

BILL ANALYSIS

Senate Research Center

C.S.H.B. 1646
By: Gallego (Ellis)
Criminal Justice
5/21/2011
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The system for state habeas corpus review of capital cases was substantially reformed in 1995 with the intent that most capital convictions would receive only one thorough review by the Texas courts through a petition for a writ of habeas corpus. However Section 5, Article 11.071, Code of Criminal Procedure, gives the Court of Criminal Appeals the power to permit a subsequent writ to be heard by the trial court in certain narrow circumstances. The state provides compensation for attorneys who represent indigent petitioners for their initial writ. In the rare cases in which the high standard of Section 5 has been met, cases in which the Court of Criminal Appeals has found that there is sufficient evidence to justify allowing an inmate to file a successor petition, the state does not reimburse the attorney of an indigent petitioner who then proceeds before the trial court on a subsequent writ of habeas corpus.

C.S.H.B. 1646 provides in those few cases where an indigent petitioner's application for a subsequent writ of habeas corpus under Section 5 is permitted to proceed by a ruling from the Court of Criminal Appeals, that the attorney to be compensated up to \$25,000 in costs and fees. This is the same amount the state pays an appointed attorney for work preparing an initial petition for writ of habeas corpus.

C.S.H.B. 1646 amends current law relating to representation of certain applicants for writs of habeas corpus in cases involving the death penalty.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 6, Article 11.071, Code of Criminal Procedure, by adding Subsections (b-1) and (b-2), as follows:

(b-1) Requires the convicting court, if the convicting court receives notice that the requirements of Section 5(a) (prohibiting a court, if a subsequent application for a writ of habeas corpus is filed after filing an initial application, from considering the merits of or grant relief based on the subsequent application unless the application contains sufficient specific facts) for consideration of a subsequent application have been met and if the applicant has not elected to proceed pro se and is not represented by retained counsel, to appoint, in order of priority:

(1) the attorney who represented the applicant in the proceedings under Section 5, if the attorney seeks the appointment;

(2) the office of capital writs, if the office represented the applicant in the proceedings under Section 5 or otherwise accepts the appointment; or

(3) counsel from a list of competent counsel maintained by the presiding judges of the administrative judicial regions under Section 78.056 (Appointment List), Government Code, if the office of capital writs did not represent the applicant as

described by Subdivision (2) or does not accept or is prohibited from accepting the appointment under Section 78.054 (Powers and Duties), Government Code.

(b-2) Requires that compensation and reimbursement of expenses for counsel appointed under Subsection (b-1), regardless of whether the subsequent application is ultimately dismissed, be provided as described by Section 2 (Representation by Counsel), 2A (State Reimbursement; County Obligation), or 3 (Investigation of Grounds for Application), including compensation for time previously spent and reimbursement of expenses previously incurred with respect to the subsequent application.

SECTION 2. Provides that the change in law made by this Act applies to a subsequent application for a writ of habeas corpus filed on or after January 1, 2012. Provides that a subsequent application filed before January 1, 2012, is covered by the law in effect when the application was filed, and the former law is continued in effect for that purpose.

SECTION 3. Effective date: September 1, 2011.