

1                                   A bill to be entitled  
2           An act relating to the Commission on Capital  
3           Cases; amending s. 27.701, F.S.; specifying  
4           that the capital collateral regional counsels  
5           are a part of the legislative branch; providing  
6           for the appointment of the capital collateral  
7           regional counsels by the President of the  
8           Senate and the Speaker of the House of  
9           Representatives; amending s. 27.702, F.S.;  
10          removing the requirement that the Justice  
11          Administrative Commission provide  
12          administrative support to the capital  
13          collateral regional counsels; amending s.  
14          27.709, F.S.; specifying that the Commission on  
15          Capital Cases is a part of the legislative  
16          branch; authorizing the Commission on Capital  
17          Cases to sponsor continuing legal education  
18          programs devoted specifically to capital cases;  
19          amending s. 27.710, F.S.; specifying criteria  
20          that a private attorney must satisfy in order  
21          to be eligible to be appointed as counsel in a  
22          postconviction capital collateral proceeding;  
23          providing that a judge may appoint an attorney  
24          who does not meet the appointment criteria if  
25          exceptional circumstances exist; providing that  
26          an attorney may be removed from the capital  
27          collateral registry if the attorney does not  
28          meet the criteria; directing the executive  
29          director of the commission to remove an  
30          attorney from the registry if the attorney  
31          fails to timely file an executed contract;

1 requiring a private attorney appointed by a  
2 court to represent a capital defendant to  
3 submit a report each quarter to the commission;  
4 requiring that the executive director remove an  
5 attorney from the registry if the attorney does  
6 not submit the report within a specified time;  
7 requiring that an attorney make reasonable  
8 efforts to assist the person under a sentence  
9 of death in finding an attorney under certain  
10 circumstances; amending s. 27.711, F.S.;  
11 providing that an attorney may submit to the  
12 Chief Financial Officer for approval a proposed  
13 budget as an alternative to the statutory  
14 attorney's fees for representing a capital  
15 defendant; requiring the attorney to accept  
16 representation and execute a fixed-fee contract  
17 if the proposed budget is approved; providing  
18 that an attorney who is listed on the registry  
19 and representing at least one capital defendant  
20 is entitled to tuition and expenses for  
21 continuing legal education courses; providing  
22 that an attorney may represent no more than 7  
23 inmates in capital postconviction cases at any  
24 one time; authorizing a trial judge to award  
25 fees exceeding those set by law; requiring a  
26 judge intending to award such fees to make  
27 specific written findings of fact; amending s.  
28 216.011, F.S.; providing that the capital  
29 collateral regional counsels are not a state  
30 agency; providing an effective date.

31

1 Be It Enacted by the Legislature of the State of Florida:

2  
3 Section 1. Subsection (1) of section 27.701, Florida  
4 Statutes, is amended to read:

5 27.701 Capital collateral regional counsels.--

6 (1) There are created three regional offices of  
7 capital collateral counsel, which shall be located in a  
8 northern, middle, and southern region of the state. The  
9 capital collateral counsels shall be a part of the legislative  
10 branch of government. The northern region shall consist of the  
11 First, Second, Third, Fourth, Eighth, and Fourteenth Judicial  
12 Circuits; the middle region shall consist of the Fifth, Sixth,  
13 Seventh, Ninth, Tenth, Twelfth, Thirteenth, and Eighteenth  
14 Judicial Circuits; and the southern region shall consist of  
15 the Eleventh, Fifteenth, Sixteenth, Seventeenth, Nineteenth,  
16 and Twentieth Judicial Circuits. Each regional office shall be  
17 administered by a regional counsel. A regional counsel must  
18 be, and must have been for the preceding 5 years, a member in  
19 good standing of The Florida Bar or a similar organization in  
20 another state. Each capital collateral regional counsel shall  
21 be appointed by the President of the Senate and the Speaker of  
22 the House of Representatives ~~Governor~~, and is subject to  
23 confirmation by the Senate. The Supreme Court Judicial  
24 Nominating Commission shall recommend to the President of the  
25 Senate and the Speaker of the House of Representatives  
26 ~~Governor~~ three qualified candidates for each appointment as  
27 regional counsel. The President of the Senate and the Speaker  
28 of the House of Representatives ~~Governor~~ shall appoint a  
29 regional counsel for each region from among the  
30 recommendations, or, if it is in the best interest of the fair  
31 administration of justice in capital cases, they ~~the Governor~~

1 may reject the nominations and request submission of three new  
2 nominees by the Supreme Court Judicial Nominating Commission.  
3 Each capital collateral regional counsel shall be appointed to  
4 a term of 3 years. Vacancies in the office of capital  
5 collateral regional counsel shall be filled in the same manner  
6 as appointments. A person appointed as a regional counsel may  
7 not run for or accept appointment to any state office for 2  
8 years following vacation of office.

9 Section 2. Subsection (1) of section 27.702, Florida  
10 Statutes, is amended to read:

11 27.702 Duties of the capital collateral regional  
12 counsel; reports.--

13 (1) The capital collateral regional counsel shall  
14 represent each person convicted and sentenced to death in this  
15 state for the sole purpose of instituting and prosecuting  
16 collateral actions challenging the legality of the judgment  
17 and sentence imposed against such person in the state courts,  
18 federal courts in this state, the United States Court of  
19 Appeals for the Eleventh Circuit, and the United States  
20 Supreme Court. The capital collateral regional counsel and the  
21 attorneys appointed pursuant to s. 27.710 shall file only  
22 those postconviction or collateral actions authorized by  
23 statute. The three capital collateral regional counsels'  
24 offices shall function independently and be separate budget  
25 entities, and the regional counsels shall be the office heads  
26 for all purposes. ~~The Justice Administrative Commission shall~~  
27 ~~provide administrative support and service to the three~~  
28 ~~offices to the extent requested by the regional counsels. The~~  
29 ~~three regional offices shall not be subject to control,~~  
30 ~~supervision, or direction by the Justice Administrative~~  
31 ~~Commission in any manner, including, but not limited to,~~

1 ~~personnel, purchasing, transactions involving real or personal~~  
2 ~~property, and budgetary matters.~~

3 Section 3. Paragraph (a) of subsection (1) of section  
4 27.709, Florida Statutes, is amended, and paragraph (d) is  
5 added to subsection (2) of that section, to read:

6 27.709 Commission on Capital Cases.--

7 (1)(a) There is created within the legislative branch  
8 of government the Commission on Capital Cases, which shall  
9 consist of the six following members:

10 1. Two members appointed by the Governor.

11 2. Two members appointed by the President of the  
12 Senate from the membership of the Senate. One member shall be  
13 a member of the majority party, and one member shall be a  
14 member of the minority party.

15 3. Two members appointed by the Speaker of the House  
16 of Representatives from the membership of the House of  
17 Representatives. One member shall be a member of the majority  
18 party, and one member shall be a member of the minority party.

19 (2)

20 (d) The commission may sponsor programs of continuing  
21 legal education which are devoted specifically to capital  
22 cases and shall undertake any project recommended or approved  
23 by the commission members.

24 Section 4. Section 27.710, Florida Statutes, is  
25 amended to read:

26 27.710 Registry of attorneys applying to represent  
27 persons in postconviction capital collateral proceedings;  
28 certification of minimum requirements; appointment by trial  
29 court.--

30 (1) The executive director of the Commission on  
31 Capital Cases shall compile and maintain a statewide registry

1 of attorneys in private practice who have certified that they  
2 meet the ~~minimum~~ requirements of this section and s-  
3 ~~27.704(2)~~, who are available for appointment by the court  
4 under this section to represent persons convicted and  
5 sentenced to death in this state in postconviction collateral  
6 proceedings, ~~and who have attended within the last year a~~  
7 ~~continuing legal education program of at least 10 hours'~~  
8 ~~duration devoted specifically to the defense of capital cases,~~  
9 ~~if available. Continuing legal education programs meeting the~~  
10 ~~requirements of this rule offered by The Florida Bar or~~  
11 ~~another recognized provider and approved for continuing legal~~  
12 ~~education credit by The Florida Bar shall satisfy this~~  
13 ~~requirement. The failure to comply with this requirement may~~  
14 ~~be cause for removal from the list until the requirement is~~  
15 ~~fulfilled.~~ To ensure that sufficient attorneys are available  
16 for appointment by the court, when the number of attorneys on  
17 the registry falls below 50, the executive director shall  
18 notify the chief judge of each circuit by letter and request  
19 the chief judge to promptly submit the names of at least three  
20 private attorneys who regularly practice criminal law in that  
21 circuit and who appear to meet the minimum requirements to  
22 represent persons in postconviction capital collateral  
23 proceedings. The executive director shall send an application  
24 to each attorney identified by the chief judge so that the  
25 attorney may register for appointment as counsel in  
26 postconviction capital collateral proceedings. As necessary,  
27 the executive director may also advertise in legal  
28 publications and other appropriate media for qualified  
29 attorneys interested in registering for appointment as counsel  
30 in postconviction capital collateral proceedings. Not later  
31 than September 1 of each year, and as necessary thereafter,

1 the executive director shall provide to the Chief Justice of  
2 the Supreme Court, the chief judge and state attorney in each  
3 judicial circuit, and the Attorney General a current copy of  
4 its registry of attorneys who are available for appointment as  
5 counsel in postconviction capital collateral proceedings. The  
6 registry must be indexed by judicial circuit and must contain  
7 the requisite information submitted by the applicants in  
8 accordance with this section.

9 (2)(a) To be eligible for court appointment as counsel  
10 in postconviction capital collateral proceedings, an attorney  
11 must certify on an application provided by the executive  
12 director that he or she is a member in good standing of The  
13 Florida Bar and:

14 1. Is an active practitioner who has at least 5 years'  
15 experience in the practice of criminal law, is familiar with  
16 the production of evidence and the use of expert witnesses,  
17 including psychiatric and forensic evidence, and has  
18 demonstrated the proficiency necessary for representation in  
19 capital cases, including the investigation and presentation of  
20 mitigation evidence;

21 2. Has attended a minimum of 12 hours of continuing  
22 legal education programs within the previous 2 years which  
23 were devoted to the defense of capital cases and offered by  
24 The Florida Bar or another recognized provider of continuing  
25 legal education courses; and

26 3.a. Has tried at least nine state or federal jury  
27 trials to completion, two of which must have been capital  
28 cases and:

29 (I) Three of which must have been murder trials;

30 (II) One of which must have been a murder trial and  
31 five of which must have been other felony trials; or

1           (III) One of which must have included a postconviction  
2 evidentiary hearing and five of which must have been other  
3 felony trials; or

4           b. Has appealed one capital conviction and appealed:

5           (I) At least three felony convictions, one of which  
6 must have been a murder;

7           (II) At least three felony convictions and  
8 participated in one capital postconviction evidentiary  
9 hearing; or

10           (III) At least six felony convictions, two of which  
11 must have been murders.

12           (b) If the trial court finds that exceptional  
13 circumstances exist requiring appointment of an attorney who  
14 does not meet the criteria set forth in paragraph (a), the  
15 trial court shall enter a written order specifying the  
16 exceptional circumstances requiring appointment of the  
17 attorney and explicit findings that the attorney chosen will  
18 provide competent representation in accordance with the intent  
19 of this section.

20           (c) A failure to comply with any criterion set forth  
21 in paragraph (a) may be cause to remove the attorney from the  
22 registry until the criterion is satisfied.

23           (d) Satisfaction of the criterion may be proven by  
24 submitting a written certification to the commission. The  
25 certification is complete upon submission of the application  
26 by electronic mail without a signature ~~satisfies the minimum~~  
27 requirements for private counsel set forth in s. 27.704(2).

28           (3) An attorney who applies for registration and court  
29 appointment as counsel in postconviction capital collateral  
30 proceedings must certify that he or she is counsel of record  
31 in not more than four such proceedings and, if appointed to



1 represent a person in postconviction capital collateral  
2 proceedings, shall continue the ~~such~~ representation under the  
3 terms and conditions set forth in s. 27.711 until the sentence  
4 is reversed, reduced, or carried out or unless permitted to  
5 withdraw from representation by the trial court. The court may  
6 not permit an attorney to withdraw from representation without  
7 a finding of sufficient good cause. The court may impose  
8 appropriate sanctions if it finds that an attorney has shown  
9 bad faith with respect to continuing to represent a defendant  
10 in a postconviction capital collateral proceeding. This  
11 section does not preclude the court from reassigning a case to  
12 a capital collateral regional counsel following  
13 discontinuation of representation if a conflict of interest no  
14 longer exists with respect to the case.

15 (4)(a) Each private attorney who is appointed by the  
16 court to represent a capital defendant must enter into a  
17 contract with the Chief Financial Officer. If the appointed  
18 attorney fails to execute the contract within 30 days after  
19 the date the contract is mailed to the attorney, the executive  
20 director of the Commission on Capital Cases shall notify the  
21 trial court and shall remove the attorney from the registry  
22 list. The Chief Financial Officer shall develop the form of  
23 the contract, function as contract manager, and enforce  
24 performance of the terms and conditions of the contract. By  
25 signing such contract, the attorney certifies that he or she  
26 intends to continue the representation under the terms and  
27 conditions set forth in the contract until the sentence is  
28 reversed, reduced, or carried out or until released by order  
29 of the trial court.

30 (b) Each private attorney appointed by a court to  
31 represent a capital defendant shall submit a report each

1 quarter to the commission in the format designated by the  
2 commission. If the attorney does not submit the report within  
3 30 days after the end of the quarter, the executive director  
4 shall remove the attorney from the registry and the court may  
5 impose a fine or remove the attorney from the case.

6 (5)(a) Upon the motion of the capital collateral  
7 regional counsel to withdraw pursuant to s. 924.056(1)(a); or

8 (b) Upon notification by the state attorney or the  
9 Attorney General that:

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

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

16  
17 the executive director shall immediately notify the trial  
18 court that imposed the sentence of death that the court must  
19 immediately appoint an attorney, selected from the current  
20 registry, to represent the ~~such~~ person in collateral actions  
21 challenging the legality of the judgment and sentence in the  
22 appropriate state and federal courts. If the attorney  
23 appointed to represent a person under a sentence of death does  
24 not wish to continue representing the person in federal  
25 proceedings, the attorney must make reasonable efforts to  
26 assist the person in finding an attorney who meets the federal  
27 criteria to represent the person in any federal proceedings.

28 The court shall have the authority to strike a notice of  
29 appearance filed by a Capital Collateral Regional Counsel, if  
30 the court finds the notice was not filed in good faith and may  
31 so notify the executive director that the client is no longer

1 represented by the Office of Capital Collateral Regional  
2 Counsel. In making an assignment, the court shall give  
3 priority to attorneys whose experience and abilities in  
4 criminal law, especially in capital proceedings, are known by  
5 the court to be commensurate with the responsibility of  
6 representing a person sentenced to death. The trial court must  
7 issue an order of appointment which contains specific findings  
8 that the appointed counsel meets the statutory requirements  
9 and has the high ethical standards necessary to represent a  
10 person sentenced to death.

11 (6) More than one attorney may not be appointed and  
12 compensated at any one time under s. 27.711 to represent a  
13 person in postconviction capital collateral proceedings.  
14 However, an attorney appointed under this section may  
15 designate another attorney to assist him or her if the  
16 designated attorney meets the qualifications of this section.

17 Section 5. Subsections (4), (7), and (9) of section  
18 27.711, Florida Statutes, are amended, and subsection (15) is  
19 added to that section, to read:

20 27.711 Terms and conditions of appointment of  
21 attorneys as counsel in postconviction capital collateral  
22 proceedings.--

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

27 (a) Regardless of the stage of postconviction capital  
28 collateral proceedings, the attorney is entitled to \$100 per  
29 hour, up to a maximum of \$2,500, before ~~after~~ accepting  
30 appointment and filing a notice of appearance to review the  
31 files and status of the case in order to determine whether to

1 accept appointment under the payment schedule in s. 27.711.  
2 If, after review of the case, the attorney determines that  
3 payment under the statutory schedule would not provide  
4 adequate compensation for the foreseeable duties associated  
5 with the prospective appointment, the attorney must either  
6 decline the appointment or submit to the Chief Financial  
7 Officer for approval a proposed budget that sets forth the  
8 attorney's projection of the number of hours and duties  
9 necessary for the representation. If the Chief Financial  
10 Officer does not approve the budget, the attorney shall notify  
11 the court that he or she is unable to accept the proposed  
12 appointment. If the Chief Financial Officer approves the  
13 attorney's proposed budget, the attorney must accept the  
14 representation and execute with the Chief Financial Officer a  
15 fixed-fee contract that incorporates the budget. By executing  
16 the contract, the attorney agrees that the contract is a  
17 fixed-fee contract and must be strictly construed and  
18 interpreted under general contract law, notwithstanding the  
19 cases of Makemson and its progeny.

20 (b) The attorney is entitled to \$100 per hour, up to a  
21 maximum of \$20,000, after timely filing in the trial court the  
22 capital defendant's complete original motion for  
23 postconviction relief under the Florida Rules of Criminal  
24 Procedure. The motion must raise all issues to be addressed by  
25 the trial court. However, an attorney is entitled to fees  
26 under this paragraph if the court schedules a hearing on a  
27 matter that makes the filing of the original motion for  
28 postconviction relief unnecessary or if the court otherwise  
29 disposes of the case.

30 (c) The attorney is entitled to \$100 per hour, up to a  
31 maximum of \$20,000, after the final hearing on ~~trial court~~

1 ~~issues a final order granting or denying~~ the capital  
2 defendant's motion for postconviction relief.

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

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

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

19 (g) At the conclusion of the capital defendant's  
20 postconviction capital collateral proceedings in state court,  
21 the attorney is entitled to \$100 per hour, up to a maximum of  
22 \$2,500, for the preparation of the initial federal pleading  
23 ~~after filing a petition for writ of certiorari in the Supreme~~  
24 ~~Court of the United States.~~

25 (h) If, at any time, a death warrant is issued, the  
26 attorney is entitled to \$100 per hour, up to a maximum of  
27 \$5,000. This payment shall be full compensation for attorney's  
28 fees and costs for representing the capital defendant  
29 throughout the proceedings before the state courts of Florida.

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1 The hours billed by a contracting attorney under this  
2 subsection may include time devoted to representation of the  
3 defendant by another attorney who is qualified under s. 27.710  
4 and who has been designated by the contracting attorney to  
5 assist him or her.

6 (7) Each registry An attorney who is representing at  
7 least one capital defendant ~~actively representing a capital~~  
8 ~~defendant~~ is entitled to a maximum of \$500 per fiscal year for  
9 tuition and expenses for continuing legal education that  
10 pertains to the representation of capital defendants,  
11 regardless of the total number of capital defendants the  
12 attorney is representing. Upon approval by the trial court,  
13 the attorney is entitled to payment by the Chief Financial  
14 Officer for expenses for such tuition and continuing legal  
15 education.

16 (9) An attorney may not represent more than 7 inmates  
17 ~~five defendants~~ in capital postconviction litigation at any  
18 one time. The 7-inmate-representation limit includes capital  
19 postconviction cases proceeding under contract with the  
20 capital collateral regional counsel, inmates represented pro  
21 bono, and inmates privately retaining the attorney. An  
22 attorney may not be appointed to additional capital  
23 postconviction cases until the attorney's representation total  
24 falls below the 7-case limit.

25 (15) A trial judge may award fees that exceed those  
26 outlined in this section. If a trial court judge intends to  
27 award attorney fees in excess of those outlined in this  
28 section, the judge must include written findings of fact that  
29 specifically state the extraordinary nature of the  
30 expenditures of the time, energy, and talents of the attorney

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1 in the case which are not ordinarily expended in other capital  
2 collateral cases.

3 Section 6. Paragraph (qq) of subsection (1) of section  
4 216.011, Florida Statutes, is amended to read:

5 216.011 Definitions.--

6 (1) For the purpose of fiscal affairs of the state,  
7 appropriations acts, legislative budgets, and approved  
8 budgets, each of the following terms has the meaning  
9 indicated:

10 (qq) "State agency" or "agency" means any official,  
11 officer, commission, board, authority, council, committee, or  
12 department of the executive branch of state government. For  
13 purposes of this chapter and chapter 215, "state agency" or  
14 "agency" includes, but is not limited to, state attorneys,  
15 public defenders, ~~the capital collateral regional counsels,~~  
16 the Justice Administrative Commission, the Florida Housing  
17 Finance Corporation, and the Florida Public Service  
18 Commission. Solely for the purposes of implementing s. 19(h),  
19 Art. III of the State Constitution, the terms "state agency"  
20 or "agency" include the judicial branch.

21 Section 7. This act shall take effect July 1, 2006.

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