

Shawn Sullivan, Director of the Budget

Sam Brownback, Governor

March 31, 2015

The Honorable John Barker, Chairperson
House Committee on Judiciary
Statehouse, Room 149-S
Topeka, Kansas 66612

Dear Representative Barker:

SUBJECT: Fiscal Note for HB 2057 by House Committee on Judiciary

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2057 is respectfully submitted to your committee.

HB 2057 would make a variety of amendments to statutes governing rules for appellate procedure in death penalty cases and rules for motions attacking sentences. The bill would take effect and be in force from and after its publication in the *Kansas Register*.

Because HB 2057 would reduce the amount of time available for capital appellate defenders to prepare appeals and responding briefs to the Kansas Supreme Court, the Board of Indigents Defense Services estimates the bill would require 7.00 new FTE positions in FY 2016 at a cost of \$472,410. The estimate includes \$312,000 for four appellate defenders for death penalty cases, \$73,600 for one appellate defender for non-death penalty cases, and \$86,810 for two legal assistants.

Since at least one capital punishment case would be proceeding through the habeas stage, the Board indicates this estimate would increase to \$1,242,410 for a total of 11.00 FTE positions in FY 2017. The FY 2017 estimate maintains the 7.00 FTE positions added in FY 2016 at a cost of \$472,410 in addition to \$156,000 for two public defender habeas corpus attorneys, \$54,000 for one investigator, \$60,000 for one mitigation specialist, and \$500,000 to contract with private habeas corpus attorneys and staff. The Board indicates private attorneys would be required because the state habeas review must be performed by persons who have had no involvement with the case.

The Office of Judicial Administration indicates the provisions in this bill would require an expedited time frame for decisions in death penalty cases, which are to be given priority by the courts under current law. This expedited time frame for these types of cases would be difficult to comply with because of their nature and complexity, despite how few might be under review at any one time. The Office cannot predict at what point the court could not comply with

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the deadlines and at which time additional justices and non-judicial staff would have to be added. Also, the court could experience a backlog in other cases as attention is focused on these cases. While some of the bill's provisions appear intended to reduce the number of filings and the amount of time to address them, it is anticipated that additional time will be needed for the Court of Appeals to authorize the filing of second and subsequent motions, which is a new requirement in HB 2057, and for the district court to determine if the claim satisfies the new standards in this bill. However, until the courts have an opportunity to operate with the provisions of HB 2057 in place, an accurate estimate of the fiscal effect on expenditures by the Judicial Branch cannot be provided. Any fiscal effect associated with HB 2057 is not reflected in *The FY 2016 Governor's Budget Report*.

Sincerely,



Shawn Sullivan,
Director of the Budget

cc: Mary Rinehart, Judiciary
Pat Scalia, Indigents Defense Services