, and exercise requirements of 33 C.F.R.
9 part 105 and individual seaport security plans and to comply
10 with the requirements of s. 311.12 relating to security
11 awareness.
12 Section 6. Section 311.124, Florida Statutes, is
13 created to read:
14 311.124 Trespassing; detention by a certified seaport
15 security officer.--
16 (1) Any Class D or Class G seaport security officer
17 certified under the Maritime Transportation Security Act
18 guidelines and s. 311.121 or any employee of the seaport
19 security force certified under the Maritime Transportation
20 Security Act guidelines and s. 311.121 who has probable cause
21 to believe that a person is trespassing pursuant to the
22 provisions of s. 810.08 or s. 810.09 or this chapter in a
23 designated restricted area pursuant to s. 311.111 is
24 authorized to detain such person in a reasonable manner for a
25 reasonable period of time pending the arrival of a law
26 enforcement officer, and such action shall not render the
27 security officer criminally or civilly liable for false
28 arrest, false imprisonment, or unlawful detention.
29 (2) Upon detaining a person for trespass, the seaport
30 security officer shall immediately call a certified law
31 enforcement officer to the scene.

1 Section 7. Section 817.021, Florida Statutes, is
2 created to read:
3 817.021 False information to obtain a seaport security
4 identification card.--A person who willfully and knowingly
5 provides false information in obtaining or attempting to
6 obtain a seaport security identification card commits a felony
7 of the third degree, punishable as provided in s. 775.082 or
8 s. 775.083.
9 Section 8. This act shall take effect July 1, 2006.
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12 ========== T I T L E A M E N D M E N T ==========
13 And the title is amended as follows:
14 Delete everything before the enacting clause
15
16 and insert:
17 A bill to be entitled
18 An act relating to seaport security; creating
19 s. 311.111, F.S.; requiring each seaport
20 authority or governing board of a seaport that
21 is subject to the statewide minimum seaport
22 security standards to designate and identify
23 security area designations, access
24 requirements, and security enforcement
25 authorizations on seaport premises and in
26 seaport security plans; providing that any part
27 of a port's property may be designated as a
28 restricted access area under certain
29 conditions; amending s. 311.12, F.S.; revising
30 purpose of security plans maintained by
31 seaports; requiring periodic plan revisions;

1 requiring plans to be inspected for compliance
2 by the Office of Drug Control and the
3 Department of Law Enforcement based upon
4 specified standards; providing requirements
5 with respect to protection standards in
6 specified restricted areas; requiring delivery
7 of the plan to specified entities; requiring
8 the Department of Law Enforcement to inspect
9 every seaport within the state to determine if
10 all security measures adopted by the seaport
11 are in compliance with seaport security
12 standards; requiring a report; authorizing
13 seaports to request review by the Domestic
14 Security Oversight Council of the findings in a
15 Department of Law Enforcement inspection
16 report; limiting the findings which the council
17 is authorized to review; requiring the
18 Department of Law Enforcement to establish by
19 rule a waiver process to grant certain
20 individuals unescorted access to seaports or
21 restricted access areas under certain
22 circumstances; providing waiver process
23 requirements; requiring the administrative
24 staff of the Parole Commission to review the
25 waiver application and transmit the findings to
26 the department; requiring the department to
27 make a final disposition of the application and
28 notify the applicant and the seaport; providing
29 procedures and requirements with respect to
30 waiver of any physical facility requirement or
31 other requirement contained in the statewide

1 minimum standards for seaport security;
2 providing a penalty for possession of a
3 concealed weapon while on seaport property in a
4 designated restricted area; creating the
5 Seaport Standards Security Advisory Council
6 under the Office of Drug Control within the
7 Executive Office of the Governor; providing
8 membership, terms, organization, and meetings
9 of the council; requiring the Office of Drug
10 Control to convene the Seaport Security
11 Standards Advisory Council to review the
12 statewide minimum standards for seaport
13 security; requiring periodic review of the
14 statewide minimum standards for seaport
15 security to be conducted by the council;
16 creating s. 311.121, F.S.; providing
17 legislative intent with respect to the
18 employment by seaports of certified law
19 enforcement officers and certified private
20 security officers; providing authority of
21 seaports and requirements of the Department of
22 Law Enforcement with respect to such intent;
23 requiring the authority or governing board of
24 each seaport that is subject to statewide
25 minimum seaport security standards to impose
26 specified requirements for certification as a
27 seaport security officer; creating the Seaport
28 Security Officer Qualification, Training, and
29 Standards Coordinating Council under the
30 Department of Law Enforcement; providing
31 membership and organization of the council;

1 providing terms of members; providing duties
2 and authority of the council; requiring the
3 Department of Education to develop curriculum
4 recommendations and specifications of the
5 council into initial and continuing education
6 and training programs for seaport security
7 officer certification; providing requirements
8 and procedures with respect to such training
9 programs; providing requirements and procedures
10 with respect to certification as a seaport
11 security officer; providing requirements for
12 renewal of inactive or revoked certification;
13 creating s. 311.122, F.S.; authorizing each
14 seaport in the state to create a seaport law
15 enforcement agency for its facility; providing
16 requirements of an agency; requiring
17 certification of an agency; providing
18 requirements with respect to the composition of
19 agency personnel; providing powers of seaport
20 law enforcement agency officers and seaport
21 security officers; creating s. 311.123, F.S.;
22 providing for the creation of a maritime domain
23 security awareness training program; providing
24 purpose of the program; providing program
25 training curriculum requirements; creating s.
26 311.124, F.S.; providing authority of seaport
27 security officers to detain persons suspected
28 of trespassing in a designated restricted area
29 of a seaport; providing immunity from specified
30 criminal or civil liability; creating s.
31 817.021, F.S.; providing a criminal penalty for

willfully and knowingly providing false information in obtaining or attempting to obtain a seaport security identification card; providing an effective date.

CHAMBER ACTION

Senate House

Consideration of this amendment requires a 2/3 vote of members present

JUSTICE APPROPRIATIONS
DATE: 4-24-06
TIME: 9:55 A.M.

The Committee on Justice Appropriations (Smith) recommended the following **amendment to amendment** (402364):

Senate Amendment (with title amendment)

On page 6, line 29, through
page 7, line 26, delete those lines

and insert:

(3)

(e) The Department of Law Enforcement shall establish a waiver process to allow unescorted access to an individual who is found to be unqualified under paragraph (c) and denied employment by a seaport. The waiver consideration shall be based on the circumstances of any disqualifying act or offense, restitution made by the individual, and other factors from which it may be determined that the individual does not pose a risk of engaging in theft, drug trafficking, or terrorism within the public seaports regulated under this chapter or of harming any person. The waiver process shall begin when an individual who has been denied initial employment within or regular unescorted access to restricted

1 areas of a public seaport as described in paragraph (c)
2 submits an application for a waiver and notarized letter or
3 affidavit from the individual's employer or union
4 representative which states the mitigating reasons for
5 initiating the waiver process. No later than 90 days after
6 receipt of the application, the administrative staff of the
7 Parole Commission shall conduct a factual review of the waiver
8 application. Findings of fact shall be transmitted to the
9 Department of Law Enforcement for review. The department shall
10 make a copy of those findings available to the applicant
11 before final disposition of the waiver request. The department
12 shall make a final disposition of the waiver request based on
13 the factual findings of the investigation by the Parole
14 Commission. The department shall notify the waiver applicant
15 and the port authority that originally denied employment to
16 the applicant of the final disposition of the waiver. The
17 review process under this paragraph is exempt from chapter
18 120.
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21 ========== T I T L E A M E N D M E N T ==========
22 And the title is amended as follows:
23 On page 19, lines 18-28, delete those lines
24
25 and insert:
26 Department of Law Enforcement to establish a
27 waiver process to grant certain individuals
28 unescorted access to seaports or restricted
29 access areas under certain circumstances;
30 providing waiver process requirements;
31 requiring the administrative staff of the

1 Parole Commission to review the waiver
2 application and transmit the findings to the
3 department; requiring the department to make a
4 final disposition of the application and notify
5 the applicant and the seaport; providing that
6 the waiver process is exempt from the
7 Administrative Procedure Act; providing
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CHAMBER ACTION

Senate House

Consideration of this amendment requires a 2/3 vote of members present

JUSTICE APPROPRIATIONS
DATE: 4-22-06
TIME: 3:00 P.M.

The Committee on Justice Appropriations (Smith) recommended the following amendment:

Senate Amendment (with title amendment)

On page 3, lines 15-20, delete those lines and redesignate subsequent paragraphs.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

On page 1, lines 10-13, delete

and insert:

number of public meetings; providing for members of