

2016 Regular Session

HOUSE BILL NO. 1090

BY REPRESENTATIVE GLOVER

INDIGENT DEFENSE: Provides relative to the provision of indigent defense services to capital defendants

1 AN ACT

2 To amend and reenact R.S. 14:30(C) and R.S. 15:178, 181, and 182 and to enact R.S.
3 15:169(C) and 184, relative to capital offenses; to create the Capital Cost
4 Commission; to provide for membership; to provide for powers and duties of the
5 commission; to require available funds prior to proceeding with a capital case or
6 capital appeal; to provide relative to sentencing for certain capital cases; and to
7 provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 14:30(C) is hereby amended and reenacted to read as follows:

10 §30. First degree murder

11 * * *

12 C.(1) If the district attorney ~~seeks~~ intends to seek a capital verdict, the
13 district attorney shall notify the district court and attorney general within thirty days
14 of indictment of the aggravating circumstances provided for in Code of Criminal
15 Procedure Article 905.4(A) upon which he intends to rely. If prosecution is
16 authorized pursuant to the provisions of R.S. 15:184, and the offender is convicted,
17 the offender shall be punished by death or life imprisonment at hard labor without
18 benefit of parole, probation, or suspension of sentence, in accordance with the
19 determination of the jury. The provisions of Code of Criminal Procedure Article 782
20 relative to cases in which punishment may be capital shall apply.

1 (2) If the district attorney does not seek a capital verdict, or does not receive
2 authorization pursuant to R.S. 15:184, the offender shall be punished by life
3 imprisonment at hard labor without benefit of parole, probation or suspension of
4 sentence. The provisions of Code of Criminal Procedure Article 782 relative to cases
5 in which punishment is necessarily confinement at hard labor shall apply.

6 Section 2. R.S. 15:178, 181, and 182 are hereby amended and reenacted and R.S.
7 15:169(C) and 184 are hereby enacted to read as follows:

8 §169. Representation of capital defendants

9 * * *

10 C. Prior to the appointment of counsel in a capital case pursuant to this
11 Section or R.S. 15:178, the Capital Cost Commission shall certify whether sufficient
12 funds exist to maintain a capital prosecution.

13 * * *

14 §178. Appointment of appellate and post-conviction counsel in death penalty case

15 In a capital case in which the trial counsel was provided to an indigent
16 defendant and in which the jury imposed the death penalty, the court, after
17 imposition of the sentence of death, shall appoint the Louisiana Public Defender
18 Board, which shall promptly cause to have enrolled counsel to represent the
19 defendant on direct appeal and in any state post-conviction proceedings, if
20 appropriate. The Capital Cost Commission, as provided by R.S. 15:184, shall certify
21 whether the funds exist to proceed with a capital appeal, post conviction relief, or
22 whether the defendant should be re-sentenced pursuant to the provisions of R.S.
23 14:30(C)(2). An indigent defendant shall have no basis to appeal or contest the
24 decision. Proceedings on appeal or post-conviction shall be stayed pending
25 certification of funding pursuant to R.S. 15:169.

26 * * *

27 §181. Limited effect

28 The provisions of this Part are intended to facilitate the providing of legal
29 services and related expenses only to the extent required by the Constitution of

1 Louisiana or the Constitution of the United States of America and specific statutory
2 provisions affording the right of counsel to indigent defendants in criminal cases.
3 No provision of this Part or rule adopted pursuant thereto creates or shall be
4 construed to confer substantive or procedural rights in favor of any person accused
5 of an offense. Notwithstanding any other provision of law to the contrary, the
6 provisions of R.S. 14:30(C)(2) shall apply unless the Capital Cost Commission has
7 certified that sufficient funds are available pursuant to the provisions of R.S. 15:184.

8 §182. Limited effect in capital cases

9 The provisions of R.S. 15:178 are intended for the sole and exclusive purpose
10 of providing legal services and related expenses for capital defendants who have
11 been sentenced to death and are not intended to confer substantive or procedural
12 rights not otherwise provided by law. The consequence of re-sentencing pursuant
13 to R.S. 15:178 shall not extend or confer additional time to the defendant to appeal.

14 * * *

15 §184. Capital Cost Commission

16 A. The Capital Cost Commission is hereby created and shall consist of seven
17 members selected as follows:

18 (1) The governor shall appoint one member to serve a four-year term and
19 shall designate the chairman.

20 (2) The chief justice of the Louisiana Supreme Court shall designate one
21 member to serve a three-year term.

22 (3) The attorney general shall designate one member to serve a three-year
23 term.

24 (4) The president of the Senate shall designate one member to serve a two-
25 year term.

26 (5) The speaker of the House shall designate one member to serve a two-year
27 term.

28 (6) The chair of the Louisiana Public Defender Board shall designate one
29 member to serve a three-year term.

1 (7) The chair of the Louisiana State Bar Association shall designate one
2 member to serve a three-year term.

3 B. The Capital Cost Commission shall meet at least quarterly to assess the
4 availability of funds, the costs of proceedings in capital cases, and the compliance
5 with the findings set forth by the Capital Punishment Fiscal Impact Commission as
6 provided for in Senate Concurrent Resolution No. 54 of the 2014 Regular Session.

7 C. The Capital Cost Commission shall certify by September first of each
8 calendar year, by vote of a majority of the commission, the availability of funds
9 necessary to proceed in capital cases.

10 D. If insufficient funds exist to proceed in all capital cases, the commission
11 may certify which circumstances identified in Code of Criminal Procedure Article
12 905.4(A)(1) merit proceeding as provided for in R.S. 14:30(C)(2).

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 1090 Original

2016 Regular Session

Glover

Abstract: Creates the Capital Cost Commission and requires sufficient funds to proceed with capital cases and appeals of capital cases.

Present law provides that the district attorney may seek a capital verdict (death penalty) in first degree murder cases and cases of treason at his discretion.

Proposed law provides that the district attorney shall notify the district court and the attorney general of his intention to pursue a capital case for first degree murder. The district attorney may then only proceed with the capital case if the Capital Cost Commission has determined that there are sufficient funds available to proceed with the case.

Proposed law further provides that the Capital Cost Commission shall certify whether funds exist to pursue a capital case appeal post-conviction relief or whether the defendant should be re-sentenced. Proposed law provides that the defendant shall have no basis to contest the decision of the commission.

Proposed law creates the Capital Cost Commission which shall consist of seven members selected as follows:

- (1) The governor shall appoint one member to serve a four-year term and shall designate the chairman.
- (2) The chief justice of the Louisiana Supreme Court shall designate one member to serve a three-year term.

- (3) The attorney general shall designate one member to serve a three-year term.
- (4) The president of the Senate shall designate one member to serve a two-year term.
- (5) The speaker of the House shall designate one member to serve a two-year term.
- (6) The chair of the Louisiana Public Defender Board shall designate one member to serve a three-year term.
- (7) The chair of the Louisiana State Bar Association shall designate one member to serve a three-year term.

Proposed law provides that the Capital Cost Commission shall meet at least quarterly to assess the availability of funds, the costs of proceedings in capital cases, and the compliance with the findings set forth by the Capital Punishment Fiscal Impact Commission as provided for in SCR 54 of the 2014 Regular Session.

Proposed law provides that the commission shall certify by September 1st of each year the availability of funds.

(Amends R.S. 14:30(C) and R.S. 15:178, 181, and 182; Adds 15:169(C) and 184)