

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. PRINCIPLES ANALYSIS

The bill would have the government repay, in whole or in part, law school loans incurred by eligible assistant attorney generals, assistant statewide prosecutors, assistant state attorneys, and assistant public defenders. This could be considered contrary to the principle relating to limited government and the principle of promoting personal responsibility. No allowance is made for those individuals that did not incur debt or quickly repaid debt. However, since these are government employees, the repayment program can also be considered an employee benefit designed to attract and retain qualified employees and not an expansion of government or contrary to the promotion of personal responsibility.

B. EFFECT OF PROPOSED CHANGES:

General Background

In Florida state courts, 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 defendants are represented by a public defender, except in conflict cases.² Each judicial circuit has an elected public defender. State attorneys and public defenders are permitted to hire assistants.³

Assistant state attorneys and assistant public defenders were guaranteed a minimum salary of \$37,566, under the FY 2004-05 General Appropriations Act.⁴ Assistant state attorneys and assistant public defenders are considered senior management service for retirement purposes. State attorneys reported an average statewide turnover rate of 16.9 percent for FY 2003-04. State public defenders reported a statewide turnover rate of 21.2 percent during the same time period.⁵

Proposed Changes

This bill would create a program to fund the repayment of law school student loans for eligible assistant attorney generals, assistant statewide prosecutors, assistant state attorneys, and assistant public defenders. Those individuals with at least three years of continuous service as an assistant attorney general, assistant statewide prosecutor, assistant state attorney, or assistant public defender would be eligible for loan repayment assistance. Once the attorney general, statewide prosecutor, state attorney, or public defender approves the affidavit of certification from the individual requesting loan repayment assistance, then the attorney general, statewide prosecutor, state attorney, or public defender, as appropriate, shall submit the affidavit to the JAC.

[The Justice Administrative Commission reports that on March 2, 2005, there were 422 assistant state attorneys, 280 assistant public defenders, and 145 assistant attorney generals and statewide prosecutors with at least three years of continuous service and, therefore, eligible for loan repayment assistance. The Legislature created the JAC to provide administrative

¹ See Art. V, s. 17, Fla. Const.

² See Art. V, s. 18, Fla. Const.

³ See Art. V, ss. 16, 17, Fla. Const.

⁴ Attorneys at executive branch agencies start at \$35,931.

⁵ Information provided on March 3, 2005, by the Justice Administrative Commission. This information was captured by circuits. The turnover rate ranged from 9.04 percent to 44.91 percent for assistant state attorneys and 2.42 percent to 38.66 percent for assistant public defenders.

services and assistance to the offices of the state attorneys, the public defenders, the Capital Collateral Regional Counsels, and the Judicial Qualifications Commission.⁶ The JAC is composed of two state attorneys selected by the Florida Prosecuting Attorneys Association and two public defenders selected by the Florida Public Defenders Association. The JAC employs an executive director and staff to run the day-to-day operations.]

Total loan repayment assistance under the proposed program would be capped at \$44,000, or after twelve years of continuous service, whichever comes first, payable in the amount of \$3,000 per year for years four through six, and \$5,000 per year of service between years seven and twelve.

[According to the Florida State University College of Law, tuition for the 2004-05 academic year tuition is \$250.15 per credit hour for an in-state student and \$917.27 per credit hour for an out-of-state student. Students must earn eighty-eight credit hours to graduate. Therefore, based on current tuition, total tuition is approximately \$22,000 for an in-state student and \$80,700 for an out-of-state student. Tuition at the University of Miami is approximately \$27,500 per year, totaling an estimated \$82,500 over three years. According to the Florida State University Financial Aid Office, students are allowed to borrow up to \$18,500 per academic year under the federal Stafford Loan Program.]

This bill would have the program funded annually out of the General Revenue Fund. This bill does not provide a specific appropriation.

[The estimated cost to fully fund this program is uncertain. The number of attorneys with outstanding government loans is unknown, but presumably could be determined. Assuming all 702 eligible assistant state attorneys and public defenders have outstanding student loans and received repayment assistance, an appropriation of approximately \$2.6 million would be required to fully fund the program in FY 2005-06. As for assistant attorney generals and assistant statewide prosecutors, the attorney general's office estimates that 145 attorneys might be eligible at a first year cost of \$406,000 if fully funded in FY 2005-06.]

This bill takes effect on July 1, 2005.

C. SECTION DIRECTORY:

Section 1 creates s. 43.201, F.S., creating a law school student loan repayment program for assistant attorney generals, assistant statewide prosecutors, assistant state attorneys, and assistant public defenders.

Section 2 establishes an effective date of July 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

⁶ See s. 43.16, F.S.

2. Expenditures:

Funding is subject to specific appropriation under the bill; however, the estimated cost to fully fund this program is uncertain. The number of attorneys with outstanding government loans is unknown, but presumably could be determined. Assuming all 702 eligible assistant state attorneys and public defenders had outstanding loans and received repayment assistance, an appropriation of approximately \$2.6 million would be required to fully fund the program in FY 2005-06. As for assistant attorney generals assistant statewide prosecutors, the attorney general's office estimates that 145 attorneys might be eligible at a first year cost of \$406,000 if fully funded. Combined, to fully fund, the bill would require an appropriation for FY 2005-06 of an estimated \$2.64 million,

Additionally, according to the JAC, one additional full-time equivalent employee would be required at a cost of \$58,299 for FY 2005-06, and an incrementally greater cost thereafter. The JAC projects an additional \$4,561 in non-recurring administrative costs in FY 2005-06

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

Assumptions for determination of fiscal for assistant attorney generals and statewide prosecutors:

They report 109 attorneys with 3 to 6 years of experience. They estimate that 80 percent have student loans. Multiplied by the \$3,000 per year, they would qualify for \$261,000 for FY 2005-06. For those with more than 6 years, they estimate 58 attorneys with only 50 percent still having outstanding loans. Multiplied by \$5,000, that would generate an additional fiscal of \$145,000. Taken together, the total would be \$406,000.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable

2. Other:

None

B. RULE-MAKING AUTHORITY:

The JAC is not provided with specific rule making authority to implement a program which appears to require the exercise of discretion in dispensing benefits to government employees.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The degree of discretion the JAC has in authorizing loan repayment assistance once approved by the attorney general, statewide prosecutor, state attorney, or public defender, is unclear. The bill suggests authorization is not automatic, but does not include any criteria or priority for guiding the JAC in making this determination.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

The Committee Substitute differs from the bill as filed in that the Committee Substitute includes assistant attorney generals and assistant statewide prosecutors as eligible to participate in the loan repayment program, and removes trial court staff attorneys due to separation of powers concerns since the program would be administered by the JAC.