

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/SB 96

SPONSOR: Judiciary Committee and Senators Campbell and Fasano

SUBJECT: Student Loans/Assistant State Attorneys

DATE: February 28, 2003 REVISED: 3/05/03 _____

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

I. Summary:

This committee substitute requires the Justice Administrative Commission to administer a student loan repayment assistance program for certain assistant state attorneys and assistant public defenders. The purpose of the program is to provide financial assistance for assistant state attorneys and assistant public defenders with government student loans used for law school.

This committee substitute provides that once an assistant state attorney or assistant public defender has served in that position for three years, the Justice Administrative Commission may make yearly payments of up to \$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 an amount up to \$5,000. Student loan assistance ends upon completion of payment on the loan or completion of twelve years of continuous service.

This committee substitute 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. *See* Art. V, s. 17, Fla. Const. Florida is divided into twenty judicial circuits and each circuit has an elected state attorney. Indigent criminal defendants are represented by a public defender. *See* Art. V, s. 18, Fla. Const. Each judicial circuit has an elected public defender. State attorneys and public defenders are permitted to hire assistants to help them fulfill their duties. *See* Art. V, ss. 16, 17, Fla. Const.

Assistant state attorneys and assistant public defenders were guaranteed a minimum salary of \$35,931, effective January 1, 2002, under the 2001-2002 General Appropriations Act.¹ Assistant state attorneys and assistant public defenders are considered senior management service for retirement purposes.

Costs of Attending Law School

According to the Florida State University College of Law, an in-state student paid \$199.43 per credit hour and an out-of-state student paid \$712.59 per credit hour for tuition during the 2002-2003 academic year. Eighty-eight credit hours are required for graduation; thus, total law school tuition costs are approximately \$17,500 for an in-state student and \$62,700 for an out-of-state student.² The University of Florida Levin College of Law estimates that approximately \$10,400 per year is required for books and living expenses during law school. Private law school tuition is significantly greater. For example, tuition at the University of Miami is approximately \$26,000 per year, totaling \$78,000 over the three-year program.

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.

In 2002, a publication issued by the United States Department of Education reported that during the 1999-2000 school year 80.6% of law students across the nation received federal Stafford Loans.³

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.^{4 5}

¹ Attorneys at executive branch agencies start at \$35,931.

² Tuition at the University of Florida Levin College of Law is approximately \$200 per credit hour for an in-state student during 2002-2003.

³ U.S Department of Education, National Center for Education Statistics, "Student Financing of Graduate and First-Professional Education, 1999-2000: Profiles of Students in Selected Degree Programs and Their Use of Assistantships," (NCES: 2002-166).

⁴ 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.

⁵ 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 \$6,000, with a maximum total payment of \$40,000 for any one employee.⁶ 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.⁷ 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.⁸ 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 years. At the end of each year, the loan is forgiven if the recipient remains employed with an eligible employer.

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.

⁶ 5 U.S.C. 5379 (2002).

⁷ 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).

⁸ 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.

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.

The Foundation's LRAP began in January 2003, and currently has 20 participants. The Foundation intends to expand the LRAP, and hopes to provide LRAP benefits to 42 participants by 2007.

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.⁹ 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.¹⁰ 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.¹¹

Maryland and Texas also administer LRAPs; however, the structure of these programs results in income tax liability for beneficiaries.

III. Effect of Proposed Changes:

This committee substitute creates s. 43.201, F.S., to require the Justice Administrative Commission to administer a LRAP for assistant state attorneys and assistant public defenders. The purpose of the program is to provide financial assistance for assistant state attorneys and assistant public defenders with eligible student loans. The term "eligible student loan" is defined to mean a loan that was issued pursuant to the Higher Education Act of 1965, as amended, to an assistant state attorney or assistant public defender to fund his or her law school education.

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

⁹ O.C.G.A. ss. 20-3-380 through 20-3-387.

¹⁰ O.C.G.A. ss. 20-3-383 and 20-3-386.

¹¹ O.C.G.A. s. 20-3-386(d).

This committee substitute provides that the program shall be funded out of the General Revenue Fund to the Justice Administrative Commission on an annual basis. This committee substitute does not provide an appropriation.

This committee substitute takes effect on July 1, 2003.

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 benefits under the LRAP structure established by this committee substitute would 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 Justice Administrative Commission provided information showing that on January 27, 2003, there were 553.30 assistant state attorneys and 368.80 assistant public defenders with at least three years continuous service. 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 attorney has outstanding student loans and the appropriate payment was made on behalf of each attorney, the program would cost \$3.65 million during the first year. It is not known what the program would cost in subsequent years.

The Justice Administration Commission contends it will need an additional FTE to administer the program. The Commission said that \$65,000 would be required in FY 2003-2004. The Commission also indicates it will have a first year, non-recurring cost of \$4,603.

It should be noted that, in the current General Appropriations Act, the state attorneys and the public defenders have been given authority to use their funding for financial assistance to assistant state attorneys and assistant public defenders for law school government loans.¹² The state attorneys and public defenders have reported that they have not used this authority to date as they feel they do not have sufficient funds to use for this purpose.

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 for the past five years for state attorney's offices was 19.83 percent annually and for public defender's offices was 20.96 percent annually.

VI. Technical Deficiencies:

In subsection (3)(a), the bill interchangeably uses the terms "assistant state attorney or public defender" and "assistant state attorney or assistant public defender." It may be desirable to amend the bill to use one of these terms consistently.

In subsection (3)(d), the bill refers to the loan assistance payment amount increasing to \$5,000 after six years of continuous service, but the bill does not specify the time basis for that payment. It may be desirable to amend the bill to state, "yearly loan assistance payment amount."

In subsection (3)(d), the bill requires loan assistance payments to terminate, "upon completion of the payment of the eligible student loan." It may be desirable to amend the bill to use the appropriate legal term of art, "upon full satisfaction of the eligible student loan."

In subsection (3)(d), the bill provides that the maximum amount of loan assistance available under the program is \$44,000; however, as drafted, the bill only permits payments up to \$39,000 per employee, e.g., the bill permits up to three years of \$3,000 payments and up to six years of \$5,000 payments. It may be desirable to amend the bill to substitute \$39,000 for \$44,000, to permit seven years of \$5,000 payments, or to strike the \$44,000 maximum.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Governmental Oversight and Productivity:

¹² See Ch. 2002-394, L.O.F. (proviso associated with specific appropriations 889 through 990, and 991 through 1085).

The amendment: (a) insures consistent use of the terms “assistant state attorney and assistant public defender” and “loan assistance payment;” (b) clarifies that payments are to be made yearly; (c) substitutes “upon full satisfaction of the eligible student loan” for “upon completion of the payment of the eligible student loan;” and (d) clarifies that up to three years of \$3,000 payments and up to seven years of \$5,000 payments may be made under the program.

This Senate staff analysis does not reflect the intent or official position of the bill’s sponsor or the Florida Senate.
