

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB APC 11-04 Commission on Capital Cases

SPONSOR(S): Appropriations Committee

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Appropriations Committee	14 Y, 7 N	Kramer	Leznoff

SUMMARY ANALYSIS

The bill repeals s. 27.709, F.S. which establishes the Commission on Capital Cases, a legislative commission which is housed within the Office of Legislative Services. The bill requires that the Justice Administrative Commission (JAC), rather than the Commission on Capital Cases, maintain the registry of private attorneys who are eligible to be appointed to represent indigent capital defendants.

This bill conforms to the House proposed General Appropriations Act for the 2011-2012 fiscal year which reduces the Legislature's budget by \$405,704 in General Revenue. Remaining statutorily required responsibilities will be absorbed by the JAC with existing resources.

The bill has an effective date of July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background:

Commission on Capital Cases: Section 27.709, F.S. creates the Commission on Capital Cases housed within the Office of Legislative Services. The commission was created in 1997 and was originally called the Commission on the Administration of Justice in Capital Cases.¹

According to s. 27.709, F.S., the Commission has six members; two members appointed by the Governor; two members appointed by the President of the Senate from the membership of the Senate and two members appointed by the Speaker of the House of Representatives from the membership of the House of Representatives.² The chair of the commission is selected by the members for a term of 1 year. The commission is required to meet quarterly. The Office of Legislative Services provides staff support for the commission.

The commission is required to:³

- review the administration of justice in capital collateral cases;
- receive relevant public input, review the operation of the capital collateral regional counsel and private counsel appointed in capital postconviction cases; and
- advise and make recommendations to the Governor, Legislature, and Supreme Court.

The commission is required to receive complaints regarding the practice of any office of regional counsel and private counsel appointed in capital postconviction cases and must refer any complaint to The Florida Bar, the State Supreme Court, or the Commission on Ethics, as appropriate.

Capital collateral attorney registry: A defendant who is convicted of a crime in which the death penalty is imposed receives a direct appeal of his or her sentence and conviction to the Florida Supreme Court. If the Supreme Court refuses to hear or rejects the defendant's appeal, the defendant is entitled to begin postconviction proceedings, also known as collateral proceedings. In the middle and southern regions of Florida, the Capital Collateral Regional Counsel and private attorneys appointed by the court from a registry provide postconviction representation to indigent capital defendants.⁴ Since 2003, in the northern region of the state, representation is exclusively provided by private attorneys appointed by the court from the registry. The registry of attorneys is maintained by the Commission on Capital Cases and is comprised of lawyers who have met certain statutory criteria.⁵ According to the commission's website, there are currently 137 attorneys on the registry.⁶

Justice Administrative Commission: The Justice Administrative Commission (JAC) provides administrative services to the state attorneys and public defenders, the capital collateral regional counsel, the criminal conflict and civil regional counsel, the Guardian Ad Litem Program, and the Florida Clerks of Court Operations Corporation.⁷ For criminal defense representation in non-capital cases in which neither the Public Defender's office or the office of criminal conflict and civil regional counsel are able to provide representation due to conflicts of interest, an attorney is appointed from a registry maintained by the clerk of court of each circuit and must sign a contract with the Justice Administrative Commission.⁸

¹ Ch. 97-313, s. 9

² A member from the majority party and a member from the minority party must be appointed from the House and the Senate. The current members of the commission are Senator Storms, Senator Joyner, Representative Waldman, Representative Eisnagle, Charles Harris (retired judge) and Jeffrey Swartz (former judge). <http://www.floridacapitalcases.state.fl.us/c-members.cfm>

³ s. 27.709, F.S.

⁴ s. 27.701, F.S.

⁵ s. 27.710(2), F.S.

⁶ <http://www.floridacapitalcases.state.fl.us/c-registry-attorney.cfm>

⁷ s. 43.16, F.S.

⁸ s. 27.40, F.S.

Effect of bill:

The bill repeals s. 27.709, F.S. which establishes the Commission on Capital Cases. The bill amends s. 27.710, F.S. to require that the Justice Administrative Commission, rather than the Commission on Capital Cases, maintain the registry of private attorneys who are eligible to be appointed to represent indigent capital defendants. Other statutory requirements found in s. 27.7002, 27.702 and 27.711, relating to the registry are transferred from the Commission on Capital Cases to the Justice Administrative Commission.

B. SECTION DIRECTORY:

Section 1. Repeals s. 27.709, F.S., relating to the Commission on Capital Cases.

Section 2. Amends s. 27.7002, F.S., relating to limitation on collateral representation; lawyer disqualification; use of state funds for excess fees not authorized.

Section 3. Amends s. 27.702, F.S., relating to the duties of the capital collateral regional counsel; reports.

Section 4. Amends s. 27.710, F.S., relating to the registry of attorneys applying to represent persons in postconviction capital collateral proceedings; certification of minimum requirements; appointment by trial court.

Section 5. Amends s. 27.711, F.S., relating to terms and conditions of appointment of attorneys as counsel in postconviction capital collateral proceedings.

Section 6. Provides effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The budget of the Legislature is reduced by \$405,704 in General Revenue in the proposed House General Appropriations Act for Fiscal Year 2011-12. 5 positions (4 FTE and 2 half-time positions) in the Office of Legislative Support associated with the budget reduction are to be eliminated. Statutorily required responsibilities related to maintenance of the registry of attorneys, will be performed by the JAC within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

See above.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal government.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES