

SENATE AMENDMENTS

2nd Printing

By: Gallego

H.B. No. 1646

A BILL TO BE ENTITLED

AN ACT

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relating to representation of certain applicants for writs of habeas corpus in cases involving the death penalty.

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

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

(b-1) If the convicting court receives notice that the requirements of Section 5(a) 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, the convicting court shall appoint:

(1) the office of capital writs; or

(2) if the office of capital writs does not accept or is prohibited from accepting the appointment under Section 78.054, Government Code, other competent counsel as described by Section 2(f).

(b-2) Regardless of whether the subsequent application is ultimately dismissed, compensation and reimbursement of expenses for counsel appointed under Subsection (b-1) shall be provided as described by Section 2, 2A, or 3, including compensation for time previously spent and reimbursement of expenses previously incurred with respect to the subsequent application.

SECTION 2. The change in law made by this Act applies to a

1 subsequent application for a writ of habeas corpus filed on or after
2 January 1, 2012. A subsequent application filed before January 1,
3 2012, is covered by the law in effect when the application was
4 filed, and the former law is continued in effect for that purpose.

5 SECTION 3. This Act takes effect September 1, 2011.

ADOPTED

MAY 25 2011

Antony Davis
Secretary of the Senate

Robyn Ellis

By: _____

H.B. No. 1646

Substitute the following for ____B. No. ____:

By: ELLIS

C.S. ____B. No. ____

A BILL TO BE ENTITLED

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AN ACT

relating to representation of certain applicants for writs of habeas corpus in cases involving the death penalty.

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

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

(b-1) If the convicting court receives notice that the requirements of Section 5(a) 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, the convicting court shall 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, Government Code, if the office of capital writs:

(A) did not represent the applicant as described by Subdivision (2); or

1 (B) does not accept or is prohibited from
2 accepting the appointment under Section 78.054, Government Code.

3 (b-2) Regardless of whether the subsequent application is
4 ultimately dismissed, compensation and reimbursement of expenses
5 for counsel appointed under Subsection (b-1) shall be provided
6 as described by Section 2, 2A, or 3, including compensation for
7 time previously spent and reimbursement of expenses previously
8 incurred with respect to the subsequent application.

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

15 SECTION 3. This Act takes effect September 1, 2011.

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

May 25, 2011

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

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

IN RE: HB1646 by Gallego (Relating to representation of certain applicants for writs of habeas corpus in cases involving the death penalty.), **As Passed 2nd House**

No significant fiscal implication to the State is anticipated.

The bill would amend the Code of Criminal Procedure, Article 11.071, which establishes the procedures for an application for a writ of habeas corpus in a death penalty case. The bill would provide for either the attorney previously representing the applicant, if the attorney seeks the appointment, the Office of Capital Writs, or other competent counsel to be appointed to represent indigent defendants when the convicting court receives notice that the requirements have been met for a subsequent application for a writ of habeas corpus.

According to the Office of Capital Writs (OCW), there may be additional costs to the new office for increased filings; however, this analysis assumes that costs, if any, could be absorbed within the OCW's existing resources. Accordingly, to the extent the bill would amend habeas corpus procedures, no significant fiscal implication to the state is anticipated. The bill would take effect September 1, 2011.

Local Government Impact

The bill could have costs at the local level in cases where the Office of Capital Writs is not appointed, as any costs for other appointed counsel above \$25,000 incurred for a death penalty writ would be paid by the county of the convicting court; however costs to a given county would vary depending on the number and cost of such cases in a locality in a given year.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 215 Office of Capital Writs

LBB Staff: JOB, SD, TB, ESi, KKR

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

May 22, 2011

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

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

IN RE: HB1646 by Gallego (Relating to representation of certain applicants for writs of habeas corpus in cases involving the death penalty.), **Committee Report 2nd House, Substituted**

No significant fiscal implication to the State is anticipated.

The bill would amend the Code of Criminal Procedure, Article 11.071, which establishes the procedures for an application for a writ of habeas corpus in a death penalty case. The bill would provide for either the attorney previously representing the applicant, if the attorney seeks the appointment, the Office of Capital Writs, or other competent counsel to be appointed to represent indigent defendants when the convicting court receives notice that the requirements have been met for a subsequent application for a writ of habeas corpus.

According to the Office of Capital Writs (OCW), there may be additional costs to the new office for increased filings; however, this analysis assumes that costs, if any, could be absorbed within the OCW's existing resources. Accordingly, to the extent the bill would amend habeas corpus procedures, no significant fiscal implication to the state is anticipated. The bill would take effect September 1, 2011.

Local Government Impact

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Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 215 Office of Capital Writs

LBB Staff: JOB, TB, ESi, KKR

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

May 20, 2011

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

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

IN RE: HB1646 by Gallego (Relating to representation of certain applicants for writs of habeas corpus in cases involving the death penalty.), **As Engrossed**

No significant fiscal implication to the State is anticipated.

The bill would amend the Code of Criminal Procedure, Article 11.071, which establishes the procedures for an application for a writ of habeas corpus in a death penalty case. The bill would provide for either the Office of Capital Writs or other competent counsel to be appointed to represent indigent defendants when the convicting court receives notice that the requirements have been met for a subsequent application for a writ of habeas corpus.

According to the Office of Capital Writs (OCW), the bill may cost an estimated \$150,000 per year for an average of six cases filed per year in cases assigned to outside counsel, where each case costs up to \$25,000 under Art. 11.071, Sec. 2A. This analysis assumes that in most cases the OCW would be the counsel that prepared the successive petition and is later appointed counsel, and estimated costs could be absorbed within the OCW's existing resources.

Accordingly, to the extent the bill would amend habeas corpus procedures, no significant fiscal implication to the state is anticipated. The bill would take effect September 1, 2011.

Local Government Impact

The bill could have costs at the local level in cases where the Office of Capital Writs is not appointed, as any costs for other appointed counsel above \$25,000 incurred for a death penalty writ would be paid by the county of the convicting court; however costs to a given county would vary depending on the number and cost of such cases in a locality in a given year.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 215 Office of Capital Writs

LBB Staff: JOB, TB, ESi, KKR

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

May 6, 2011

TO: Honorable Pete Gallego, Chair, House Committee on Criminal Jurisprudence

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

IN RE: HB1646 by Gallego (Relating to representation of certain applicants for writs of habeas corpus in cases involving the death penalty.), **Committee Report 1st House, Substituted**

No significant fiscal implication to the State is anticipated.

The bill would amend the Code of Criminal Procedure, Article 11.071, which establishes the procedures for an application for a writ of habeas corpus in a death penalty case. The bill would provide for either the Office of Capital Writs or other competent counsel to be appointed to represent indigent defendants when the convicting court receives notice that the requirements have been met for a subsequent application for a writ of habeas corpus.

According to the Office of Capital Writs (OCW), the bill may cost an estimated \$150,000 per year for an average of six cases filed per year in cases assigned to outside counsel, where each case costs up to \$25,000 under Art. 11.071, Sec. 2A. This analysis assumes that in most cases the OCW would be the counsel that prepared the successive petition and is later appointed counsel, and estimated costs could be absorbed within the OCW's existing resources.

Accordingly, to the extent the bill would amend habeas corpus procedures, no significant fiscal implication to the state is anticipated. The bill would take effect September 1, 2011.

Local Government Impact

The bill could have costs at the local level in cases where the Office of Capital Writs is not appointed, as any costs for other appointed counsel above \$25,000 incurred for a death penalty writ would be paid by the county of the convicting court; however costs to a given county would vary depending on the number and cost of such cases in a locality in a given year.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 215 Office of Capital Writs

LBB Staff: JOB, TB, ESi, KKR

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

March 28, 2011

TO: Honorable Pete Gallego, Chair, House Committee on Criminal Jurisprudence

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

IN RE: HB1646 by Gallego (Relating to representation of certain applicants for writs of habeas corpus in cases involving the death penalty.), **As Introduced**

No significant fiscal implication to the State is anticipated.

The bill would amend the Code of Criminal Procedure, Article 11.071, which establishes the procedures for an application for a writ of habeas corpus in a death penalty case. The bill would provide for counsel to be appointed to represent indigent defendants when the convicting court receives notice that the requirements have been met for a subsequent application for a writ of habeas corpus. According to the Office of Capital Writs (OCW), the bill may cost an estimated \$150,000 per year for an average of six cases filed per year in cases assigned to outside counsel, where each case costs up to \$25,000 under Art. 11.071, sec. 2A. This analysis assumes the OCW would be the counsel that prepared the successive petition and is later appointed counsel, and estimated costs could be absorbed within the OCW's existing resources. Accordingly, to the extent the bill would amend habeas corpus procedures, no significant fiscal implication to the state is anticipated. The bill would take effect September 1, 2011.

Local Government Impact

The bill could have significant costs at the local level as any costs above \$25,000 incurred for a death penalty writ would be paid by the county of the convicting court; however costs to a given county would vary depending on the number and cost of such cases in a locality in a given year.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 215 Office of Capital Writs

LBB Staff: JOB, ESi, TB, KKR