**South Carolina General Assembly**

119th Session, 2011-2012

**H. 4465**

**STATUS INFORMATION**

General Bill

Sponsors: Rep. Harrison

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Introduced in the House on January 10, 2012

Currently residing in the House Committee on **Judiciary**

Summary: Post-conviction relief proceeding in capital cases

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

11/29/2011 House Prefiled

11/29/2011 House Referred to Committee on **Judiciary**

1/10/2012 House Introduced and read first time ([House Journal‑page 50](file:///h:\hj%20archive\2012\01-10-12.docx))

1/10/2012 House Referred to Committee on **Judiciary** ([House Journal‑page 51](file:///h:\hj%20archive\2012\01-10-12.docx))

**VERSIONS OF THIS BILL**

[11/29/2011](file:///p:\pprever\2011-12\4465_20111129.docx)

**A** **BILL**

TO AMEND SECTION 17‑27‑160, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO POST‑CONVICTION RELIEF PROCEEDINGS IN CAPITAL CASES, SO AS TO EXEMPT ATTORNEYS CERTIFIED AS LEAD COUNSEL IN DEATH PENALTY CASES AND ATTORNEYS WHO HAVE PREVIOUSLY REPRESENTED INMATES SENTENCED TO THE DEATH PENALTY IN POST‑CONVICTION RELIEF PROCEEDINGS FROM CERTAIN CONTINUING LEGAL EDUCATION REQUIREMENTS BEFORE THEY MAY PARTICIPATE IN DEATH PENALTY POST‑CONVICTION RELIEF PROCEDURES.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 17‑27‑160 of the 1976 Code is amended to read:

“Section 17‑27‑160. (A) If a defendant has been sentenced to death in South Carolina, he must file his application for post‑conviction relief in the county in which he was indicted for the crime resulting in the sentence of death. Upon receipt of the application for post‑conviction relief, the clerk of court shall forward the application to the judge who has been assigned to hear the post‑conviction relief application. This judge shall maintain control over the expedited consideration of the application pursuant to this section. The judge assigned as the post‑conviction relief judge must not be the original sentencing judge. A copy of the application ~~shall~~ must be immediately provided to the solicitor of the circuit in which the applicant was convicted and a copy provided to the Attorney General. The filing of the application does not automatically stay any sentence of death.

(B) Upon receipt of the application for post‑conviction relief, the counsel for the respondent shall file a return within thirty days after receipt of the application.

If the applicant is indigent and desires representation by counsel, two ~~counsel~~ attorneys ~~shall~~ must be immediately appointed to represent the petitioner in this action. At least one of the attorneys appointed to represent the applicant must have previously represented a death‑sentenced inmate in state or federal post‑conviction relief proceedings or (1) must meet the minimum qualifications ~~set forth~~ provided in Section 16‑3‑26(B) and Section 16‑3‑26(F) and (2) have successfully completed, within the previous two years, not less than twelve hours of South Carolina Bar approved continuing legal education or professional training primarily involving advocacy in the field of capital appellate ~~and/~~or post‑conviction defense. This continuing legal education requirement contained in this subsection does not apply to an attorney who is certified as lead counsel pursuant to South Carolina Appellate Court Rule 421(b) or to an attorney who has previously represented an inmate sentenced to death in a state or federal post‑conviction relief proceeding. The Supreme Court may promulgate additional standards for qualifications of counsel in capital post‑conviction proceedings. The court may not appoint an attorney as counsel under this section if the attorney represented the applicant at trial or in a direct appeal unless the applicant and the attorney request appointment on the record or the court finds good cause to make the appointment. Counsel appointed in these cases ~~shall~~ must be compensated from the funding provided in Section 16‑3‑26 in the same manner and rate as appointed trial counsel, provided that Section 16‑3‑26(I) ~~shall~~ does not apply to counsel appointed in post‑conviction relief proceedings. Appointed counsel on appeal from state post‑conviction relief cases ~~shall~~ must be funded and compensated from the funds established for representation of indigents on appeal by the Office of Appellate Defense pursuant to Chapter 4 ~~of~~, Title 17. Nothing in this section ~~shall preclude~~ precludes an out‑of‑state attorney from appearing pro hac vice.

If counsel is the same person appointed as counsel on appeal, the court shall appoint a second counsel to assist in the preparation of the application for post‑conviction relief. If the applicant elects to proceed pro se, any findings made by the court ~~shall~~ must be done on the record and in open court concerning the waiver of the assistance of counsel.

(C) Not later than thirty days after the filing of the state’s return, the judge shall convene a status conference to schedule a hearing on the merits of the application for post‑conviction relief. The hearing must be scheduled within one hundred eighty days from the date of the status conference, unless good cause is shown to justify a continuance.

(D) Within thirty days from the receipt of the transcript, or if the judge requests post trial briefs, within thirty days from the receipt of the post trial briefs, the hearing judge in writing shall make specific findings of fact and state expressly the judge’s conclusions of law relating to each issue. This order is a final judgment subject to a motion for rehearing, a motion to alter or amend judgment, a motion for relief from judgment or order, or any other motion as allowed by the South Carolina Rules of Civil Procedure.

(E) In these expedited capital post‑conviction relief hearings, a court reporter ~~shall~~ must be assigned to take testimony. The transcription of the testimony and record ~~shall~~ must be given priority over all other matters concerning the preparation of the record and, upon completion, ~~shall~~ immediately must be provided to the parties and the Clerk of the Supreme Court of South Carolina.”

SECTION 2. This act takes effect upon approval by the Governor.

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