

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

Prepared By: The Professional Staff of the Criminal Justice Committee

**BILL:** CS/SB 614

**INTRODUCER:** Criminal Justice and Senator Dean

**SUBJECT:** Public Defenders/Classification and Pay Plan

**DATE:** March 6, 2008      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	Fav/CS
2.	_____	_____	JU	_____
3.	_____	_____	GO	_____
4.	_____	_____	GA	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**Please see Section VIII. for Additional Information:**

- A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes
- B. AMENDMENTS.....  Technical amendments were recommended
- Amendments were recommended
- Significant amendments were recommended

**I. Summary:**

The bill authorizes the twenty Offices of the Public Defender to lawfully include lump-sum bonus awards in their classification and payment plan. The bill also lists the public defender payment plan as a potential source of bonuses under s. 216.181, F.S.

This bill substantially amends sections 27.53 and 216.181 of the Florida Statutes.

**II. Present Situation:**

The twenty Offices of the Public Defender are experiencing problems retaining Assistant Public Defenders. The Florida Public Defender Association (the Association) reports that a ten-year average of the statewide turnover rate of assistant public defenders is 22 percent. Individual offices have experienced annual turnover rates as high as 58 percent.<sup>1</sup>

According to the Association, in an effort to retain assistant public defenders, support staff and investigators, individual Public Defenders have utilized appropriated salary dollars (“left-over”

<sup>1</sup> Statement in Support of Authorization to Allow For Recognition Awards, Florida Public Defender Association, received by Committee Staff via e-mail, February 22, 2008.

in the salary budget when employees leave and create vacancies that were funded for the fiscal year) to award “recognition awards” or bonuses. This practice does not appear to be authorized under Florida law.

The Offices of the Public Defender are funded by the Legislature. Public Defenders are authorized to appoint and pay assistant public defenders. Section 27.53, F.S., establishes parameters under which they may act. It states:

The public defender of each judicial circuit is authorized to employ and establish, in such numbers as authorized by the General Appropriations Act, assistant public defenders and other staff and personnel pursuant to s. 29.006, who shall be paid from funds appropriated for that purpose.

Section 27.5301, F.S., further provides for the appropriation and expenditure of salary dollars. That section allows the Public Defender from each circuit to set the salaries of the assistants in an amount not to exceed 100 percent of the Public Defender him or herself, and provides that the salaries “shall be paid from funds appropriated for that purpose.”

Subsections (1) and (3) of s. 27.53, F.S., require the public defenders to jointly develop a coordinated classification and pay plan which shall be submitted on or before January 1 of each year to the Governor and the Legislature.

Subsection (10)(b) of s. 216.181 F.S., provides that lump-sum salary bonuses may be provided only if specifically appropriated or provided pursuant to s. 110.1245 or s. 216.1815, F.S. These two provisions allow agencies to provide bonuses to employees that save the state money. Specifically, s. 110.1245, F.S., provides for “cost-saving sharing” awards for state employees who come up with ways to save state expenditures. Agency plans for participating in the program must include, at a minimum, a statement that “bonuses are subject to specific appropriation by the legislature.” (s. 110.1245(2)(a), F.S.) Section 216.185, F.S., provides for agency “incentives,” an opportunity to retain certain funds and utilize them for salary increases “or other expenditures specified in the agency’s plan”...so long as the expenditures do not create a “recurring cost to the state in excess of the recurring savings achieved by the agency...in the plan.” (s. 216.185(5), F.S.)

### **III. Effect of Proposed Changes:**

At a minimum the bill appears to give the Public Defenders the ability to include salary bonuses within their annual classification and pay plans. Further, the bill amends ch. 216, F.S., to exempt the public defenders from the prohibition of bonuses not specifically authorized by the General Appropriations Act. By submitting pay plans that include bonuses, it appears the expectation is that the bonuses could be “specifically appropriated.”

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None anticipated.

C. Government Sector Impact:

The bill may have a positive effect on the ability of the Public Defender's Offices to retain assistant public defenders and other staff. It seems likely, though, that employees who are motivated to leave are leaving for reasons related to caseload, the nature of the work, or more lucrative offers. These are reasons for dissatisfaction with a job that typically linger long after a lump-sum salary bonus is spent. It is much more likely, however, that those who have no intention of leaving and whose work ethic leads them to "take up the slack" when turnover occurs, would be the real beneficiaries of the Public Defenders bonuses.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Criminal Justice on March 5, 2008:**

The bill was amended to insert technical amendments and cross-references that were necessary to clarify and simplify the implementation of the intent of the bill.

B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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