

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: SPB 7096

INTRODUCER: For consideration by the Appropriations Committee

SUBJECT: Capital Clemency Counsel

DATE: March 19, 2014

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Clodfelter	Kynoch		Pre-Meeting

I. Summary:

SPB 7096 revises statutes that relate to appointment of counsel to provide representation in executive clemency proceedings for inmates who have been sentenced to death. The bill authorizes the Board of Executive Clemency to appoint private counsel in executive clemency cases and removes existing authority for the trial court to appoint the public defender or other counsel for such representation. The bill also increases the cap on compensation for attorney fees and costs in executive clemency cases from \$1,000 to \$10,000. Under the bill, compensation will be paid from general revenue funds appropriated to the Parole Commission. Currently, compensation is paid from general revenue funds appropriated to the Justice Administrative Commission.

The bill is not expected to have a fiscal impact because in recent years court-appointed counsel has not been paid more than \$10,000 for attorney fees and costs in a capital clemency case.

II. Present Situation:

The Timely Justice Act of 2013 (ch. 2013-216, L.O.F.) revised a number of laws relating to postconviction or collateral review of capital cases in which a death sentence is imposed. Section 922.052, F.S., was substantially amended by the Timely Justice Act to establish specific procedures for issuing a warrant of execution. Among other requirements, the clerk of the Florida Supreme Court must provide written certification to the Governor when a person who is sentenced to death has completed his or her direct appeal and initial postconviction proceedings in state court and has completed (or not timely filed) habeas corpus proceedings in federal court.¹ Within 30 days after receiving the written certification from the clerk, the Governor is required to issue a warrant for execution of the death sentence if the executive clemency process has concluded.²

¹ Section 922.052(2)(a), F.S.

² Section 922.052(2)(b), F.S.

Executive clemency is an act of mercy that absolves the individual upon whom it is bestowed from all or part of the punishment for a crime. The power of clemency is vested in the Governor pursuant to Art. IV, s. 8(a) of the Florida Constitution. The Governor has discretion to deny clemency at any time for any reason and, with the approval of at least two members of the Cabinet, may grant clemency at any time and for any reason. Clemency petitions are considered by the Governor and Cabinet members acting as the Board of Executive Clemency. The Parole Commission provides investigatory and administrative support to the Board of Executive Clemency, but the clemency process is not part of the parole process.

The trial court that imposed the sentence of death retains authority to appoint counsel to represent the convicted person in executive clemency proceedings if the convicted offender had been represented by the public defender, the office of criminal conflict and civil regional counsel, or court-appointed private conflict counsel.³ Private court-appointed counsel is allowed compensation of up to \$1,000 for attorney fees and costs in executive clemency cases, with the compensation paid from general revenue funds appropriated to the Justice Administrative Commission.

III. Effect of Proposed Changes:

This bill amends ss. 27.51, 27.511, and 27.5303, F.S., to remove the authority for the trial court to appoint counsel to represent convicted persons who are seeking executive clemency in capital cases. It also amends s. 27.5304, F.S., to remove the \$1,000 cap on compensation to private court-appointed counsel in capital executive clemency cases.

Section 940.031, F.S., is created to address appointment and compensation of counsel in capital executive clemency cases. It authorizes the Board of Executive Clemency to appoint private counsel in such proceedings, and requires the board to maintain a list of available private counsel. The bill also raises the maximum amount of compensation for attorney fees and costs to \$10,000. This compensation is to be paid from general revenue funds appropriated to the Parole Commission.

Section 940.031(3), F.S., states the Legislature's intent that the prescribed fee of up to \$10,000 be the only compensation provided to court-appointed private counsel for executive clemency proceedings in capital cases. It further states that the new statute is intended to provide notice to counsel of the limit on compensation, that appointment of counsel is at the Board of Executive Clemency's sole discretion, and that the provision of counsel under the statute does not create a statutory right to counsel.

An indigent prisoner who is sentenced to death does not have a constitutional right to representation in post-conviction proceedings.⁴ However, in *Remeta v. State*, 559 So.2d 1132 (Fla. 1990), the Florida Supreme Court found that the then-current statute had created a statutory right to counsel in executive clemency proceedings that are related to capital cases. Based upon that statutory right, the Court found that the trial court could exceed the statutory cap on compensation in order to ensure adequate representation. It appears that the statement of

³ See ss. 27.51(5)(a), 27.511(9), and 27.5303(4)(b), F.S.

⁴ See *Murray v. Giarratano*, 492 U.S. 1, 109 S.Ct. 2765, 106 L.Ed.2d 1 (1989) (federal); *State ex rel. Butterworth v. Kenny* (Fla. 1998) and *Kokal v. State*, 901 So.2d 766 (Fla. 2005) (Florida).

legislative intent will remove the legal basis for awarding compensation above the cap, and the increase in the cap will remove or alleviate the need for an excess award.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

SPB 7096 will result in appointment and compensation of some private attorneys who would otherwise not be appointed as counsel in capital executive clemency cases.

C. Government Sector Impact:

SPB 7096 is not expected to have a fiscal impact. In recent years, the highest payment for compensation in a capital executive clemency case was \$10,000. Compensation payments have been less than \$5,000 in all other recent cases.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 27.51, 27.511, 27.5303, and 27.5304.

This bill creates section 940.031 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
