

## CHAMBER ACTION

1 The Governmental Operations Committee recommends the following:

2  
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to the Commission on Capital Cases;  
7 amending s. 27.7001, F.S.; providing legislative findings;  
8 amending s. 27.709, F.S.; authorizing the Commission on  
9 Capital Cases to sponsor continuing legal education  
10 programs devoted specifically to capital cases; amending  
11 s. 27.710, F.S.; specifying criteria that a private  
12 attorney must satisfy in order to be eligible to be  
13 appointed as counsel in a postconviction capital  
14 collateral proceeding; providing that a judge may appoint  
15 an attorney who does not meet the appointment criteria if  
16 exceptional circumstances exist; providing that an  
17 attorney may be removed from the capital collateral  
18 registry if the attorney does not meet the criteria;  
19 directing the executive director of the commission to  
20 remove an attorney from the registry if the attorney fails  
21 to timely file an executed contract; requiring a private  
22 attorney appointed by a court to represent a capital  
23 defendant to submit a report each quarter to the

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24 | commission; requiring the executive director to notify the  
25 | trial court and remove an attorney from the registry if  
26 | the attorney does not submit the report within a specified  
27 | time; authorizing the commission to return a removed  
28 | attorney to the registry; requiring that an attorney make  
29 | reasonable efforts to assist the person under a sentence  
30 | of death in finding an attorney under certain  
31 | circumstances; amending s. 27.711, F.S.; requiring that  
32 | certain costs incurred during pro bono representation of a  
33 | capital defendant be paid to the attorney; providing that  
34 | an attorney who is listed on the registry and representing  
35 | at least one capital defendant is entitled to tuition and  
36 | expenses for continuing legal education courses; providing  
37 | that an attorney may represent no more than seven inmates  
38 | in capital postconviction cases at any one time; requiring  
39 | that, if a trial court judge intends to award attorney's  
40 | fees in excess of those set by law, the judge must include  
41 | written findings of fact specifically stating the  
42 | extraordinary nature of the expenditures of the time,  
43 | energy, and talents of the attorney in the case that are  
44 | not ordinarily expended in other capital collateral cases;  
45 | providing an effective date.

46 |  
47 | Be It Enacted by the Legislature of the State of Florida:

48 |  
49 | Section 1. Section 27.7001, Florida Statutes, is amended  
50 | to read:

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51           27.7001 Legislative intent and findings.--It is the intent  
52 of the Legislature to create part IV of this chapter, consisting  
53 of ss. 27.7001-27.711, inclusive, to provide for the collateral  
54 representation of any person convicted and sentenced to death in  
55 this state, so that collateral legal proceedings to challenge  
56 any Florida capital conviction and sentence may be commenced in  
57 a timely manner and so as to assure the people of this state  
58 that the judgments of its courts may be regarded with the  
59 finality to which they are entitled in the interests of justice.  
60 It is the further intent of the Legislature that collateral  
61 representation shall not include representation during retrials,  
62 resentencings, proceedings commenced under chapter 940, or civil  
63 litigation. The Legislature further finds that not all capital  
64 collateral cases are extraordinary or unusual.

65           Section 2. Paragraph (d) is added to subsection (2) of  
66 section 27.709, Florida Statutes, to read:

67           27.709 Commission on Capital Cases.--

68           (2)

69           (d) The commission may sponsor programs of continuing  
70 legal education which are devoted specifically to capital cases  
71 and shall undertake any project recommended or approved by the  
72 commission members.

73           Section 3. Section 27.710, Florida Statutes, is amended to  
74 read:

75           27.710 Registry of attorneys applying to represent persons  
76 in postconviction capital collateral proceedings; certification  
77 of minimum requirements; appointment by trial court.--

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78 | (1) The executive director of the Commission on Capital  
79 | Cases shall compile and maintain a statewide registry of  
80 | attorneys in private practice who have certified that they meet  
81 | the ~~minimum~~ requirements of this section and s. 27.704(2), who  
82 | are available for appointment by the court under this section to  
83 | represent persons convicted and sentenced to death in this state  
84 | in postconviction collateral proceedings, ~~and who have attended~~  
85 | ~~within the last year a continuing legal education program of at~~  
86 | ~~least 10 hours' duration devoted specifically to the defense of~~  
87 | ~~capital cases, if available. Continuing legal education programs~~  
88 | ~~meeting the requirements of this rule offered by The Florida Bar~~  
89 | ~~or another recognized provider and approved for continuing legal~~  
90 | ~~education credit by The Florida Bar shall satisfy this~~  
91 | ~~requirement. The failure to comply with this requirement may be~~  
92 | ~~cause for removal from the list until the requirement is~~  
93 | ~~fulfilled.~~ To ensure that sufficient attorneys are available for  
94 | appointment by the court, when the number of attorneys on the  
95 | registry falls below 50, the executive director shall notify the  
96 | chief judge of each circuit by letter and request the chief  
97 | judge to promptly submit the names of at least three private  
98 | attorneys who regularly practice criminal law in that circuit  
99 | and who appear to meet the minimum requirements to represent  
100 | persons in postconviction capital collateral proceedings. The  
101 | executive director shall send an application to each attorney  
102 | identified by the chief judge so that the attorney may register  
103 | for appointment as counsel in postconviction capital collateral  
104 | proceedings. As necessary, the executive director may also  
105 | advertise in legal publications and other appropriate media for

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106 | qualified attorneys interested in registering for appointment as  
107 | counsel in postconviction capital collateral proceedings. Not  
108 | later than September 1 of each year, and as necessary  
109 | thereafter, the executive director shall provide to the Chief  
110 | Justice of the Supreme Court, the chief judge and state attorney  
111 | in each judicial circuit, and the Attorney General a current  
112 | copy of its registry of attorneys who are available for  
113 | appointment as counsel in postconviction capital collateral  
114 | proceedings. The registry must be indexed by judicial circuit  
115 | and must contain the requisite information submitted by the  
116 | applicants in accordance with this section.

117 |       (2) (a) To be eligible for court appointment as counsel in  
118 | postconviction capital collateral proceedings, an attorney must  
119 | certify on an application provided by the executive director  
120 | that he or she is a member in good standing of The Florida Bar  
121 | and:

122 |           1. Is an active practitioner who has at least 5 years'  
123 | experience in the practice of criminal law, is familiar with the  
124 | production of evidence and the use of expert witnesses,  
125 | including psychiatric and forensic evidence, and has  
126 | demonstrated the proficiency necessary for representation in  
127 | capital cases, including the investigation and presentation of  
128 | mitigation evidence;

129 |           2. Has attended a minimum of 12 hours of continuing legal  
130 | education programs within the previous 2 years which were  
131 | devoted to the defense of capital cases and offered by The  
132 | Florida Bar or another recognized provider of continuing legal  
133 | education courses; and

134        3.a. Has tried at least nine state or federal jury trials  
135 to completion, two of which must have been capital cases and:  
136        (I) Three of which must have been murder trials;  
137        (II) One of which must have been a murder trial and five  
138 of which must have been other felony trials; or  
139        (III) One of which must have included a postconviction  
140 evidentiary hearing and five of which must have been other  
141 felony trials; or  
142        b. Has appealed one capital conviction and appealed:  
143        (I) At least three felony convictions, one of which must  
144 have been a murder;  
145        (II) At least three felony convictions and participated in  
146 one capital postconviction evidentiary hearing; or  
147        (III) At least six felony convictions, two of which must  
148 have been murders.  
149        (b) If the trial court finds that exceptional  
150 circumstances exist requiring appointment of an attorney who  
151 does not meet the criteria set forth in paragraph (a), the trial  
152 court shall enter a written order specifying the exceptional  
153 circumstances requiring appointment of the attorney and explicit  
154 findings that the attorney chosen will provide competent  
155 representation in accordance with the intent of this section.  
156        (c) A failure to comply with any criterion set forth in  
157 paragraph (a) may be cause to remove the attorney from the  
158 registry until the criterion is satisfied.  
159        (d) Satisfaction of the criterion may be proven by  
160 submitting a written certification to the commission. The  
161 certification is complete upon submission of the application by

162 electronic mail without a signature ~~satisfies the minimum~~  
163 ~~requirements for private counsel set forth in s. 27.704(2).~~

164 (3) An attorney ~~who applies for registration and court~~  
165 ~~appointment as counsel in postconviction capital collateral~~  
166 ~~proceedings must certify that he or she is counsel of record in~~  
167 ~~not more than four such proceedings and, if appointed to~~  
168 represent a person in postconviction capital collateral  
169 proceedings, shall continue the ~~such~~ representation under the  
170 terms and conditions set forth in s. 27.711 until the sentence  
171 is reversed, reduced, or carried out or unless permitted to  
172 withdraw from representation by the trial court. The court may  
173 not permit an attorney to withdraw from representation without a  
174 finding of sufficient good cause. The court may impose  
175 appropriate sanctions if it finds that an attorney has shown bad  
176 faith with respect to continuing to represent a defendant in a  
177 postconviction capital collateral proceeding. This section does  
178 not preclude the court from reassigning a case to a capital  
179 collateral regional counsel following discontinuation of  
180 representation if a conflict of interest no longer exists with  
181 respect to the case.

182 (4) (a) Each private attorney who is appointed by the court  
183 to represent a capital defendant must enter into a contract with  
184 the Chief Financial Officer. If the appointed attorney fails to  
185 execute the contract within 30 days after the date the contract  
186 is mailed to the attorney, the executive director of the  
187 Commission on Capital Cases shall notify the trial court, which  
188 may impose a fine or remove the attorney from the case. If the  
189 appointed attorney fails to execute the contract within 45 days

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190 after the date the contract is mailed to the attorney, the  
191 executive director shall remove the attorney from the registry  
192 list. The Chief Financial Officer shall develop the form of the  
193 contract, function as contract manager, and enforce performance  
194 of the terms and conditions of the contract. By signing such  
195 contract, the attorney certifies that he or she intends to  
196 continue the representation under the terms and conditions set  
197 forth in the contract until the sentence is reversed, reduced,  
198 or carried out or until released by order of the trial court. In  
199 no event shall an attorney receive any funds from the State  
200 Treasury without executing the contract required by this  
201 paragraph.

202 (b) Each private attorney appointed by a court to  
203 represent a capital defendant shall submit a report each quarter  
204 to the commission in the format designated by the commission. If  
205 the attorney does not submit the report within 30 days after the  
206 end of the quarter, the executive director shall notify the  
207 court, which may impose a fine or remove the attorney from the  
208 case. If the attorney fails to submit the report within 45 days  
209 after the end of the quarter, the executive director shall  
210 remove the attorney from the registry list.

211 (c) Any appointed attorney removed from the registry may,  
212 at the discretion of the court, continue to represent any  
213 clients that the attorney has been appointed to represent as of  
214 the date of removal. If the court allows an attorney who has  
215 been removed from the registry to continue to represent  
216 previously appointed capital defendants, the court shall take  
217 all necessary actions to ensure compliance with the requirements



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218 of this subsection. An attorney who has been removed from the  
219 registry is prohibited from accepting appointment to represent  
220 any new capital defendants unless the attorney is placed back on  
221 the registry as provided in paragraph (d).

222 (d) After certifying to the executive director that he or  
223 she will act in accordance with the provisions of this  
224 subsection, an attorney removed from the registry may, after 60  
225 days, reapply for the registry as provided in subsection (2). An  
226 attorney may reapply for the registry no more than two times  
227 under the provisions of this paragraph for failure to adhere to  
228 the requirements of this subsection.

229 (5) (a) Upon the motion of the capital collateral regional  
230 counsel to withdraw under ~~pursuant to~~ s. 924.056(1)(a); or

231 (b) Upon notification by the state attorney or the  
232 Attorney General that:

233 1. Thirty days have elapsed since appointment of the  
234 capital collateral regional counsel and no entry of appearance  
235 has been filed under ~~pursuant to~~ s. 924.056; or

236 2. A person under sentence of death who was previously  
237 represented by private counsel is currently unrepresented in a  
238 postconviction capital collateral proceeding,

239  
240 the executive director shall immediately notify the trial court  
241 that imposed the sentence of death that the court must  
242 immediately appoint an attorney, selected from the current  
243 registry, to represent the ~~such~~ person in collateral actions  
244 challenging the legality of the judgment and sentence in the  
245 appropriate state and federal courts. If the attorney appointed

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246 | to represent a person under a sentence of death does not wish to  
247 | continue representing the person in federal proceedings, the  
248 | attorney must make reasonable efforts to assist the person in  
249 | finding an attorney who meets the federal criteria to represent  
250 | the person in any federal proceedings. The court shall have the  
251 | authority to strike a notice of appearance filed by a Capital  
252 | Collateral Regional Counsel, if the court finds the notice was  
253 | not filed in good faith and may so notify the executive director  
254 | that the client is no longer represented by the Office of  
255 | Capital Collateral Regional Counsel. In making an assignment,  
256 | the court shall give priority to attorneys whose experience and  
257 | abilities in criminal law, especially in capital proceedings,  
258 | are known by the court to be commensurate with the  
259 | responsibility of representing a person sentenced to death. The  
260 | trial court must issue an order of appointment which contains  
261 | specific findings that the appointed counsel meets the statutory  
262 | requirements and has the high ethical standards necessary to  
263 | represent a person sentenced to death.

264 | (6) More than one attorney may not be appointed and  
265 | compensated at any one time under s. 27.711 to represent a  
266 | person in postconviction capital collateral proceedings.  
267 | However, an attorney appointed under this section may designate  
268 | another attorney to assist him or her if the designated attorney  
269 | meets the qualifications of this section.

270 | Section 4. Subsections (3), (4), (7), and (9) of section  
271 | 27.711, Florida Statutes, are amended, and subsection (15) is  
272 | added to that section, to read:

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273           27.711 Terms and conditions of appointment of attorneys as  
274 counsel in postconviction capital collateral proceedings.--  
275           (3) An attorney appointed to represent a capital defendant  
276 is entitled to payment of the fees set forth in this section  
277 only upon full performance by the attorney of the duties  
278 specified in this section and approval of payment by the trial  
279 court, and the submission of a payment request by the attorney,  
280 subject to the availability of sufficient funding specifically  
281 appropriated for this purpose. An attorney may not be  
282 compensated under this section for work performed by the  
283 attorney before July 1, 2003, while employed by the northern  
284 regional office of the capital collateral counsel. The Chief  
285 Financial Officer shall notify the executive director and the  
286 court if it appears that sufficient funding has not been  
287 specifically appropriated for this purpose to pay any fees which  
288 may be incurred. The attorney shall maintain appropriate  
289 documentation, including a current and detailed hourly  
290 accounting of time spent representing the capital defendant. The  
291 fee and payment schedule in this section is the exclusive means  
292 of compensating a court-appointed attorney who represents a  
293 capital defendant. When appropriate, a court-appointed attorney  
294 must seek further compensation from the Federal Government, as  
295 provided in 18 U.S.C. s. 3006A or other federal law, in habeas  
296 corpus litigation in the federal courts. An attorney who is  
297 appointed by a court to represent a capital defendant on a pro  
298 bono basis shall not be entitled to attorney's fees as provided  
299 in subsection (4), but shall be entitled to payment by the Chief  
300 Financial Officer from the registry appropriation for

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301 investigative services as specified in subsection (5) and for  
302 miscellaneous expenses actually incurred on behalf of the  
303 defendant as specified in subsection (6). If a registry attorney  
304 has been appointed to represent a defendant, no payment shall be  
305 made to any other attorney who volunteers to represent the same  
306 defendant on a pro bono basis.

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

311 (a) Regardless of the stage of postconviction capital  
312 collateral proceedings, the attorney is entitled to \$100 per  
313 hour, up to a maximum of \$2,500, after accepting appointment and  
314 filing a notice of appearance.

315 (b) The attorney is entitled to \$100 per hour, up to a  
316 maximum of \$20,000, after timely filing in the trial court the  
317 capital defendant's complete original motion for postconviction  
318 relief under the Florida Rules of Criminal Procedure. The motion  
319 must raise all issues to be addressed by the trial court.

320 However, an attorney is entitled to fees under this paragraph if  
321 the court schedules a hearing on a matter that makes the filing  
322 of the original motion for postconviction relief unnecessary or  
323 if the court otherwise disposes of the case.

324 (c) The attorney is entitled to \$100 per hour, up to a  
325 maximum of \$20,000, after the final hearing on trial court  
326 ~~issues a final order granting or denying~~ the capital defendant's  
327 motion for postconviction relief.

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

334 (e) The attorney is entitled to \$100 per hour, up to a  
335 maximum of \$10,000, after the trial court issues an order,  
336 following ~~pursuant to~~ a remand from the Supreme Court, which  
337 directs the trial court to hold further proceedings on the  
338 capital defendant's motion for postconviction relief.

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

344 (g) At the conclusion of the capital defendant's  
345 postconviction capital collateral proceedings in state court,  
346 the attorney is entitled to \$100 per hour, up to a maximum of  
347 \$2,500, for the preparation of the initial federal pleading  
348 ~~after filing a petition for writ of certiorari in the Supreme~~  
349 ~~Court of the United States.~~

350 (h) If, at any time, a death warrant is issued, the  
351 attorney is entitled to \$100 per hour, up to a maximum of  
352 \$5,000. This payment shall be full compensation for attorney's  
353 fees and costs for representing the capital defendant throughout  
354 the proceedings before the state courts of Florida.

355

356 The hours billed by a contracting attorney under this subsection  
 357 may include time devoted to representation of the defendant by  
 358 another attorney who is qualified under s. 27.710 and who has  
 359 been designated by the contracting attorney to assist him or  
 360 her.

361 (7) Each registry ~~An~~ attorney who is representing at least  
 362 one capital defendant ~~actively representing a capital defendant~~  
 363 is entitled to a maximum of \$500 per fiscal year for tuition and  
 364 expenses for continuing legal education that pertains to the  
 365 representation of capital defendants, regardless of the total  
 366 number of capital defendants the attorney is representing. Upon  
 367 approval by the trial court, the attorney is entitled to payment  
 368 by the Chief Financial Officer for expenses for such tuition and  
 369 continuing legal education.

370 (9) An attorney may not represent more than seven inmates  
 371 ~~five defendants~~ in capital postconviction litigation at any one  
 372 time. The seven-inmate-representation limit includes capital  
 373 postconviction cases proceeding under contract with the capital  
 374 collateral regional counsel, inmates represented pro bono, and  
 375 inmates privately retaining the attorney. An attorney may not be  
 376 appointed to additional capital postconviction cases until the  
 377 attorney's representation total falls below the seven-case  
 378 limit.

379 (15) If a trial court judge intends to award attorney fees  
 380 in excess of those outlined in this section, the judge must  
 381 include written findings of fact that specifically state the  
 382 extraordinary nature of the expenditures of the time, energy,

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383 | and talents of the attorney in the case that are not ordinarily  
384 | expended in other capital collateral cases.

385 | Section 5. This act shall take effect July 1, 2006.