

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 1138

SPONSOR: Judiciary Committee and Senator Campbell

SUBJECT: Student Loans/Attorneys/Public Defenders

DATE: March 7, 2002 REVISED: 03/11/02 _____

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

I. Summary:

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

This committee substitute provides that once an assistant state attorney, assistant public defender, or assistant capital collateral counsel 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 up to \$5,000. Student loan assistance ends upon completion of payment on the loan, completion of twelve years of continuous service, or when payments made on behalf of the attorney equal \$44,000.

This committee substitute creates section 43.201 of the Florida Statutes.

II. Present Situation:

State Attorneys, Public Defenders, and Capital Collateral Regional Counsels

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 defendants are represented by a public defender.² Each judicial circuit has an elected public

¹ See Art. V, s. 17, Fla. Const.

² See Art. V, s. 18, Fla. Const.

defender. State attorneys and public defenders are permitted to hire assistants to help them fulfill their duties.³

The Capital Collateral Regional Counsel (CCRC) represents all death-sentenced inmates on collateral actions challenging the legality of the judgment and sentence in the state and federal courts.⁴ There are three CCRC offices that function independently -- Northern Region (Tallahassee), Middle Region (Tampa), and Southern Region (Miami).⁵

The CCRC represents defendants sentenced within his or her region. In the event that a CCRC has a conflict of interest with a client, the sentencing court may designate another CCRC or private counsel to represent the defendant.⁶

The CCRCs are appointed by the Governor from a list of three qualified candidates selected by the Supreme Court Judicial Nominating Commission.⁷ The CCRCs serve three-year terms and are subject to confirmation by the Senate.⁸ The 1997 Legislature created the regional offices.⁹ Prior to 1997, one capital collateral representative represented all death-sentenced inmates.

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.¹⁰ 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 \$182.30 per credit hour and an out-of-state student paid \$606.40 per credit hour for tuition during the 2001-2002 academic year. Eighty-eight credit hours are required for graduation so the tuition costs would be approximately \$16,000 for an in-state student and \$53,400 for an out-of-state student.¹¹ The University of Florida Levin College of Law estimates approximately \$10,000 per year for books and living expenses while in law school. Private law schools are significantly greater. For example, tuition at the University of Miami is approximately \$26,000 per year, totaling \$78,000 over the three-year program.

Students may borrow money through the federal Stafford Loan Program where the loan is either subsidized by the federal government or not subsidized. Under the subsidized program, where eligibility is based on a student's financial need, student loan interest is paid by the federal government while the student is in school. Under the unsubsidized program, available to students who do not qualify for the subsidized program, interest accrues while the student is in school but

³ See Art. V, ss. 16, 17, Fla. Const.

⁴ Section 27.702(1), F.S.

⁵ Section 27.701, F.S.

⁶ Section 27.703, F.S.

⁷ Section 27.701, F.S.

⁸ *Id.*

⁹ Chapter 97-313, L.O.F.

¹⁰ Attorneys at executive branch agencies start at \$35,931.

¹¹ Tuition at the University of Florida Levin College of Law was approximately \$161 per credit hour for an in-state student during 1999-2000.

repayment is deferred until the student leaves school. According to the Florida State University Financial Aid Office, students are allowed to borrow as much as \$18,500 per academic year under these programs, which would amount to \$55,000 for the three year law school program.

III. Effect of Proposed Changes:

This committee substitute creates s. 43.201, F.S., to require the Justice Administrative Commission to administer a student loan program for assistant state attorneys, assistant public defenders, and assistant capital collateral counsels. The purpose of the program is to provide financial assistance for assistant state attorneys, assistant public defenders, and assistant capital collateral counsels with law school government loans.

This committee substitute provides that once an assistant state attorney, assistant public defender, or assistant capital collateral counsel has served in that position for three years, the offices of the state attorney, public defender, or the capital collateral regional counsel may submit an affidavit of certification. Once the certification is received, the Justice Administrative Commission may make yearly payments of up to \$3,000 to the government student loan lender on behalf of the attorney. When an attorney completes six years of continuous service, the payment amount is increased to 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.

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, 2002.

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:

According to the Comptroller's Officer, any financial assistance provided by this bill will constitute taxable income to the assistant state attorney, assistant public defender, and assistant capital collateral counsel.

B. Private Sector Impact:

The Justice Administration Commission indicates that, as of December 11, 2001, there were 567 assistant state attorneys and 344 assistant public defenders with at least three years of continuous service. The number of these attorneys who currently have outstanding government student loan obligations is unknown. However, those who do have loan obligations would receive the benefit of up to \$3,000 per year in assistance. Any assistance provided under the bill would constitute taxable income to the assistant state attorney, assistant public defender, or assistant capital collateral counsel.

Information provided by the Capital Collateral Regional Councils offices reveals that there are 6 attorneys from the South Region and 4 attorneys from the North Region who would currently be eligible to receive assistance. Information on the number of eligible attorneys from the Middle Region is not yet available.

C. Government Sector Impact:

The exact cost of the program is not known. The Justice Administrative Commission provided information showing that on December 11, 2001, there were 567 assistant state attorneys and 344 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 \$3.68 million during the first year. It is not known what the program would cost in subsequent years.

Likewise, the exact cost as it relates to the three offices of the Capital Collateral Regional Counsel is not yet known. Estimates from the South Region indicate a total loan balance of \$624,995 for the 6 currently eligible attorneys and \$204,000 for the 4 currently eligible attorneys from the North Region. It is not yet known what portion of these loan balances is attributable to law school government student loans. Estimates from the Middle Region are not yet available.

The program could aid the state attorneys, public defenders, and capital collateral regional counsels 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. Likewise, the program could lower the turnover ratios of the offices of the state attorneys, public defenders, and capital collateral regional counsels as the loan repayment assistance will provide the attorneys with incentive to make long-term commitments to their respective offices. However, the impact is indeterminate.

The Justice Administration Commission estimates it will need an additional FTE to administer the program. The Commission said that \$65,000 would be required in FY 2002-2003 and \$67,000 in FY 2003-2004 for this position

VI. Technical Deficiencies:

It may be desirable to amend the bill to precisely define the types of loans that are eligible for the program. For example, the bill could provide a definition that states, “For purposes of this section, term ‘eligible student loan’ means a loan that was issued pursuant to the Higher Education Act of 1965, as amended or as may be amended, to an assistant state attorney, assistant public defender, or assistant capital collateral counsel to fund his or her law school education.” This would limit the bill’s financial assistance to Federal Stafford and Perkins loans used by the student for law school.

The bill provides that the financial assistance payment will be made to the government student loan; however, in some cases, the student may have consolidated the loan with a private lender, or in other cases the loan, though guaranteed by the Federal Government, may have been provided by a private lender. Accordingly, it may be desirable to amend the bill to provide that the payment will be made to the lender that services an eligible student loan.

VII. Related Issues:

The bill does not specify how the Justice Administrative Commission should treat those situations in which an assistant state attorney, assistant public defender, or assistant capital collateral counsel has incurred undergraduate or graduate school loans and consolidated those loans with their eligible law school student loans. A representative from the law school financial aid office at the University of Florida stated that law schools generally maintain records of the loans received by students; however, the retention of these records vary by school. Consequently, it may be difficult for some attorneys, who have failed to maintain documentation of their student loans prior to consolidation, to demonstrate to the Commission which loans would be eligible for the bill’s financial assistance program.

VIII. Amendments:

#1 by Governmental Oversight and Productivity:

Defines the term “eligible student loan” to mean a loan that was issued pursuant to the Higher Education Act of 1965, to an assistant state attorney, assistant public defender, or assistant capital collateral counsel to fund his or her law school education. (WITH TITLE AMENDMENT)

#2 by Governmental Oversight and Productivity:

Provides that the commission shall pay the lender that services the eligible student loan, and provides that the payment is made for the benefit of the employee and for the purpose of satisfying the student loan obligation.

#3 by Governmental Oversight and Productivity:

Makes a conforming change to consistently use the term “eligible student loan.”