

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1847 Capital Collateral Regional Counsel
SPONSOR(S): Appropriations
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Appropriations</u>	<u>21 Y, 16 N</u>	<u>London/Davis</u>	<u>Baker</u>
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

HB 1847 places provisions for the Capital Collateral Regional Counsel (CCRC) pilot program in statute, alleviating the need for any Implementing Bill language. The bill maintains the scheduled performance review by the Auditor General so the Legislature may determine program efficiencies when compared to the traditional CCRC offices.

This bill also limits capital collateral regional counsel representation to state courts.

The proposed House General Appropriations Act continues savings of \$1.4 million from maintaining the northern region pilot program, and an additional \$1.7 million from the discontinuation of federal representation by CCRC attorneys.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1847.ap.doc
DATE: March 26, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. Empower families? | 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. EFFECT OF PROPOSED CHANGES:

Present Situation

In 1985, the Florida Legislature created the Office of the Capital Collateral Representative to represent death row inmates in collateral actions challenging the legality of the judgment and sentence imposed against such person in the state and federal courts.¹ Prior to 1997, one capital collateral representative represented all death sentenced inmates. The 1997 Legislature created the three regional offices,² becoming the Capital Collateral Regional Counsel (CCRC). These three offices function independently with a Northern Region based in Tallahassee, a Middle Region based in Tampa, and a Southern Region based in Miami. Each represents defendants sentenced within his or her region.³

The Legislature created the attorney registry for private lawyers to reduce the backlog of cases in which death row inmates were unrepresented by the CCRCs in 1998.⁴ Under the registry act, the Commission on Capital Cases is responsible for maintaining the attorney registry with lawyers who are statutorily qualified to represent inmates on death row in postconviction proceedings.⁵ Participation in the registry is voluntary, and trial courts are authorized to select lawyers from the registry list and issue orders of appointment.

In 2003, the Legislature established a pilot program in the northern region of the state that uses attorneys from the certified registry of attorneys to take over the duties of the capital collateral regional counsel for the northern region. This was authorized through a provision in the FY 2003-04 Implementing Bill.⁶

Proposed Changes

The General Appropriations Act and its companion Implementing Bill are only effective for one fiscal year. This bill, in order to effectuate the Legislature's decision to develop a pilot program in the northern region for more than one year, amends s. 27.701(2), F.S., so the pilot program will not terminate on July 1, 2004. The Auditor General is still required to report on the effectiveness and efficiency of using the registry of attorneys compared to the CCRCs, and must report to the Speaker of the House and the President of the Senate of its findings by January 30, 2006. The Legislature may

¹ Ch. 85-332, Laws of Florida, section three; section 27.7001, F.S.; and s. 27.702(1), F.S.

² Ch. 97-313, Laws of Florida.

³ Section 27.702(2), F.S.

⁴ Ch. 98-197, Laws of Florida.

⁵ Private lawyers participating in the attorney registry have the same statutory minimum qualifications as assistant capital collateral counsels: three years experience in the practice of law, and having participated in at least five felony trials, five felony appeals, or five capital postconviction evidentiary hearings or any combination of at least five of such proceedings. Sections 27.710(2) and 27.204, F.S.

⁶ Section 84, ch. 2003-399, amending s. 27.701, F.S.

then determine whether to convert the pilot program to a permanent program after receipt of this review.

Secondly, the capital collateral regional counsels' jurisdiction to represent individuals in collateral actions to a death penalty case extends to both the state and federal courts.⁷ This bill removes the capital collateral regional counsels' ability to represent an individual in a collateral action to a death penalty case in any federal court, and makes the necessary conforming changes.

C. SECTION DIRECTORY:

Section 1. Amends s. 27.701, F.S., relating to a pilot program to use attorneys from the registry of attorneys maintained pursuant to s. 27.710 instead of capital collateral regional counsel to fulfill the duties of the capital collateral regional counsel for the Northern District.

Section 2. Amends s. 27.702, F.S., relating to duties of the capital collateral regional counsel.

Section 3. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The FY 2003-04 General Appropriations Act produced a savings to the state of \$1.4 million from establishing this pilot program. [There were \$9.4 million in recurring expenditures which were reduced to \$6.7 million. An additional \$1.3 million was added to the registry of attorneys appropriation.]

The Commission on Capital Cases provided a Mid-Fiscal Year 2003-2004 Report on the pilot program. In addition to reporting that there have been no lengthy continuances or delays in the transfer of cases from the CCRC-North to the registry thus costing more money, their report indicated that the state will save approximately \$2 million in the current year if costs remain constant. [The budget for the CCRC-North would have been approximately \$2.7 million in the 2003-2004 fiscal year. From July 1, 2003-February 19, 2004, the payments to registry attorneys totaled \$387,145. The projected total cost of paying the registry attorneys for the total fiscal year 2003-04 is estimated to be \$603,300.]

⁷ Section 27.702(1), F.S.

Section 2 proposes eliminating responsibility for federal representation by the CCRC. The Capital Collateral Counsels testified before the Subcommittee on Judicial Appropriations that approximately 40 percent of their workload is federal. The operating budget for these two regions for the FY 2004-05 is \$7.2 million. Forty percent of \$7.2 million translates to an approximate \$2.9 million of additional savings. The proposed House budget contemplates a \$1.7 million savings (25 percent).

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to require counties or cities to: spend funds or take action requiring the expenditure of funds; reduce the authority of counties or cities to raises revenues in the aggregate; or reduce the percentage of a state tax shared with counties or cities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not create the need for rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES