

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

May 25, 2007

TO: Honorable Tom Craddick, Speaker of the House, House of Representatives

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB1267 by Pena (Relating to the compensation of counsel appointed to defend an indigent defendant in a criminal proceeding.), **As Passed 2nd House**

Estimated Two-year Net Impact to General Revenue Related Funds for HB1267, As Passed 2nd House: a negative impact of (\$57,837) through the biennium ending August 31, 2009.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2008	\$0
2009	(\$57,837)
2010	(\$71,417)
2011	(\$71,417)
2012	(\$77,604)

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain/(Loss) from <i>New General Revenue Dedicated Indigent Defense Representation</i>	Probable Savings/ (Cost) from <i>GENERAL REVENUE FUND 1</i>	Probable Savings from <i>GENERAL REVENUE FUND 1</i>	Change in Number of State Employees from FY 2007
2008	\$5,379,000	\$0	\$0	0.0
2009	\$7,939,000	(\$557,837)	\$500,000	4.5
2010	\$7,996,000	(\$571,417)	\$500,000	4.5
2011	\$8,156,000	(\$571,417)	\$500,000	4.5
2012	\$8,319,000	(\$577,604)	\$500,000	4.5

Fiscal Analysis

The bill would amend the Code of Criminal Procedure relating to the compensation, qualifications, and appointments of counsel appointed to defend indigent defendants. The bill would amend the Code of Criminal Procedure relating to the appointment of an attorney to represent an indigent defendant in the custody of a correctional facility, including a facility of the Texas Department of Criminal Justice. The bill would require the state to reimburse a county for the compensation and expenses of counsel representing an indigent inmate defendant. The fiscal implications of these provisions of the bill to the State are not anticipated to be significant.

The bill would amend the Government Code to establish the Office of Capital Writs and the Capital

Writs Committee. The committee would make hiring recommendations for the office director to the Court of Criminal Appeals, which would be required to hire a director no later than September 1, 2008. The Office of Capital Writs would be appointed to represent indigent defendants in appeals of death penalty convictions. If it is necessary that another attorney other than an attorney employed by the Office of Capital Writs be appointed, that attorney would be provided state compensation not to exceed \$25,000 per case, as provided by Articles 11.071 and 26.05 of the Code of Criminal Procedure.

The bill would amend the Code of Criminal Procedure to create a new General Revenue-Dedicated Account for Indigent Defense Representation. The account could only be appropriated to the Task Force on Indigent Defense or for compensating appointed counsel. The bill would allow the appeal of a payment request, by appointed counsel, that had not been addressed within 60 days. The new account would be funded with a \$2 cost on criminal convictions, other than pedestrian or parking offenses. After retaining 10 percent for timely remittance, the treasurer would remit the court cost and filing fee revenue to the Comptroller. The fund, account, or revenue dedication included in this bill would be subject to funds consolidation review by the current Legislature.

The bill would take effect September 1, 2007.

Methodology

New General Revenue Dedicated Account: According to the Comptroller, the fiscal impact for the new \$2 court cost was based on historical data from the Annual Statistical Report for the Texas Judiciary—Fiscal 2006, adjusted for growth, indigency, implementation, and retention by local governments. The court costs for criminal cases were multiplied by the total number of convictions, reduced to reflect the historical non-collection rates, and adjusted for an implementation lag.

Office of Capital Writs: The state provides an appropriation for death penalty representation in the amount of \$500,000 per year from General Revenue through the Judiciary Section, Comptroller's Department. This estimate assumes that beginning in fiscal year 2009, the new Office of Capital Writs would supersede the need for continuing this appropriation and thus this amount is shown as a cost savings.

Beginning in fiscal year 2009, estimated expenses for a Capital Writs Office are based on a forecasted caseload of 16 capital writs per fiscal year. This estimate assumes 4.5 full-time equivalent positions would be needed to staff a capital writs office capable of handling 12 cases per year, with private appointed counsel providing representation for 4 of the 16 cases. Staffing includes the following positions: 2.0 attorneys, 1.0 investigator, 1.0 legal assistant, and one part-time accountant (0.5 FTE) for a total of 4.5 FTEs. Salaries for the positions would cost \$268,226 in fiscal year 2008 and \$292,611 in fiscal year 2010 and each year thereafter, with related fringe benefits costing \$75,811 in fiscal year 2009 and \$82,780 in fiscal year 2010 and each year thereafter.

Operating expenses include supplies, telephone, copy expense, software maintenance, and other office expenses (\$21,325 in fiscal year 2009, \$21,026 in fiscal years 2010 and 2012, and \$22,255 in fiscal year 2012). Fluctuating operating costs relate to replacement cycles for needed information technology equipment. Expert witness expenses, document bank, and other litigation expenses are estimated to average \$6,250 per case and would total \$75,000 per fiscal year to handle a caseload of 12. Additionally, costs of four cases outsourced to private law firms would total \$25,000 per case (as provided by Articles 11.071 and 26.05 of the Code of Criminal Procedure) for a total of \$100,000 per fiscal year.

Technology

Office of Capital Writs. Technology needs include a personal computer for each employee, shared printers, a file server, and software and the replacement of those items. Costs included in amounts described above would total \$17,475 in fiscal year 2009, and \$5,258 in fiscal year 2011.

Local Government Impact

No significant fiscal implication to units of local government is anticipated for provisions relating to compensation, qualifications, and appointments of counsel representing indigent defendants.

Counties statewide could expect a positive fiscal implication for retention of 10 percent of a new \$2 court cost. Statewide, amounts are expected to be \$598,000 in fiscal year 2008, \$871,000 in fiscal year 2009, \$888,000 in fiscal year 2010, \$906,000 in fiscal year 2011, and \$924,000 in fiscal year 2012.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 304 Comptroller of Public Accounts

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