



528252

LEGISLATIVE ACTION

Senate

.

House

.

.

Floor: 1/R/2R

.

05/02/2014 10:38 PM

.

.

Senator Bradley moved the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraph (a) of subsection (5) of section
27.51, Florida Statutes, is amended to read:

27.51 Duties of public defender.—

(5) (a) When direct appellate proceedings prosecuted by a
public defender on behalf of an accused and challenging a
judgment of conviction and sentence of death terminate in an
affirmance of such conviction and sentence, whether by the



528252

12 Florida Supreme Court or by the United States Supreme Court or
13 by expiration of any deadline for filing such appeal in a state
14 or federal court, the public defender shall notify the accused
15 of his or her rights pursuant to Rule 3.850, Florida Rules of
16 Criminal Procedure, including any time limits pertinent thereto,
17 and shall advise such person that representation in any
18 collateral proceedings is the responsibility of the capital
19 collateral regional counsel. The public defender shall then
20 forward all original files on the matter to the capital
21 collateral regional counsel, retaining such copies for his or
22 her files as may be desired. ~~However, the trial court shall~~
23 ~~retain the power to appoint the public defender or other~~
24 ~~attorney not employed by the capital collateral regional counsel~~
25 ~~to represent such person in proceedings for relief by executive~~
26 ~~elemency pursuant to ss. 27.40 and 27.5303.~~

27 Section 2. Subsection (9) of section 27.511, Florida
28 Statutes, is amended to read:

29 27.511 Offices of criminal conflict and civil regional
30 counsel; legislative intent; qualifications; appointment;
31 duties.—

32 (9) When direct appellate proceedings prosecuted by the
33 office of criminal conflict and civil regional counsel on behalf
34 of an accused and challenging a judgment of conviction and
35 sentence of death terminate in an affirmance of such conviction
36 and sentence, whether by the Supreme Court or by the United
37 States Supreme Court or by expiration of any deadline for filing
38 such appeal in a state or federal court, the office of criminal
39 conflict and civil regional counsel shall notify the accused of
40 his or her rights pursuant to Rule 3.850, Florida Rules of



528252

41 Criminal Procedure, including any time limits pertinent thereto,
42 and shall advise such person that representation in any
43 collateral proceedings is the responsibility of the capital
44 collateral regional counsel. The office of criminal conflict and
45 civil regional counsel shall forward all original files on the
46 matter to the capital collateral regional counsel, retaining
47 such copies for his or her files as may be desired or required
48 by law. ~~However, the trial court shall retain the power to~~
49 ~~appoint the office of criminal conflict and civil regional~~
50 ~~counsel or other attorney not employed by the capital collateral~~
51 ~~regional counsel to represent such person in proceedings for~~
52 ~~relief by executive clemency pursuant to ss. 27.40 and 27.5303.~~

53 Section 3. Subsection (4) of section 27.5303, Florida
54 Statutes, is amended to read:

55 27.5303 Public defenders; criminal conflict and civil
56 regional counsel; conflict of interest.—

57 (4) (a) If a defendant is convicted and the death sentence
58 is imposed, the appointed attorney shall continue representation
59 through appeal to the Supreme Court. The attorney shall be
60 compensated as provided in s. 27.5304. If the attorney first
61 appointed is unable to handle the appeal, the court shall
62 appoint another attorney and that attorney shall be compensated
63 as provided in s. 27.5304.

64 ~~(b) The public defender or an attorney appointed pursuant~~
65 ~~to this section may be appointed by the court rendering the~~
66 ~~judgment imposing the death penalty to represent an indigent~~
67 ~~defendant who has applied for executive clemency as relief from~~
68 ~~the execution of the judgment imposing the death penalty.~~

69 ~~(c) When the appointed attorney in a capital case has~~



528252

70 completed the duties imposed by this section, the attorney shall
71 file a written report in the trial court stating the duties
72 performed by the attorney and apply for discharge.

73 Section 4. Subsection (5) of section 27.5304, Florida
74 Statutes, is amended to read:

75 27.5304 Private court-appointed counsel; compensation;
76 notice.—

77 (5) The compensation for representation in a criminal
78 proceeding may ~~shall~~ not exceed the following:

79 (a) ~~1.~~ For misdemeanors and juveniles represented at the
80 trial level: \$1,000.

81 (b) ~~2.~~ For noncapital, nonlife felonies represented at the
82 trial level: \$2,500.

83 (c) ~~3.~~ For life felonies represented at the trial level:
84 \$3,000.

85 (d) ~~4.~~ For capital cases represented at the trial level:
86 \$15,000. For purposes of this paragraph ~~subparagraph~~, a "capital
87 case" is any offense for which the potential sentence is death
88 and the state has not waived seeking the death penalty.

89 (e) ~~5.~~ For representation on appeal: \$2,000.

90 ~~(b) If a death sentence is imposed and affirmed on appeal
91 to the Supreme Court, the appointed attorney shall be allowed
92 compensation, not to exceed \$1,000, for attorney fees and costs
93 incurred in representing the defendant as to an application for
94 executive clemency, with compensation to be paid out of general
95 revenue from funds budgeted to the Justice Administrative
96 Commission.~~

97 Section 5. Section 940.031, Florida Statutes, is created to
98 read:



528252

99 940.031 Clemency counsel when sentence of death has been
100 imposed.-

101 (1) The Board of Executive Clemency may appoint private
102 counsel to represent a person sentenced to death for relief by
103 executive clemency at such time as the board deems appropriate
104 for clemency consideration. The board shall maintain a list of
105 private counsel available for appointment under this section.

106 (2) The appointed private counsel shall be compensated by
107 the board up to \$10,000 for attorney fees and costs incurred in
108 representing the person for relief by executive clemency, with
109 compensation to be paid out of the General Revenue Fund from
110 funds appropriated to the Parole Commission.

111 (3) It is the intent of the Legislature that the fee
112 prescribed under this section be the full and complete
113 compensation for appointed private counsel. It is further the
114 intent of the Legislature that the fee in this section be
115 prescribed for the purpose of providing counsel with notice of
116 the limit on the amount of compensation for representation under
117 this section. Appointment of counsel for executive clemency
118 under this section shall be at the board's sole discretion. The
119 provision of counsel for relief by executive clemency under this
120 section does not create a statutory right to counsel in such
121 proceedings.

122 Section 6. This act shall take effect July 1, 2014.

123
124 ===== T I T L E A M E N D M E N T =====

125 And the title is amended as follows:

126 Delete everything before the enacting clause
127 and insert:



528252

128 A bill to be entitled
129 An act relating to executive clemency; amending ss.
130 27.51 and 27.511, F.S.; removing authority of the
131 trial court to appoint counsel for executive clemency
132 proceedings; amending s. 27.5303, F.S.; removing
133 authority of the court rendering judgment imposing the
134 death penalty to appoint counsel for executive
135 clemency proceedings; amending s. 27.5304, F.S.;
136 removing authority for payment to the appointed
137 attorney for representing a defendant in an
138 application for executive clemency after the
139 imposition of a death sentence; creating s. 940.031,
140 F.S.; authorizing the Board of Executive Clemency to
141 appoint private counsel to represent a person
142 sentenced to death in an executive clemency
143 proceeding; authorizing compensation of up to a
144 specified amount to the appointed attorney from the
145 General Revenue Funds appropriated to the Parole
146 Commission; providing legislative intent; providing an
147 effective date.