

FY 2012-13 LEGISLATIVE APPROPRIATIONS REQUEST
Office of Court Administration, Texas Judicial Council

Table of Contents

Administrator’s Statement	1-2
Organization Chart	1
2.A. Summary of Base Request by Strategy	2.A, 1
2.B. Summary of Base Request by Method of Finance	2.B, 1-3
2.C. Summary of Base Request by Object of Expense	2.C, 1
2.D. Summary of Base Request Objective Outcomes	2.D, 1
2.E. Summary of Exceptional Items Request	2.E, 1
2.F. Summary of Total Request by Strategy	2.F, 1-2
2.G. Summary of Total Request Objective Outcomes	2.G, 1
3.A. Strategy Request	3.A, 1-3
3.B. Rider Revisions and Additions Request.....	3.B, 1
3.C. Rider Appropriations and Unexpended Balances Request.....	3.C, 1-2
4.A. Exceptional Item Request Schedule	4.A, 1-2
4.B. Exceptional Items Strategy Allocation Schedule	4.B, 1
4.C. Exceptional Items Strategy Request	4.C, 1
6.1. 10 Percent Biennial Base Reductions Options Schedule	6.I, 1-11

ADMINISTRATOR'S STATEMENT
82nd Regular Session, Agency Submission, Version I
Automated Budget and Evaluation System of Texas (ABEST)

DATE: 8/25/2010
TIME: 9:19:59AM
PAGE: 1 of 2

Agency code: 215

Agency name: Office of Capital Writs

PURPOSE OF THE OFFICE OF CAPITAL WRITS

The Office of Capital Writs (OCW) was established by SB 1091, 81st Legislature, R.S. The OCW will provide representation to indigent individuals seeking habeas relief in Texas death penalty cases.

OVERVIEW OF OCW's FY 2012-13 LEGISLATIVE APPROPRIATIONS REQUEST

As directed by the state's leadership, this appropriations request reduces the baseline budget for OCW to 95% of FY 2010-11 levels for General Revenue and GR-Dedicated Accounts. At this budget level, the agency can begin operations, procure start-up equipment and furnishings, and hire staff. This should also cover a base level of investigative expenses.

RESTORATION OF 5% BUDGET REDUCTION

OCW is requesting restoration of the 5% budget reductions applied to the FY 2010-11 appropriations for the Office. A defendant in a state capital habeas proceeding has one final opportunity to raise issues of Constitutional dimension in order to establish his innocence or to show that he or she did not receive a fair trial. By its very nature, capital habeas litigation is both important and complicated work.

In April, 2007, the State Bar of Texas Task Force Report on the creation of what was to become the OCW, recommended that "the office be supported with adequate funding that will allow the lawyers of the office to fully investigate all cases and to provide effective capital habeas representation to all clients." Throughout the Report, it was repeated that adequate funding was necessary for the representation of such clients and cases. The funding deemed appropriate by this Legislature however, has already been cut by 5% before the Office could even commence operation.

Due to the complicated nature of the cases brought to the OCW, investigative and expert witness expenses are an integral part of the agency's budget. These expenses include, but are not limited to the presentation of the following: crime scene/forensic evidence; evidence of the client's background and psycho-social history; and evidence of the client's mental state including possible organic brain dysfunction. These services require extensive travel and investigation, and the hiring of appropriate expert witnesses.

Habeas representation must include a thorough and independent investigation of all aspects of a case. Habeas counsel cannot assume that the trial record presents a complete or accurate portrayal of the facts and issues in the case. Thus, the habeas investigation must include both a newfound look at the guilt-phase facts of the case and an investigation into any mitigating evidence that was not presented at trial. Without appropriate funding, the Office of Capital Writs cannot effectively represent its clients. Restoration of the 5% will help ensure that funds are sufficient to provide fair and adequate representation to the clients the agency serves.

RIDER REVISIONS AND ADDITIONS

Included with this appropriations request are two proposed riders. The first lays out the performance measures targets for the office. The second is a request for Unexpended Balance (U.B.) authority to provide the agency with greater flexibility in managing its scarce resources.

ADMINISTRATOR'S STATEMENT
82nd Regular Session, Agency Submission, Version I
Automated Budget and Evaluation System of Texas (ABEST)

DATE: **8/25/2010**
TIME: **9:19:51AM**
PAGE: **2 of 2**

Agency code: **215**

Agency name: **Office of Capital Writs**

SCHEDULE OF EXEMPT POSITIONS

Because OCW is a new agency, its FY 2011 appropriation was included as part of the Office of Court Administration. As a result, no exempt position was established for the new director's position. This LAR requests that the new appropriation pattern for OCW include a Schedule of Exempt Positions listing the Executive Director as a Group 4 position (or equivalent if the salaries for this Group are changed during the 82nd Legislature) at a salary of \$130,000 per year.

SUMMARY

The Office of Capital Writs provides an important function for the state. The OCW will provide representation to indigent individuals seeking habeas relief in Texas death penalty cases.

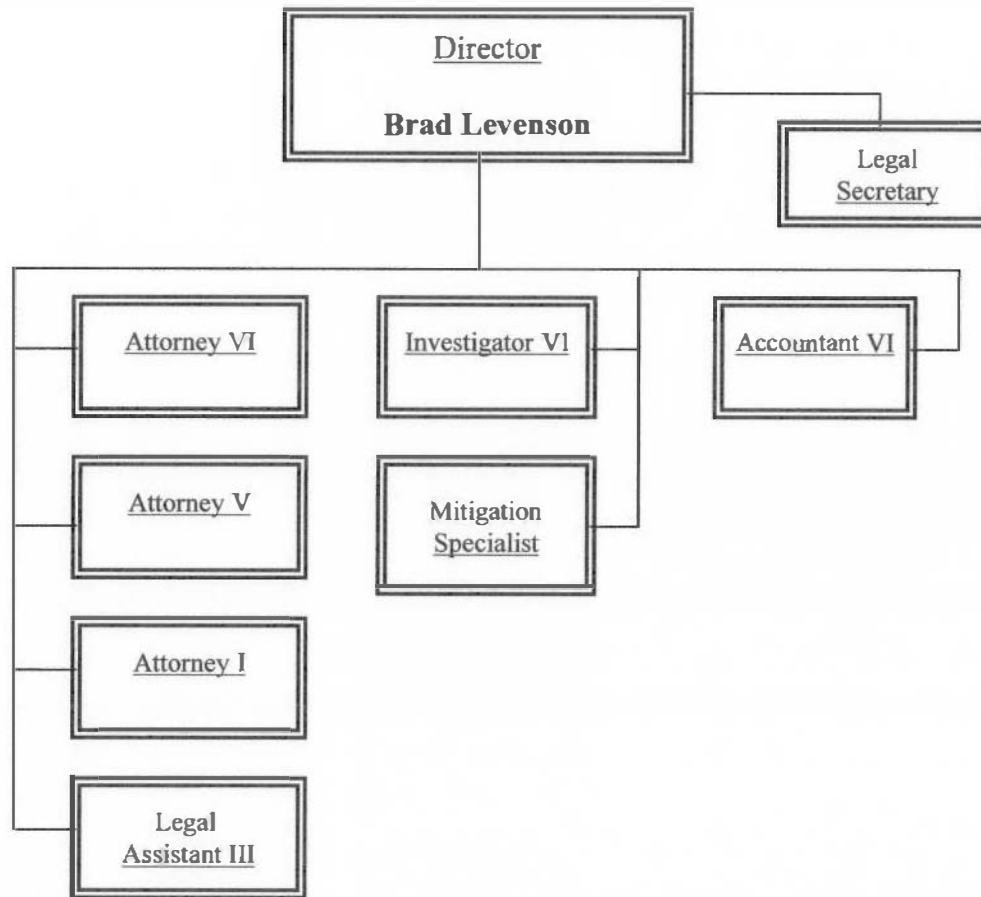
At 95% of FY 10-11 funding levels, the agency will be hard pressed to carry out this function. As discussed above, without adequate staffing and funding, the Office will have difficulty effectively representing its clients. The capital habeas proceeding is an individual's final chance in state court to either prove his or her innocence or to demonstrate the unfairness of his or her trial. Counsel, therefore, must do everything that is legally and ethically conceivable to further that goal. Additional funding for staffing and/or investigative expenses could make the difference in providing fair representation to its clients.

Thank you for your consideration of this request. We will be happy to answer any questions and provide any additional information you may need to make an informed decision.

Respectfully Submitted,

Brad Levenson
Executive Director

**Office of Capital Writs
Organizational Chart
As of September 1, 2010**



2.A. SUMMARY OF BASE REQUEST BY STRATEGY
 82nd Regular Session, Agency Submission, Version 1
 Automated Budget and Evaluation System of Texas (ABEST)

DATE: 8/18/2010
 TIME: 3:56:16PM

Agency code: 215 Agency name: Office of Capital Writs

Goal / Objective / STRATEGY	Exp 2009	Est 2010	Bud 2011	Req 2012	Req 2013
<u>1</u> Death Penalty Habeas Representation					
<u>1</u> Death Penalty Habeas Representation					
1 DEATH PENALTY REPRESENTATION	0	0	991,262	991,262	991,262
TOTAL, GOAL 1	\$0	\$0	\$991,262	\$991,262	\$991,262
TOTAL, AGENCY STRATEGY REQUEST	\$0	\$0	\$991,262	\$991,262	\$991,262
TOTAL, AGENCY RIDER APPROPRIATIONS REQUEST*				\$0	\$0
GRAND TOTAL, AGENCY REQUEST	\$0	\$0	\$991,262	\$991,262	\$991,262
<u>METHOD OF FINANCING:</u>					
General Revenue Funds:					
1 General Revenue Fund	0	0	469,794	469,794	469,794
SUBTOTAL	\$0	\$0	\$469,794	\$469,794	\$469,794
General Revenue Dedicated Funds:					
5073 Fair Defense	0	0	521,468	521,468	521,468
SUBTOTAL	\$0	\$0	\$521,468	\$521,468	\$521,468
TOTAL, METHOD OF FINANCING	\$0	\$0	\$991,262	\$991,262	\$991,262

*Rider appropriations for the historical years are included in the strategy amounts.

2.B. SUMMARY OF BASE REQUEST BY METHOD OF FINANCE
 82nd Regular Session, Agency Submission, Version 1
 Automated Budget and Evaluation System of Texas (ABEST)

DATE: 8/18/2010
 TIME: 5:07:08PM

Agency code: 215

Agency name: Office of Capital Writs

METHOD OF FINANCING	Exp 2009	Est 2010	Bud 2011	Req 2012	Req 2013
<u>GENERAL REVENUE</u>					
<u>1</u> General Revenue Fund					
<i>REGULAR APPROPRIATIONS</i>					
Original Appropriations	\$0	\$0	\$0	\$469,794	\$469,794
<i>TRANSFERS</i>					
Art IX, Sec. 17.104, Contingcy Appn, SB 1091, Office of Capital Writs	\$0	\$0	\$494,520	\$0	\$0
<i>LAPSED APPROPRIATIONS</i>					
Five Percent Reduction (2010-11 Biennium)	\$0	\$0	\$(24,726)	\$0	\$0
TOTAL, General Revenue Fund	\$0	\$0	\$469,794	\$469,794	\$469,794
TOTAL, ALL GENERAL REVENUE	\$0	\$0	\$469,794	\$469,794	\$469,794

GENERAL REVENUE FUND - DEDICATED

5073 GR Dedicated - Fair Defense Account No. 5073

REGULAR APPROPRIATIONS

Original Appropriations

\$0	\$0	\$0	\$521,468	\$521,468
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TRANSFERS

2.B. SUMMARY OF BASE REQUEST BY METHOD OF FINANCE
 82nd Regular Session, Agency Submission, Version I
 Automated Budget and Evaluation System of Texas (ABEST)

DATE: 8/18/2010
 TIME: 5:07:13PM

Agency code: 215 Agency name: Office of Capital Writs

METHOD OF FINANCING	Exp 2009	Est 2010	Bud 2011	Req 2012	Req 2013
<u>GENERAL REVENUE FUND - DEDICATED</u>					
Art IX, Sec. 17.104, Contingcy Appn, SB 1091, Office of Capital Writs					
	\$0	\$0	\$548,914	\$0	\$0
<i>LAPSED APPROPRIATIONS</i>					
Five Percent Reduction (2010-11 Biennium)					
	\$0	\$0	\$(27,446)	\$0	\$0
TOTAL, GR Dedicated - Fair Defense Account No. 5073	\$0	\$0	\$521,468	\$521,468	\$521,468
TOTAL, ALL GENERAL REVENUE FUND - DEDICATED	\$0	\$0	\$521,468	\$521,468	\$521,468
TOTAL, GR & GR-DEDICATED FUNDS	\$0	\$0	\$991,262	\$991,262	\$991,262
GRAND TOTAL	\$0	\$0	\$991,262	\$991,262	\$991,262
<u>FULL-TIME-EQUIVALENT POSITIONS</u>					
TRANSFERS					
Art IX, Sec. 17.104, Contingcy Appn, SB 1091, Office of Capital Writs					
	0.0	0.0	3.3	9.5	9.5
TOTAL, ADJUSTED FTES	0.0	0.0	3.3	9.5	9.5

2.B. SUMMARY OF BASE REQUEST BY METHOD OF FINANCE
82nd Regular Session, Agency Submission, Version 1
Automated Budget and Evaluation System of Texas (ABEST)

DATE: 8/18/2010
TIME: 5:07:13PM

Agency code: 215

Agency name: Office of Capital Writs

METHOD OF FINANCING	Exp 2009	Est 2010	Bud 2011	Req 2012	Req 2013
NUMBER OF 100% FEDERALLY FUNDED FTEs	0.0	0.0	0.0	0.0	0.0

2.C. SUMMARY OF BASE REQUEST BY OBJECT OF EXPENSE
 82nd Regular Session, Agency Submission, Version I
 Automated Budget and Evaluation System of Texas (ABEST)

DATE: **8/24/2010**
 TIME: **12:42:17PM**

Agency code: **215**

Agency name: **Office of Capital Writs**

OBJECT OF EXPENSE	Exp 2009	Est 2010	Bud 2011	BL 2012	BL 2013
1001 SALARIES AND WAGES	\$0	\$0	\$544,035	\$631,805	\$665,673
1002 OTHER PERSONNEL COSTS	\$0	\$0	\$1,440	\$1,440	\$1,680
2001 PROFESSIONAL FEES AND SERVICES	\$0	\$0	\$154,576	\$200,000	\$210,000
2003 CONSUMABLE SUPPLIES	\$0	\$0	\$5,000	\$5,000	\$7,500
2004 UTILITIES	\$0	\$0	\$4,000	\$4,000	\$5,000
2005 TRAVEL	\$0	\$0	\$14,700	\$14,700	\$14,700
2006 RENT - BUILDING	\$0	\$0	\$42,696	\$0	\$0
2007 RENT - MACHINE AND OTHER	\$0	\$0	\$2,400	\$2,400	\$3,600
2009 OTHER OPERATING EXPENSE	\$0	\$0	\$222,415	\$131,917	\$83,109
OOE Total (Excluding Riders)	\$0	\$0	\$991,262	\$991,262	\$991,262
OOE Total (Riders)					
Grand Total	\$0	\$0	\$991,262	\$991,262	\$991,262

2.D. SUMMARY OF BASE REQUEST OBJECTIVE OUTCOMES

82nd Regular Session, Agency Submission, Version 1
 Automated Budget and Evaluation system of Texas (ABEST)

Date : 8/23/2010
 Time: 10:39:33AM

Agency code: 215

Agency name: Office of Capital Writs

Goal/ Objective / Outcome	Exp 2009	Est 2010	Bud 2011	BL 2012	BL 2013
1 Death Penalty Habeas Representation					
1 Death Penalty Habeas Representation					
1 # Writ Apps for Which Evidentiary Hearings are Granted by Trial Court	0.00	0.00	0.00	1.00	3.00

2.E. SUMMARY OF EXCEPTIONAL ITEMS REQUEST
 82nd Regular Session, Agency Submission, Version 1
 Automated Budget and Evaluation System of Texas (ABEST)

DATE: 8/18/2010
 TIME : 3:56:51PM

Agency code: 215

Agency name: Office of Capital Writs

Priority	Item	2012			2013			Biennium	
		GRand GR/GR Dedicated	All Funds	FTEs	GR and GR Dedicated	All Funds	FTEs	GRand GR Dedicated	All Funds
1	Restore 5% Budget Cut	\$52,172	\$52,172		\$52,172	\$52,172		\$104,344	\$104,344
Total, Exceptional Items Request		\$52,172	\$52,172		\$52,172	\$52,172		\$104,344	\$104,344

Method of Financing

General Revenue	\$24,726	\$24,726		\$24,726	\$24,726		\$49,452	\$49,452
General Revenue - Dedicated	27,446	27,446		27,446	27,446		54,892	54,892
Federal Funds								
Other Funds								
	\$52,172	\$52,172		\$52,172	\$52,172		\$104,344	\$104,344

Full Time Equivalent Positions

Number of 100% Federally Funded FTEs

0.0

0.0

2.F. SUMMARY OF TOTAL REQUEST BY STRATEGY
 82nd Regular Session, Agency Submission, Version I
 Automated Budget and Evaluation System of Texas (ABEST)

DATE : 8/18/2010
 TIME : 3:57:21PM

Agency code: 215	Agency name: Office of Capital Writs					
<i>Goal/Objective/STRATEGY</i>	Base 2012	Base 2013	Exceptional 2012	Exceptional 2013	Total Request 2012	Total Request 2013
1 Death Penalty Habeas Representation						
1 <i>Death Penalty Habeas Representation</i>						
1 DEATH PENALTY REPRESENTATION	\$991,262	\$991,262	\$52,172	\$52,172	\$1,043,434	\$1,043,434
TOTAL, GOAL 1	\$991,262	\$991,262	\$52,172	\$52,172	\$1,043,434	\$1,043,434
TOTAL, AGENCY STRATEGY REQUEST	\$991,262	\$991,262	\$52,172	\$52,172	\$1,043,434	\$1,043,434
TOTAL, AGENCY RIDER APPROPRIATIONS REQUEST						
GRAND TOTAL, AGENCY REQUEST	\$991,262	\$991,262	\$52,172	\$52,172	\$1,043,434	\$1,043,434

2.F. SUMMARY OF TOTAL REQUEST BY STRATEGY
 82nd Regular Session, Agency Submission, Version I
 Automated Budget and Evaluation System of Texas (ABEST)

DATE : 8/18/2010
 TIME : 3:57:27PM

Agency code: 215 Agency name: Office of Capital Writs							
<i>Goal/Objective/STRATEGY</i>		Base 2012	Base 2013	Exceptional 2012	Exceptional 2013	Total Request 2012	Total Request 2013
General Revenue Funds:							
1 General Revenue Fund		\$469,794	\$469,794	\$24,726	\$24,726	\$494,520	\$494,520
		\$469,794	\$469,794	\$24,726	\$24,726	\$494,520	\$494,520
General Revenue Dedicated Funds:							
5073 Fair Defense		521,468	521,468	27,446	27,446	548,914	548,914
		\$521,468	\$521,468	\$27,446	\$27,446	\$548,914	\$548,914
TOTAL, METHOD OF FINANCING		\$991,262	\$991,262	\$52,172	\$52,172	\$1,043,434	\$1,043,434
FULL TIME EQUIVALENT POSITIONS		9.5	9.5	0.0	0.0	9.5	9.5

2. G. SUMMARY OF TOTAL REQUEST OBJECTIVE OUTCOMES

82nd Regular Session, Agency Submission, Version 1
Automated Budget and Evaluation system of Texas (ABEST)

Date : 8/23/2010
Time: 10:40:24AM

Agency code: 215

Agency name: Office of Capital Writs

Goal/ Objective / Outcome

	BL 2012	BL 2013	Excp 2012	Excp 2013	Total Request 2012	Total Request 2013
1						
1						
1 # Writ Apps for Which Evidentiary Hearings are Granted by Trial Court	1.00	3.00			1.00	3.00

3.A. STRATEGY REQUEST
 82nd Regular Session, Agency Submission, Version 1
 Automated Budget and Evaluation System of Texas (ABEST)

DATE: 8/24/2010
 TIME: 12:38:55PM

Agency code: 215 Agency name: **Office of Capital Writs**

GOAL:	1	Death Penalty Habeas Representation	Statewide Goal/Benchmark:	0	0
OBJECTIVE:	1	Death Penalty Habeas Representation	Service Categories:		
STRATEGY:	1	Death Penalty Habeas Representation	Service:	NA	Income: NA Age: NA

CODE	DESCRIPTION	Exp 2009	Est 2010	Bud 2011	BL 2012	BL 2013
Efficiency Measures:						
1	Percentage of Writs Filed on a Timely Basis	0.00	0.00	100.00	100.00	100.00
Explanatory/Input Measures:						
1	Number of Writ Applications Filed	0.00	0.00	0.00	3.00	9.00
Objects of Expense:						
1001	SALARIES AND WAGES	\$0	\$0	\$544,035	\$631,805	\$665,673
1002	OTHER PERSONNEL COSTS	\$0	\$0	\$1,440	\$1,440	\$1,680
2001	PROFESSIONAL FEES AND SERVICES	\$0	\$0	\$154,576	\$200,000	\$210,000
2003	CONSUMABLE SUPPLIES	\$0	\$0	\$5,000	\$5,000	\$7,500
2004	UTILITIES	\$0	\$0	\$4,000	\$4,000	\$5,000
2005	TRAVEL	\$0	\$0	\$14,700	\$14,700	\$14,700
2006	RENT - BUILDING	\$0	\$0	\$42,696	\$0	\$0
2007	RENT - MACHINE AND OTHER	\$0	\$0	\$2,400	\$2,400	\$3,600
2009	OTHER OPERATING EXPENSE	\$0	\$0	\$222,415	\$131,917	\$83,109
TOTAL, OBJECT OF EXPENSE		\$0	\$0	\$991,262	\$991,262	\$991,262
Method of Financing:						
1	General Revenue Fund	\$0	\$0	\$469,794	\$469,794	\$469,794
SUBTOTAL, MOF (GENERAL REVENUE FUNDS)		\$0	\$0	\$469,794	\$469,794	\$469,794
Method of Financing:						
5073	Fair Defense	\$0	\$0	\$521,468	\$521,468	\$521,468
SUBTOTAL, MOF (GENERAL REVENUE FUNDS - DEDICATED)		\$0	\$0	\$521,468	\$521,468	\$521,468

3.A. STRATEGY REQUEST
 82nd Regular Session, Agency Submission, Version 1
 Automated Budget and Evaluation System of Texas (ABEST)

DATE: 8/24/2010
 TIME: 12:40:59PM

Agency code: **215** Agency name: **Office of Capital Writs**

GOAL: 1 Death Penalty Habeas Representation Statewide Goal/Benchmark: 0 0
 OBJECTIVE: 1 Death Penalty Habeas Representation Service Categories:
 STRATEGY: 1 Death Penalty Habeas Representation Service: NA Income: NA Age: NA

CODE	DESCRIPTION	Exp 2009	Est 2010	Bud 2011	BL 2012	BL 2013
TOTAL, METHOD OF FINANCE (INCLUDING RIDERS)					\$991,262	\$991,262
TOTAL, METHOD OF FINANCE (EXCLUDING RIDERS)		\$0	\$0	\$991,262	\$991,262	\$991,262
FULL TIME EQUIVALENT POSITIONS:		0.0	0.0	3.3	9.5	9.5

STRATEGY DESCRIPTION AND JUSTIFICATION:

STATUTORY AUTHORITY: Tx Govt Code, Chapter 78

Under this strategy, the Office of Capital Writs (“OCW”) provides representation to individuals seeking habeas relief in Texas death penalty cases. At 95% of FY 2010-11 funding, the agency can begin operations, procure start-up equipment (including, but not limited to, computers, servers, telephones, and copiers), furnishings (including, but not limited to, desks, chairs, computer tables, filing cabinets, and bookshelves), and hire and pay office staff. This 95% should also cover a base level of investigative expenses. Due to the nature of cases brought to the OCW, investigative expenses are an important and integral part of the agency’s budget. These expenses include, but are not limited to, the following: (1) travel and investigation to the scene(s) of the crime; (2) travel and investigatory interviews of family members and friends regarding the client’s background and psycho-social history; and, (3) hiring and payment of expert witnesses [1]. Without these services, the Office of Capital Writs cannot effectively represent its indigent clients.

[1] Types of expert witnesses include, but are not limited to: psychiatrists, psychologists, neuropsychologists, social historians, and forensic experts.

EXTERNAL/INTERNAL FACTORS IMPACTING STRATEGY:

Over half the funding for the Office of Capital Writs (and this exceptional item) comes from the Fair Defense Account, a dedicated account in General Revenue. Its funding comes from court costs and fees collected by county and municipal courts and other revenues dedicated to indigent defense by statute. The vast majority of these fees are collected from convicted criminal defendants.

3.A. STRATEGY REQUEST
82nd Regular Session, Agency Submission, Version 1
Automated Budget and Evaluation System of Texas (ABEST)

DATE: 8/24/2010
TIME: 12:40:59PM

SUMMARY TOTALS:

OBJECTS OF EXPENSE:	\$0	\$0	\$991,262	\$991,262	\$991,262
METHODS OF FINANCE (INCLUDING RIDERS):				\$991,262	\$991,262
METHODS OF FINANCE (EXCLUDING RIDERS):	\$0	\$0	\$991,262	\$991,262	\$991,262
FULL TIME EQUIVALENT POSITIONS:	0.0	0.0	3.3	9.5	9.5

3.B. RIDER REVISIONS AND ADDITIONS REQUEST

Agency Code: 215	Agency Name: Office of Capital Writs	Prepared by: Glenna Rhea Bowman	Date: 08/30/10	Request Level: Baseline															
Current Rider Number	Proposed Rider Language																		
701	<p><u>Performance Measure Targets.</u> The following is a listing of the key performance target levels for the Office of Capital Writs. <u>It is the intent of the Legislature that appropriations made by this Act be utilized in the most efficient and effective manner possible to achieve the intended mission of the Office of Capital Writs. In order to achieve the objectives and service standards established by this Act, the Office of Capital Writs shall make every effort to attain the following designated key performance target levels associated with each item of appropriation.</u></p> <table style="width: 100%; margin-left: 20px;"> <thead> <tr> <th style="width: 80%;"></th> <th style="text-align: center; width: 10%;"><u>2012</u></th> <th style="text-align: center; width: 10%;"><u>2013</u></th> </tr> </thead> <tbody> <tr> <td><u>A. Goal:</u> DEATH PENALTY POST-CONVICTION HABEAS REPRESENTATION</td> <td></td> <td></td> </tr> <tr> <td><u>Outcome (Results/Impact):</u> Number Writ Applications for Which Evidentiary Hearings are Granted by Trail Court</td> <td style="text-align: center;">1.0</td> <td style="text-align: center;">3.0</td> </tr> <tr> <td><u>Efficiency:</u> Percentage of Writs Filed on a Timely Basis</td> <td style="text-align: center;">100%</td> <td style="text-align: center;">100%</td> </tr> <tr> <td><u>Explanatory:</u> Number of Writ Applications Filed</td> <td style="text-align: center;">3.0</td> <td style="text-align: center;">9.0</td> </tr> </tbody> </table> <p><i>This is a new rider for the Office of Capital Writs, established by SB 1091, 81st Legislature, R.S. It sets out the performance measures targets for FY 2012 and FY 2013 for this new office.</i></p>					<u>2012</u>	<u>2013</u>	<u>A. Goal:</u> DEATH PENALTY POST-CONVICTION HABEAS REPRESENTATION			<u>Outcome (Results/Impact):</u> Number Writ Applications for Which Evidentiary Hearings are Granted by Trail Court	1.0	3.0	<u>Efficiency:</u> Percentage of Writs Filed on a Timely Basis	100%	100%	<u>Explanatory:</u> Number of Writ Applications Filed	3.0	9.0
	<u>2012</u>	<u>2013</u>																	
<u>A. Goal:</u> DEATH PENALTY POST-CONVICTION HABEAS REPRESENTATION																			
<u>Outcome (Results/Impact):</u> Number Writ Applications for Which Evidentiary Hearings are Granted by Trail Court	1.0	3.0																	
<u>Efficiency:</u> Percentage of Writs Filed on a Timely Basis	100%	100%																	
<u>Explanatory:</u> Number of Writ Applications Filed	3.0	9.0																	
702	<p><u>Unexpended Balances.</u> <u>Any unexpended balances appropriated above in fiscal year 2012 are hereby appropriated to the Office of Capital Writs for fiscal year 2013 for the same purposes.</u></p> <p><i>This is a new rider requested for the Office of Capital Writs. Investigation costs are a major component of this agency's budget. Uncertainty exists around these costs because they vary based on the particulars of the case being filed. In addition, payments for outside counsel may not be billed in the year services begin. Authority to carry forward unexpended balances between years of the biennium provides greater flexibility in managing expenses that may vary greatly from year to year.</i></p>																		

4.A. EXCEPTIONAL ITEM REQUEST SCHEDULE
 82nd Regular Session, Agency Submission, Version 1
 Automated Budget and Evaluation System of Texas (ABEST)

DATE: 8/23/2010
 TIME: 10:42:45AM

Agency code: 215

Agency name:
Office of Capital Writs

CODE	DESCRIPTION	Excp 2012	Excp 2013
	Item Name: Restore 5% Budget Reduction Amount		
	Item Priority: 1		
	Includes Funding for the Following Strategy or Strategies: 01-01-01 Death Penalty Habeas Representation		
OBJECTS OF EXPENSE:			
2001	PROFESSIONAL FEES AND SERVICES	52,172	52,172
	TOTAL, OBJECT OF EXPENSE	\$52,172	\$52,172
METHOD OF FINANCING:			
1	General Revenue Fund	24,726	24,726
5073	Fair Defense	27,446	27,446
	TOTAL, METHOD OF FINANCING	\$52,172	\$52,172

DESCRIPTION / JUSTIFICATION:

This exceptional item would restore the 5% budget reductions applied to the FY 2010-11 appropriations for the Office of Capital Writs.

Due to the complicated nature of cases brought to the Office of Capital Writs, investigative expenses (including expert witness fees) are an integral part of the agency's budget. These expenses involve investigation and presentation of the following: crime scene/forensic evidence; evidence of the client's background and psycho-social history; and, evidence of the client's mental state including possible organic brain dysfunction. Without these important services, the Office of Capital Writs cannot effectively represent its clients. Restoration of the 5% will help ensure that funds are sufficient to provide fair representation to the clients the agency serves.

EXTERNAL/INTERNAL FACTORS:

4.A. EXCEPTIONAL ITEM REQUEST SCHEDULE
82nd Regular Session, Agency Submission, Version 1
Automated Budget and Evaluation System of Texas (ABEST)

DATE: 8/23/2010
TIME: 10:42:34AM

Agency code: 215

Agency name:

Office of Capital Writs

CODE DESCRIPTION

Excp 2012

Excp 2013

The restoration of the lost budgetary funding (approximately \$50,000 per year) could benefit the OCW in numerous ways, as circumstances dictate. For example, with the restoration of this money the Office could hire an additional, part-time junior attorney within its current FTE cap. The additional attorney position would assist the Office in effectively representing its clients. In that regard, while death penalty guidelines anticipate that attorneys will not represent more than four to six capital clients at a time, it is anticipated that attorneys at the OCW will be assigned, at any given time, well over eight capital cases. An additional lawyer would lower the number of represented clients per lawyer to an acceptable level.

The restored funding could also be used for expert witness fees. While each capital post-conviction case is different, it is anticipated that some of the cases will require several expert witnesses to be hired. While the OCW will do everything it can to contain these costs, some factors are out of its control, including the fees charged for such expert witnesses. To that end, should an OCW case be granted an evidentiary hearing, it is anticipated that expert witness fees would consume a large amount of funding for the presentation of evidence.

Over half the funding for the Office of Capital Writs (and this exceptional item) comes from the Fair Defense Account, a dedicated account in General Revenue. Its funding comes from court costs and fees collected by county and municipal courts and other revenues dedicated to indigent defense by statute. The vast majority of these fees are collected from convicted criminal defendants.

4.B. EXCEPTIONAL ITEMS STRATEGY ALLOCATION SCHEDULE

82nd Regular Session, Agency Submission, Version 1
 Automated Budget and Evaluation System of Texas (ABEST)

DATE: 8/18/2010

TIME: 3:58:50PM

Agency code: 215 Agency name: Office of Capital Writs

Code Description	Excp 2012	Excp 2013
Item Name: Restore 5% Budget Reduction Amount		
Allocation to Strategy: 1-1-1 Death Penalty Habeas Representation		
OBJECTS OF EXPENSE:		
2001 PROFESSIONAL FEES AND SERVICES	52,172	52,172
TOTAL, OBJECT OF EXPENSE	\$52,172	\$52,172
METHOD OF FINANCING:		
1 General Revenue Fund	24,726	24,726
5073 Fair Defense	27,446	27,446
TOTAL, METHOD OF FINANCING	\$52,172	\$52,172

4.C. EXCEPTIONAL ITEMS STRATEGY REQUEST
 82nd Regular Session, Agency Submission, Version 1
 Automated Budget and Evaluation System of Texas (ABEST)

DATE: 8/18/2010
TIME: 3:59:04PM

Agency Code: **215**

Agency name: **Office of Capital Writs**

GOAL: 1 Death Penalty Habeas Representation
 OBJECTIVE: 1 Death Penalty Habeas Representation
 STRATEGY: 1 Death Penalty Habeas Representation

Statewide Goal/Benchmark: 0 - 0
 Service Categories:
 Service: NA Income: NA Age: NA

CODE DESCRIPTION	Excp 2012	Excp 2013
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OBJECTS OF EXPENSE:

2001 PROFESSIONAL FEES AND SERVICES	52,172	52,172
Total, Objects of Expense	\$52,172	\$52,172

METHOD OF FINANCING:

1 General Revenue Fund	24,726	24,726
5073 Fair Defense	27,446	27,446
Total, Method of Finance	\$52,172	\$52,172

EXCEPTIONAL ITEM(S) INCLUDED IN STRATEGY:

Restore 5% Budget Reduction Amount

6.1 10 PERCENT BIENNIAL BASE REDUCTION OPTIONS
 82nd Regular Session, Agency Submission, Version I
 Automated Budget and Evaluation System of Texas (ABEST)

Date: 8/23/2010
 Time: 10:41:55AM

Agency code: **215** Agency name: **Office of Capital Writs**

Item Priority and Name/ Method of Financing	REVENUE LOSS			REDUCTION AMOUNT			TARGET
	2012	2013	Biennial Total	2012	2013	Biennial Total	

I First 5% Reduction

Category: Programs - Service Reductions (FTEs-Layoffs)

Item Comment: A 5% reduction to the Office of Capital Writs (on top of the 5% reduction in the baseline budget) would require a reduction of a half-time attorney position in FY 2012 or a full-time investigative position. In addition, the agency would have to cut an additional attorney position at the end of FY 2013. This would mean that fewer cases could be accepted by the Office (defeating the legislative purpose behind the creation of the Office) or the remaining staff would have to work overtime to keep up with the workload, which could compromise the effectiveness of the Office's representation of its clients.

Strategy: 1-1-1 Death Penalty Habeas Representation

General Revenue Funds

1 General Revenue Fund	\$0	\$0	\$0	\$17,772	\$29,207	\$46,979
General Revenue Funds Total	\$0	\$0	\$0	\$17,772	\$29,207	\$46,979
<u>Gr Dedicated</u>						
5073 Fair Defense	\$0	\$0	\$0	\$19,728	\$32,419	\$52,147
Gr Dedicated Total	\$0	\$0	\$0	\$19,728	\$32,419	\$52,147
Item Total	\$0	\$0	\$0	\$37,500	\$61,626	\$99,126

FTE Reductions (From FY 2012 and FY 2013 Base Request) 0.5 0.7

2 Second 5% Reduction

Category: Programs - Service Reductions (FTEs-Layoffs)

Item Comment: A 5% reduction to the Office of Capital Writs (on top of the 5% reduction in the baseline budget and the first additional 5% reduction) would require the agency to cut an attorney position at the end of FY 2012, rather than in FY 2013 (as laid out in the first 5% reduction). The work performed by the office is staff-intensive; therefore, reductions in staff result in reductions in performance. This would mean that fewer cases could be accepted by the office (again, defeating the very purpose behind the Office's creation).

Strategy: 1-1-1 Death Penalty Habeas Representation

General Revenue Funds

1 General Revenue Fund	\$0	\$0	\$0	\$14,989	\$31,990	\$46,979
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6.1 10 PERCENT BIENNIAL BASE REDUCTION OPTIONS
 82nd Regular Session, Agency Submission, Version I
 Automated Budget and Evaluation System of Texas (ABEST)

Date: 8/23/2010
 Time: 10:42:07AM

Agency code: **215** Agency name: **Office of Capital Writs**

<u>Item Priority and Name/ Method of Financing</u>	REVENUE LOSS			REDUCTION AMOUNT			TARGET
	2012	2013	Biennial Total	2012	2013	Biennial Total	
General Revenue Funds Total	\$0	\$0	\$0	\$14,989	\$31,990	\$46,979	
<u>Gr Dedicated</u>							
5073 Fair Defense	\$0	\$0	\$0	\$16,638	\$35,510	\$52,148	
Gr Dedicated Total	\$0	\$0	\$0	\$16,638	\$35,510	\$52,148	
Item Total	\$0	\$0	\$0	\$31,627	\$67,500	\$99,127	
FTE Reductions (From FY 2012 and FY 2013 Base Request)				0.3	0.7		
AGENCY TOTALS							
General Revenue Total				\$32,761	\$61,197	\$93,958	\$93,959
GR Dedicated Total				\$36,366	\$67,929	\$104,295	\$104,294
Agency Grand Total	\$0	\$0	\$0	\$69,127	\$129,126	\$198,253	
Difference, Options Total Less Target							
Agency FTE Reductions (From FY 2012 and FY 2013 Base Request)				0.8	1.4		