By: Pena
H.B. No. 1545

A BILL TO BE ENTITLED

1   AN ACT

2 relating to competency to be executed in a capital case.

3   BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

4   SECTION 1. Article 46.05, Code of Criminal Procedure, is

5 amended by amending Subsections (g), (k), and (l) and adding

6 Subsections (m) and (n) to read as follows:

7   (g) If the trial court does not determine that the defendant

8 has made a substantial showing of incompetency, the court shall

9 deny the motion and may set an execution date as otherwise provided

10 by law.

11   (k) The trial court shall determine whether [If], on the

12 basis of reports provided under Subsection (i), the motion, any

13 attached documents, any responsive pleadings, and any evidence

14 introduced in the final competency hearing, the defendant has

15 established [trial court makes a finding] by a preponderance of the

16 evidence that the defendant is incompetent to be executed. If the

17 court makes a finding that the defendant is not incompetent to be

18 executed, the court may set an execution date as otherwise provided

19 by law.

20   (l) Following the trial court's determination under

21 Subsection (k) and on motion of a party, the clerk shall send

22 immediately to the court of criminal appeals in accordance with

23 Section 8(d), Article 11.071, the appropriate documents for that

24 court's review and entry of a judgment [determination] of whether

1 to adopt the trial court's order, findings, or recommendations

2 issued under Subsection (g) or (k). The court of criminal appeals

3 also shall determine whether any existing execution date should be

4 withdrawn and a stay of execution issued while that court is

5 conducting its review or, if a stay is not issued during the review,

6 after entry of its judgment.

7   (m) If a stay of execution is issued by the court of criminal

8 appeals, the trial court periodically shall order that the

9 defendant be reexamined by mental health experts to determine

10 whether the defendant is no longer incompetent to be executed.

11   (n) [(1)] If the court of criminal appeals enters a judgment

12 that a defendant is not incompetent to be executed [trial court does

13 not make the finding as described by Subsection (k)], the court may

14 withdraw any stay of execution issued under Subsection (l), and the

15 trial court may set an execution date as otherwise provided by law.

16   SECTION 2. The change in law made by this Act applies only

17 to a motion filed under Article 46.05, Code of Criminal Procedure,

18 on or after the effective date of this Act. A motion filed under

19 that article before the effective date of this Act is covered by the

20 law in effect on the date the motion was filed, and the former law is

21 continued in effect for that purpose.

22   SECTION 3. This Act takes effect September 1, 2007.