

*****Pending*****

AMENDMENT No. 1 PROPOSED TO

House Bill NO. 1363

By Senator(s) Committee

**Amend by striking all after the enacting clause and inserting
in lieu thereof the following:**

14 SECTION 1. (1) This act may be cited as the "Mississippi
15 Capital Post-Conviction Counsel Act."

16 (2) This act shall be read and applied in harmony with the
17 Mississippi Statewide Public Defender Act of 1998 (Section
18 25-32-31 et seq., Mississippi Code of 1972).

19 SECTION 2. For the purposes of this act, the following words
20 shall have the meanings ascribed to them, unless the context
21 clearly requires otherwise:

22 (a) "Office" means the Mississippi Office of Capital
23 Post-Conviction Counsel created by this act within the Appellate
24 Division of the Mississippi Public Defender Commission as provided
25 by Section 25-32-53(1), Mississippi Code of 1972.

26 (b) "Commission" means the Mississippi Public Defender
27 Commission created by Section 25-32-37, Mississippi Code of 1972.

28 (c) "Executive director" means the Executive Director
29 of the Mississippi Public Defender Commission appointed under
30 Section 25-32-39(a), Mississippi Code of 1972.

31 SECTION 3. There is created the Mississippi Office of
32 Capital Post-Conviction Counsel within the Appellate Division of
33 the Mississippi Public Defender Commission. The personnel of the
34 office shall include a number of attorneys, investigators and

35 other support personnel as determined by the commission,
36 consistent with qualifications and standards adopted by the
37 commission and subject to available funding. The commission may
38 designate one (1) of the attorneys to act as director of the
39 office.

40 SECTION 4. In order to be qualified for appointment as an
41 attorney with the office, an attorney must meet the following
42 qualifications:

43 (a) Licensed to practice law in the State of
44 Mississippi and a member in good standing of The Mississippi Bar,
45 or is making diligent efforts to become admitted to the practice
46 of law in this state;

47 (b) Such other qualifications and standards as are
48 established by the commission, provided that the commission shall
49 use all reasonable measures and take all reasonable steps to
50 assure that the standards will qualify under the special rules
51 relating to federal habeas corpus designated as Public Law
52 104-132, Title I, Section 107, April 24, 1996, 110 Stat. 1221, as
53 codified in Title 28, United States Code, Section 2261.

54 SECTION 5. The primary responsibility of attorneys employed
55 in the office shall be the representation of indigent capital
56 defendants in state post-conviction proceedings, but they shall
57 also cooperate with and advise attorneys working in the appellate
58 division. Attorneys shall also advise and counsel with attorneys
59 representing capital defendants at the pre-trial, trial and
60 appellate stages, to the end that effective representation is
61 there provided and errors that may result in the reversal of
62 convictions and sentences may be minimized or avoided.

63 SECTION 6. The commission shall establish the salaries for
64 employees of the office consistent with Section 25-32-39(h),
65 Mississippi Code of 1972, subject to available funding.

66 SECTION 7. The office shall be open and accessible by the
67 public during reasonable business hours subject to the direction

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68 of the commission.

69 SECTION 8. The commission is hereby authorized to obtain
70 office space to accommodate the office in such locations as may be
71 reasonable and convenient and to accommodate the staff, and to
72 purchase such necessary office supplies and equipment as may be
73 needed for the proper administration of the offices within the
74 funds appropriated for such purpose. The office may be housed and
75 otherwise associated with the appellate division.

76 SECTION 9. The executive director shall keep a docket of all
77 causes in which he is required to appear, which must at all
78 reasonable times be open to the inspection of the public and must
79 show the county, district and court in which the causes have been
80 instituted.

81 SECTION 10. If at any time the executive director determines
82 that a capital defendant cannot be represented by the office
83 without conflict of interest, the commission, upon application
84 therefor by the executive director, shall appoint one or more
85 attorneys certified by the commission to represent the defendant.
86 Appointed counsel shall be paid from funds appropriated to a
87 Special Capital Post-Conviction Counsel Fund for this purpose,
88 which is hereby created. Monies in this fund shall not lapse into
89 the General Fund at the end of a fiscal year but shall remain in
90 the fund and any interest accruing to such fund shall remain in
91 the fund. If sufficient funds are not otherwise available to the
92 commission, counsel so appointed shall be compensated by the
93 county in whose circuit court the defendant was originally
94 convicted and sentenced.

95 SECTION 11. The attorneys appointed by the office who serve
96 on a full-time basis are prohibited from engaging in the private
97 practice of law.

98 SECTION 12. The performance of attorneys appointed to the
99 office shall be evaluated from time to time consistent with
100 Section 25-32-39(j), Mississippi Code of 1972. The commission may

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101 remove any attorney appointed to the office for misconduct,
102 incompetency, unprofessional conduct, failure to perform duties of
103 the office, neglect of duty or for other sufficient cause.

104 SECTION 13. This act shall take effect and be in force from
105 and after its passage.

**Further, amend by striking the title in its entirety and
inserting in lieu thereof the following:**

1 AN ACT TO CREATE THE MISSISSIPPI CAPITAL POST-CONVICTION
2 COUNSEL ACT; TO ENACT DEFINITIONS; TO CREATE THE MISSISSIPPI
3 OFFICE OF CAPITAL POST-CONVICTION COUNSEL AND SPECIFY ITS
4 PERSONNEL; TO PROVIDE QUALIFICATIONS FOR ATTORNEYS IN THE OFFICE;
5 TO PRESCRIBE THE DUTIES OF ATTORNEYS IN THE OFFICE; TO PROVIDE FOR
6 COMPENSATION; TO SPECIFY OFFICE HOURS; TO AUTHORIZE THE
7 ACQUISITION OF OFFICE SPACE, SUPPLIES AND EQUIPMENT; TO REQUIRE
8 MAINTENANCE OF A DOCKET; TO AUTHORIZE THE APPOINTMENT OF ATTORNEYS
9 IN SITUATIONS WHERE CONFLICTS ARISE; TO CREATE THE SPECIAL CAPITAL
10 POST-CONVICTION COUNSEL FUND; TO PROVIDE THAT ATTORNEYS APPOINTED
11 TO THE OFFICE FULL TIME SHALL NOT OTHERWISE PRACTICE LAW; TO
12 PROVIDE FOR THE REMOVAL OF ATTORNEYS; AND FOR RELATED PURPOSES.