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FISCAL IMPACT REPORT

SPONSOR Beam DATE TYPED 3/3/05 HB 576/aHJC

SHORT TITLE Abolish Death Penalty SB _____

ANALYST Medina

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	NFI				

(Parenthesis () Indicate Expenditure Decreases)

Conflicts with SB 173

SOURCES OF INFORMATION

- LFC Files
- Administrative Office of the Courts (AOC)
- Administrative Office of the District Attorney (AODA)
- Attorney General (AG)
- Corrections Department (CD)

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee amendment adds a section of applicability, which states that the provisions of the bill apply to a person convicted of a capital felony on or after July 1, 2005.

Synopsis of Bill

House Bill 576 amends and repeals sections of Chapter 31 NMSA 1978 abolishing the penalty of death for persons convicted of a capital felony. The bill substitutes the penalty of punishment by death with a sentence of life imprisonment without possibility of release or parole. The sentence of life imprisonment with parole would still exist under this bill although an inmate serving this sentence would be eligible for parole only after serving thirty years of incarceration.

This bill repeals Sections 31-14-1 through 31-14-16, 31-18-14.1, 31-20A-2.1 through 31-20A-4, and 31-20A-6 NMSA 1978, the sections relating to capital felony sentencing, capital felony

cases heard by jury, and the execution of the death sentence.

Significant Issues

In New Mexico, the only capital felony is first-degree murder. According to the Attorney General's Office, this measure also repeals the existing provisions for carrying out the death penalty, Sections 31-14-1 through 31-14-16 NMSA 1978, despite the fact that there are inmates on death row at present. Those provisions probably should not be repealed even if this bill is enacted until existing death sentences are either carried out or vacated by the courts. The legislature does not have authority to effectively commute existing death sentences by repealing procedures for inflicting a penalty. (N.M. Const. Art. IV, Sections 33 & 34.)

PERFORMANCE IMPLICATIONS

According to the Corrections Department, the bill could result in a moderate placement burden on the department. Because the department currently operates all of its facilities at or near capacity, it would be difficult for the department to continually absorb new offenders who have been sentenced to life imprisonment without the possibility of release or parole.

FISCAL IMPLICATIONS

The Corrections Department contends that because the medical costs for inmates increase substantially as inmates reach the end of their lives, this bill will create additional costs related to inmate care. However, since there have been only two death penalty sentences have been carried out in the last thirty-five years, the fiscal impact to the department would be insignificant.

According to AOC, Moreover, to assemble a jury for a death penalty case, the district court will summon as many as one thousand (1,000) people. An estimate of what a death penalty case cost for the jury and witness fee fund is approximately \$20,000-\$25,000. In contrast, a non-death penalty murder case cost approximately \$7,000-\$8,000.

ADMINISTRATIVE IMPLICATIONS

A larger prison population could result due to the additional number of offenders sentenced to life imprisonment without the possibility of release or parole. In the long-term, the Corrections Department could potentially experience substantial increases in administrative responsibilities as a result of a larger prison population.

According to AODA, there is a possibility that more capital cases would be pursued under provisions of this bill since the ultimate penalty of death would be absent from the equation and prosecutors in larger judicial districts may pursue true life sentences more often.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

This bill conflicts with Senate Bill 173, which not only preserves the death penalty, but replaces the current life sentence with a new punishment of life imprisonment without possibility of release or parole.

TECHNICAL ISSUES

The bill does not address or override application of the Geriatric Parole Act. According to the Attorney General's Office, persons sentenced under the provisions of this bill might be eligible for parole under the provisions of that Act.

According to AODA, Section 31-20A-1 NMSA 1978 needs to be amended to clarify that defendants are always able to present mitigating circumstances at sentencing. The section refers to the enumerated aggravating circumstances for a capital crime, not aggravating circumstances pursuant to Section 31-18-15.1 NMSA 1978.

ALTERNATIVES

The Attorney General's Office recommends the following: "Legislators may want to consider clarifying application or non-application of Geriatric Parole Act, NMSA 1978, § 31-21-25.1, to inmates serving life without possibility of release or parole."

And "Legislators may want to re-examine provisions of this bill that repeal NMSA 1978, §§ 31-14-1 through 31-14-16, until such time as the two current death row inmates are executed, die awaiting execution, have their sentences overturned or commuted."

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

The sentence of death will continue to be a form of punishment for those convicted of a capital felony.

DXM/njw:yr