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DATE: March 27, 2001

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
CRIME PREVENTION, CORRECTIONS & SAFETY
ANALYSIS**

BILL #: HB 697

RELATING TO: Capital Case Staff Attorney Program

SPONSOR(S): Representative Goodlette

TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) JUDICIAL OVERSIGHT YEAS 10 NAYS 0
 - (2) CRIME PREVENTION, CORRECTIONS & SAFETY
 - (3) CRIMINAL JUSTICE APPROPRIATIONS
 - (4) SMARTER GOVERNMENT
 - (5)
-

I. SUMMARY:

The bill creates the Capital Case Staff Attorney Program in the state's circuit courts to provide legal assistance to circuit judges presiding over capital cases. The bill provides for 25 attorneys in the state's twenty judicial circuits. The chief circuit judge in each circuit would hire and supervise the attorneys. Attorneys hired into the program must be a member of the Florida Bar and have at least one year of professional experience.

The attorneys will be responsible for attending hearings and advising the assigned judge on matters of fact, law, and pretrial procedure. Attorneys will also provide research and drafting assistance as requested, attend trial as requested, and prepare a bench-book containing current state and federal cases relevant to capital cases. Finally, attorneys will provide advice concerning matters of case management and perform other duties as assigned by the chief judge.

The bill provides for training for the attorneys and provides that starting salaries for attorneys will not exceed \$40,000 per year using state appropriated funds.

The bill requires the presiding judge in each circuit to provide a report concerning the value and efficacy of the Capital Case Attorney Program to the Speaker of the House of Representatives, the Governor, the President of the Senate, the Chief Justice of the Supreme Court, and the Executive Director of the Commission on Capital Cases at the end of each fiscal year.

The bill provides a \$1.6 million appropriation for start-up and operating costs during the 2001-2002 fiscal year. The bill takes effect on July 1, 2001.

The Committee on Judicial Oversight approved a strike-all amendment that gives the Florida Supreme Court more flexibility in assigning attorneys to appropriate judicial circuits and also made technical changes. The amendment is traveling with the bill.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

B. PRESENT SITUATION:

In Chapter 2000-237, Laws of Florida, the Legislature created the Supreme Court Workload Study Commission (“Commission”). The Speaker of the House, the President of the Senate, and the Chief Justice of the Supreme Court of Florida each appointed members to serve on the Commission. The Commission was charged with making recommendations for addressing Supreme Court workload issues and submitting a report to the Legislature. The Commission held six public meetings where it received evidence and heard testimony from justices of the Supreme Court, judges on the district courts of appeal, judges from other states, clerks of the court, and attorneys who practice before the court. The Commission presented its report to the Legislature prior to the 2001 session.

The Commission heard testimony that showed that deciding death penalty appeals is a significant portion of the Supreme Court’s workload. The Commission found that between 1990 and 1999, the court issued opinions in 763 death penalty cases (either direct appeal or some form of collateral review).¹ Of those cases, 307 resulted in some form of relief being granted (either a reversal or a remand for further proceedings).² The report stated:

Commission members expressed concern that there may be insufficient law clerk support for the trial judges assigned to the complex death penalty cases and that by providing additional legal research support with specific knowledge in the legal issues related to death penalty cases, the error rate for these cases could be further reduced.³

The Commission explained the process for assigning trial court law clerks in the circuit courts:

The number of law clerks assigned to the trial courts is based on the number of new judges approved by the Legislature. When the Supreme Court certifies the need for additional judges, law clerks and judicial assistants are requested and appropriated on a formula basis. Currently, for every three judges requested at the circuit court level the budget includes funding and

¹ Source: 2001 Final Report of the Supreme Court Workload Study Commission, page 11.

² Id.

³ Id.

positions for one law clerk and two judicial assistants. Each new judge is allocated a judicial assistant and each circuit allocates the law clerk positions.⁴

Chief Justice Wells has stated repeatedly that the court system must do a better job of managing capital cases. See Jones v. State, 740 So. 2d 520, 526 (Fla. 1999)(Wells, J., concurring)(“However, avoiding the ineptness and embarrassment which this case represents ultimately relies upon the commitment of our circuit judges in each circuit in this state to manage a capital case for which the circuit judge has responsibility with the diligence that the public, the defendant, and the victims of such crimes expect such cases to receive. The assigned circuit judge must give the case special concentrated attention.”), Allen v. Butterworth, 756 So. 2d 52, 67-68 (Fla. 2000)(Wells, J., concurring)(noting that the judiciary must continue to improve case management procedures), Nixon v. Singletary, 758 So. 2d 618, 634 (Fla. 2000)(Wells, J., dissenting)(“Finally, I believe this case again exemplifies why this Court must have a much better and more pro-active case management procedure in capital cases.”). The Florida Supreme Court has recently initiated a training program to provide specialized training for law clerks working with circuit judges hearing death penalty cases.

C. EFFECT OF PROPOSED CHANGES:

The bill creates the Capital Case Staff Attorney Program in the state’s circuit courts to provide legal assistance to circuit judges presiding over capital cases. The bill provides for 25 attorneys in the state’s twenty judicial circuits. Each circuit would get one attorney. Two additional attorneys would be provided for in the Ninth and Eleventh Circuits. Six circuits would share an additional attorney (the Fifteenth and Seventeenth Circuits, Fourth and Seventh Circuits, and the Sixth and Thirteenth Circuits), for a total three additional attorneys. These positions are in addition to any that might be allocated by the Florida Supreme Court to assist in disposition of capital cases. The attorneys in the program would be hired by the chief circuit judge and, in the circuits in which attorneys will be shared, the chief judges of those circuits will jointly make the hiring decision. Attorneys hired into the program must be a member of the Florida Bar and have at least one year of professional experience.

The chief judge or judges (in the shared positions) or their designees will supervise the attorneys in the Capital Case Staff Attorney Program. The attorneys will be responsible for attending hearings and advising the assigned judge on matters of fact, law, and pretrial procedure. Attorneys will also provide research and drafting assistance as requested, attend trial as requested, and prepare a bench-book containing current state and federal cases relevant to capital cases. Finally, attorneys will provide advice concerning matters of case management and perform other duties as assigned by the chief judge.

The bill provides that the Commission on Capital Cases⁵ will provide training for the attorneys and may do so in conjunction with other training programs. Costs for such training shall not exceed \$750 per attorney. Starting salaries for attorneys will not exceed \$40,000 per year using state appropriated funds.

Presiding circuit judges are permitted to request the temporary assignment of capital case staff attorneys across circuit lines from other circuits. Such requests must be given prompt and favorable consideration if possible.

⁴ Id.

⁵ The Commission on Capital Cases is created by s. 27.709, F.S. to review the administration of justice in capital cases and make recommendations to the Legislature and Governor.

The bill requires the presiding judge in each circuit to provide a report concerning the value and efficacy of the Capital Case Attorney Program to the Speaker of the House, the Governor, the President of the Senate, the Chief Justice of the Supreme Court, and the Executive Director of the Commission on Capital Cases at the end of each fiscal year.

The bill provides a \$1.6 million appropriation for start-up and operating costs during the 2001-2002 fiscal year. The bill takes effect on July 1, 2001.

D. SECTION-BY-SECTION ANALYSIS:

See Section II.C. Effect of Proposed Changes.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

The bill provides a \$1.6 million appropriation for start-up and operating costs in fiscal year 2001-2002. There would be an indeterminate recurring cost to continue the program each year.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require a city or county to spend funds, or to take any action requiring the expenditure of any funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the revenue raising authority of any city or county.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the amount of state tax shared with any city or county.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Judicial Oversight considered the bill on March 20, 2001. The committee approved a strike-all amendment that gives the Florida Supreme Court more flexibility in assigning attorneys to appropriate judicial circuits and also made technical changes. The amendment will allow an attorney to be assigned to criminal matters of the circuit court when not needed for capital litigation. The amendment also removes the \$40,000 maximum starting salary contained in the bill. The amendment contains a 1.6 million dollar appropriation to the Commission on Capital Cases for start-up and operating expenses during the 2001-2002 fiscal year which was contained in the bill. The amendment is traveling with the bill.

VII. SIGNATURES:

COMMITTEE ON JUDICIAL OVERSIGHT:

Prepared by:

L. Michael Billmeier

Staff Director:

Lynne Overton

AS REVISED BY THE COMMITTEE ON CRIME PREVENTION, CORRECTIONS & SAFETY:

Prepared by:

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