



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

SB1289

Introduced 2/10/2009, by Sen. William R. Haine

SYNOPSIS AS INTRODUCED:

725 ILCS 124/10
725 ILCS 124/15

Amends the Capital Crimes Litigation Act. Provides that each provider of proposed capital litigation services must specify the best preliminary estimate that can be made in light of information received in the case at that point, and the provider must sign this estimate under the provisions of the Code of Civil Procedure relating to verified statements made under the penalty of perjury. Provides that a provider of proposed services must also specify (1) his or her hourly rate; (2) the hourly rate of anyone else in his or her employ for whom reimbursement is sought; and (3) the hourly rate of any person or entity that may be subcontracted to perform these services. Provides that the court must certify reasonable and necessary expenses of the petitioner for travel and per diem (lodging, meals, and incidental expenses). Provides that these expenses must be paid at the rate as promulgated by the United States General Services Administration for these expenses for the date and location in which they were incurred, unless extraordinary reasons are shown for the difference. Provides that if the State Treasurer finds within 14 days of his or her receipt of a certification that the compensation and expenses to be paid are unreasonable, unnecessary, or inappropriate, he or she may return the certification to the court setting forth in detail the objection or objections with a request for the court to review the objection or objections before resubmitting the certification. Provides that the State Treasurer may only seek a review of a specific objection once. Provides that the claimant has 7 days from his or her receipt of the objections to file a response with the court. Provides that with or without further hearing, the court must promptly rule on the objections.

LRB096 03761 RLC 13791 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

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

6 (725 ILCS 124/10)

7 Sec. 10. Court appointed trial counsel; compensation and
8 expenses.

9 (a) This Section applies only to compensation and expenses
10 of trial counsel appointed by the court as set forth in Section
11 5, other than public defenders, for the period after
12 arraignment and so long as the State's Attorney has not, at any
13 time, filed a certificate indicating he or she will not seek
14 the death penalty or stated on the record in open court that
15 the death penalty will not be sought.

16 (a-5) Litigation budget.

17 (1) In a case in which the State has filed a statement
18 of intent to seek the death penalty, the court shall
19 require appointed counsel, including those appointed in
20 Cook County, after counsel has had adequate time to review
21 the case and prior to engaging trial assistance, to submit
22 a proposed estimated litigation budget for court approval,
23 that will be subject to modification in light of facts and

1 developments that emerge as the case proceeds. Case budgets
2 should be submitted ex parte and filed and maintained under
3 seal in order to protect the defendant's right to effective
4 assistance of counsel, right not to incriminate him or
5 herself and all applicable privileges. Case budgets shall
6 be reviewed and approved by the judge assigned to try the
7 case. As provided under subsection (c) of this Section,
8 petitions for compensation shall be reviewed by both the
9 trial judge and the presiding judge or the presiding
10 judge's designee.

11 (2) The litigation budget shall serve purposes
12 comparable to those of private retainer agreements by
13 confirming both the court's and the attorney's
14 expectations regarding fees and expenses. Consideration
15 should be given to employing an ex parte pretrial
16 conference in order to facilitate reaching agreement on a
17 litigation budget at the earliest opportunity.

18 (3) The budget shall be incorporated into a sealed
19 initial pretrial order that reflects the understandings of
20 the court and counsel regarding all matters affecting
21 counsel compensation and reimbursement and payments for
22 investigative, expert and other services, including but
23 not limited to the following matters:

24 (A) The hourly rate at which counsel will be
25 compensated;

26 (B) The hourly rate at which private

1 investigators, other than investigators employed by
2 the Office of the State Appellate Defender, will be
3 compensated; and

4 (C) The best preliminary estimate that can be made
5 of the cost of all services, including, but not limited
6 to, counsel, expert, and investigative services, that
7 are likely to be needed through the guilt and penalty
8 phases of the trial. The court shall have discretion to
9 require that budgets be prepared for shorter intervals
10 of time.

11 (4) Appointed counsel may obtain, subject to later
12 review, investigative, expert or other services without
13 prior authorization if necessary for an adequate defense.
14 If such services are obtained, the presiding judge or the
15 presiding judge's designee shall consider in an ex parte
16 proceeding that timely procurement of necessary services
17 could not await prior authorization. If an ex parte hearing
18 is requested by defense counsel or deemed necessary by the
19 trial judge prior to modifying a budget, the ex parte
20 hearing shall be before the presiding judge or the
21 presiding judge's designee. The judge may then authorize
22 such services nunc pro tunc. If the presiding judge or the
23 presiding judge's designee finds that the services were not
24 reasonable, payment may be denied.

25 (5) An approved budget shall guide counsel's use of
26 time and resources by indicating the services for which

1 compensation is authorized. The case budget shall be
2 re-evaluated when justified by changed or unexpected
3 circumstances and shall be modified by the court when
4 reasonable and necessary for an adequate defense. If an ex
5 parte hearing is requested by defense counsel or deemed
6 necessary by the trial judge prior to modifying a budget,
7 the ex parte hearing shall be before the presiding judge or
8 the presiding judge's designee.

9 (b) Appointed trial counsel shall be compensated upon
10 presentment and certification by the circuit court of a claim
11 for services detailing the date, activity, and time duration
12 for which compensation is sought. Compensation for appointed
13 trial counsel may be paid at a reasonable rate not to exceed
14 \$125 per hour. The court shall not authorize payment of bills
15 that are not properly itemized. A request for payment shall be
16 presented under seal and reviewed ex parte with a court
17 reporter present.

18 Beginning in 2001, every January 20, the statutory rate
19 prescribed in this subsection shall be automatically increased
20 or decreased, as applicable, by a percentage equal to the
21 percentage change in the consumer price index-u during the
22 preceding 12-month calendar year. "Consumer price index-u"
23 means the index published by the Bureau of Labor Statistics of
24 the United States Department of Labor that measures the average
25 change in prices of goods and services purchased by all urban
26 consumers, United States city average, all items, 1982-84=100.

1 The new rate resulting from each annual adjustment shall be
2 determined by the State Treasurer and made available to the
3 chief judge of each judicial circuit.

4 (c) Appointed trial counsel may also petition the court for
5 certification of expenses for reasonable and necessary capital
6 litigation expenses including, but not limited to,
7 investigatory and other assistance, expert, forensic, and
8 other witnesses, and mitigation specialists. Each provider of
9 proposed services must specify the best preliminary estimate
10 that can be made in light of information received in the case
11 at that point, and the provider must sign this estimate under
12 the provisions of Section 1-109 of the Code of Civil Procedure.
13 A provider of proposed services must also specify (1) his or
14 her hourly rate; (2) the hourly rate of anyone else in his or
15 her employ for whom reimbursement is sought; and (3) the hourly
16 rate of any person or entity that may be subcontracted to
17 perform these services. Counsel may not petition for
18 certification of expenses that may have been provided or
19 compensated by the State Appellate Defender under item (c)(5)
20 of Section 10 of the State Appellate Defender Act. The
21 petitions shall be filed under seal and considered ex parte but
22 with a court reporter present for all ex parte conferences. If
23 the requests are submitted after services have been rendered,
24 the requests shall be supported by an invoice describing the
25 services rendered, the dates the services were performed and
26 the amount of time spent. These petitions shall be reviewed by

1 both the trial judge and the presiding judge of the circuit
2 court or the presiding judge's designee. The petitions and
3 orders shall be kept under seal and shall be exempt from
4 Freedom of Information requests until the conclusion of the
5 trial, even if the prosecution chooses not to pursue the death
6 penalty prior to trial or sentencing. If an ex parte hearing is
7 requested by defense counsel or deemed necessary by the trial
8 judge, the hearing shall be before the presiding judge or the
9 presiding judge's designee.

10 (d) Appointed trial counsel shall petition the court for
11 certification of compensation and expenses under this Section
12 periodically during the course of counsel's representation.
13 The petitions shall be supported by itemized bills showing the
14 date, the amount of time spent, the work done and the total
15 being charged for each entry. The court shall not authorize
16 payment of bills that are not properly itemized. The court must
17 certify reasonable and necessary expenses of the petitioner for
18 travel and per diem (lodging, meals, and incidental expenses).
19 These expenses must be paid at the rate as promulgated by the
20 United States General Services Administration for these
21 expenses for the date and location in which they were incurred,
22 unless extraordinary reasons are shown for the difference. The
23 petitions shall be filed under seal and considered ex parte but
24 with a court reporter present for all ex parte conferences. The
25 petitions shall be reviewed by both the trial judge and the
26 presiding judge of the circuit court or the presiding judge's

1 designee. If an ex parte hearing is requested by defense
2 counsel or deemed necessary by the trial judge, the ex parte
3 hearing shall be before the presiding judge or the presiding
4 judge's designee. If the court determines that the compensation
5 and expenses should be paid from the Capital Litigation Trust
6 Fund, the court shall certify, on a form created by the State
7 Treasurer, that all or a designated portion of the amount
8 requested is reasonable, necessary, and appropriate for
9 payment from the Trust Fund. The form must also be signed by
10 lead trial counsel under the provisions of Section 1-109 of the
11 Code of Civil Procedure verifying that the amount requested is
12 reasonable, necessary, and appropriate. Bills submitted for
13 payment by any individual or entity seeking payment from the
14 Capital Litigation Trust Fund must also be accompanied by a
15 form created by the State Treasurer and signed by the
16 individual or responsible agent of the entity under the
17 provisions of Section 1-109 of the Code of Civil Procedure that
18 the amount requested is accurate and truthful and reflects time
19 spent or expenses incurred. Certification of compensation and
20 expenses by a court in any county other than Cook County shall
21 be delivered by the court to the State Treasurer and must be
22 paid by the State Treasurer directly from the Capital
23 Litigation Trust Fund if there are sufficient moneys in the
24 Trust Fund to pay the compensation and expenses. If the State
25 Treasurer finds within 14 days of his or her receipt of a
26 certification that the compensation and expenses to be paid are

1 unreasonable, unnecessary, or inappropriate, he or she may
2 return the certification to the court setting forth in detail
3 the objection or objections with a request for the court to
4 review the objection or objections before resubmitting the
5 certification. The State Treasurer must send the claimant a
6 copy of the objection or objections. The State Treasurer may
7 only seek a review of a specific objection once. The claimant
8 has 7 days from his or her receipt of the objections to file a
9 response with the court. With or without further hearing, the
10 court must promptly rule on the objections. The petitions and
11 orders shall be kept under seal and shall be exempt from
12 Freedom of Information requests until the conclusion of the
13 trial and appeal of the case, even if the prosecution chooses
14 not to pursue the death penalty prior to trial or sentencing.
15 Certification of compensation and expenses by a court in Cook
16 County shall be delivered by the court to the county treasurer
17 and paid by the county treasurer from moneys granted to the
18 county from the Capital Litigation Trust Fund.

19 (Source: P.A. 94-664, eff. 1-1-06.)

20 (725 ILCS 124/15)

21 Sec. 15. Capital Litigation Trust Fund.

22 (a) The Capital Litigation Trust Fund is created as a
23 special fund in the State Treasury. The Trust Fund shall be
24 administered by the State Treasurer to provide moneys for the
25 appropriations to be made, grants to be awarded, and

1 compensation and expenses to be paid under this Act. All
2 interest earned from the investment or deposit of moneys
3 accumulated in the Trust Fund shall, under Section 4.1 of the
4 State Finance Act, be deposited into the Trust Fund.

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

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

17 (d) Every fiscal year the State Treasurer shall transfer
18 from the General Revenue Fund to the Capital Litigation Trust
19 Fund an amount equal to the full amount of moneys appropriated
20 by the General Assembly (both by original and supplemental
21 appropriation), less any unexpended balance from the previous
22 fiscal year, from the Capital Litigation Trust Fund for the
23 specific purpose of making funding available for the
24 prosecution and defense of capital cases and for the litigation
25 expenses associated with post-conviction proceedings in
26 capital cases under Article 122 of the Code of Criminal

1 Procedure of 1963 and in relation to petitions filed under
2 Section 2-1401 of the Code of Civil Procedure in relation to
3 capital cases. The Public Defender and State's Attorney in Cook
4 County, the State Appellate Defender, the State's Attorneys
5 Appellate Prosecutor, and the Attorney General shall make
6 annual requests for appropriations from the Trust Fund.

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

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

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

1 from the Trust Fund for the defense of cases in counties
2 other than Cook County.

3 (4) The State's Attorneys Appellate Prosecutor shall
4 request a direct appropriation from the Trust Fund to pay
5 expenses incurred by the State's Attorneys Appellate
6 Prosecutor and an appropriation to the State Treasurer for
7 payments from the Trust Fund for expenses incurred by
8 State's Attorneys in counties other than Cook County.

9 (5) The Attorney General shall request a direct
10 appropriation from the Trust Fund to pay expenses incurred
11 by the Attorney General in assisting the State's Attorneys
12 in counties other than Cook County and to pay for expenses
13 incurred by the Attorney General when the Attorney General
14 is ordered by the presiding judge of the Criminal Division
15 of the Circuit Court of Cook County to prosecute or
16 supervise the prosecution of Cook County cases and for
17 expenses incurred by the Attorney General in representing
18 the State in post-conviction proceedings in capital cases
19 under Article 122 of the Code of Criminal Procedure of 1963
20 and in relation to petitions filed under Section 2-1401 of
21 the Code of Civil Procedure in relation to capital cases.

22 The Public Defender and State's Attorney in Cook County,
23 the State Appellate Defender, the State's Attorneys Appellate
24 Prosecutor, and the Attorney General may each request
25 supplemental appropriations from the Trust Fund during the
26 fiscal year.

1 (e) Moneys in the Trust Fund shall be expended only as
2 follows:

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

7 (2) To pay the capital litigation expenses of trial
8 defense and 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 including, but not limited to, DNA testing, including DNA
13 testing under Section 116-3 of the Code of Criminal
14 Procedure of 1963, analysis, and expert testimony,
15 investigatory and other assistance, expert, forensic, and
16 other witnesses, and mitigation specialists, and grants
17 and aid provided to public defenders, appellate defenders,
18 and any attorney approved by or contracted with the State
19 Appellate Defender representing petitioners in
20 post-conviction proceedings in capital cases under Article
21 122 of the Code of Criminal Procedure of 1963 and in
22 relation to petitions filed under Section 2-1401 of the
23 Code of Civil Procedure in relation to capital cases or
24 assistance to attorneys who have been appointed by the
25 court to represent defendants who are charged with capital
26 crimes. Reasonable and necessary capital litigation

1 expenses include travel and per diem (lodging, meals, and
2 incidental expenses).

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

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

1 filed under Section 2-1401 of the Code of Civil Procedure
2 in relation to capital cases including, but not limited to,
3 investigatory and other assistance and expert, forensic,
4 or other witnesses under this Section may request that the
5 State's Attorneys Appellate Prosecutor or the Attorney
6 General, as the case may be, certify the expenses as
7 reasonable, necessary, and appropriate for payment from
8 the Trust Fund, on a form created by the State Treasurer.
9 Upon certification of the expenses and delivery of the
10 certification to the State Treasurer, the Treasurer shall
11 pay the expenses directly from the Capital Litigation Trust
12 Fund if there are sufficient moneys in the Trust Fund to
13 pay the expenses.

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

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

1 Appellate Prosecutor.

2 (7) To provide financial support to the State Appellate
3 Defender pursuant to the State Appellate Defender Act.

4 Moneys expended from the Trust Fund shall be in addition to
5 county funding for Public Defenders and State's Attorneys, and
6 shall not be used to supplant or reduce ordinary and customary
7 county funding.

8 (f) Moneys in the Trust Fund shall be appropriated to the
9 State Appellate Defender, the State's Attorneys Appellate
10 Prosecutor, the Attorney General, and the State Treasurer. The
11 State Appellate Defender shall receive an appropriation from
12 the Trust Fund to enable it to provide assistance to appointed
13 defense counsel and attorneys approved by or contracted with
14 the State Appellate Defender to represent petitioners in
15 post-conviction proceedings in capital cases under Article 122
16 of the Code of Criminal Procedure of 1963 and in relation to
17 petitions filed under Section 2-1401 of the Code of Civil
18 Procedure in relation to capital cases throughout the State and
19 to Public Defenders in counties other than Cook. The State's
20 Attorneys Appellate Prosecutor and the Attorney General shall
21 receive appropriations from the Trust Fund to enable them to
22 provide assistance to State's Attorneys in counties other than
23 Cook County and when the Attorney General is ordered by the
24 presiding judge of the Criminal Division of the Circuit Court
25 of Cook County to prosecute or supervise the prosecution of
26 Cook County cases. Moneys shall be appropriated to the State

1 Treasurer to enable the Treasurer (i) to make grants to Cook
2 County, (ii) to pay the expenses of Public Defenders, the State
3 Appellate Defender, the Attorney General, the Office of the
4 State's Attorneys Appellate Prosecutor, and State's Attorneys
5 in counties other than Cook County, (iii) to pay the expenses
6 and compensation of appointed defense counsel and attorneys
7 approved by or contracted with the State Appellate Defender to
8 represent petitioners in post-conviction proceedings in
9 capital cases under Article 122 of the Code of Criminal
10 Procedure of 1963 and in relation to petitions filed under
11 Section 2-1401 of the Code of Civil Procedure in relation to
12 capital cases in counties other than Cook County, and (iv) to
13 pay the costs of administering the Trust Fund. All expenditures
14 and grants made from the Trust Fund shall be subject to audit
15 by the Auditor General.

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

18 (1) For each State fiscal year, the State's Attorney
19 and Public Defender must each make a separate application
20 to the State Treasurer for capital litigation grants.

21 (2) The State Treasurer shall establish rules and
22 procedures for grant applications. The rules shall require
23 the Cook County Treasurer as the grant recipient to report
24 on a periodic basis to the State Treasurer how much of the
25 grant has been expended, how much of the grant is
26 remaining, and the purposes for which the grant has been

1 used. The rules may also require the Cook County Treasurer
2 to certify on a periodic basis that expenditures of the
3 funds have been made for expenses that are reasonable,
4 necessary, and appropriate for payment from the Trust Fund.

5 (3) The State Treasurer shall make the grants to the
6 Cook County Treasurer as soon as possible after the
7 beginning of the State fiscal year.

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

10 (5) Grant moneys shall be paid to the Cook County
11 Treasurer in block grants and held in separate accounts for
12 the State's Attorney, the Public Defender, and court
13 appointed defense counsel other than the Cook County Public
14 Defender, respectively, for the designated fiscal year,
15 and are not subject to county appropriation.

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

18 (7) The Cook County Treasurer shall immediately make
19 payment from the appropriate separate account in the county
20 treasury for capital litigation expenses to the State's
21 Attorney, Public Defender, or court appointed defense
22 counsel other than the Public Defender, as the case may be,
23 upon order of the State's Attorney, Public Defender or the
24 court, respectively.

25 (h) If a defendant in a capital case in Cook County is
26 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. The petitions shall be filed under seal and
10 considered ex parte but with a court reporter present for all
11 ex parte conferences. The petitions shall be reviewed by both
12 the trial judge and the presiding judge of the circuit court or
13 the presiding judge's designee. The petitions and orders shall
14 be kept under seal and shall be exempt from Freedom of
15 Information requests until the conclusion of the trial and
16 appeal of the case, even if the prosecution chooses not to
17 pursue the death penalty prior to trial or sentencing. Orders
18 denying petitions for compensation or expenses are final.
19 Counsel may not petition for expenses that may have been
20 provided or compensated by the State Appellate Defender under
21 item (c)(5) of Section 10 of the State Appellate Defender Act.

22 (i) In counties other than Cook County, and when the
23 Attorney General is ordered by the presiding judge of the
24 Criminal Division of the Circuit Court of Cook County to
25 prosecute or supervise the prosecution of Cook County cases,
26 and excluding capital litigation expenses or services that may

1 have been provided by the State Appellate Defender under item
2 (c) (5) of Section 10 of the State Appellate Defender Act:

3 (1) Upon certification by the circuit court, on a form
4 created by the State Treasurer, that all or a portion of
5 the expenses are reasonable, necessary, and appropriate
6 for payment from the Trust Fund and the court's delivery of
7 the certification to the Treasurer, the Treasurer shall pay
8 the certified expenses of Public Defenders and the State
9 Appellate Defender from the money appropriated to the
10 Treasurer for capital litigation expenses of Public
11 Defenders and post-conviction proceeding expenses in
12 capital cases of the State Appellate Defender and expenses
13 in relation to petitions filed under Section 2-1401 of the
14 Code of Civil Procedure in relation to capital cases in any
15 county other than Cook County, if there are sufficient
16 moneys in the Trust Fund to pay the expenses.

17 (2) If a defendant in a capital case is represented by
18 court appointed counsel other than the Public Defender, the
19 appointed counsel shall petition the court to certify
20 compensation and capital litigation expenses including,
21 but not limited to, investigatory and other assistance,
22 expert, forensic, and other witnesses, and mitigation
23 specialists as reasonable, necessary, and appropriate for
24 payment from the Trust Fund. If a petitioner in a capital
25 case who has filed a petition for post-conviction relief
26 under Article 122 of the Code of Criminal Procedure of 1963

1 or a petition under Section 2-1401 of the Code of Civil
2 Procedure in relation to capital cases is represented by an
3 attorney approved by or contracted with the State Appellate
4 Defender other than the State Appellate Defender, that
5 attorney shall petition the court to certify compensation
6 and litigation expenses of post-conviction proceedings
7 under Article 122 of the Code of Criminal Procedure of 1963
8 or in relation to petitions filed under Section 2-1401 of
9 the Code of Civil Procedure in relation to capital cases.
10 Upon certification on a form created by the State Treasurer
11 of all or a portion of the compensation and expenses
12 certified as reasonable, necessary, and appropriate for
13 payment from the Trust Fund and the court's delivery of the
14 certification to the Treasurer, the State Treasurer shall
15 pay the certified compensation and expenses from the money
16 appropriated to the Treasurer for that purpose, if there
17 are sufficient moneys in the Trust Fund to make those
18 payments.

19 (3) A petition for capital litigation expenses or
20 post-conviction proceeding expenses or expenses incurred
21 in filing a petition under Section 2-1401 of the Code of
22 Civil Procedure in relation to capital cases under this
23 subsection shall be considered under seal and reviewed ex
24 parte with a court reporter present. Orders denying
25 petitions for compensation or expenses are final.

26 (j) If the Trust Fund is discontinued or dissolved by an

1 Act of the General Assembly or by operation of law, any balance
2 remaining in the Trust Fund shall be returned to the General
3 Revenue Fund after deduction of administrative costs, any other
4 provision of this Act to the contrary notwithstanding.

5 (Source: P.A. 93-127, eff. 1-1-04; 93-605, eff. 11-19-03;
6 93-972, eff. 8-20-04; 94-664, eff. 1-1-06.)