

FOR CONSIDERATION By the Committee on Appropriations

576-02908-13

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1 A bill to be entitled

2 An act relating to postconviction capital collateral  
3 proceedings; amending s. 27.701, F.S.; providing for  
4 the elimination of a capital collateral counsel pilot  
5 program in the northern region of the state; amending  
6 s. 27.702, F.S.; requiring each capital collateral  
7 regional counsel to provide a report to the Justice  
8 Administrative Commission; amending ss. 27.710 and  
9 27.711, F.S.; providing for the assumption of certain  
10 duties of the Chief Financial Officer by the Justice  
11 Administrative Commission; providing an effective  
12 date.

13  
14 Be It Enacted by the Legislature of the State of Florida:

15  
16 Section 1. Section 27.701, Florida Statutes, is amended to  
17 read:

18 27.701 Capital collateral regional counsel.-

19 ~~(1)~~ There are created three regional offices of capital  
20 collateral counsel, which shall be located in a northern,  
21 middle, and southern region of the state. The northern region  
22 shall consist of the First, Second, Third, Fourth, Eighth, and  
23 Fourteenth Judicial Circuits; the middle region shall consist of  
24 the Fifth, Sixth, Seventh, Ninth, Tenth, Twelfth, Thirteenth,  
25 and Eighteenth Judicial Circuits; and the southern region shall  
26 consist of the Eleventh, Fifteenth, Sixteenth, Seventeenth,  
27 Nineteenth, and Twentieth Judicial Circuits. Each regional  
28 office shall be administered by a regional counsel. A regional  
29 counsel must be, and must have been for the preceding 5 years, a

576-02908-13

20137050

30 member in good standing of The Florida Bar or a similar  
31 organization in another state. Each capital collateral regional  
32 counsel shall be appointed by the Governor, and is subject to  
33 confirmation by the Senate. The Supreme Court Judicial  
34 Nominating Commission shall recommend to the Governor three  
35 qualified candidates for each appointment as regional counsel.  
36 The Governor shall appoint a regional counsel for each region  
37 from among the recommendations, or, if it is in the best  
38 interest of the fair administration of justice in capital cases,  
39 the Governor may reject the nominations and request submission  
40 of three new nominees by the Supreme Court Judicial Nominating  
41 Commission. Each capital collateral regional counsel shall be  
42 appointed to a term of 3 years. Vacancies in the office of  
43 capital collateral regional counsel shall be filled in the same  
44 manner as appointments. A person appointed as a regional counsel  
45 may not run for or accept appointment to any state office for 2  
46 years following vacation of office.

47 ~~(2) Notwithstanding the provisions of subsection (1), the~~  
48 ~~responsibilities of the regional office of capital collateral~~  
49 ~~counsel for the northern region of the state shall be met~~  
50 ~~through a pilot program using only attorneys from the registry~~  
51 ~~of attorneys maintained pursuant to s. 27.710. Each attorney~~  
52 ~~participating in the pilot must be qualified to provide~~  
53 ~~representation in federal court. The Auditor General shall~~  
54 ~~schedule a performance review of the pilot program to determine~~  
55 ~~the effectiveness and efficiency of using attorneys from the~~  
56 ~~registry compared to the capital collateral regional counsel.~~  
57 ~~The review, at a minimum, shall include comparisons of the~~  
58 ~~timeliness and costs of the pilot and the counsel and shall be~~

576-02908-13

20137050\_\_

59 ~~submitted to the President of the Senate and the Speaker of the~~  
60 ~~House of Representatives by January 30, 2007. The Legislature~~  
61 ~~may determine whether to convert the pilot program to a~~  
62 ~~permanent program after receipt of the Auditor General's review.~~

63 Section 2. Section 27.702, Florida Statutes, is amended to  
64 read:

65 27.702 Duties of the capital collateral regional counsel;  
66 reports.-

67 (1) The capital collateral regional counsel shall represent  
68 each person convicted and sentenced to death in this state for  
69 the sole purpose of instituting and prosecuting collateral  
70 actions challenging the legality of the judgment and sentence  
71 imposed against such person in the state courts, federal courts  
72 in this state, the United States Court of Appeals for the  
73 Eleventh Circuit, and the United States Supreme Court. The  
74 capital collateral regional counsel and the attorneys appointed  
75 pursuant to s. 27.710 shall file only those postconviction or  
76 collateral actions authorized by statute. The three capital  
77 collateral regional counsel's offices shall function  
78 independently and be separate budget entities, and the regional  
79 counsel shall be the office heads for all purposes. The Justice  
80 Administrative Commission shall provide administrative support  
81 and service to the three offices to the extent requested by the  
82 regional counsel. The three regional offices shall not be  
83 subject to control, supervision, or direction by the Justice  
84 Administrative Commission in any manner, including, but not  
85 limited to, personnel, purchasing, transactions involving real  
86 or personal property, and budgetary matters.

87 (2) The capital collateral regional counsel shall represent

576-02908-13

20137050\_\_

88 persons convicted and sentenced to death within the region in  
89 collateral postconviction proceedings, unless a court appoints  
90 or permits other counsel to appear as counsel of record.

91 (3) (a) The capital collateral regional counsel shall file  
92 motions seeking compensation for representation and  
93 reimbursement for expenses pursuant to 18 U.S.C. s. 3006A when  
94 providing representation to indigent persons in the federal  
95 courts, and shall deposit all such payments received into the  
96 Capital Collateral Regional Counsel Trust Fund.

97 (b) The court having jurisdiction over any nonindigent or  
98 indigent-but-able-to-contribute defendant who has been receiving  
99 the services of the capital collateral regional counsel may  
100 assess attorney ~~attorney's~~ fees and costs against the defendant  
101 at any stage in the proceedings as the court may deem  
102 appropriate. The determination of indigence of any defendant  
103 shall be made pursuant to s. 27.52. Liability for the costs of  
104 such representation may be imposed in the form of a lien against  
105 the property of the nonindigent or indigent-but-able-to-  
106 contribute defendant, which lien shall be enforceable as  
107 provided in s. 27.561 or s. 938.29.

108 (4) (a) The capital collateral regional counsel or private  
109 counsel shall give written notification of each pleading filed  
110 by that office and the name of the person filing the pleading to  
111 the trial court assigned to the case.

112 (b) Each capital collateral regional counsel ~~and each~~  
113 ~~attorney participating in the pilot program in the northern~~  
114 ~~region pursuant to s. 27.701(2)~~ shall provide a quarterly report  
115 to the President of the Senate, and the Speaker of the House of  
116 Representatives, and the Justice Administrative Commission which

576-02908-13

20137050\_\_

117 details the number of hours worked by investigators and legal  
118 counsel per case and the amounts per case expended during the  
119 preceding quarter in investigating and litigating capital  
120 collateral cases.

121 Section 3. Section 27.710, Florida Statutes, is amended to  
122 read:

123 27.710 Registry of attorneys applying to represent persons  
124 in postconviction capital collateral proceedings; certification  
125 of minimum requirements; appointment by trial court.-

126 (1) The executive director of the Justice Administrative  
127 Commission shall compile and maintain a statewide registry of  
128 attorneys in private practice who have certified that they meet  
129 the minimum requirements of s. 27.704(2), who are available for  
130 appointment by the court under this section to represent persons  
131 convicted and sentenced to death in this state in postconviction  
132 collateral proceedings, and who have attended within the last  
133 year a continuing legal education program of at least 10 hours'  
134 duration devoted specifically to the defense of capital cases,  
135 if available. Continuing legal education programs meeting the  
136 requirements of this rule offered by The Florida Bar or another  
137 recognized provider and approved for continuing legal education  
138 credit by The Florida Bar shall satisfy this requirement. The  
139 failure to comply with this requirement may be cause for removal  
140 from the list until the requirement is fulfilled. To ensure that  
141 sufficient attorneys are available for appointment by the court,  
142 when the number of attorneys on the registry falls below 50, the  
143 executive director shall notify the chief judge of each circuit  
144 by letter and request the chief judge to promptly submit the  
145 names of at least three private attorneys who regularly practice

576-02908-13

20137050\_\_

146 criminal law in that circuit and who appear to meet the minimum  
147 requirements to represent persons in postconviction capital  
148 collateral proceedings. The executive director shall send an  
149 application to each attorney identified by the chief judge so  
150 that the attorney may register for appointment as counsel in  
151 postconviction capital collateral proceedings. As necessary, the  
152 executive director may also advertise in legal publications and  
153 other appropriate media for qualified attorneys interested in  
154 registering for appointment as counsel in postconviction capital  
155 collateral proceedings. Not later than September 1 of each year,  
156 and as necessary thereafter, the executive director shall  
157 provide to the Chief Justice of the Supreme Court, the chief  
158 judge and state attorney in each judicial circuit, and the  
159 Attorney General a current copy of its registry of attorneys who  
160 are available for appointment as counsel in postconviction  
161 capital collateral proceedings. The registry must be indexed by  
162 judicial circuit and must contain the requisite information  
163 submitted by the applicants in accordance with this section.

164 (2) To be eligible for court appointment as counsel in  
165 postconviction capital collateral proceedings, an attorney must  
166 certify on an application provided by the executive director  
167 that he or she satisfies the minimum requirements for private  
168 counsel set forth in s. 27.704(2).

169 (3) An attorney who applies for registration and court  
170 appointment as counsel in postconviction capital collateral  
171 proceedings must certify that he or she is counsel of record in  
172 not more than four such proceedings and, if appointed to  
173 represent a person in postconviction capital collateral  
174 proceedings, shall continue such representation under the terms

576-02908-13

20137050\_\_

175 and conditions set forth in s. 27.711 until the sentence is  
176 reversed, reduced, or carried out or unless permitted to  
177 withdraw from representation by the trial court. The court may  
178 not permit an attorney to withdraw from representation without a  
179 finding of sufficient good cause. The court may impose  
180 appropriate sanctions if it finds that an attorney has shown bad  
181 faith with respect to continuing to represent a defendant in a  
182 postconviction capital collateral proceeding. This section does  
183 not preclude the court from reassigning a case to a capital  
184 collateral regional counsel following discontinuation of  
185 representation if a conflict of interest no longer exists with  
186 respect to the case.

187 (4) Each private attorney who is appointed by the court to  
188 represent a capital defendant must enter into a contract with  
189 the Justice Administrative Commission ~~Chief Financial Officer~~.  
190 If the appointed attorney fails to execute the contract within  
191 30 days after the date the contract is mailed to the attorney,  
192 the executive director shall notify the trial court. The Justice  
193 Administrative Commission ~~Chief Financial Officer~~ shall ~~develop~~  
194 ~~the form of the contract,~~ function as contract manager, and  
195 enforce performance of the terms and conditions of the contract.  
196 The Justice Administrative Commission shall approve uniform  
197 contract forms for use in procuring the services of private  
198 court-appointed counsel and uniform procedures and forms for use  
199 by a court-appointed attorney in support of billing for attorney  
200 fees, costs, and related expenses to demonstrate attorney  
201 completion of specified duties. By signing such contract, the  
202 attorney certifies that he or she intends to continue the  
203 representation under the terms and conditions set forth in the

576-02908-13

20137050\_\_

204 contract until the sentence is reversed, reduced, or carried out  
205 or until released by order of the trial court.

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

208 (b) Upon notification by the state attorney or the Attorney  
209 General that:

210 1. Thirty days have elapsed since appointment of the  
211 capital collateral regional counsel and no entry of appearance  
212 has been filed pursuant to s. 924.056; or

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

216

217 the executive director shall immediately notify the trial court  
218 that imposed the sentence of death that the court must  
219 immediately appoint an attorney, selected from the current  
220 registry, to represent such person in collateral actions  
221 challenging the legality of the judgment and sentence in the  
222 appropriate state and federal courts. The court shall have the  
223 authority to strike a notice of appearance filed by a Capital  
224 Collateral Regional Counsel, if the court finds the notice was  
225 not filed in good faith and may so notify the executive director  
226 that the client is no longer represented by the Office of  
227 Capital Collateral Regional Counsel. In making an assignment,  
228 the court shall give priority to attorneys whose experience and  
229 abilities in criminal law, especially in capital proceedings,  
230 are known by the court to be commensurate with the  
231 responsibility of representing a person sentenced to death. The  
232 trial court must issue an order of appointment which contains



576-02908-13

20137050\_\_

233 specific findings that the appointed counsel meets the statutory  
234 requirements and has the high ethical standards necessary to  
235 represent a person sentenced to death.

236 (6) More than one attorney may not be appointed and  
237 compensated at any one time under s. 27.711 to represent a  
238 person in postconviction capital collateral proceedings.  
239 However, an attorney appointed under this section may designate  
240 another attorney to assist him or her if the designated attorney  
241 meets the qualifications of this section.

242 Section 4. Section 27.711, Florida Statutes, is amended to  
243 read:

244 27.711 Terms and conditions of appointment of attorneys as  
245 counsel in postconviction capital collateral proceedings.—

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

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

250 (b) "Executive director" means the executive director of  
251 the Justice Administrative Commission.

252 (c) "Postconviction capital collateral proceedings" means  
253 one series of collateral litigation of an affirmed conviction  
254 and sentence of death, including the proceedings in the trial  
255 court that imposed the capital sentence, any appellate review of  
256 the sentence by the Supreme Court, any certiorari review of the  
257 sentence by the United States Supreme Court, and any authorized  
258 federal habeas corpus litigation with respect to the sentence.  
259 The term does not include repetitive or successive collateral  
260 challenges to a conviction and sentence of death which is  
261 affirmed by the Supreme Court and undisturbed by any collateral

576-02908-13

20137050\_\_

262 litigation.

263 (2) After appointment by the trial court under s. 27.710,  
264 the attorney must immediately file a notice of appearance with  
265 the trial court indicating acceptance of the appointment to  
266 represent the capital defendant throughout all postconviction  
267 capital collateral proceedings, including federal habeas corpus  
268 proceedings, in accordance with this section or until released  
269 by order of the trial court.

270 (3) An attorney appointed to represent a capital defendant  
271 is entitled to payment of the fees set forth in this section  
272 only upon full performance by the attorney of the duties  
273 specified in this section and approval of payment by the trial  
274 court, and the submission of a payment request by the attorney,  
275 subject to the availability of sufficient funding specifically  
276 appropriated for this purpose. An attorney may not be  
277 compensated under this section for work performed by the  
278 attorney before July 1, 2003, while employed by the northern  
279 regional office of the capital collateral counsel. The Justice  
280 Administrative Commission ~~Chief Financial Officer~~ shall notify  
281 the executive director and the court if it appears that  
282 sufficient funding has not been specifically appropriated for  
283 this purpose to pay any fees which may be incurred. The attorney  
284 shall maintain appropriate documentation, including a current  
285 and detailed hourly accounting of time spent representing the  
286 capital defendant. The fee and payment schedule in this section  
287 is the exclusive means of compensating a court-appointed  
288 attorney who represents a capital defendant. When appropriate, a  
289 court-appointed attorney must seek further compensation from the  
290 Federal Government, as provided in 18 U.S.C. s. 3006A or other

576-02908-13

20137050\_\_

291 federal law, in habeas corpus litigation in the federal courts.

292 (4) Upon approval by the trial court, an attorney appointed  
293 to represent a capital defendant under s. 27.710 is entitled to  
294 payment of the following fees by the Justice Administrative  
295 Commission ~~Chief Financial Officer~~:

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

300 (b) The attorney is entitled to \$100 per hour, up to a  
301 maximum of \$20,000, after timely filing in the trial court the  
302 capital defendant's complete original motion for postconviction  
303 relief under the Florida Rules of Criminal Procedure. The motion  
304 must raise all issues to be addressed by the trial court.  
305 However, an attorney is entitled to fees under this paragraph if  
306 the court schedules a hearing on a matter that makes the filing  
307 of the original motion for postconviction relief unnecessary or  
308 if the court otherwise disposes of the case.

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

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

319 (e) The attorney is entitled to \$100 per hour, up to a

576-02908-13

20137050\_\_

320 maximum of \$10,000, after the trial court issues an order,  
321 pursuant to a remand from the Supreme Court, which directs the  
322 trial court to hold further proceedings on the capital  
323 defendant's motion for postconviction relief.

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

329 (g) At the conclusion of the capital defendant's  
330 postconviction capital collateral proceedings in state court,  
331 the attorney is entitled to \$100 per hour, up to a maximum of  
332 \$2,500, after filing a petition for writ of certiorari in the  
333 Supreme Court of the United States.

334 (h) If, at any time, a death warrant is issued, the  
335 attorney is entitled to \$100 per hour, up to a maximum of  
336 \$5,000. This payment shall be full compensation for attorney  
337 ~~attorney's~~ fees and costs for representing the capital defendant  
338 throughout the proceedings before the state courts of Florida.

339  
340 The hours billed by a contracting attorney under this subsection  
341 may include time devoted to representation of the defendant by  
342 another attorney who is qualified under s. 27.710 and who has  
343 been designated by the contracting attorney to assist him or  
344 her.

345 (5) An attorney who represents a capital defendant may use  
346 the services of one or more investigators to assist in  
347 representing a capital defendant. Upon approval by the trial  
348 court, the attorney is entitled to payment from the Justice

576-02908-13

20137050\_\_

349 Administrative Commission ~~Chief Financial Officer~~ of \$40 per  
350 hour, up to a maximum of \$15,000, for the purpose of paying for  
351 investigative services.

352 (6) An attorney who represents a capital defendant is  
353 entitled to a maximum of \$15,000 for miscellaneous expenses,  
354 such as the costs of preparing transcripts, compensating expert  
355 witnesses, and copying documents. Upon approval by the trial  
356 court, the attorney is entitled to payment by the Justice  
357 Administrative Commission ~~Chief Financial Officer~~ of up to  
358 \$15,000 for miscellaneous expenses, except that, if the trial  
359 court finds that extraordinary circumstances exist, the attorney  
360 is entitled to payment in excess of \$15,000.

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

368 (8) By accepting court appointment under s. 27.710 to  
369 represent a capital defendant, the attorney agrees to continue  
370 such representation under the terms and conditions set forth in  
371 this section until the capital defendant's sentence is reversed,  
372 reduced, or carried out, and the attorney is permitted to  
373 withdraw from such representation by a court of competent  
374 jurisdiction. However, if an attorney is permitted to withdraw  
375 or is otherwise removed from representation prior to full  
376 performance of the duties specified in this section, the trial  
377 court shall approve payment of fees and costs for work

576-02908-13

20137050\_\_

378 performed, which may not exceed the amounts specified in this  
379 section. An attorney who withdraws or is removed from  
380 representation shall deliver all files, notes, documents, and  
381 research to the successor attorney within 15 days after notice  
382 from the successor attorney. The successor attorney shall bear  
383 the cost of transmitting the files, notes, documents, and  
384 research.

385 (9) An attorney may not represent more than five defendants  
386 in capital postconviction litigation at any one time.

387 (10) This section does not authorize an attorney who  
388 represents a capital defendant to file repetitive or frivolous  
389 pleadings that are not supported by law or by the facts of the  
390 case. An action taken by an attorney who represents a capital  
391 defendant in postconviction capital collateral proceedings may  
392 not be the basis for a claim of ineffective assistance of  
393 counsel.

394 (11) An attorney appointed under s. 27.710 to represent a  
395 capital defendant may not represent the capital defendant during  
396 a retrial, a resentencing proceeding, a proceeding commenced  
397 under chapter 940, a proceeding challenging a conviction or  
398 sentence other than the conviction and sentence of death for  
399 which the appointment was made, or any civil litigation other  
400 than habeas corpus proceedings.

401 (12) The court shall monitor the performance of assigned  
402 counsel to ensure that the capital defendant is receiving  
403 quality representation. The court shall also receive and  
404 evaluate allegations that are made regarding the performance of  
405 assigned counsel. The Justice Administrative Commission ~~Chief~~  
406 ~~Financial Officer~~, the Department of Legal Affairs, ~~the~~

576-02908-13

20137050\_\_

407 ~~executive director,~~ or any interested person may advise the  
408 court of any circumstance that could affect the quality of  
409 representation, including, but not limited to, false or  
410 fraudulent billing, misconduct, failure to meet continuing legal  
411 education requirements, solicitation to receive compensation  
412 from the capital defendant, or failure to file appropriate  
413 motions in a timely manner.

414 (13) Prior to the filing of a motion for order approving  
415 payment of attorney ~~attorney's~~ fees, costs, or related expenses,  
416 the assigned counsel shall deliver a copy of his intended  
417 billing, together with supporting affidavits and all other  
418 necessary documentation, to the Justice Administrative  
419 Commission Chief Financial Officer's ~~named contract manager~~. The  
420 Justice Administrative Commission shall review the intended  
421 billing ~~contract manager shall have 10 business days from~~  
422 ~~receipt to review the billings, affidavit, and documentation~~ for  
423 completeness and compliance with contractual and statutory  
424 requirements. If the Justice Administrative Commission ~~contract~~  
425 ~~manager~~ objects to any portion of the proposed billing, the  
426 objection and reasons therefor shall be communicated to the  
427 assigned counsel. The assigned counsel may thereafter file his  
428 or her motion for order approving payment of attorney ~~attorney's~~  
429 fees, costs, or related expenses together with supporting  
430 affidavits and all other necessary documentation. The motion  
431 must specify whether the Justice Administrative Commission ~~Chief~~  
432 ~~Financial Officer's contract manager~~ objects to any portion of  
433 the billing or the sufficiency of documentation and, if so, the  
434 reason therefor. A copy of the motions and attachments shall be  
435 served on the Justice Administrative Commission at least 5

576-02908-13

20137050\_\_

436 business days before the date of a hearing. The Justice  
437 Administrative Commission has standing to appear before the  
438 court to contest any motion for an order approving payment of  
439 attorney fees, costs, or related expenses and may participate in  
440 a hearing on the motion by use of telephonic or other  
441 communication equipment ~~A copy of the motion and attachments~~  
442 ~~shall be served on the Chief Financial Officer's contract~~  
443 ~~manager, who shall have standing to file pleadings and appear~~  
444 ~~before the court to contest any motion for order approving~~  
445 ~~payment.~~ The fact that the Justice Administrative Commission  
446 ~~Chief Financial Officer's contract manager~~ has not objected to  
447 any portion of the billing or to the sufficiency of the  
448 documentation is not binding on the court, which retains primary  
449 authority and responsibility for determining the reasonableness  
450 of all billings for fees, costs, and related expenses, subject  
451 to statutory limitations.

452 ~~(14) Each attorney participating in the pilot program in~~  
453 ~~the northern region pursuant to s. 27.701(2), as a condition of~~  
454 ~~payment pursuant to this section, shall report on the~~  
455 ~~performance measures adopted by the Legislature for the capital~~  
456 ~~collateral regional counsel.~~

457 Section 5. This act shall take effect October 1, 2013.