



**Policy & Budget Council**

**Ray Sansom, Chair  
Stan Mayfield, Vice Chair**

# **AMENDMENT PACKET**

**PCB PBC-07-03 Implementing the General Appropriations  
Act for Fiscal Year 2007-2008**

**PCB PBC-07-05 Distribution of Documentary  
Stamp Taxes**

**HB's 7045, 7047, 7059, 7061, 7063, 7065, 7067, 7069,  
7071, 7073, 7075, 7079, 7081, 7083, 7085 Conforming  
Legislation to the General Appropriations Act for Fiscal  
Year 2007-2008**

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 2 (for drafter's use only)

2

Bill No. HB 7083

COUNCIL/COMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
 ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
 ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
 FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
 WITHDRAWN \_\_\_\_\_ (Y/N)  
 OTHER \_\_\_\_\_

1 Council/Committee hearing bill: Policy & Budget Council  
 2 Representative(s) Dean offered the following:

3

4 **Amendment (with title amendments)**

5 Insert between lines 857-858:

6 Section 14. Section 27.7001, Florida Statutes, is amended  
 7 to read:

8 27.7001 Legislative intent and findings.--

9 (a) It is the intent of the Legislature to create part IV  
 10 of this chapter, consisting of ss. 27.7001-27.711, inclusive, to  
 11 provide for the collateral representation of any person  
 12 convicted and sentenced to death in this state, so that  
 13 collateral legal proceedings to challenge any Florida capital  
 14 conviction and sentence may be commenced in a timely manner and  
 15 so as to assure the people of this state that the judgments of  
 16 its courts may be regarded with the finality to which they are  
 17 entitled in the interests of justice.

18 (b) It is the further intent of the Legislature that  
 19 collateral representation shall not include representation  
 20 during retrials, resentencings, proceedings commenced under  
 21 chapter 940, or civil litigation.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 2 (for drafter's use only)

22 (c) The Legislature finds that under Florida and federal  
23 law, a defendant has no constitutional right to counsel in  
24 postconviction proceedings. Notwithstanding, the Legislature  
25 created by statute a qualified right for capital defendants to  
26 postconviction counsel at specified rates for certain services.

27 (e) The Legislature finds that attorneys who participate in  
28 the attorney registry to offer their services are not required  
29 to accept an appointment and are free to decline an appointment  
30 if they find the statutory fee schedule insufficient.

31 (f) The Florida Supreme Court in Olive v. Maas, 811 So.2d  
32 644 (Fla. 2002) has allowed registry attorneys to seek, and  
33 authorized trial courts to grant, compensation in excess of the  
34 statutory fee schedule notwithstanding the terms of each  
35 attorney's contract, notwithstanding statutory requirements, and  
36 notwithstanding that the Legislature contemplated the nature of  
37 postconviction representation in all capital cases in the  
38 development of the statutory fee schedule.

39 Section 15. Subsections (5), (6) and (7) of section  
40 27.7002, Florida Statutes, are amended to read:

41 27.7002 Limitation on collateral representation; lawyer  
42 disqualification; use of state funds for excess fees not  
43 authorized.--

44 (5) The use of state funds for compensation of counsel  
45 appointed pursuant to s. 27.710 above the amounts set forth in  
46 s. 27.711 is not authorized unless ordered by the court pursuant  
47 to s. 27.7003.

48 ~~(6) The executive director of the Commission on Capital~~  
49 ~~Cases is authorized to permanently remove from the registry of~~  
50 ~~attorneys provided in ss. 27.710 and 27.711 any attorney who~~

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 2 (for drafter's use only)

51 ~~seeks compensation for services above the amounts provided in s.~~  
52 ~~27.711.~~

53 ~~(7) Any attorney who notifies any court, judge, state~~  
54 ~~attorney, the Attorney General, or the executive director of the~~  
55 ~~Commission on Capital Cases, prior to signing the contract~~  
56 ~~required under s. 27.710, determines that he or she cannot~~  
57 ~~provide adequate or proper representation under the terms and~~  
58 ~~conditions set forth in s. 27.711 must immediately notify the~~  
59 ~~appropriate trial court and decline the appointment for which~~  
60 ~~the contract was offered shall be permanently disqualified from~~  
61 ~~any attorney registry created under this chapter unless good~~  
62 ~~cause arises after a change in circumstances.~~

63 Section 16. Section 27.7003, Florida Statutes, is created  
64 to read:

65 27.7003 Determination of authorization for fees and costs  
66 for registry attorneys in excess of those authorized by s.  
67 27.711.--

68 (1) This section governs the determination of whether the  
69 use of state funds for compensation of counsel requesting fees  
70 or reimbursement of expenses in excess of the amounts set forth  
71 in s. 27.711 is authorized.

72 (2) The use of state funds for compensation of counsel in  
73 amounts greater than the amounts provided in ss. 27.711(4)(b)-  
74 (h), (5) and (6) is authorized as provided in subsection (4) only  
75 when in an evidentiary hearing the attorney requesting  
76 additional compensation proves by clear and convincing evidence  
77 that the services for which additional compensation is sought  
78 were due to additional work that was unforeseeable by a  
79 reasonable attorney exercising due diligence at the time the

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 2 (for drafter's use only)

80 contract was signed. Additional work is unforeseeable only when  
81 all of the following conditions are met:

82 (a) The additional work was necessary due to an  
83 unanticipated change in circumstances that occurred after the  
84 signing of the contract.

85 (b) The change in circumstances was extraordinary and  
86 unusual when compared to other capital cases in the  
87 postconviction stage of proceedings.

88 (c) The additional work was for the purpose of raising a  
89 meritorious claim in a timely manner that could not have been  
90 raised but for the unanticipated change in circumstances  
91 described in paragraph (a) and not for the purpose of raising  
92 any claim that is procedurally barred, not supported by the law  
93 or facts of the case, or that is otherwise frivolous or  
94 successive.

95 (d) The additional work claimed is not due to counsel's  
96 failure to adequately review the case record in advance of  
97 signing the contract or due to counsel's failure to remain  
98 apprised of current developments in the law.

99 (3) (a) Any motion for additional compensation that fails to  
100 state specific facts describing how the additional work was  
101 necessary due to an unanticipated change in circumstances  
102 occurring after the signing of the contract shall be summarily  
103 dismissed without prejudice.

104 (b) In determining whether the required showing in  
105 subsection (2) has been satisfied, the court may, to the extent  
106 possible, compare the case in which the registry counsel seeks  
107 additional compensation to other similar capital cases in the  
108 postconviction stage of proceedings. If the court grants the  
109 motion for additional compensation it shall issue a written

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 2 (for drafter's use only)

110 order setting forth its findings and reasons along with an  
111 explanation of how the amount of additional compensation was  
112 calculated. An order granting additional compensation may be  
113 appealed by the State.

114 (4) The use of state funds for compensation above the  
115 amounts provided in ss. 27.711(4)(b)-(h), (5) and (6) is  
116 authorized upon the filing of the court order granting  
117 additional compensation with the clerk of the court. The amount  
118 of additional compensation authorized in this section shall be  
119 calculated using the statutory maximum amounts as the starting  
120 point with additional compensation determined using the rate per  
121 hour provided in s. 27.711 for the applicable service. The  
122 amount of additional compensation ordered shall be no more than  
123 the court determines is necessary to avoid confiscation of the  
124 registry counsel's time, energy and talent for his or her  
125 unforeseeable additional work but in no event shall the amount  
126 of additional compensation exceed thirty percent of the  
127 statutory maximum amount authorized under s. 27.711 for the  
128 specific service for which additional compensation was granted.  
129 In the same way as the statutory maximum amounts provided in s.  
130 27.711 restrict the number of hours for which compensation is  
131 authorized for each service at the specified rate, it is not  
132 necessary that additional compensation be ordered for every hour  
133 of unforeseeable additional work claimed. In determining an  
134 amount of additional compensation needed to avoid confiscation  
135 of a registry counsel's time, energy and talent, the court may  
136 consider whether the additional work resulted in registry  
137 counsel pursuing a meritorious claim that could not have  
138 otherwise been raised and how the quantity and quality of the  
139 additional work proportionally compares with the quantity and

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 2 (for drafter's use only)

140 quality of work that is within the scope of expected performance  
141 under the registry contract and the terms of s. 27.711.

142 (5) The Chief Financial Officer shall represent the state  
143 in proceedings for additional compensation provided in this  
144 section.

145 (6) This section shall not be construed to authorize  
146 compensation for services or expenses not specified in ss.  
147 27.711(4), (5) or (6).

148 Section 17. Subsections (2), (3), (4), and (12) of section  
149 27.711, Florida Statutes, are amended to read:

150 27.711 Terms and conditions of appointment of attorneys as  
151 counsel in postconviction capital collateral proceedings.--

152 (2) After appointment by the trial court under s. 27.710,  
153 the attorney must, immediately within thirty days, sign the  
154 contract required under s. 27.710 and file a notice of  
155 appearance with the trial court indicating acceptance of the  
156 appointment to represent the capital defendant throughout all  
157 postconviction capital collateral proceedings, including federal  
158 habeas corpus proceedings, in accordance with this section or  
159 until released by order of the trial court.

160 (3) An attorney appointed to represent a capital defendant  
161 is entitled to payment of the fees set forth in this section or  
162 s. 27.7003 only upon full performance by the attorney of the  
163 duties specified in this section and approval of payment by the  
164 trial court, and the submission of a payment request by the  
165 attorney, subject to the availability of sufficient funding  
166 specifically appropriated for this purpose. An attorney may not  
167 be compensated under this section for work performed by the  
168 attorney before July 1, 2003, while employed by the northern  
169 regional office of the capital collateral counsel. The Chief

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 2 (for drafter's use only)

170 Financial Officer shall notify the executive director and the  
171 court if it appears that sufficient funding has not been  
172 specifically appropriated for this purpose to pay any fees which  
173 may be incurred. The attorney shall maintain appropriate  
174 documentation, including a current and detailed hourly  
175 accounting of time spent representing the capital defendant. The  
176 fee and payment schedule in this section is the exclusive means  
177 of compensating a court-appointed attorney who represents a  
178 capital defendant. An attorney seeking additional compensation  
179 for fees or reimbursement for expenses in excess of the amounts  
180 provided in subsections (4)(b)-(h), (5) or (6) must satisfy the  
181 requirements of s. 27.7003. When appropriate, a court-appointed  
182 attorney must seek further compensation from the Federal  
183 Government, as provided in 18 U.S.C. s. 3006A or other federal  
184 law, in habeas corpus litigation in the federal courts.

185 (4) Upon approval by the trial court, an attorney  
186 appointed to represent a capital defendant under s. 27.710 is  
187 entitled to payment of the following fees by the Chief Financial  
188 Officer:

189 (a) Regardless of the stage of postconviction capital  
190 collateral proceedings, the attorney is entitled to \$100 per  
191 hour, up to a maximum of \$2,500, after signing the contract  
192 required under s. 27.710, accepting the appointment and filing a  
193 notice of appearance.

194 (b) The attorney is entitled to \$100 per hour, up to a  
195 maximum of \$20,000, after timely filing in the trial court the  
196 capital defendant's complete original motion for postconviction  
197 relief under the Florida Rules of Criminal Procedure. The motion  
198 must raise all issues to be addressed by the trial court.  
199 However, an attorney is entitled to fees under this paragraph if



HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 2 (for drafter's use only)

200 the court schedules a hearing on a matter that makes the filing  
201 of the original motion for postconviction relief unnecessary or  
202 if the court otherwise disposes of the case.

203 (c) The attorney is entitled to \$100 per hour, up to a  
204 maximum of \$20,000, after the trial court issues a final order  
205 granting or denying the capital defendant's motion for  
206 postconviction relief.

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

213 (e) The attorney is entitled to \$100 per hour, up to a  
214 maximum of \$10,000, after the trial court issues an order,  
215 pursuant to a remand from the Supreme Court, which directs the  
216 trial court to hold further proceedings on the capital  
217 defendant's motion for postconviction relief.

218 (f) The attorney is entitled to \$100 per hour, up to a  
219 maximum of \$4,000, after the appeal of the trial court's denial  
220 of the capital defendant's motion for postconviction relief and  
221 the capital defendant's state petition for writ of habeas corpus  
222 become final in the Supreme Court.

223 (g) At the conclusion of the capital defendant's  
224 postconviction capital collateral proceedings in state court,  
225 the attorney is entitled to \$100 per hour, up to a maximum of  
226 \$2,500, after filing a petition for writ of certiorari in the  
227 Supreme Court of the United States.

228 (h) If, at any time, a death warrant is issued, the  
229 attorney is entitled to \$100 per hour, up to a maximum of

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 2 (for drafter's use only)

230 \$5,000. This payment shall be full compensation for attorney's  
231 fees and costs for representing the capital defendant throughout  
232 the proceedings before the state courts of Florida.

233

234 The hours billed by a contracting attorney under this subsection  
235 may include time devoted to representation of the defendant by  
236 another attorney who is qualified under s. 27.710 and who has  
237 been designated by the contracting attorney to assist him or  
238 her.

239 (12) The court shall monitor the performance of assigned  
240 counsel to ensure that the capital defendant is receiving  
241 quality representation. The court shall also receive and  
242 evaluate allegations that are made regarding the performance of  
243 assigned counsel. The Chief Financial Officer, the Department of  
244 Legal Affairs, the executive director, or any interested person  
245 may advise the court of any circumstance that could affect the  
246 quality of representation, including, but not limited to, false  
247 or fraudulent billing, misconduct, failure to meet continuing  
248 legal education requirements, solicitation to receive  
249 compensation from the capital defendant, ~~or~~ failure to file  
250 appropriate motions in a timely manner, or assertion of claims  
251 that are not supported by the law or the facts of the case.

252

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

254 Remove line(s) 40 and insert:

255 prisoners as the public defender; amending s. 27.7001, F.S.;  
256 adding legislative intent and findings; amending s. 27.7002,  
257 F.S.; deleting authority for the executive director of the  
258 Commission on Capital Cases to remove attorneys from the  
259 registry of attorneys under Chapter 27; requiring registry

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 2 (for drafter's use only)

260 attorneys to decline acceptance of an appointment in certain  
261 circumstances and to notify the trial court; creating s.  
262 27.7003, F.S.; providing for authorization to use state funds  
263 for additional compensation to registry counsel for additional  
264 work that was unforeseeable at the time the contract was signed  
265 under certain circumstances; providing requirements and  
266 conditions with respect to such authorization; providing a right  
267 for the state to appeal an order granting additional  
268 compensation; providing the method of calculating the amount of  
269 additional compensation and specifying the maximum amount of  
270 additional compensation authorized; providing that the Chief  
271 Financial Officer shall represent the state in proceedings in  
272 which additional compensation is sought; providing that no  
273 compensation is authorized for services not specified in s.  
274 27.711, F.S.; amending s. 27.711, F.S.; relating to terms and  
275 conditions of the appointment of registry counsel; requiring  
276 signature of contract and notice of appearance to be filed  
277 within specified time period; requiring compliance with s.  
278 27.7003, F.S., when registry counsel seek additional  
279 compensation; specifying the assertion of claims not supported  
280 by the law or facts of the case among the list of example  
281 circumstances that may affect the quality of representation  
282 which may be reported to the court; amending s. 29.007,