

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

March 30, 2009

TO: Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

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

IN RE: SB1091 by Ellis (Relating to the establishment of the capital writs committee and the office of capital writs and to the appointment and compensation of certain counsel for indigent defendants in a capital case.), **Committee Report 1st House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for SB1091, Committee Report 1st House, Substituted: a positive impact of \$500,000 through the biennium ending August 31, 2011.

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
2010	\$0
2011	\$500,000
2012	\$500,000
2013	\$500,000
2014	\$500,000

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from <i>Fair Defense</i> 5073	Probable Savings/(Cost) from <i>General Revenue Fund</i> 1	Change in Number of State Employees from FY 2009
2010	\$0	\$0	0.0
2011	(\$994,520)	\$500,000	9.5
2012	(\$1,107,634)	\$500,000	9.5
2013	(\$1,032,536)	\$500,000	9.5
2014	(\$1,037,810)	\$500,000	9.5

Fiscal Analysis

The bill would amend the Government Code to add Chapter 78 and amend the Code of Criminal Procedure to establish the Office of Capital Writs and the Capital Writs Committee. The Capital Writs Committee would be composed of five members to be selected by the President of the State Bar of Texas and ratified by the executive committee of the State Bar of Texas. The committee would interview applicants for the position of director of the Office of Capital Writs and make hiring recommendations to the Court of Criminal Appeals. The bill would require the Court of Criminal Appeals to appoint the director of the Office of Capital Writs no later than September 1, 2010.

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 presiding judges of the administrative judicial regions would maintain a statewide list of competent counsel for appointment if it is necessary to appoint an attorney other than an employee of the Office of Capital Writs.

The bill would take effect September 1, 2009.

Methodology

The bill specifies that the Office of Capital Writs would be paid for from General Revenue-Dedicated Fair Defense Account No. 5073. The state already 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 2011, 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 2011, estimated expenses for a Capital Writs Office are based on a forecasted caseload of 13 capital writs per fiscal year. This estimate assumes 9.5 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 1 of the 13 cases. Staffing includes the following positions: 4.0 attorneys, 2.0 investigators, 1.0 legal assistant, 1.0 mitigation specialist, 1.0 network specialist, and one part-time accountant (0.5 FTE) for a total of 9.5 FTEs. Salaries from the positions would cost \$429,141 in fiscal year 2011 and \$607,188 in fiscal year 2012 and each year thereafter, with related fringe benefits costing \$122,606 in fiscal year 2011 and \$173,474 in fiscal year 2012 and each year thereafter.

Operating Expenses include supplies, telephones, copy expenses, software maintenance, and other office expenses (\$48,073 in fiscal year 2011, \$37,172 in fiscal year 2012, \$37,074 in fiscal year 2013, and \$42,348 in fiscal year 2014). Fluctuating operating costs relate primarily to replacement cycles for needed information technology equipment. Expenses for travel are estimated at \$14,700 in fiscal year 2011 and drop to \$9,800 in fiscal year 2012 and each year thereafter. Expert witness expenses, document bank, and other litigation expenses are estimated to average \$13,847 per case and would total to \$180,000 per fiscal year to handle a caseload of 13.

This cost estimate also assumes that the Office of Capital Writs would reimburse outstanding claims from counties for amounts paid to private counsel. This would cover cases previously assigned to private counsel before the Office of Capital Writs would be established but that were still ongoing after the office's inception date that were previously paid from the Comptroller's Department, Judiciary Section. This estimate assumes that \$200,000 would be used for this purpose in fiscal year 2011 and \$100,000 in fiscal year 2012. Additionally, costs of one case 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). The estimate assumes that approximately one case would be outsourced to private counsel per year and the estimate assumes \$25,000 per year in fiscal year 2013 and each year thereafter.

This cost estimate assumes that the Texas Facilities Commission would be able to find office space to house the Office of Capital Writs 9.5 FTEs within existing Capitol Complex facilities. The bill does not specify where the Office of Capital Writs would operate, however the Office of Court Administration and the Comptroller's Department, Judiciary Section have indicated they do not have space to house the staff for the Office of Capital Writs.

Technology

Technology needs include a personal computer for each employee, two shared printers, a file server, a network switch, software for both the personal computers and file server, and the replacement of those items. Costs included in amounts described above would total \$29,496 in fiscal year 2011, and \$4,275 in fiscal year 2014.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

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

LBB Staff: JOB, ESi, ZS, JP