

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/CS/SB 250

SPONSOR: Governmental Oversight and Productivity Committee, Judiciary Committee, and Senator Campbell

SUBJECT: Student Loans/Attorneys

DATE: January 22, 2003 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Greenbaum</u>	<u>Lang</u>	<u>JU</u>	<u>Fav/CS</u>
2.	<u>White</u>	<u>Wilson</u>	<u>GO</u>	<u>Fav/CS</u>
3.	_____	_____	<u>AAV</u>	_____
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The Committee Substitute for Committee Substitute for Senate Bill 250 requires the Justice Administrative Commission (JAC) to administer a student loan repayment program for certain assistant state attorneys and assistant public defenders. The purpose of the program is to provide financial assistance to lawyers in these positions with outstanding government student loans used for law school.

This bill provides that once an assistant state attorney or assistant public defender has served in that position for three years, the JAC shall make yearly payments of \$3,000 to the student loan lender on behalf of the attorney. When an attorney completes six years of continuous service, the payment amount is increased to \$5,000. Student loan assistance ends upon completion of payment on the loan or completion of thirteen years of continuous service.

The bill provides that the program shall be annually funded by an appropriation from the General Revenue Fund to the JAC.

This bill creates section 43.201 of the Florida Statutes.

II. Present Situation:

State Attorneys and Public Defenders

In Florida, criminal prosecutions are conducted by the state attorney.¹ Florida is divided into twenty judicial circuits and each circuit has an elected state attorney. Indigent criminal

¹ Art. V, s. 17, Fla. Const.

defendants are represented by a public defender.² Each judicial circuit has an elected public defender. State attorneys and public defenders are permitted to hire assistants to help them fulfill their duties.³

Effective December 1, 2003, the annual minimum salary for assistant state attorneys and assistant public defenders will be \$37,566. Assistant state attorneys and assistant public defenders are considered senior management service for retirement purposes.

Costs of Attending Law School

Tuition at the Florida State University College of Law for an in-state student is \$195.97 per credit hour and for an out-of-state student is \$788.93 per credit hour for the 2003-04 academic year.⁴ A full-time class load for a law student is 24 credit hours.⁵ An in-state student pays \$5,393.04 and an out-of-state student pays \$19,624.08 annually for tuition at this school.⁶ Private law school tuition costs are significantly greater. For example, tuition at the Nova-Southeastern University Shepard Broad School of Law for the 2003-2004 school year for a full-time student is \$22,500.⁷

Two types of federal student loans are available to students for law school financing pursuant to the Higher Education Act of 1965, as amended. The first is the Perkins Loan, which is a low-interest (5%) loan available to students with exceptional financial need. The second is the Stafford Loan, which may be subsidized or unsubsidized. Under the subsidized program, student loan interest is paid by the federal government for financially needy students while the student is in school. For students not qualifying for the subsidized program, an unsubsidized program is available wherein interest accrues while the student is in school, but repayment is deferred until the student leaves school. Students may borrow up to \$18,500 per academic year under the Stafford Loan program, which would amount to \$55,000 for the three-year law school program.

Loan Repayment Assistance Programs (LRAPs)

Loan Repayment Assistance Programs (LRAPs) assist college graduates working in low paying public interest and government positions with student loan repayment. According to a report entitled, "From Paper Chase to Money Chase: Law School Debt Diverts Road to Public Service," LRAPs are currently offered by some federal agencies, states, law schools, and private employers.^{8 9}

² Art. V, s. 18, Fla. Const.

³ Art. V, ss. 16 & 17, Fla. Const.

⁴ Office of Data Analysis and Institutional Research, Div. of Colleges and Univ., Dept. of Educ., *2003-04 Tuition and Required Fees*, (August 5, 2003), <<http://www.flcdu.org/planning/2003-04Fees.pdf>>.

⁵ *Id.*

⁶ *Id.* The annual fee amounts apparently include additional costs but the chart does not indicate these additional costs.

⁷ Nova-Southeastern University, *Nova Southeastern University Law Center Top Twenty Most Frequently Asked Questions* (2003), <<http://www.nsulaw.nova.edu/admissions/faq.cfm>>.

⁸ Equal Justice Works, the National Association for Law Placement, and the Partnership for Public Service, "From Paper Chase to Money Chase: Law School Debt Diverts Road to Public Service," November 2002.

⁹ Equal Justice Works, a program funded by private donations, provides training and support to law students interested in pursuing public service careers. The National Association for Law Placement is a clearing house for legal career planning information, and its members include lawyer personnel administrators and law school career services professionals. The

Federal law authorizes federal agencies to establish LRAPs for employees that provide yearly payments up to \$10,000, with a maximum total payment of \$60,000 for any one employee.¹⁰ Only employees who agree in writing to remain in service with the agency for at least three years are eligible for the program. Although this law was enacted in 1990, the Office of Personnel Management did not prescribe uniform regulations for agencies to implement LRAPs until 2000. As a result, federal agencies have only recently begun to enact rules permitting LRAPs.

Currently, it appears that LRAP payments, such as those permitted by the federal government, that are made by an employer on behalf of an employee are considered taxable income.¹¹ However, pursuant to 26 U.S.C. 108(f) of the Internal Revenue Code, it appears that LRAP benefits may be non-taxable if the LRAP is structured as follows:

- The LRAP benefits are initially provided as a loan;
- The lender is an entity other than the employer and is either a specified governmental, non-profit, or educational entity;
- The recipient of the LRAP benefits is either a governmental employee or an employee of a non-profit organization; and
- The loan is forgiven by the provider pursuant to a loan provision specifying that the loan will be discharged if the employee works for a certain period of time for his or her employer.

This provision of the Internal Revenue Code was created in 1997, and has not yet been construed in case law. Consequently, due to the lack of authoritative legal guidance, it is currently impossible to unequivocally state that the aforementioned LRAP structure results in non-taxable benefits. It appears that the majority of entities administering LRAPs with this structure advise a LRAP participant that he or she should consult with their own tax advisors and that he or she is solely responsible for any federal, state, or local income tax liability accruing as a result of LRAP benefits.

Statewide non-profit organizations in Arizona, Florida, Minnesota, and North Carolina administer LRAPs, which are structured, as described above, to avoid income tax liability. The Florida Bar Foundation administers a LRAP for Florida attorneys that is funded by proceeds from Florida's "Interest on Trust Accounts" (IOTA) program.¹² This LRAP offers annual loans in an amount of 75 percent of annual debt payments up to \$6,000 per year for a maximum of five

Partnership for Public Service is a non-partisan organization dedicated to revitalizing the federal public service through public-private partnerships and research and educational efforts.

¹⁰ 5 U.S.C. 5379 (2003).

¹¹ In 2002, proposed legislation entitled the, "Generating Opportunity by Forgiving Educational Debt Act" was filed in Congress. The legislation, which ultimately was not enacted into law, would have made federal government LRAP payments non-taxable. *See* S. 1817 and H.R. 3893 (2002).

¹² In 1981, the Florida Bar Foundation implemented the nation's first IOTA program. Today, all states operate IOTA programs modeled upon Florida's. Under IOTA, client trust deposits, which are deemed to be impractical for investment because there is too small an amount or because it will be held for too short a period of time, are pooled by the attorney or law firm into an approved interest or dividend-bearing financial institution account benefiting IOTA. The proceeds from this investment are used to fund IOTA grants to fund legal assistance to the poor, grants for judicial administration improvement, public service fellowships, and the LRAP.

years. At the end of each year, the loan is forgiven if the recipient remains employed with an eligible employer.

In order to be eligible for the LRAP, an applicant must: (1) be a full-time employee of an IOTA funded legal assistance for the poor grantee; (2) receive an annual salary no greater than \$40,000 for a new attorney with \$3,000 increments in salary permitted for each year of legal experience; and (3) be a member of the Florida Bar by the end of the first year of participation. Eligible applicants are then selected for program participation on the basis of merit by the Foundation.

In 2002, legislation was enacted in Georgia that permits the Georgia Student Finance Authority to establish a non-profit corporation to administer a Public Interest Lawyers' Fund, the purpose of which is to fund loan forgiveness programs for specified attorneys employed by the state.¹³ These programs are funded through state appropriations and donations, may distribute up to \$600 per month per beneficiary, and require a beneficiary to repay assistance provided if he or she fails to comply with a contractual commitment to remain with the employer for a certain length of time.¹⁴ The legislation states that the program is to be operated in a manner that qualifies for the tax benefits provided in 26 U.S.C. 108 of the Internal Revenue Code.¹⁵

III. Effect of Proposed Changes:

This bill creates s. 43.201, F.S., to require the JAC to administer a student loan repayment program for assistant state attorneys and assistant public defenders. The purpose of the program is to provide financial assistance to these attorneys for repayment of "eligible student loans," which are defined as loans issued pursuant to the Higher Education Act of 1965 for purposes of funding a law school education.

This bill provides that once an assistant state attorney or assistant public defender has served in that position for three years, the state attorney or the public defender may submit an affidavit of certification to the JAC. Once the certification is received, the JAC is required to make yearly payments of \$3,000 for the benefit of the attorney to the lender that services the eligible student loan. When an attorney completes six years of continuous service, the payment amount is increased to \$5,000. Upon completion of thirteen years of continuous service or completion of payment of the eligible student loan obligation, payments must cease. Total payments on behalf of any one individual under the program may not exceed \$44,000.

This bill provides that the program shall be annually funded by an appropriation from the General Revenue Fund to the JAC.

This bill takes effect on July 1, 2004.

¹³ O.C.G.A. ss. 20-3-380 through 20-3-387.

¹⁴ O.C.G.A. ss. 20-3-383 and 20-3-386.

¹⁵ O.C.G.A. s. 20-3-386(d).

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

It appears that any financial assistance provided by this bill will constitute taxable income to the assistant state attorney or assistant public defender.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The exact cost of the program is not known. The JAC indicates there are 377.67 assistant public defenders and 582.35 assistant state attorneys with at least three years of continuous service.¹⁶ However, it is not known how many of those attorneys have outstanding government loans or how many eligible attorneys would be working on the bill's effective date. If every assistant state attorney and public defender has outstanding student loans and the appropriate payment was made on behalf of each attorney, the program would cost \$3,809,000.¹⁷

The JAC indicates that it will need 1.00 FTE to administer this program. This FTE would be funded as follows:

Recurring revenues	\$65,000
Non recurring	\$ 4,603

The 2002-03 General Appropriations Act gave the state attorneys and the public defenders the authority to use their funding for financial assistance to assistant state attorneys and assistant public defenders for law school government loans.¹⁸ The state

¹⁶ Based on a COPEs inquiry done November 24, 2003, by the Justice Administrative Commission. E-mail correspondence from June Hart, Justice Administrative Commission (Nov. 26, 2003).

¹⁷ *Id.*

¹⁸ See Ch. 2002-394, L.O.F. (proviso associated with specific appropriations 889 through 1085).

attorneys and public defenders reported that they did not use this authority as they did not believe they had sufficient funds for this purpose. This authority was not provided in the 2003-2004 General Appropriations Act.

There is no restriction on the use of the funds in CS/SB 250 to employees in regularly established positions only. A qualifying state attorney employed but paid out of the Other Personal Services appropriations category may plausibly make an application.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The program created by this bill may aid the state attorneys and public defenders in their recruitment efforts. Student loan obligations prohibit some law school graduates from pursuing careers as assistant state attorneys and assistant public defenders because the salaries are not high enough to cover the costs of their monthly student loan payments.

Additionally, the program may lower the turnover ratios in the offices of the state attorneys and public defenders as the LRAP will provide the attorneys with incentive to make long-term commitments to their respective offices. Pursuant to statistics provided by the Judicial Administrative Commission, the average turnover rate in Florida between 1997 and 2002 for state attorney's offices was 19.83 percent annually and for public defender's offices was 20.96 percent annually.

VIII. Amendments:

None.