



Rep. Kurt M. Granberg

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09400HB1641ham001

LRB094 02715 RXD 45076 a

1 AMENDMENT TO HOUSE BILL 1641

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 1641 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Capital Crimes Litigation Act is amended by  
5 changing Sections 10 and 15 and by adding Section 5-5 as  
6 follows:

7 (725 ILCS 124/5-5 new)

8 Sec. 5-5. Litigation budget.

9 (a) In a case in which the State has filed a statement of  
10 intent to seek the death penalty, the court shall require  
11 appointed counsel, after counsel has had adequate time to  
12 review the case and prior to engaging trial assistance, to  
13 submit a proposed estimated litigation budget for court  
14 approval by the trial judge, including the use of investigators  
15 and other litigation support provided by the Office of the  
16 State Appellate Defender, that will be subject to modification  
17 in light of facts and developments that emerge as the case  
18 proceeds. Case budgets should be submitted ex parte and filed  
19 and maintained under seal in order to protect the defendant's  
20 right to effective assistance of counsel, right not to  
21 incriminate him or herself, and all applicable privileges.

22 (b) The litigation budget shall serve purposes comparable  
23 to those of private retainer agreements by confirming both the  
24 court's and the attorney's expectations regarding fees and

1 expenses.

2 (c) The budget shall be incorporated into a sealed initial  
3 pretrial order that reflects the understandings of the court  
4 and counsel regarding all matters affecting counsel  
5 compensation and reimbursement and payments for investigative,  
6 expert, and other services, including, but not limited to, the  
7 following matters:

8 (1) The hourly rate and approximated amount of time at  
9 which counsel will be compensated;

10 (2) The hourly rate and approximated amount of time at  
11 which private investigators, other than investigators  
12 employed by the Office of the State Appellate Defender in  
13 the event that they are unable to provide assistance, will  
14 be compensated; and

15 (3) The best preliminary estimate that can be made of  
16 the cost of all services, including, but not limited to,  
17 counsel, expert, and investigative services that are  
18 likely to be needed through the guilt and penalty phases of  
19 the trial. The court shall have discretion to require that  
20 budgets be prepared for shorter intervals of time.

21 (d) Appointed counsel may obtain, subject to later review,  
22 investigative, expert, or other services without prior  
23 authorization if necessary for an adequate defense. Appointed  
24 counsel shall file a written motion, supported by an affidavit,  
25 for modification of the litigation budget nunc pro tunc as soon  
26 as practicable after obtaining trial assistance. The court's  
27 determination shall be based on the written motion and any  
28 attachments that shall be maintained under seal along with the  
29 case budget. Upon the court's finding that it was necessary for  
30 an adequate defense that the appointed counsel obtain  
31 investigative, expert, or other services without prior  
32 authorization, the trial judge may then authorize the services  
33 nunc pro tunc. If the court does not find that it was  
34 necessary, it shall deny payment from the Capital Litigation

1 Trust Fund for the unauthorized services. The court's denial of  
2 a written motion for modification nunc pro tunc shall be a  
3 final and appealable order.

4 (e) An approved budget shall guide counsel's use of time  
5 and resources by indicating the services for which compensation  
6 is authorized. Case budget shall be re-evaluated when justified  
7 by changed or unexpected circumstances and shall be modified by  
8 the court when reasonable and necessary for an adequate  
9 defense.

10 (725 ILCS 124/10)

11 Sec. 10. Court appointed trial counsel; compensation and  
12 expenses.

13 (a) This Section applies only to compensation and expenses  
14 of trial counsel appointed by the court as set forth in Section  
15 5, other than public defenders, for the period after  
16 arraignment and so long as the State's Attorney has not, at any  
17 time, filed a certificate indicating he or she will not seek  
18 the death penalty or stated on the record in open court that  
19 the death penalty will not be sought.

20 (b) Appointed trial counsel shall be compensated upon  
21 presentment and certification by the circuit court of a claim  
22 for services detailing the date, activity, and time duration  
23 for which compensation is sought. Compensation for appointed  
24 trial counsel may be paid at a reasonable rate not to exceed  
25 \$125 per hour. The court shall not authorize payment of bills  
26 that are not properly itemized or that do not comport with the  
27 case budget or any subsequent modifications. A request for  
28 payment shall be presented under seal and reviewed ex parte.

29 Beginning in 2001, every January 20, the statutory rate  
30 prescribed in this subsection shall be automatically increased  
31 or decreased, as applicable, by a percentage equal to the  
32 percentage change in the consumer price index-u during the  
33 preceding 12-month calendar year. "Consumer price index-u"

1 means the index published by the Bureau of Labor Statistics of  
2 the United States Department of Labor that measures the average  
3 change in prices of goods and services purchased by all urban  
4 consumers, United States city average, all items, 1982-84=100.  
5 The new rate resulting from each annual adjustment shall be  
6 determined by the State Treasurer and made available to the  
7 chief judge of each judicial circuit.

8 (c) Appointed trial counsel may also petition the court for  
9 certification of expenses for reasonable and necessary capital  
10 litigation expenses including, but not limited to,  
11 investigatory and other assistance, expert, forensic, and  
12 other witnesses, and mitigation specialists. Counsel may not  
13 petition for certification of expenses that may have been  
14 provided or compensated by the State Appellate Defender under  
15 item (c)(5) of Section 10 of the State Appellate Defender Act.  
16 The court shall not authorize payment of bills that are not  
17 properly itemized or that do not comport with the case budget  
18 or any subsequent modifications. A request for payment shall be  
19 presented under seal and reviewed ex parte.

20 (d) Appointed trial counsel shall petition the court for  
21 certification of compensation and expenses under this Section  
22 periodically during the course of counsel's representation.  
23 The petitions shall be supported by itemized bills showing the  
24 date, the amount of time spent, the work done, and the total  
25 being charged for each entry, and shall comport with the case  
26 budget or any subsequent modifications. A determination by the  
27 court that the written petition submitted by appointed counsel  
28 for compensation is not sufficiently itemized or does not  
29 comport with the case budget shall be issued in writing and  
30 shall contain directions to counsel for compliance. If the  
31 court determines that the compensation and expenses should be  
32 paid from the Capital Litigation Trust Fund, the court shall  
33 certify, on a form created by the State Treasurer, that all or  
34 a designated portion of the amount requested is reasonable,

1 necessary, and appropriate for payment from the Trust Fund.  
2 Certification of compensation and expenses by a court in any  
3 county other than Cook County shall be delivered by the court  
4 to the State Treasurer and paid by the State Treasurer directly  
5 from the Capital Litigation Trust Fund if there are sufficient  
6 moneys in the Trust Fund to pay the compensation and expenses.  
7 The petitions and orders shall be kept under seal and shall be  
8 exempt from Freedom of Information requests until the  
9 conclusion of the trial and appeal of the case, even if the  
10 prosecution chooses not to pursue the death penalty prior to  
11 trial or sentencing. Certification of compensation and  
12 expenses by a court in Cook County shall be delivered by the  
13 court to the county treasurer and paid by the county treasurer  
14 from moneys granted to the county from the Capital Litigation  
15 Trust Fund.

16 (e) The court may order compensation or reasonable and  
17 necessary capital litigation expenses in camera upon a showing  
18 that the basis for the request would substantially interfere  
19 with defendant's defense strategy or otherwise cause unfair  
20 prejudice to the defendant. Any request for an in camera order  
21 shall be in writing. If the court allows an in camera hearing  
22 on any request for compensation or reasonable and necessary  
23 expenses a record shall be made of such proceedings.

24 (f) All matters regarding compensation shall be pursuant to  
25 written petition or motion and written court order. In the  
26 event a hearing is necessary for resolution of the issues, the  
27 hearing may be conducted ex parte only upon a showing that the  
28 basis of the request would substantially interfere with the  
29 defendant's strategy or otherwise cause unfair prejudice to the  
30 defendant and where a record is made of such proceedings. The  
31 record of such ex parte hearings shall be maintained under  
32 seal.

33 (Source: P.A. 91-589, eff. 1-1-00.)

1 (725 ILCS 124/15)

2 Sec. 15. Capital Litigation Trust Fund.

3 (a) The Capital Litigation Trust Fund is created as a  
4 special fund in the State Treasury. The Trust Fund shall be  
5 administered by the State Treasurer to provide moneys for the  
6 appropriations to be made, grants to be awarded, and  
7 compensation and expenses to be paid under this Act. All  
8 interest earned from the investment or deposit of moneys  
9 accumulated in the Trust Fund shall, under Section 4.1 of the  
10 State Finance Act, be deposited into the Trust Fund.

11 (b) Moneys deposited into the Trust Fund shall not be  
12 considered general revenue of the State of Illinois.

13 (c) Moneys deposited into the Trust Fund shall be used  
14 exclusively for the purposes of providing funding for the  
15 prosecution and defense of capital cases and for providing  
16 funding for post-conviction proceedings in capital cases under  
17 Article 122 of the Code of Criminal Procedure of 1963 and in  
18 relation to petitions filed under Section 2-1401 of the Code of  
19 Civil Procedure in relation to capital cases as provided in  
20 this Act and shall not be appropriated, loaned, or in any  
21 manner transferred to the General Revenue Fund of the State of  
22 Illinois.

23 (d) Every fiscal year the State Treasurer shall transfer  
24 from the General Revenue Fund to the Capital Litigation Trust  
25 Fund an amount equal to the full amount of moneys appropriated  
26 by the General Assembly (both by original and supplemental  
27 appropriation), less any unexpended balance from the previous  
28 fiscal year, from the Capital Litigation Trust Fund for the  
29 specific purpose of making funding available for the  
30 prosecution and defense of capital cases and for the litigation  
31 expenses associated with post-conviction proceedings in  
32 capital cases under Article 122 of the Code of Criminal  
33 Procedure of 1963 and in relation to petitions filed under  
34 Section 2-1401 of the Code of Civil Procedure in relation to

1 capital cases. The Public Defender and State's Attorney in Cook  
2 County, the State Appellate Defender, the State's Attorneys  
3 Appellate Prosecutor, and the Attorney General shall make  
4 annual requests for appropriations from the Trust Fund.

5 (1) The Public Defender in Cook County shall request  
6 appropriations to the State Treasurer for expenses  
7 incurred by the Public Defender and for funding for private  
8 appointed defense counsel in Cook County.

9 (2) The State's Attorney in Cook County shall request  
10 an appropriation to the State Treasurer for expenses  
11 incurred by the State's Attorney.

12 (3) The State Appellate Defender shall request a direct  
13 appropriation from the Trust Fund for expenses incurred by  
14 the State Appellate Defender in providing assistance to  
15 trial attorneys under item (c)(5) of Section 10 of the  
16 State Appellate Defender Act and for expenses incurred by  
17 the State Appellate Defender in representing petitioners  
18 in capital cases in post-conviction proceedings under  
19 Article 122 of the Code of Criminal Procedure of 1963 and  
20 in relation to petitions filed under Section 2-1401 of the  
21 Code of Civil Procedure in relation to capital cases and  
22 for the representation of those petitioners by attorneys  
23 approved by or contracted with the State Appellate Defender  
24 and an appropriation to the State Treasurer for payments  
25 from the Trust Fund for the defense of cases in counties  
26 other than Cook County.

27 (4) The State's Attorneys Appellate Prosecutor shall  
28 request a direct appropriation from the Trust Fund to pay  
29 expenses incurred by the State's Attorneys Appellate  
30 Prosecutor and an appropriation to the State Treasurer for  
31 payments from the Trust Fund for expenses incurred by  
32 State's Attorneys in counties other than Cook County.

33 (5) The Attorney General shall request a direct  
34 appropriation from the Trust Fund to pay expenses incurred

1 by the Attorney General in assisting the State's Attorneys  
2 in counties other than Cook County and to pay for expenses  
3 incurred by the Attorney General when the Attorney General  
4 is ordered by the presiding judge of the Criminal Division  
5 of the Circuit Court of Cook County to prosecute or  
6 supervise the prosecution of Cook County cases and for  
7 expenses incurred by the Attorney General in representing  
8 the State in post-conviction proceedings in capital cases  
9 under Article 122 of the Code of Criminal Procedure of 1963  
10 and in relation to petitions filed under Section 2-1401 of  
11 the Code of Civil Procedure in relation to capital cases.

12 The Public Defender and State's Attorney in Cook County,  
13 the State Appellate Defender, the State's Attorneys Appellate  
14 Prosecutor, and the Attorney General may each request  
15 supplemental appropriations from the Trust Fund during the  
16 fiscal year.

17 (e) Moneys in the Trust Fund shall be expended only as  
18 follows:

19 (1) To pay the State Treasurer's costs to administer  
20 the Trust Fund. The amount for this purpose may not exceed  
21 5% in any one fiscal year of the amount otherwise  
22 appropriated from the Trust Fund in the same fiscal year.

23 (2) To pay the capital litigation expenses of trial  
24 defense and post-conviction proceedings in capital cases  
25 under Article 122 of the Code of Criminal Procedure of 1963  
26 and in relation to petitions filed under Section 2-1401 of  
27 the Code of Civil Procedure in relation to capital cases  
28 including, but not limited to, DNA testing, including DNA  
29 testing under Section 116-3 of the Code of Criminal  
30 Procedure of 1963, analysis, and expert testimony,  
31 investigatory and other assistance, expert, forensic, and  
32 other witnesses, and mitigation specialists, and grants  
33 and aid provided to public defenders, appellate defenders,  
34 and any attorney approved by or contracted with the State



1 Appellate Defender representing petitioners in  
2 post-conviction proceedings in capital cases under Article  
3 122 of the Code of Criminal Procedure of 1963 and in  
4 relation to petitions filed under Section 2-1401 of the  
5 Code of Civil Procedure in relation to capital cases or  
6 assistance to attorneys who have been appointed by the  
7 court to represent defendants who are charged with capital  
8 crimes.

9 (3) To pay the compensation of trial attorneys, other  
10 than public defenders or appellate defenders, who have been  
11 appointed by the court to represent defendants who are  
12 charged with capital crimes or attorneys approved by or  
13 contracted with the State Appellate Defender to represent  
14 petitioners in post-conviction proceedings in capital  
15 cases under Article 122 of the Code of Criminal Procedure  
16 of 1963 and in relation to petitions filed under Section  
17 2-1401 of the Code of Civil Procedure in relation to  
18 capital cases.

19 (4) To provide State's Attorneys with funding for  
20 capital litigation expenses and for expenses of  
21 representing the State in post-conviction proceedings in  
22 capital cases under Article 122 of the Code of Criminal  
23 Procedure of 1963 and in relation to petitions filed under  
24 Section 2-1401 of the Code of Civil Procedure in relation  
25 to capital cases including, but not limited to,  
26 investigatory and other assistance and expert, forensic,  
27 and other witnesses necessary to prosecute capital cases.  
28 State's Attorneys in any county other than Cook County  
29 seeking funding for capital litigation expenses and for  
30 expenses of representing the State in post-conviction  
31 proceedings in capital cases under Article 122 of the Code  
32 of Criminal Procedure of 1963 and in relation to petitions  
33 filed under Section 2-1401 of the Code of Civil Procedure  
34 in relation to capital cases including, but not limited to,

1       investigatory and other assistance and expert, forensic,  
2       or other witnesses under this Section may request that the  
3       State's Attorneys Appellate Prosecutor or the Attorney  
4       General, as the case may be, certify the expenses as  
5       reasonable, necessary, and appropriate for payment from  
6       the Trust Fund, on a form created by the State Treasurer.  
7       Upon certification of the expenses and delivery of the  
8       certification to the State Treasurer, the Treasurer shall  
9       pay the expenses directly from the Capital Litigation Trust  
10      Fund if there are sufficient moneys in the Trust Fund to  
11      pay the expenses.

12       (5) To provide financial support through the Attorney  
13      General pursuant to the Attorney General Act for the  
14      several county State's Attorneys outside of Cook County,  
15      but shall not be used to increase personnel for the  
16      Attorney General's Office, except when the Attorney  
17      General is ordered by the presiding judge of the Criminal  
18      Division of the Circuit Court of Cook County to prosecute  
19      or supervise the prosecution of Cook County cases.

20       (6) To provide financial support through the State's  
21      Attorneys Appellate Prosecutor pursuant to the State's  
22      Attorneys Appellate Prosecutor's Act for the several  
23      county State's Attorneys outside of Cook County, but shall  
24      not be used to increase personnel for the State's Attorneys  
25      Appellate Prosecutor.

26       (7) To provide financial support to the State Appellate  
27      Defender pursuant to the State Appellate Defender Act.

28       Moneys expended from the Trust Fund shall be in addition to  
29      county funding for Public Defenders and State's Attorneys, and  
30      shall not be used to supplant or reduce ordinary and customary  
31      county funding.

32       (f) Moneys in the Trust Fund shall be appropriated to the  
33      State Appellate Defender, the State's Attorneys Appellate  
34      Prosecutor, the Attorney General, and the State Treasurer. The

1 State Appellate Defender shall receive an appropriation from  
2 the Trust Fund to enable it to provide assistance to appointed  
3 defense counsel and attorneys approved by or contracted with  
4 the State Appellate Defender to represent petitioners in  
5 post-conviction proceedings in capital cases under Article 122  
6 of the Code of Criminal Procedure of 1963 and in relation to  
7 petitions filed under Section 2-1401 of the Code of Civil  
8 Procedure in relation to capital cases throughout the State and  
9 to Public Defenders in counties other than Cook. The State's  
10 Attorneys Appellate Prosecutor and the Attorney General shall  
11 receive appropriations from the Trust Fund to enable them to  
12 provide assistance to State's Attorneys in counties other than  
13 Cook County and when the Attorney General is ordered by the  
14 presiding judge of the Criminal Division of the Circuit Court  
15 of Cook County to prosecute or supervise the prosecution of  
16 Cook County cases. Moneys shall be appropriated to the State  
17 Treasurer to enable the Treasurer (i) to make grants to Cook  
18 County, (ii) to pay the expenses of Public Defenders, the State  
19 Appellate Defender, the Attorney General, the Office of the  
20 State's Attorneys Appellate Prosecutor, and State's Attorneys  
21 in counties other than Cook County, (iii) to pay the expenses  
22 and compensation of appointed defense counsel and attorneys  
23 approved by or contracted with the State Appellate Defender to  
24 represent petitioners in post-conviction proceedings in  
25 capital cases under Article 122 of the Code of Criminal  
26 Procedure of 1963 and in relation to petitions filed under  
27 Section 2-1401 of the Code of Civil Procedure in relation to  
28 capital cases in counties other than Cook County, and (iv) to  
29 pay the costs of administering the Trust Fund. All expenditures  
30 and grants made from the Trust Fund shall be subject to audit  
31 by the Auditor General.

32 (g) For Cook County, grants from the Trust Fund shall be  
33 made and administered as follows:

34 (1) For each State fiscal year, the State's Attorney

1 and Public Defender must each make a separate application  
2 to the State Treasurer for capital litigation grants.

3 (2) The State Treasurer shall establish rules and  
4 procedures for grant applications. The rules shall require  
5 the Cook County Treasurer as the grant recipient to report  
6 on a periodic basis to the State Treasurer how much of the  
7 grant has been expended, how much of the grant is  
8 remaining, and the purposes for which the grant has been  
9 used. The rules may also require the Cook County Treasurer  
10 to certify on a periodic basis that expenditures of the  
11 funds have been made for expenses that are reasonable,  
12 necessary, and appropriate for payment from the Trust Fund.

13 (3) The State Treasurer shall make the grants to the  
14 Cook County Treasurer as soon as possible after the  
15 beginning of the State fiscal year.

16 (4) The State's Attorney or Public Defender may apply  
17 for supplemental grants during the fiscal year.

18 (5) Grant moneys shall be paid to the Cook County  
19 Treasurer in block grants and held in separate accounts for  
20 the State's Attorney, the Public Defender, and court  
21 appointed defense counsel other than the Cook County Public  
22 Defender, respectively, for the designated fiscal year,  
23 and are not subject to county appropriation.

24 (6) Expenditure of grant moneys under this subsection  
25 (g) is subject to audit by the Auditor General.

26 (7) The Cook County Treasurer shall immediately make  
27 payment from the appropriate separate account in the county  
28 treasury for capital litigation expenses to the State's  
29 Attorney, Public Defender, or court appointed defense  
30 counsel other than the Public Defender, as the case may be,  
31 upon order of the State's Attorney, Public Defender or the  
32 court, respectively.

33 (h) If a defendant in a capital case in Cook County is  
34 represented by court appointed counsel other than the Cook

1 County Public Defender, the appointed counsel shall petition  
2 the court for an order directing the Cook County Treasurer to  
3 pay the court appointed counsel's reasonable and necessary  
4 compensation and capital litigation expenses from grant moneys  
5 provided from the Trust Fund. The petitions shall be supported  
6 by itemized bills showing the date, the amount of time spent,  
7 the work done, and the total being charged for each entry. The  
8 court shall not authorize payment of bills that are not  
9 properly itemized or that do not comport with the case budget  
10 or subsequent modifications. ~~These petitions shall be~~  
11 considered in camera. Orders denying petitions for  
12 compensation or expenses are final. Counsel may not petition  
13 for expenses that may have been provided or compensated by the  
14 State Appellate Defender under item (c) (5) of Section 10 of the  
15 State Appellate Defender Act.

16 (i) In counties other than Cook County, and when the  
17 Attorney General is ordered by the presiding judge of the  
18 Criminal Division of the Circuit Court of Cook County to  
19 prosecute or supervise the prosecution of Cook County cases,  
20 and excluding capital litigation expenses or services that may  
21 have been provided by the State Appellate Defender under item  
22 (c) (5) of Section 10 of the State Appellate Defender Act:

23 (1) Upon certification by the circuit court, on a form  
24 created by the State Treasurer, that all or a portion of  
25 the expenses are reasonable, necessary, and appropriate  
26 for payment from the Trust Fund and the court's delivery of  
27 the certification to the Treasurer, the Treasurer shall pay  
28 the certified expenses of Public Defenders and the State  
29 Appellate Defender from the money appropriated to the  
30 Treasurer for capital litigation expenses of Public  
31 Defenders and post-conviction proceeding expenses in  
32 capital cases of the State Appellate Defender and expenses  
33 in relation to petitions filed under Section 2-1401 of the  
34 Code of Civil Procedure in relation to capital cases in any

1 county other than Cook County, if there are sufficient  
2 moneys in the Trust Fund to pay the expenses.

3 (2) If a defendant in a capital case is represented by  
4 court appointed counsel other than the Public Defender, the  
5 appointed counsel shall petition the court to certify  
6 compensation and capital litigation expenses including,  
7 but not limited to, investigatory and other assistance,  
8 expert, forensic, and other witnesses, and mitigation  
9 specialists as reasonable, necessary, and appropriate for  
10 payment from the Trust Fund. If a petitioner in a capital  
11 case who has filed a petition for post-conviction relief  
12 under Article 122 of the Code of Criminal Procedure of 1963  
13 or a petition under Section 2-1401 of the Code of Civil  
14 Procedure in relation to capital cases is represented by an  
15 attorney approved by or contracted with the State Appellate  
16 Defender other than the State Appellate Defender, that  
17 attorney shall petition the court to certify compensation  
18 and litigation expenses of post-conviction proceedings  
19 under Article 122 of the Code of Criminal Procedure of 1963  
20 or in relation to petitions filed under Section 2-1401 of  
21 the Code of Civil Procedure in relation to capital cases.  
22 Upon certification on a form created by the State Treasurer  
23 of all or a portion of the compensation and expenses  
24 certified as reasonable, necessary, and appropriate for  
25 payment from the Trust Fund and the court's delivery of the  
26 certification to the Treasurer, the State Treasurer shall  
27 pay the certified compensation and expenses from the money  
28 appropriated to the Treasurer for that purpose, if there  
29 are sufficient moneys in the Trust Fund to make those  
30 payments.

31 (3) A petition for capital litigation expenses or  
32 post-conviction proceeding expenses or expenses incurred  
33 in filing a petition under Section 2-1401 of the Code of  
34 Civil Procedure in relation to capital cases under this

1 subsection shall be considered in camera. Orders denying  
2 petitions for compensation or expenses are final.

3 (j) If the Trust Fund is discontinued or dissolved by an  
4 Act of the General Assembly or by operation of law, any balance  
5 remaining in the Trust Fund shall be returned to the General  
6 Revenue Fund after deduction of administrative costs, any other  
7 provision of this Act to the contrary notwithstanding.

8 (Source: P.A. 93-127, eff. 1-1-04; 93-605, eff. 11-19-03;  
9 93-972, eff. 8-20-04.)

10 Section 99. Effective date. This Act takes effect upon  
11 becoming law."