

Amendment No.

CHAMBER ACTION

Senate

House

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1 The Conference Committee on HB 5011 offered the following:

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3 **Conference Committee Amendment (with title amendment)**

4 Remove everything after the enacting clause and insert:

5 Section 1. Section 27.709, Florida Statutes, is repealed.

6 Section 2. Subsections (6) and (7) of section 27.7002,

7 Florida Statutes, are amended to read:

8 27.7002 Limitation on collateral representation; lawyer  
9 disqualification; use of state funds for excess fees not  
10 authorized.--

11 (6) The executive director of the Justice Administrative  
12 ~~Commission on Capital Cases~~ is authorized to permanently remove  
13 from the registry of attorneys provided in ss. 27.710 and 27.711  
14 any attorney who seeks compensation for services above the  
15 amounts provided in s. 27.711.

16 (7) Any attorney who notifies any court, judge, state

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17 attorney, the Attorney General, or the executive director of the  
18 Justice Administrative Commission on Capital Cases, that he or  
19 she cannot provide adequate or proper representation under the  
20 terms and conditions set forth in s. 27.711 shall be permanently  
21 disqualified from any attorney registry created under this  
22 chapter unless good cause arises after a change in  
23 circumstances.

24 Section 3. Subsection (4) of section 27.702, Florida  
25 Statutes, is amended to read:

26 27.702 Duties of the capital collateral regional counsel;  
27 reports.--

28 (4)(a) The capital collateral regional counsel or private  
29 counsel shall give written notification of each pleading filed  
30 by that office and the name of the person filing the pleading to  
31 ~~the Commission on Capital Cases and to~~ the trial court assigned  
32 to the case.

33 (b) Each capital collateral regional counsel and each  
34 attorney participating in the pilot program in the northern  
35 region pursuant to s. 27.701(2) shall provide a quarterly report  
36 to the President of the Senate and the Speaker of the House of  
37 Representatives, ~~and the Commission on Capital Cases~~ which  
38 details the number of hours worked by investigators and legal  
39 counsel per case and the amounts per case expended during the  
40 preceding quarter in investigating and litigating capital  
41 collateral cases.

42 Section 4. Subsections (1) and (4) of section 27.710,  
43 Florida Statutes, are amended to read:

44 27.710 Registry of attorneys applying to represent persons  
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45 in postconviction capital collateral proceedings; certification  
46 of minimum requirements; appointment by trial court.-

47 (1) The executive director of the Justice Administrative  
48 Commission on Capital Cases shall compile and maintain a  
49 statewide registry of attorneys in private practice who have  
50 certified that they meet the minimum requirements of s.  
51 27.704(2), who are available for appointment by the court under  
52 this section to represent persons convicted and sentenced to  
53 death in this state in postconviction collateral proceedings,  
54 and who have attended within the last year a continuing legal  
55 education program of at least 10 hours' duration devoted  
56 specifically to the defense of capital cases, if available.  
57 Continuing legal education programs meeting the requirements of  
58 this rule offered by The Florida Bar or another recognized  
59 provider and approved for continuing legal education credit by  
60 The Florida Bar shall satisfy this requirement. The failure to  
61 comply with this requirement may be cause for removal from the  
62 list until the requirement is fulfilled. To ensure that  
63 sufficient attorneys are available for appointment by the court,  
64 when the number of attorneys on the registry falls below 50, the  
65 executive director shall notify the chief judge of each circuit  
66 by letter and request the chief judge to promptly submit the  
67 names of at least three private attorneys who regularly practice  
68 criminal law in that circuit and who appear to meet the minimum  
69 requirements to represent persons in postconviction capital  
70 collateral proceedings. The executive director shall send an  
71 application to each attorney identified by the chief judge so  
72 that the attorney may register for appointment as counsel in

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73 postconviction capital collateral proceedings. As necessary, the  
74 executive director may also advertise in legal publications and  
75 other appropriate media for qualified attorneys interested in  
76 registering for appointment as counsel in postconviction capital  
77 collateral proceedings. Not later than September 1 of each year,  
78 and as necessary thereafter, the executive director shall  
79 provide to the Chief Justice of the Supreme Court, the chief  
80 judge and state attorney in each judicial circuit, and the  
81 Attorney General a current copy of its registry of attorneys who  
82 are available for appointment as counsel in postconviction  
83 capital collateral proceedings. The registry must be indexed by  
84 judicial circuit and must contain the requisite information  
85 submitted by the applicants in accordance with this section.

86 (4) Each private attorney who is appointed by the court to  
87 represent a capital defendant must enter into a contract with  
88 the Chief Financial Officer. If the appointed attorney fails to  
89 execute the contract within 30 days after the date the contract  
90 is mailed to the attorney, the executive director ~~of the~~  
91 ~~Commission on Capital Cases~~ shall notify the trial court. The  
92 Chief Financial Officer shall develop the form of the contract,  
93 function as contract manager, and enforce performance of the  
94 terms and conditions of the contract. By signing such contract,  
95 the attorney certifies that he or she intends to continue the  
96 representation under the terms and conditions set forth in the  
97 contract until the sentence is reversed, reduced, or carried out  
98 or until released by order of the trial court.

99 Section 5. Paragraph (b) of subsection (1) of section  
100 27.711, Florida Statutes, is amended to read:

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101 27.711 Terms and conditions of appointment of attorneys as  
102 counsel in postconviction capital collateral proceedings.-

103 (1) As used in s. 27.710 and this section, the term:

104 (b) "Executive director" means the executive director of  
105 the Justice Administrative Commission ~~on Capital Cases~~.

106 Section 6. This act shall take effect July 1, 2011.

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109 **T I T L E A M E N D M E N T**

110 Remove the entire title and insert:

111 A bill to be entitled

112 An act relating to the Commission on Capital Cases;  
113 repealing s. 27.709, F.S., relating to the creation of the  
114 Commission on Capital Cases; amending ss. 27.7002, 27.702,  
115 27.710, and 27.711, F.S.; providing for assumption of  
116 certain duties of the Commission on Capital Cases by the  
117 Justice Administrative Commission; conforming provisions  
118 to changes made by the act; providing an effective date.

## 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.<sup>1</sup>

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.<sup>2</sup> 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:<sup>3</sup>

- 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.<sup>4</sup> 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.<sup>5</sup> According to the commission's website, there are currently 137 attorneys on the registry.<sup>6</sup>

*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.<sup>7</sup> 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.<sup>8</sup>

**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**