

Amendment No. 1 (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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The Committee on Civil Justice & Claims offered the following:

**Amendment (with title amendment)**

On page 3, line 23,  
remove from the bill: everything after the enacting clause  
and insert in lieu thereof:

Section 1. The Division of Statutory Revision is requested to designate part IV of chapter 27, Florida Statutes, as "Capital Collateral Representation."

Section 2. Subsections (1) and (2) of section 27.702, Florida Statutes, are amended to read:

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

(1) The capital collateral regional counsel shall represent each person convicted and sentenced to death in this state for the sole purpose of instituting and prosecuting collateral actions challenging the legality of the judgment and sentence imposed against such person in the state courts, federal courts in this state, the United States Court of Appeals for the Eleventh Circuit, and the United States

1 Supreme Court. ~~Representation by the regional counsel shall~~  
2 ~~commence automatically upon termination of direct appellate~~  
3 ~~proceedings in state or federal courts. Within 91 days after~~  
4 ~~the date the Supreme Court issues a mandate on a direct appeal~~  
5 ~~or the United States Supreme Court denies a petition for~~  
6 ~~certiorari, whichever is later, the capital collateral~~  
7 ~~regional counsel shall file a notice of appearance in the~~  
8 ~~trial court in which the judgment and sentence were entered~~  
9 ~~and shall secure all direct appeal files for collateral~~  
10 ~~representation. Upon receipt of files from the public~~  
11 ~~defender or other counsel, the capital collateral regional~~  
12 ~~counsel shall assign each such case to personnel in his or her~~  
13 ~~office for investigation, client contact, and any further~~  
14 ~~action the circumstances warrant.~~The three capital collateral  
15 regional counsels' offices shall function independently and be  
16 separate budget entities, and the regional counsels shall be  
17 the office heads for all purposes. The Justice Administrative  
18 Commission shall provide administrative support and service to  
19 the three offices to the extent requested by the regional  
20 counsels. The three regional offices shall not be subject to  
21 control, supervision, or direction by the Justice  
22 Administrative Commission in any manner, including, but not  
23 limited to, personnel, purchasing, transactions involving real  
24 or personal property, and budgetary matters.

25 (2) The capital collateral regional counsel shall  
26 represent persons ~~each person~~ convicted and sentenced to death  
27 within the region in collateral postconviction proceedings,  
28 unless a court appoints or permits other counsel to appear as  
29 counsel of record.

30 Section 3. Section 27.710, Florida Statutes, is  
31 created to read:

1           27.710 Registry of attorneys applying to represent  
2 persons in postconviction capital collateral proceedings;  
3 certification of minimum requirements; appointment by trial  
4 court.--

5           (1) The executive director of the Commission on the  
6 Administration of Justice in Capital Cases shall compile and  
7 maintain a statewide registry of attorneys in private practice  
8 who have certified that they meet the minimum requirements of  
9 s. 27.704(2) and who are available for appointment by the  
10 court under this section to represent persons convicted and  
11 sentenced to death in this state in postconviction capital  
12 collateral proceedings. To ensure that sufficient attorneys  
13 are available for appointment by the court, when the number of  
14 attorneys on the registry falls below 50, the executive  
15 director shall notify the chief judge of each circuit by  
16 letter and request the chief judge to promptly submit the  
17 names of at least three private attorneys who regularly  
18 practice criminal law in that circuit and who appear to meet  
19 the minimum requirements to represent persons in  
20 postconviction capital collateral proceedings. The executive  
21 director shall send an application to each attorney identified  
22 by the chief judge so that the attorney may register for  
23 appointment as counsel in postconviction capital collateral  
24 proceedings. As necessary, the executive director may also  
25 advertise in legal publications and other appropriate media  
26 for qualified attorneys interested in registering for  
27 appointment as counsel in postconviction capital collateral  
28 proceedings. Not later than September 1 of each year, and as  
29 necessary thereafter, the executive director shall provide to  
30 the Chief Justice of the Supreme Court, the chief judge and  
31 state attorney in each judicial circuit, and the Attorney

1 General a current copy of its registry of attorneys who are  
2 available for appointment as counsel in postconviction capital  
3 collateral proceedings. The registry must be indexed by  
4 judicial circuit and must contain the requisite information  
5 submitted by the applicants in accordance with this section.

6 (2) To be eligible for court appointment as counsel in  
7 postconviction capital collateral proceedings, an attorney  
8 must certify on an application provided by the executive  
9 director that he or she satisfies the minimum requirements for  
10 private counsel set forth in s. 27.704(2).

11 (3) An attorney who applies for registration and court  
12 appointment as counsel in postconviction capital collateral  
13 proceedings must certify that he or she is counsel of record  
14 in not more than four such proceedings and, if appointed to  
15 represent a person in postconviction capital collateral  
16 proceedings, shall continue such representation under the  
17 terms and conditions set forth in s. 27.711 until the sentence  
18 is reversed, reduced, or carried out or unless permitted to  
19 withdraw from representation by the trial court. The court may  
20 not permit an attorney to withdraw from representation without  
21 a finding of sufficient good cause. The court may impose  
22 appropriate sanctions if it finds that an attorney has shown  
23 bad faith with respect to continuing to represent a defendant  
24 in a postconviction capital collateral proceeding. This  
25 section does not preclude the court from reassigning a case to  
26 a capital collateral regional counsel following  
27 discontinuation of representation if a conflict of interest no  
28 longer exists with respect to the case.

29 (4) Each private attorney who is appointed by the  
30 court to represent a capital defendant must enter into a  
31 contract with the Comptroller. The executive director of the

1 Commission on the Administration of Justice in Capital Cases  
2 shall develop the form of the contract and the Comptroller  
3 shall function as contract manager and shall enforce  
4 performance of the terms and conditions of the contract. By  
5 signing such contract, the attorney certifies that he or she  
6 intends to continue the representation under the terms and  
7 conditions set forth in the contract until the sentence is  
8 reversed, reduced, or carried out or until released by order  
9 of the trial court.

10 (5) Upon notification by the Attorney General that:  
11 (a) Ninety-one days have elapsed since the Supreme  
12 Court issued a mandate on a direct appeal, or the Supreme  
13 Court of the United States has denied a petition for  
14 certiorari, whichever is later;

15 (b) A person under sentence of death who was  
16 previously represented by private counsel is currently  
17 unrepresented in a postconviction capital collateral  
18 proceeding; or

19 (c) The trial court has issued an order finding that a  
20 year and a day have elapsed since the commencement of the  
21 period for filing a motion for postconviction relief under s.  
22 924.055(2), and the defendant's complete original motion for  
23 postconviction relief has not been filed in the trial court,  
24  
25 the executive director shall immediately notify the trial  
26 court that imposed the sentence of death that the court must  
27 immediately appoint an attorney, selected from the current  
28 registry, to represent such person in collateral actions  
29 challenging the legality of the judgment and sentence in the  
30 appropriate state and federal courts. The court shall have the  
31 authority to strike a notice of appearance filed by a Capital

1 Collateral Regional Counsel, if the court finds the notice was  
2 not filed in good faith and may so notify the executive  
3 director that the client is no longer represented by the  
4 Office of Capital Collateral Regional Counsel. In making an  
5 assignment, the court shall give priority to attorneys whose  
6 experience and abilities in criminal law, especially in  
7 capital proceedings, are known by the court to be commensurate  
8 with the responsibility of representing a person sentenced to  
9 death. The trial court must issue an order of appointment  
10 which contains specific findings that the appointed counsel  
11 meets the statutory requirements and has the high ethical  
12 standards necessary to represent a person sentenced to death.

13 (6) More than one attorney may not be appointed and  
14 compensated at any one time under s. 27.711 to represent a  
15 person in postconviction capital collateral proceedings.

16 Section 4. Section 27.711, Florida Statutes, is  
17 created to read:

18 27.711 Terms and conditions of appointment of  
19 attorneys as counsel in postconviction capital collateral  
20 proceedings.--

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

22 (a) "Capital defendant" means the person who is  
23 represented in postconviction capital collateral proceedings  
24 by an attorney appointed under s. 27.710.

25 (b) "Executive director" means the executive director  
26 of the Commission on the Administration of Justice in Capital  
27 Cases.

28 (c) "Postconviction capital collateral proceedings"  
29 means one series of collateral litigation of an affirmed  
30 conviction and sentence of death, including the proceedings in  
31 the trial court that imposed the capital sentence, any

1 appellate review of the sentence by the Supreme Court, any  
2 certiorari review of the sentence by the United States Supreme  
3 Court, and any authorized federal habeas corpus litigation  
4 with respect to the sentence. The term does not include  
5 repetitive or successive collateral challenges to a conviction  
6 and sentence of death which is affirmed by the Supreme Court  
7 and undisturbed by any collateral litigation.

8 (2) After appointment by the trial court under s.  
9 27.710, the attorney must immediately file a notice of  
10 appearance with the trial court indicating acceptance of the  
11 appointment to represent the capital defendant throughout all  
12 postconviction capital collateral proceedings, including  
13 federal habeas corpus proceedings, in accordance with this  
14 section or until released by order of the trial court.

15 (3) An attorney appointed to represent a capital  
16 defendant is entitled to payment of the fees set forth in this  
17 section only upon full performance by the attorney of the  
18 duties specified in this section and approval of payment by  
19 the trial court. The attorney shall maintain appropriate  
20 documentation, including a current and detailed hourly  
21 accounting of time spent representing the capital defendant.  
22 The fee and payment schedule in this section is the exclusive  
23 means of compensating a court-appointed attorney who  
24 represents a capital defendant. When appropriate, a  
25 court-appointed attorney must seek further compensation from  
26 the Federal Government, as provided in 18 U.S.C. s. 3006A or  
27 other federal law, in habeas corpus litigation in the federal  
28 courts.

29 (4) Upon approval by the trial court, an attorney  
30 appointed to represent a capital defendant under s. 27.710 is  
31 entitled to payment of the following fees by the Comptroller:

1       (a) Regardless of the stage of postconviction capital  
2 collateral proceedings, the attorney is entitled to \$100 per  
3 hour, up to a maximum of \$2,500, upon accepting appointment  
4 and filing a notice of appearance. This fee is in the nature  
5 of a fee for a retainer agreement.

6       (b) The attorney is entitled to \$100 per hour, up to a  
7 maximum of \$20,000, after timely filing in the trial court the  
8 capital defendant's complete original motion for  
9 postconviction relief under the Florida Rules of Criminal  
10 Procedure. The motion must raise all issues to be addressed by  
11 the trial court.

12       (c) The attorney is entitled to \$100 per hour, up to a  
13 maximum of \$10,000, after the trial court issues a final order  
14 granting or denying the capital defendant's motion for  
15 postconviction relief.

16       (d) The attorney is entitled to \$100 per hour, up to a  
17 maximum of \$4,000, after timely filing in the Supreme Court  
18 the capital defendant's brief or briefs that address the trial  
19 court's final order granting or denying the capital  
20 defendant's motion for postconviction relief and the state  
21 petition for writ of habeas corpus.

22       (e) The attorney is entitled to \$100 per hour, up to a  
23 maximum of \$20,000, after the appeal of the trial court's  
24 denial of the capital defendant's motion for postconviction  
25 relief and the capital defendant's state petition for writ of  
26 habeas corpus become final in the Supreme Court.

27       (f) At the conclusion of the capital defendant's  
28 postconviction capital collateral proceedings in state court,  
29 the attorney is entitled to \$100 per hour, up to a maximum of  
30 \$2,500, after filing a petition for writ of certiorari in the  
31 Supreme Court of the United States.



1       (g) If, at any time, the Supreme Court of the United  
2 States accepts for review the capital defendant's collateral  
3 challenge of the conviction and sentence of death, the  
4 attorney is entitled to \$100 per hour, up to a maximum of  
5 \$5,000. This payment shall be full compensation for  
6 representing the capital defendant throughout the certiorari  
7 proceedings before the United States Supreme Court.

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9       The hours billed by a contracting attorney under this  
10 subsection may include time devoted to representation of the  
11 defendant by another attorney who is qualified under s. 27.710  
12 and who has been designated by the contracting attorney to  
13 assist him or her.

14       (5) An attorney who represents a capital defendant may  
15 use the services of one or more investigators to assist in  
16 representing a capital defendant. Upon approval by the trial  
17 court, the attorney is entitled to payment from the  
18 Comptroller of \$40 per hour, up to a maximum of \$15,000, for  
19 the purpose of paying for investigative services.

20       (6) An attorney who represents a capital defendant is  
21 entitled to a maximum of \$5,000 for miscellaneous expenses,  
22 such as the costs of preparing transcripts, compensating  
23 expert witnesses, and copying documents. Upon approval by the  
24 trial court, the attorney is entitled to payment by the  
25 Comptroller for miscellaneous expenses.

26       (7) By accepting court appointment under s. 27.710 to  
27 represent a capital defendant, the attorney agrees to continue  
28 such representation under the terms and conditions set forth  
29 in this section until the capital defendant's sentence is  
30 reversed, reduced, or carried out, and the attorney is  
31 permitted to withdraw from such representation by a court of

1 competent jurisdiction.

2 (8) An attorney may not represent more than five  
3 capital defendants at any one time.

4 (9) This section does not authorize an attorney who  
5 represents a capital defendant to file repetitive or frivolous  
6 pleadings that are not supported by law or by the facts of the  
7 case. An action taken by an attorney who represents a capital  
8 defendant in postconviction capital collateral proceedings may  
9 not be the basis for a claim of ineffective assistance of  
10 counsel.

11 (10) An attorney appointed under s. 27.710 to  
12 represent a capital defendant may not represent the capital  
13 defendant during a retrial, a resentencing proceeding, a  
14 proceeding commenced under chapter 940, a proceeding  
15 challenging a conviction or sentence other than the conviction  
16 and sentence of death for which the appointment was made, or  
17 any civil litigation other than habeas corpus proceedings.

18 Section 5. (1)(a) There is created the Commission on  
19 Legislative Reform of Judicial Administration, which shall  
20 consist of twelve of the following members:

21 1. Three members appointed by the Chief Justice of the  
22 Florida Supreme Court.

23 2. Three members appointed by the Speaker of the House  
24 of Representatives.

25 3. Three members appointed by the President of the  
26 Senate.

27 4. One member appointed by the Governor.

28 5. One member appointed by the Public Defender's  
29 Attorneys Association.

30 6. One member appointed by the Florida Prosecuting  
31 Attorneys' Association.

1           (b) The Chair of the Commission shall be selected by  
2 the members.

3           (c) The Commission shall meet at least monthly, and  
4 other meetings may be called by the chair upon giving at least  
5 7 days notice to all members and the public.

6           (d) Members of the commission are entitled to per diem  
7 and travel expenses to be paid by the appointing authority.

8 (e) The initial members of the commission shall be appointed  
9 on or before July 15, 1998. A member's term shall expire upon  
10 submission of the report to the Legislature.

11           (f) The staff of the Commission of the Administration  
12 of Justice in Capital Cases shall staff the commission.

13           (2) The Commission shall study the feasibility of  
14 judicial administration reforms, including but not limited to,  
15 appropriate minimum standards, if any, for counsel in capital  
16 cases; the feasibility of authorizing cross circuit  
17 assignments of Public Defenders to minimize the cost of  
18 representation in conflicts-of-interest cases; the potential  
19 resolutions of the inability of the Office of the Public  
20 Defender for the Tenth Judicial Circuit to represent indigent  
21 criminal defendants on appeal in a timely fashion, and other  
22 issues regarding indigent criminal appeals; and other judicial  
23 reforms that could expedite justice and reduce costs in  
24 judicial administration. The Commission shall submit a report  
25 to the Speaker of the House of Representatives and the  
26 President of the Senate no later than January 1, 1999,  
27 containing their recommendations. The Commission's authority  
28 will expire on January 4, 1999, and the term of office of each  
29 member will expire on that date.

30           Section 6. This act shall take effect July 1, 1998.

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Amendment No. 1 (for drafter's use only)

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

2 And the title is amended as follows:

3 On page 1, line 2, through page 3, line 21,  
4 remove from the title of the bill: all of said lines

5

6 and insert in lieu thereof:

7 An act relating to judicial administration;  
8 requesting that the Division of Statutory  
9 Revision designate part IV of ch. 27, F.S., as  
10 "Capital Collateral Representation"; amending  
11 s. 27.702, F.S.; deleting a requirement that  
12 specifies the time for the capital collateral  
13 regional counsel to commence the representation  
14 of a person sentenced to death; creating s.  
15 27.710, F.S.; requiring that the executive  
16 director of the Commission on the  
17 Administration of Justice in Capital Cases  
18 maintain a registry of attorneys in private  
19 practice who are available to be appointed to  
20 represent defendants in postconviction capital  
21 collateral proceedings; authorizing the  
22 executive director to obtain names of attorneys  
23 who may register for appointment; providing  
24 eligibility requirements for appointment as  
25 counsel in postconviction capital collateral  
26 proceedings; providing for appointment of an  
27 attorney selected from the registry; limiting  
28 the circumstances under which the court may  
29 permit an attorney to withdraw from  
30 representation following appointment;  
31 authorizing the court to impose sanctions;

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1 requiring that appointed counsel enter into a  
2 contract with the Comptroller; providing for  
3 the Comptroller to enforce performance of the  
4 contract; providing that more than one attorney  
5 may not be appointed at any one time to  
6 represent a capital defendant; creating s.  
7 27.711, F.S.; requiring that an attorney  
8 appointed to represent a capital defendant file  
9 a notice of appearance; providing a schedule of  
10 fees to which the attorney is entitled for  
11 specified appearances and representations;  
12 requiring that the trial court approve the  
13 payment of costs and fees; providing that such  
14 fees constitute the exclusive means of  
15 compensation for such representation;  
16 authorizing compensation as provided by federal  
17 law under certain circumstances; authorizing  
18 the use of investigative services and the  
19 payment of fees for such services; providing  
20 that by accepting appointment to represent a  
21 capital defendant the attorney agrees to  
22 continue such representation until the  
23 defendant's sentence is reversed, reduced, or  
24 carried out; limiting the number of capital  
25 defendants that an attorney may represent;  
26 prohibiting a claim of ineffective assistance  
27 of counsel based on an action by the attorney  
28 who represents a capital defendant; prohibiting  
29 the attorney from representing the capital  
30 defendant in certain other proceedings;  
31 creating the Commission on Legislative Reform

1 of Judicial Administrating to study judicial  
2 administration reform; providing an effective  
3 date.  
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