

1 A bill to be entitled  
2 An act relating to capital collateral representation;  
3 amending s. 27.7001, F.S.; providing a legislative finding  
4 that not all capital cases are extraordinary or unusual;  
5 amending s. 27.701, F.S.; requiring that capital  
6 collateral regional counsel be appointed by and serve at  
7 the pleasure of the Commission on Capital Cases; removing  
8 provisions establishing a pilot program in the northern  
9 region of the state; amending s. 27.702, F.S.; clarifying  
10 the administrative roles and functions of the Justice  
11 Administrative Commission, the Commission on Capital  
12 Cases, and the capital collateral regional counsel;  
13 deleting references to a pilot project; amending s.  
14 27.709, F.S.; increasing the membership of the Commission  
15 on Capital Cases; relocating the commission from the  
16 Office of Legislative Services to the Justice  
17 Administrative Commission for administrative purposes;  
18 authorizing the commission to sponsor programs of  
19 continuing legal education on capital cases; authorizing  
20 the commission to request certain reports; authorizing the  
21 commission to issue subpoenas and hold hearings it  
22 considers appropriate for the administration of justice in  
23 capital cases; authorizing the commission to terminate the  
24 appointment of a capital collateral regional counsel  
25 before the end of the counsel's term; amending s. 27.710,  
26 F.S.; revising the criteria required for an attorney to be  
27 eligible to be placed on the registry of attorneys  
28 qualified to represent defendants in postconviction

29 capital collateral proceedings; providing certain limited  
30 exceptions; requiring attorneys to sign a contract with  
31 the Chief Financial Officer in order to receive funds from  
32 the state; requiring each private attorney appointed by a  
33 court to represent a capital defendant to submit a report  
34 each quarter to the commission; providing for removal and  
35 reinstatement to the registry of attorneys; providing  
36 requirements with respect to finding another attorney to  
37 represent a defendant in federal proceedings under certain  
38 circumstances; amending s. 27.711, F.S.; providing for  
39 terms and conditions for appointment of counsel in  
40 postconviction capital collateral proceedings; providing  
41 for pro bono attorneys to receive reimbursement for  
42 certain specified expenses; revising fee and other expense  
43 provisions applicable to registry attorneys appointed to  
44 represent capital defendants; limiting representation by a  
45 court-appointed attorney to seven defendants; prohibiting  
46 an attorney from entering into an employment contract with  
47 any Office of Capital Collateral Regional Counsel if he or  
48 she represents seven or more defendants in capital  
49 collateral litigation; requiring a trial court judge who  
50 proposes to award attorney's fees in excess of those set  
51 forth in law to make written findings of fact that state  
52 the extraordinary nature of the expenditures of time,  
53 energy, and talents of the attorney in the case which are  
54 not ordinarily expended in other capital collateral cases  
55 and how the case is unusual; reenacting s. 27.7002, F.S.,  
56 relating to the limitation of cases on collateral

HB 943

2008

57 representation, to incorporate the amendments made to ss.  
 58 27.710 and 27.711, F.S., in references thereto; providing  
 59 an effective date.

60

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

62

63 Section 1. Section 27.7001, Florida Statutes, is amended  
 64 to read:

65 27.7001 Legislative intent and findings.--It is the intent  
 66 of the Legislature to create part IV of this chapter, consisting  
 67 of ss. 27.7001-27.711, inclusive, to provide for the collateral  
 68 representation of any person convicted and sentenced to death in  
 69 this state, so that collateral legal proceedings to challenge  
 70 any Florida capital conviction and sentence may be commenced in  
 71 a timely manner and so as to assure the people of this state  
 72 that the judgments of its courts may be regarded with the  
 73 finality to which they are entitled in the interests of justice.  
 74 It is the further intent of the Legislature that collateral  
 75 representation shall not include representation during retrials,  
 76 resentencings, proceedings commenced under chapter 940, or civil  
 77 litigation. The Legislature further finds that not all capital  
 78 collateral cases are extraordinary or unusual.

79 Section 2. Section 27.701, Florida Statutes, is amended to  
 80 read:

81 27.701 Capital collateral regional counsel.--

82 ~~(1)~~ There are created three regional offices of capital  
 83 collateral counsel, which shall be located in a northern,  
 84 middle, and southern region of the state. The northern region

HB 943

2008

85 shall consist of the First, Second, Third, Fourth, Eighth, and  
86 Fourteenth Judicial Circuits; the middle region shall consist of  
87 the Fifth, Sixth, Seventh, Ninth, Tenth, Twelfth, Thirteenth,  
88 and Eighteenth Judicial Circuits; and the southern region shall  
89 consist of the Eleventh, Fifteenth, Sixteenth, Seventeenth,  
90 Nineteenth, and Twentieth Judicial Circuits. Each regional  
91 office shall be administered by a regional counsel. A regional  
92 counsel must be, and must have been for the preceding 5 years, a  
93 member in good standing of The Florida Bar or a similar  
94 organization in another state. Each capital collateral regional  
95 counsel shall be appointed by the Commission on Capital Cases  
96 ~~Governor~~, and is subject to confirmation by the Senate. The  
97 Supreme Court Judicial Nominating Commission shall recommend to  
98 the Commission on Capital Cases ~~Governor~~ three qualified  
99 candidates for each appointment as regional counsel. The  
100 commission ~~Governor~~ shall appoint a regional counsel for each  
101 region from among the recommendations, or, if it is in the best  
102 interest of the fair administration of justice in capital cases,  
103 the commission ~~Governor~~ may reject the nominations and request  
104 submission of three new nominees by the Supreme Court Judicial  
105 Nominating Commission. Each capital collateral regional counsel  
106 shall be appointed to a term of 3 years. Vacancies in the office  
107 of capital collateral regional counsel shall be filled in the  
108 same manner as appointments. A person appointed as a regional  
109 counsel may not run for or accept appointment to any state  
110 office for 2 years following vacation of office. Each capital  
111 collateral counsel shall report to and serve at the pleasure of  
112 the Commission on Capital Cases.

Page 4 of 27

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

hb0943-00

HB 943

2008

113       ~~(2) Notwithstanding the provisions of subsection (1), the~~  
114 ~~responsibilities of the regional office of capital collateral~~  
115 ~~counsel for the northern region of the state shall be met~~  
116 ~~through a pilot program using only attorneys from the registry~~  
117 ~~of attorneys maintained pursuant to s. 27.710. Each attorney~~  
118 ~~participating in the pilot must be qualified to provide~~  
119 ~~representation in federal court. The Auditor General shall~~  
120 ~~schedule a performance review of the pilot program to determine~~  
121 ~~the effectiveness and efficiency of using attorneys from the~~  
122 ~~registry compared to the capital collateral regional counsel.~~  
123 ~~The review, at a minimum, shall include comparisons of the~~  
124 ~~timeliness and costs of the pilot and the counsel and shall be~~  
125 ~~submitted to the President of the Senate and the Speaker of the~~  
126 ~~House of Representatives by January 30, 2007. The Legislature~~  
127 ~~may determine whether to convert the pilot program to a~~  
128 ~~permanent program after receipt of the Auditor General's review.~~

129       Section 3. Section 27.702, Florida Statutes, is amended to  
130 read:

131       27.702 Duties of the capital collateral regional counsel;  
132 reports.--

133       (1) The capital collateral regional counsel shall  
134 represent each person convicted and sentenced to death in this  
135 state for the sole purpose of instituting and prosecuting  
136 collateral actions challenging the legality of the judgment and  
137 sentence imposed against such person in the state courts,  
138 federal courts in this state, the United States Court of Appeals  
139 for the Eleventh Circuit, and the United States Supreme Court.  
140 The capital collateral regional counsel and the attorneys

141 appointed pursuant to s. 27.710 shall file only those  
142 postconviction or collateral actions authorized by statute. The  
143 three capital collateral regional counsel's offices shall  
144 function independently and be separate budget entities, and the  
145 regional counsel shall be the office heads for all purposes. The  
146 capital collateral regional counsel shall be housed, for  
147 administrative purposes, within the Justice Administrative  
148 Commission. The Justice Administrative Commission shall provide  
149 administrative support and service to the three offices to the  
150 extent requested by the regional counsel. The three regional  
151 offices shall not be subject to control, supervision, or  
152 direction by the Justice Administrative Commission in any  
153 manner, including, but not limited to, personnel, purchasing,  
154 transactions involving real or personal property, and budgetary  
155 matters.

156 (2) The capital collateral regional counsel shall  
157 represent persons convicted and sentenced to death within the  
158 region in collateral postconviction proceedings, unless a court  
159 appoints or permits other counsel to appear as counsel of record  
160 pursuant to ss. 27.710 and 27.711.

161 (3) (a) The capital collateral regional counsel shall file  
162 motions seeking compensation for representation and  
163 reimbursement for expenses pursuant to 18 U.S.C. s. 3006A when  
164 providing representation to indigent persons in the federal  
165 courts, and shall deposit all such payments received into the  
166 General Revenue Fund.

167 (b) The court having jurisdiction over any nonindigent or  
168 indigent-but-able-to-contribute defendant who has been receiving

169 the services of the capital collateral regional counsel may  
 170 assess attorney's fees and costs against the defendant at any  
 171 stage in the proceedings as the court may deem appropriate. The  
 172 determination of indigence of any defendant shall be made  
 173 pursuant to s. 27.52. Liability for the costs of such  
 174 representation may be imposed in the form of a lien against the  
 175 property of the nonindigent or indigent-but-able-to-contribute  
 176 defendant, which lien shall be enforceable as provided in s.  
 177 27.561 or s. 938.29.

178 (4) (a) The capital collateral regional counsel or private  
 179 counsel shall give written notification of each pleading filed  
 180 by that office and the name of the person filing the pleading to  
 181 the Commission on Capital Cases and to the trial court assigned  
 182 to the case.

183 (b) Each capital collateral regional counsel ~~and each~~  
 184 ~~attorney participating in the pilot program in the northern~~  
 185 ~~region pursuant to s. 27.701(2)~~ shall provide a quarterly report  
 186 to ~~the President of the Senate, the Speaker of the House of~~  
 187 ~~Representatives,~~ and the Commission on Capital Cases which  
 188 details the number of hours worked by investigators and legal  
 189 counsel per case and the amounts per case expended during the  
 190 preceding quarter in investigating and litigating capital  
 191 collateral cases.

192 Section 4. Section 27.709, Florida Statutes, is amended to  
 193 read:

194 27.709 Commission on Capital Cases.--

195 (1) (a) There is created the Commission on Capital Cases,  
 196 which shall consist of the seven ~~six~~ following members:

- 197           1. Three ~~Two~~ members appointed by the Governor.
- 198           2. Two members appointed by the President of the Senate  
 199 from the membership of the Senate. One member shall be a member  
 200 of the majority party, and one member shall be a member of the  
 201 minority party.
- 202           3. Two members appointed by the Speaker of the House of  
 203 Representatives from the membership of the House of  
 204 Representatives. One member shall be a member of the majority  
 205 party, and one member shall be a member of the minority party.
- 206           (b) The chair of the commission shall be selected by the  
 207 members for a term of 1 year.
- 208           (c) The commission shall meet quarterly, and other  
 209 meetings may be called by the chair upon giving at least 7 days'  
 210 notice to all members and the public.
- 211           (d) Members of the commission are entitled to per diem and  
 212 travel expenses to be paid by the appointing entity.
- 213           (e) Members of the commission shall be appointed to serve  
 214 terms of 4 years each, except that a member's term shall expire  
 215 upon leaving office as a member of the Senate or the House of  
 216 Representatives.
- 217           (f) The Justice Administrative Commission ~~Office of~~  
 218 ~~Legislative Services~~ shall provide staff support for the  
 219 commission, which shall be housed therein for administrative  
 220 purposes.
- 221           (2)(a) The commission shall review the administration of  
 222 justice in capital collateral cases, receive relevant public  
 223 input, review the operation of the capital collateral regional  
 224 counsel and private counsel appointed pursuant to ss. 27.710 and

225 27.711, and advise and make recommendations to the Governor,  
 226 Legislature, and Supreme Court.

227 (b) As part of its duties, the commission shall compile  
 228 and analyze case-tracking reports produced by the Supreme Court.  
 229 In analyzing these reports, the commission shall develop  
 230 statistics to identify trends and changes in case management and  
 231 case processing, identify and evaluate unproductive points of  
 232 delay, and generally evaluate the way cases are progressing. The  
 233 commission shall report these findings to the Legislature by  
 234 January 1 of each year.

235 (c) ~~In addition,~~ The commission shall receive complaints  
 236 regarding the practice of any office of regional counsel and  
 237 private counsel appointed under ~~pursuant to~~ ss. 27.710 and  
 238 27.711 and may investigate and ~~shall~~ refer any complaint to The  
 239 Florida Bar, the State Supreme Court, the Department of Law  
 240 Enforcement, the Chief Inspector General, or the Commission on  
 241 Ethics, as appropriate.

242 (d) The commission may sponsor continuing legal education  
 243 programs that are devoted specifically to capital cases and  
 244 shall undertake any project recommended or approved by the  
 245 commission members.

246 (e) The commission may request each state attorney,  
 247 circuit court judge, and the Office of the Attorney General to  
 248 submit pertinent reports to the commission for its review.

249 (f) The commission may exercise subpoena powers and  
 250 receive sworn testimony it deems necessary for the  
 251 administration of justice in capital cases.

252           (g) The commission shall appoint the capital collateral  
 253 regional counsel and may terminate the employment of regional  
 254 counsel at any time prior to the expiration of the appointment.

255           Section 5. Section 27.710, Florida Statutes, is amended to  
 256 read:

257           27.710 Registry of attorneys applying to represent persons  
 258 in postconviction capital collateral proceedings; certification  
 259 of minimum requirements; appointment by trial court.--

260           (1) The executive director of the Commission on Capital  
 261 Cases shall compile and maintain a statewide registry of  
 262 attorneys in private practice who have certified that they meet  
 263 the ~~minimum~~ requirements of this section and s. 27.704(2), who  
 264 are available for appointment by the court under this section to  
 265 represent persons convicted and sentenced to death in this state  
 266 in postconviction collateral proceedings, ~~and who have attended~~  
 267 ~~within the last year a continuing legal education program of at~~  
 268 ~~least 10 hours' duration devoted specifically to the defense of~~  
 269 ~~capital cases, if available. Continuing legal education programs~~  
 270 ~~meeting the requirements of this rule offered by The Florida Bar~~  
 271 ~~or another recognized provider and approved for continuing legal~~  
 272 ~~education credit by The Florida Bar shall satisfy this~~  
 273 ~~requirement. The failure to comply with this requirement may be~~  
 274 ~~cause for removal from the list until the requirement is~~  
 275 ~~fulfilled.~~ To ensure that sufficient attorneys are available for  
 276 appointment by the court, when the number of attorneys on the  
 277 registry falls below 50, the executive director shall notify the  
 278 chief judge of each circuit by letter and request the chief  
 279 judge to promptly submit the names of at least three private

HB 943

2008

280 attorneys who regularly practice criminal law in that circuit  
281 and who appear to meet the minimum requirements to represent  
282 persons in postconviction capital collateral proceedings. The  
283 executive director shall send an application to each attorney  
284 identified by the chief judge so that the attorney may register  
285 for appointment as counsel in postconviction capital collateral  
286 proceedings. As necessary, the executive director may also  
287 advertise in legal publications and other appropriate media for  
288 qualified attorneys interested in registering for appointment as  
289 counsel in postconviction capital collateral proceedings. When  
290 the number of qualified lawyers on the registry falls below 50,  
291 upon the application of an attorney who does not meet the  
292 minimum qualifications set forth in this section, the  
293 application may be forwarded by the executive director to the  
294 full commission for its approval of the applicant being included  
295 on the list of available registry attorneys. By ~~Not later than~~  
296 September 1 of each year, and as necessary thereafter, the  
297 executive director shall provide to the Chief Justice of the  
298 Supreme Court, the chief judge and state attorney in each  
299 judicial circuit, and the Attorney General a current copy of its  
300 registry of attorneys who are available for appointment as  
301 counsel in postconviction capital collateral proceedings. The  
302 registry must be indexed by judicial circuit and must contain  
303 the requisite information submitted by the applicants in  
304 accordance with this section.

305 (2) (a) To be eligible for court appointment as counsel in  
306 postconviction capital collateral proceedings, an attorney must  
307 certify on an application provided by the executive director

HB 943

2008

308 that he or she is a member in good standing of The Florida Bar  
309 and:

310 1. Is an active practicing attorney who has at least 5  
311 years' experience in the practice of criminal law and has  
312 demonstrated the proficiency necessary to represent defendants  
313 in capital cases, including proficiency in the production and  
314 admission of evidence, including psychiatric and forensic  
315 evidence, the use of expert witnesses, and the investigation and  
316 presentation of mitigation evidence;

317 2. Has attended and completed a minimum of 12 hours of  
318 continuing legal education programs within the previous 2 years  
319 which were devoted to the defense of capital cases and offered  
320 by The Florida Bar, the Commission on Capital Cases, or another  
321 authorized provider of continuing legal education courses; and

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

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

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

327 (III) One of which must have included a postconviction  
328 evidentiary hearing and five of which must have been other  
329 felony trials;

330 b. Has appealed one capital conviction and appealed:

331 (I) At least three felony convictions, one of which must  
332 have been a murder conviction;

333 (II) At least three felony convictions and participated in  
334 one capital postconviction evidentiary hearing; or

335 (III) At least six felony convictions, two of which must  
 336 have been murder convictions; or

337 c. Has litigated as a first chair attorney at least three  
 338 capital collateral evidentiary hearings.

339 (b) If the trial court finds that exceptional  
 340 circumstances exist requiring appointment of an attorney who  
 341 does not meet the criteria set forth in paragraph (a), the trial  
 342 court shall enter a written order specifying the circumstances  
 343 and making explicit findings that the attorney appointed is  
 344 capable of providing competent representation in accordance with  
 345 the intent of this section.

346 (c) Failure by an attorney to comply with any criteria set  
 347 forth in paragraph (a) may be cause to remove the attorney from  
 348 the registry until such criteria is satisfied.

349 (d) Compliance may be proven by submitting written  
 350 certification of compliance to the commission and may be  
 351 submitted by electronic mail ~~satisfies the minimum requirements~~  
 352 ~~for private counsel set forth in s. 27.704(2).~~

353 ~~(3) An attorney who applies for registration and court~~  
 354 ~~appointment as counsel in postconviction capital collateral~~  
 355 ~~proceedings must certify that he or she is counsel of record in~~  
 356 ~~not more than four such proceedings and, if appointed to~~  
 357 ~~represent a person in postconviction capital collateral~~  
 358 ~~proceedings, shall continue the ~~such~~ representation under the~~  
 359 ~~terms and conditions set forth in s. 27.711 until the sentence~~  
 360 ~~is reversed, reduced, or carried out or unless permitted to~~  
 361 ~~withdraw from representation by the trial court. The court may~~  
 362 ~~not permit an attorney to withdraw from representation without a~~

HB 943

2008

363 finding of sufficient good cause. The court may impose  
364 appropriate sanctions if it finds that an attorney has shown bad  
365 faith with respect to continuing to represent a defendant in a  
366 postconviction capital collateral proceeding. This section does  
367 not preclude the court from reassigning a case to a capital  
368 collateral regional counsel following discontinuation of  
369 representation if a conflict of interest no longer exists with  
370 respect to the case.

371 (4) (a) Each private attorney who is appointed by the court  
372 to represent a capital defendant, including court-appointed  
373 attorneys who elect to proceed pro bono, must enter into a  
374 contract with the Chief Financial Officer. If the ~~appointed~~  
375 attorney fails to execute the contract within 30 days after the  
376 date the contract is mailed to the attorney, the executive  
377 director of the Commission on Capital Cases shall notify the  
378 trial court and remove the attorney from the registry. The Chief  
379 Financial Officer shall develop the form of the contract for  
380 court-appointed attorneys, function as contract manager, and  
381 enforce performance of the terms and conditions of the contract  
382 consistent with the requirements of this chapter. By signing  
383 such contract, the attorney certifies that he or she intends to  
384 continue the representation under the terms and conditions set  
385 forth in the contract until the sentence is reversed, reduced,  
386 or carried out or until released by order of the trial court. A  
387 court-appointed attorney may not receive state funds unless he  
388 or she has executed the contract required under this paragraph.

389 (b) Each attorney appointed under this section must submit  
390 a report each quarter to the commission in the format designated

391 by the commission. If the report is not submitted within 60 days  
 392 after the end of the quarter, the executive director shall  
 393 remove the attorney from the registry and the court may impose a  
 394 fine for noncompliance. The court may also remove the attorney  
 395 from the case or cases to which he or she has been appointed  
 396 under this section.

397 (c) An attorney removed from the registry may, at the  
 398 discretion of the court, continue to represent any clients that  
 399 the attorney has been appointed to represent as of the date of  
 400 removal. If the court allows an attorney who has been removed  
 401 from the registry to continue to represent appointed capital  
 402 defendants, the court must take all necessary actions to ensure  
 403 compliance with the requirements of this subsection. An attorney  
 404 who has been removed from the registry may not accept further  
 405 appointments to represent any new capital defendant unless the  
 406 attorney is placed back on the registry as provided in paragraph  
 407 (d).

408 (d) After certifying to the executive director that he or  
 409 she will act in accordance with the provisions of this  
 410 subsection, an attorney removed from the registry may, after 60  
 411 days, reapply for the registry as provided in subsection (2). An  
 412 attorney may reapply for the registry no more than two times  
 413 under this paragraph for failure to adhere to the requirements  
 414 of this subsection.

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

417 (b) Upon notification by the state attorney or the  
 418 Attorney General that:

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

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

425  
 426 the executive director shall immediately notify the trial court  
 427 that imposed the sentence of death that the court must  
 428 immediately appoint an attorney, selected from the current  
 429 registry, to represent such person in collateral actions  
 430 challenging the legality of the judgment and sentence in the  
 431 appropriate state and federal courts. If the attorney appointed  
 432 to represent a defendant under a sentence of death does not wish  
 433 to continue representing the defendant in federal proceedings,  
 434 the attorney must make a good-faith effort to assist the  
 435 defendant in finding an attorney who meets the criteria  
 436 specified in subsection (2) and is willing to represent the  
 437 defendant in federal proceedings. The court may ~~shall have the~~  
 438 ~~authority to~~ strike a notice of appearance filed by a capital  
 439 collateral regional counsel ~~Capital Collateral Regional Counsel~~,  
 440 if the court finds the notice was not filed in good faith and  
 441 may so notify the executive director that the client is no  
 442 longer represented by the Office of Capital Collateral Regional  
 443 Counsel. In making an assignment, the court shall give priority  
 444 to attorneys whose experience and abilities in criminal law,  
 445 especially in capital proceedings, are known by the court to be  
 446 commensurate with the responsibility of representing a person

447 sentenced to death. The trial court must issue an order of  
 448 appointment which contains specific findings that the appointed  
 449 counsel meets the statutory requirements and has the high  
 450 ethical standards necessary to represent a person sentenced to  
 451 death.

452 (6) More than one attorney may not be appointed and  
 453 compensated at any one time under s. 27.711 to represent a  
 454 person in postconviction capital collateral proceedings.  
 455 However, an attorney appointed under this section may designate  
 456 another attorney to assist him or her if the designated attorney  
 457 meets the qualifications of this section.

458 Section 6. Section 27.711, Florida Statutes, is amended to  
 459 read:

460 27.711 Terms and conditions of appointment of attorneys as  
 461 counsel in postconviction capital collateral proceedings.--

462 (1) As used in s. 27.710 and this section, the term:

463 (a) "Capital defendant" means the person who is  
 464 represented in postconviction capital collateral proceedings by  
 465 an attorney appointed under s. 27.710.

466 (b) "Executive director" means the executive director of  
 467 the Commission on Capital Cases.

468 (c) "Postconviction capital collateral proceedings" means  
 469 one series of collateral litigation of an affirmed conviction  
 470 and sentence of death, including the proceedings in the trial  
 471 court that imposed the capital sentence, any appellate review of  
 472 the sentence by the Supreme Court, any certiorari review of the  
 473 sentence by the United States Supreme Court, and any authorized  
 474 federal habeas corpus litigation with respect to the sentence.

475 The term does not include repetitive or successive collateral  
 476 challenges to a conviction and sentence of death which is  
 477 affirmed by the Supreme Court and undisturbed by any collateral  
 478 litigation.

479 (2) After appointment by the trial court under s. 27.710,  
 480 the attorney must immediately file a notice of appearance with  
 481 the trial court indicating acceptance of the appointment to  
 482 represent the capital defendant throughout all postconviction  
 483 capital collateral proceedings, including federal habeas corpus  
 484 proceedings, in accordance with this section or until released  
 485 by order of the trial court.

486 (3) An attorney appointed to represent a capital defendant  
 487 is entitled to payment of the fees set forth in this section  
 488 only upon full performance by the attorney of the duties  
 489 specified in this section and approval of payment by the trial  
 490 court, and the submission of a payment request by the attorney,  
 491 subject to the availability of sufficient funding specifically  
 492 appropriated for this purpose. An attorney may not be  
 493 compensated under this section for work performed by the  
 494 attorney before July 1, 2003, while employed by the northern  
 495 regional office of the capital collateral counsel. The Chief  
 496 Financial Officer shall notify the executive director and the  
 497 court if it appears that sufficient funding has not been  
 498 specifically appropriated for this purpose to pay any fees which  
 499 may be incurred. The attorney shall maintain appropriate  
 500 documentation, including a current and detailed hourly  
 501 accounting of time spent representing the capital defendant. The  
 502 fee and payment schedule in this section is the exclusive means

HB 943

2008

503 of compensating a court-appointed attorney who represents a  
504 capital defendant. When appropriate, a court-appointed attorney  
505 must seek further compensation from the Federal Government, as  
506 provided in 18 U.S.C. s. 3006A or other federal law, in habeas  
507 corpus litigation in the federal courts. An attorney who is  
508 appointed by a court to represent a capital defendant on a pro  
509 bono basis is not entitled to attorney's fees as provided for in  
510 subsection (4). However, after executing a contract with the  
511 Chief Financial Officer, a pro bono attorney is entitled to  
512 payment for investigative services as specified in subsection  
513 (5) and for miscellaneous expenses actually incurred on behalf  
514 of the capital defendant as specified in subsection (6). If a  
515 registry attorney has been appointed to represent a defendant, a  
516 payment may not be made to any other attorney who volunteers to  
517 represent the same defendant on a pro bono basis.

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

522 (a) Regardless of the stage of postconviction capital  
523 collateral proceedings, the attorney is entitled to \$100 per  
524 hour, up to a maximum of \$2,500, before ~~after~~ accepting  
525 appointment and filing a notice of appearance in order to review  
526 the files and status of the case to determine whether to accept  
527 an appointment under the payment schedule in this section. If,  
528 after reviewing the case files, the attorney determines that  
529 payment under this section does not provide adequate  
530 compensation for the foreseeable duties associated with the

HB 943

2008

531 prospective appointment, the attorney must decline the  
532 appointment.

533 (b) The attorney is entitled to \$100 per hour, up to a  
534 maximum of \$20,000, after timely filing in the trial court the  
535 capital defendant's complete original motion for postconviction  
536 relief under the Florida Rules of Criminal Procedure. The motion  
537 must raise all issues to be addressed by the trial court.  
538 However, an attorney is entitled to fees under this paragraph if  
539 the court schedules a hearing on a matter that makes the filing  
540 of the original motion for postconviction relief unnecessary or  
541 if the court otherwise disposes of the case.

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

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

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

557 (f) The attorney is entitled to \$100 per hour, up to a  
558 maximum of \$4,000, after the appeal of the trial court's denial

HB 943

2008

559 of the capital defendant's motion for postconviction relief and  
560 the capital defendant's state petition for writ of habeas corpus  
561 become final in the Supreme Court.

562 (g) At the conclusion of the capital defendant's  
563 postconviction capital collateral proceedings in state court,  
564 the attorney is entitled to \$100 per hour, up to a maximum of  
565 \$2,500, for the preparation of the initial federal pleading  
566 ~~after filing a petition for writ of certiorari in the Supreme~~  
567 ~~Court of the United States.~~

568 (h) If, at any time, a death warrant is issued, the  
569 attorney is entitled to \$100 per hour, up to a maximum of  
570 \$5,000. This payment is ~~shall be~~ full compensation for  
571 attorney's fees and costs for representing the capital defendant  
572 throughout the proceedings before the state courts of Florida.

573  
574 The hours billed by a contracting attorney under this subsection  
575 may include time devoted to representation of the defendant by  
576 another attorney who is qualified under s. 27.710 and who has  
577 been designated by the contracting attorney to assist him or  
578 her.

579 (5) An attorney who represents a capital defendant may use  
580 the services of one or more investigators to assist in  
581 representing a capital defendant. Upon approval by the trial  
582 court, the attorney is entitled to payment from the Chief  
583 Financial Officer of \$40 per hour, up to a maximum of \$15,000,  
584 for the purpose of paying for investigative services.

585 (6) An attorney who represents a capital defendant is  
586 entitled to a maximum of \$15,000 for miscellaneous expenses,

587 such as the costs of preparing transcripts, compensating expert  
 588 witnesses, and copying documents. Upon approval by the trial  
 589 court, the attorney is entitled to payment by the Chief  
 590 Financial Officer of up to \$15,000 for miscellaneous expenses,  
 591 except that, if the trial court finds that extraordinary  
 592 circumstances exist, the attorney is entitled to payment in  
 593 excess of \$15,000.

594 (7) A registry ~~An~~ attorney who is ~~actively~~ representing a  
 595 capital defendant is entitled to a maximum of \$500 per fiscal  
 596 year for tuition and expenses for continuing legal education  
 597 that pertains to the representation of capital defendants  
 598 regardless of the total number of capital defendants the  
 599 attorney is representing. Upon approval by the trial court, the  
 600 attorney is entitled to payment by the Chief Financial Officer  
 601 for expenses for such tuition and continuing legal education.

602 (8) By accepting court appointment under s. 27.710 to  
 603 represent a capital defendant, the attorney agrees to continue  
 604 such representation under the terms and conditions set forth in  
 605 this section until the capital defendant's sentence is reversed,  
 606 reduced, or carried out, and the attorney is permitted to  
 607 withdraw from such representation by a court of competent  
 608 jurisdiction. However, if an attorney is permitted to withdraw  
 609 or is otherwise removed from representation prior to full  
 610 performance of the duties specified in this section, the trial  
 611 court shall approve payment of fees and costs for work  
 612 performed, which may not exceed the amounts specified in this  
 613 section. An attorney who withdraws or is removed from  
 614 representation shall deliver all files, notes, documents, and

HB 943

2008

615 research to the successor attorney within 15 days after notice  
616 from the successor attorney. The successor attorney shall bear  
617 the cost of transmitting the files, notes, documents, and  
618 research.

619 (9) An attorney may not represent more than seven ~~five~~  
620 defendants in capital postconviction litigation at any one time.  
621 The defendant-representation limit includes cases involving  
622 capital postconviction proceedings under contract with the  
623 capital collateral regional counsel, pro bono cases, registry  
624 cases, and privately retained cases. An attorney may not be  
625 appointed to an additional capital postconviction case until the  
626 attorney's capital postconviction representation total falls  
627 below the seven-case limit. An attorney may not enter into an  
628 employment contract with any Office of Capital Collateral  
629 Regional Counsel if he or she currently represents more than  
630 seven defendants in capital collateral litigation in the  
631 categories specified in this subsection.

632 (10) This section does not authorize an attorney who  
633 represents a capital defendant to file repetitive or frivolous  
634 pleadings that are not supported by law or by the facts of the  
635 case. An action taken by an attorney who represents a capital  
636 defendant in postconviction capital collateral proceedings may  
637 not be the basis for a claim of ineffective assistance of  
638 counsel.

639 (11) An attorney appointed under s. 27.710 to represent a  
640 capital defendant may not represent the capital defendant during  
641 a retrial, a resentencing proceeding, a proceeding commenced  
642 under chapter 940, a proceeding challenging a conviction or

HB 943

2008

643 sentence other than the conviction and sentence of death for  
644 which the appointment was made, or any civil litigation other  
645 than habeas corpus proceedings.

646 (12) The court shall monitor the performance of assigned  
647 counsel to ensure that the capital defendant is receiving  
648 quality representation. The court shall also receive and  
649 evaluate allegations that are made regarding the performance of  
650 assigned counsel. The Chief Financial Officer, the Department of  
651 Legal Affairs, the executive director, or any interested person  
652 may advise the court of any circumstance that could affect the  
653 quality of representation, including, but not limited to, false  
654 or fraudulent billing, misconduct, failure to meet continuing  
655 legal education requirements, solicitation to receive  
656 compensation from the capital defendant, or failure to file  
657 appropriate motions in a timely manner.

658 (13) Prior to the filing of a motion for order approving  
659 payment of attorney's fees, costs, or related expenses, the  
660 assigned counsel shall deliver a copy of his intended billing,  
661 together with supporting affidavits and all other necessary  
662 documentation, to the Chief Financial Officer's named contract  
663 manager. The contract manager shall have 10 business days from  
664 receipt to review the billings, affidavit, and documentation for  
665 completeness and compliance with contractual and statutory  
666 requirements. If the contract manager objects to any portion of  
667 the proposed billing, the objection and reasons therefor shall  
668 be communicated to the assigned counsel. The assigned counsel  
669 may thereafter file his or her motion for order approving  
670 payment of attorney's fees, costs, or related expenses together

HB 943

2008

671 with supporting affidavits and all other necessary  
672 documentation. The motion must specify whether the Chief  
673 Financial Officer's contract manager objects to any portion of  
674 the billing or the sufficiency of documentation and, if so, the  
675 reason therefor. A copy of the motion and attachments shall be  
676 served on the Chief Financial Officer's contract manager, who  
677 shall have standing to file pleadings and appear before the  
678 court to contest any motion for order approving payment. The  
679 fact that the Chief Financial Officer's contract manager has not  
680 objected to any portion of the billing or to the sufficiency of  
681 the documentation is not binding on the court, which retains  
682 primary authority and responsibility for determining the  
683 reasonableness of all billings for fees, costs, and related  
684 expenses, subject to statutory limitations.

685       (14) If a trial court judge proposes to award attorney's  
686 fees in excess of those set forth in this section, the judge  
687 must include written findings of fact that state in detail the  
688 extraordinary nature of the expenditures of the time, energy,  
689 and talents of the attorney in the case which are not ordinarily  
690 expended in other capital collateral cases and the basis for the  
691 court finding that the case is unusual compared to other capital  
692 postconviction cases. ~~Each attorney participating in the pilot~~  
693 ~~program in the northern region pursuant to s. 27.701(2), as a~~  
694 ~~condition of payment pursuant to this section, shall report on~~  
695 ~~the performance measures adopted by the Legislature for the~~  
696 ~~capital collateral regional counsel.~~

697       Section 7. For the purpose of incorporating the amendments  
698 made by this act to sections 27.710 and 27.711, Florida

699 Statutes, in references thereto, section 27.7002, Florida  
 700 Statutes, is reenacted to read:

701       27.7002 Limitation on collateral representation; lawyer  
 702 disqualification; use of state funds for excess fees not  
 703 authorized.--

704       (1) This chapter does not create any right on behalf of  
 705 any person, provided counsel pursuant to any provision of this  
 706 chapter, to challenge in any form or manner the adequacy of the  
 707 collateral representation provided.

708       (2) With respect to counsel appointed to represent  
 709 defendants in collateral proceedings pursuant to ss. 27.710 and  
 710 27.711, the sole method of assuring adequacy of representation  
 711 provided shall be in accordance with the provisions of s.  
 712 27.711(12).

713       (3) No provision of this chapter shall be construed to  
 714 generate any right on behalf of any attorney appointed pursuant  
 715 to s. 27.710, or seeking appointment pursuant to s. 27.710, to  
 716 be compensated above the amounts provided in s. 27.711.

717       (4) No attorney may be appointed, at state expense, to  
 718 represent any defendant in collateral legal proceedings except  
 719 as expressly authorized in this chapter.

720       (5) The use of state funds for compensation of counsel  
 721 appointed pursuant to s. 27.710 above the amounts set forth in  
 722 s. 27.711 is not authorized.

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

HB 943

2008

726 seeks compensation for services above the amounts provided in s.  
727 27.711.

728 (7) Any attorney who notifies any court, judge, state  
729 attorney, the Attorney General, or the executive director of the  
730 Commission on Capital Cases, that he or she cannot provide  
731 adequate or proper representation under the terms and conditions  
732 set forth in s. 27.711 shall be permanently disqualified from  
733 any attorney registry created under this chapter unless good  
734 cause arises after a change in circumstances.

735 Section 8. This act shall take effect July 1, 2008.