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FISCAL IMPACT REPORT

SPONSOR Beam **DATE TYPED** 02/04/04 **HB** 255a/HJC

SHORT TITLE Public Defender Capital Felony Case Contracts **SB** _____

ANALYST Bransford

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY04	FY05	FY04	FY05		
	\$517.0		Indeterminate	Non-Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Duplicates Appropriation in the General Appropriation Act
 Duplicates SB 275
 Relates to SB 234

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring Or Non-Rec	Fund Affected
FY04	FY05			
	\$517.0		Recurring	New Capitol Felony Representation Fund

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

- Public Defender Department (PDD)
- Administrative Office of the District Attorneys (AODA)
- Attorney General (AG)
- Administrative Office of the Courts (AOC)

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee amendment adds a provision requiring the PDD to pay contract attorneys a minimum of \$75 dollars an hour for capital felony cases.

Synopsis of Original Bill

House Bill 255 appropriates \$517 thousand from the general fund to the Public Defender Department for the purpose of creating the capital felony representation fund. The bill authorizes PDD to use money in the fund to contract for representation of defendants in capital felony cases.

Significant Issues

Not all capital felony cases are death penalty cases therefore the provisions of this bill could have a significant fiscal impact. For example the district attorney charged fourteen of the defendants in the Santa Rosa prison riot resulting in the death of a prison guard with capital felony murder, but only sought the death penalty in three cases.

Setting the fee at \$75 an hour limits the PDD from possibly contracting cases for less. If the intention of the legislation is to ensure that death penalty cases are adequately defended, this bill may go beyond that purpose by establishing an hourly rate for all capital felony cases, even those in which the death penalty is not sought.

FISCAL IMPLICATIONS

This bill creates the new Capital Felony Representation Fund and appropriates \$517 thousand in general fund to the Fund. This is a non-recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert to the general fund.

Continuing Appropriation

This bill creates a new fund and provides for continuing appropriations. The LFC objects to including continuing appropriation language in the statutory provision for newly created funds. Earmarking reduces the ability of the legislature to establish spending priorities.

PDD is responsible for reporting fund balance projections to the legislative finance committee annually.

The AG is concerned the bill may also have indeterminate fiscal implications for the AG and the District Attorneys prosecuting capital felony and death penalty cases at the trial level and the criminal appeals level. Increased funding for representation of defendants in capital felony and death penalty case should also include increased funding for the prosecution to keep the criminal justice system balanced.

ADMINISTRATIVE IMPLICATIONS

PDD reports the administrative impact of managing the fund can be accomplished with current resources. However, the House Judiciary amendment may limit the agency's ability to manage its budget.

RELATIONSHIP

This bill relates to SB 275 and SB 234 which makes an appropriation of \$695 thousand to the PDD to continue legal representation for the defendants in capital felony cases as a result of the prison riot at the Guadalupe county correctional facility.

TECHNICAL ISSUES

The bill does not clarify whether contracts for representation of defendants in capital felony cases would be exclusively funded from the "capital felony representation fund" or whether the public defender could continue to pay for such contracts from the department's operating budget. In addition, it may be necessary to clarify whether or not the fund could be used to pay for expert witnesses and other costs related to the case.

VB/prr