

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.)

Prepared By: Judiciary Committee

BILL: SB 196

INTRODUCER: Senator Aronberg

SUBJECT: Student Loans/Attorneys

DATE: February 5, 2007

REVISED: 02/06/07

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|------------------------|
| 1. | Merlin | Maclure | JU | Fav/1 amendment |
| 2. | | | GO | |
| 3. | | | JA | |
| 4. | | | | |
| 5. | | | | |
| 6. | | | | |

Please see last section for Summary of Amendments

- Technical amendments were recommended
- Amendments were recommended
- Significant amendments were recommended

I. Summary:

This bill creates a loan repayment assistance program administered by the Justice Administrative Commission (JAC) and the Office of the Attorney General. The program is designed to help assistant state attorneys, assistant public defenders, assistant attorneys general, and assistant statewide prosecutors repay student loans used to fund their legal education.¹ After three years of service, an attorney is eligible for up to \$3,000 in student loan repayment assistance per year. After six years of service, an attorney is eligible for up to \$5,000 in loan repayment assistance per year. Eligibility ceases after 12 years of service. The maximum amount of student loan assistance is \$44,000 per attorney or upon full satisfaction of the loan, whichever comes first.

This bill creates section 43.45, Florida Statutes.

II. Present Situation:

State Government Attorneys

¹ According to the National Association of Law Placement (NALP), a non-profit legal services organization, more than half of employed law school graduates obtain their first job at a private law firm. See survey data at <http://www.nalp.org/content/index.php?pid=386&printer-friendly=1> (last visited January 29, 2007). In addition, anecdotal conversations with the staff at the career centers of all 10 Florida law schools suggests that the amount of salary may influence a student's likelihood of entering public service.

Salary Statistics

The minimum starting salary for assistant public defenders, assistant state attorneys, and assistant attorneys general is approximately \$38,000. Individual attorneys, however, can be hired for amounts greater than the minimum salary. Assistant state attorneys, assistant public defenders, assistant attorneys general, and assistant statewide prosecutors are considered senior management service for retirement purposes.² The starting salary for assistant statewide prosecutors is approximately \$50,000, because legal experience is required for these positions.³

Table 1 Assistant State Attorney Salaries

| | | | |
|------------------|----------|----------|----------|
| Years of Service | 0.01 – 1 | 3 – 4 | 5 – 6 |
| Average Salary | \$43,794 | \$56,758 | \$64,917 |

Source: Justice Administrative Commission, January 2007.⁴

Table 2 Assistant Public Defender Salaries

| | | | |
|------------------|----------|----------|----------|
| Years of Service | 0.01 – 1 | 3 – 4 | 5 – 6 |
| Average Salary | \$43,059 | \$53,280 | \$58,848 |

Source: Justice Administrative Commission, January 2007.

Table 3 Assistant Attorney General/Assistant Statewide Prosecutor Salaries

| Years of Experience | Average Salary | Number of Attorneys |
|---------------------|----------------|---------------------|
| 0-2 | \$44,727.08 | 40 |
| 3-5 | \$52,020.10 | 42 |
| 6-12 | \$59,143.05 | 108 |
| 13-20 | \$64,309.68 | 89 |
| 20+ | \$74,323.99 | 88 |

Source: Office of the Attorney General, January 2007.

Law School Graduate Debt Levels

According to the National Association of Student Financial Aid Administrators, during 2003-2004, 87 percent of graduates from public law schools and 86 percent of graduates of private law schools had student loan debt.⁵ The average level of indebtedness of graduates with

² Rule 60S-1.0057(1)(j) and (k), F.A.C.

³ Conversation with staff of the Office of the Attorney General, January 2007.

⁴ According to conversations with the staff of the Justice Administrative Commission, the turnover rate in Florida for new lawyers entering the public service profession is two to three years, an average of 20.25 percent during FY 2005-2006. *See also* AMERICAN BAR ASSOCIATION, LIFTING THE BURDEN: LAW STUDENT DEBT AS A BARRIER TO PUBLIC SERVICE, THE FINAL REPORT OF THE ABA COMMITTEE ON LOAN REPAYMENT AND FORGIVENESS, at <http://www.abanet.org/legalservices/downloads/lrap/lrapfinalreport.pdf> (last visited January 29, 2007), which indicates that many students who accept public service legal jobs find that they must leave after two or three years of service to accept higher-paying employment.

⁵ KENNETH REDD, NATIONAL ASSOCIATION OF STUDENT FINANCIAL AID ADMINISTRATORS, MONOGRAPH, FINANCING AND PROFESSIONAL EDUCATION: 2003-2004, MARCH 2006, NUMBER 17, page 19, at <http://www.nasfaa.org>. According to the American Bar Association, in 2005, private law school graduates were at least \$80,000 in debt, a number which includes \$20,000 in undergraduate loans. AMERICAN BAR ASSOCIATION, ACCESS TO LEGAL EDUCATION: STUDENT LOAN FORGIVENESS, at http://www.abanet.org/poladv/priorities/student_loan/ (last visited January 29, 2007).

student loan debt from public and private law schools was \$51,230 and \$64,854, respectively.⁶ For law school graduates, student loan payments account for nearly 15 percent of their starting salaries if they do not consolidate their loans or just over 9 percent if they do consolidate.⁷ In either case, loan repayment can take longer than 20 years to complete.⁸

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 titled *From Paper Chase to Money Chase: Law School Debt Diverts Road to Public Service*,¹⁰ LRAPs are currently offered by some federal agencies, law schools,⁹ and private employers.¹⁰ There are currently 20 states that offer loan repayment assistance programs.¹¹

Federal law authorizes federal agencies to establish LRAPs for employees which provide yearly payments up to \$10,000, with a maximum total payment of \$60,000 for any one employee.¹² Only employees who agree in writing to remain in service with an agency for at least three years are eligible for the program. In FY 2005, “Federal agencies provided 4,409 employees with nearly \$28 million in student loan repayment benefits.”¹³

In some states, LRAPs are funded through public interest funds or non-profit corporations established by their legislatures. In Georgia, for example, such a program is funded through state appropriations and donations and may require a beneficiary to repay assistance 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 section 108 of the Internal Revenue Code.¹⁵

At present, Florida does not have a program like that of Georgia. However, organizations such as the Florida Bar Foundation provide limited assistance to law students through a grant from the

⁶ See REDD, *supra* note 5, at 20.

⁷ *Id.* at 23.

⁸ *Id.*

⁹ Staff from the Senate Committee on Judiciary contacted all 10 of Florida’s law schools and found that three of the schools currently offer loan repayment assistance. See also AMERICAN BAR ASSOCIATION, DIRECTORY OF LAW SCHOOL PUBLIC INTEREST AND PRO BONO PROGRAMS, PUBLIC INTEREST LOAN REPAYMENT ASSISTANCE PROGRAMS (LRAP), at http://www.abanet.org/legalservices/probono/lawschools/pi_lrap.html, December 20, 2006.

¹⁰ 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; see also THE AMERICAN BAR ASSOCIATION, COMMISSION ON LOAN REPAYMENT AND FORGIVENESS, STATE LRAP TOOL KIT: A RESOURCE GUIDE FOR CREATING STATE LOAN REPAYMENT ASSISTANCE PROGRAMS FOR PUBLIC SERVICE LAWYERS (2003), at <http://www.abanet.org/>.

¹¹ AMERICAN BAR ASSOCIATION, LEGAL AID & INDIGENT DEFENDANTS, STATE LOAN REPAYMENT ASSISTANCE PROGRAMS, at <http://www.abanet.org/legalservices/sclaid/lrap/statelraps.html> (last modified January 5, 2007). “These programs range in age, size[,] and scope. Some are administered by a state bar association or foundation while others are administered through stand-alone nonprofit organizations. Some are funded through state legislative appropriations while others rely on funding from the private sector or from Interest on Lawyers Trust Accounts (IOLTA) funding.” *Id.*

¹² 5 U.S.C. s. 5379.

¹³ OFFICE OF PERSONNEL MANAGEMENT, FEDERAL STUDENT LOAN REPAYMENT PROGRAM FISCAL YEAR 2005: REPORT TO THE CONGRESS (May 2006), at <http://www2.opm.gov/oca/>.

¹⁴ GA. CODE ANN. ss. 20-3-383 and 20-3-386.

¹⁵ GA. CODE ANN. s. 20-3-386(d).

Law Student Assistance (LSA) program. The LSA is designed to promote public service and pro bono activities among law students through fellowships, seminars, and clinical programs. Grant money is given directly to the schools, which then select the students based on criteria approved in advance by the Foundation.¹⁶ In addition, the Foundation recently created a new LRAP for attorneys who provide legal assistance to the poor. Under that program, “[b]enefits will be in the form of one-year loans which will be forgiven annually at the end of each year provided the staff attorney remains employed on a full-time basis by a Foundation LAP grantee and is in compliance with LRAP requirements.”¹⁷ The Foundation will disburse “[a]n amount equal to 80% of annual debt payments up to \$6,400 per year subject to the availability of funding.”¹⁸ “The program will provide a maximum of eight years of benefits.”¹⁹

Justice Administrative Commission

The Justice Administrative Commission (JAC) provides administrative services and assistance to state attorneys and public defenders, the Capital Collateral Regional Counsels of Florida,²⁰ and the Guardian Ad Litem Program.²¹ The administrative services and assistance that may be provided by the JAC include preparation of budget requests, voucher schedules, and other forms and reports.²²

III. Effect of Proposed Changes:

This bill creates a loan repayment assistance program to help assistant state attorneys, assistant public defenders, assistant attorneys general, and assistant statewide prosecutors repay student loans used to fund their legal educations. The administering bodies of the program are the Justice Administrative Commission for assistant state attorneys and assistant public defenders and the Office of the Attorney General for assistant attorneys general and assistant statewide prosecutors.

Benefits Available

After three years of service, an attorney is eligible for up to \$3,000 in student loan repayment assistance per year. After six years of service, an attorney is eligible for up to \$5,000 in student loan repayment assistance per year. An attorney’s eligibility for assistance ceases after he or she has received assistance upon the completion of the twelfth year of service, total assistance of \$44,000, or upon full repayment of the eligible attorney’s student loans.

Funding and Administration

The bill provides procedures for processing applications for loan repayment assistance. Within 30 days after the attorney’s three-year employment anniversary, he or she may submit an

¹⁶ See THE FLORIDA BAR FOUNDATION, GRANT PROGRAMS: LAW STUDENT ASSISTANCE (LSA), at <http://www.flabarfindn.org/content.php?page=33> (last visited January 29, 2007).

¹⁷ Conversation with staff of the Florida Bar Foundation and LRAP program materials, February 2007.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ The Capital Collateral Regional Counsels (CCRCs) represent all death-sentenced inmates on collateral actions challenging the legality of the judgment and sentence in the state and federal courts. See s. 27.702(1), F.S.

²¹ Section 43.16(5)(a), F.S.

²² Section 43.16(5)(b), F.S.

affidavit certifying that he or she has the required years of service and has an eligible student loan. Upon approval by the employing agency, the affidavit must be submitted to the appropriate administering body for processing. The bill also gives the administering bodies rulemaking authority to implement the loan repayment program. However, the JAC is exempt from the Administrative Procedure Act, Chapter 120, F.S., by virtue of s. 43.16(7), F.S. The Legislature may wish to clarify whether it intends for Chapter 120 to apply to the JAC for purposes of this program.

Payments under the program are made directly to the lender that services the eligible student loan. The administering body must make the payments between July 1 and July 31 in the year after the certification affidavit is received. If the eligible attorney has more than one eligible loan, payment must be made on the loan with the highest interest rate. In addition, the bill provides for pro rata payments on behalf of the attorneys in the event that the program is not fully funded.

The bill takes effect on July 1, 2007.

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:

Financial assistance provided under the bill will likely constitute taxable income to the recipient.²³

B. Private Sector Impact:

The availability of loan assistance to certain government attorneys may encourage more attorneys to be career state government attorneys. As a result, fewer attorneys may seek employment in the private sector in favor of government service.

²³ See OFFICE OF PERSONNEL MANAGEMENT, STUDENT LOAN REPAYMENT PROGRAM, TAX LIABILITY QUESTIONS AND ANSWERS, at <http://www.opm.gov/oca/>.

C. Government Sector Impact:

The bill specifies that the program will be funded through General Revenue. However, the exact impact of this bill cannot be calculated because the number of eligible attorneys with student loans is unknown.

The Justice Administrative Commission (JAC), however, estimates that 712 assistant state attorneys and assistant public defenders would use the loan repayment assistance program.²⁴ This estimate assumes that 75 percent of the attorneys with at least three but less than six years of experience and 50 percent of the attorneys with at least six but not more than 12 years of experience have student loans to repay. In accordance with the figures above, the JAC estimates that the cost of student loan repayment assistance authorized by the bill for attorneys employed by the office of a state attorney and the office of a public defender is \$2,604,000 for the first year.

The Office of the Attorney General estimates that 88 assistant attorneys general and assistant statewide prosecutors would use the loan repayment assistance program. The Office of the Attorney General estimates that the cost of implementing the program for the Office of the Attorney General and the Office of the Statewide Prosecutor is \$372,000 for the first year.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Although the bill refers to “student loans,” proposed s. 43.45(2)(d), F.S., appears to limit repayment to those loans used to “fund . . . law school education” as opposed to both law school and undergraduate loans. Student loans, however, may be consolidated at any time, making those portions attributable to a law school education difficult to identify. The Legislature may wish to clarify whether the loan repayment assistance is available for both undergraduate and graduate loans. If the Legislature intends to limit loan repayment assistance to loans used to fund law school, it may wish to establish a mechanism to identify which portion of a consolidated loan is attributable to law school.

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

²⁴ Conversation with staff of the Justice Administrative Commission, January 29, 2007.

VIII. Summary of Amendments:

Barcode 752986 by Judiciary:

Revises the bill's requirement for the administering body to adopt rules for the program, to specify instead that the Justice Administrative Commission shall develop procedures while the Office of the Attorney General shall adopt rules under the Administrative Procedure Act, ch. 120, F.S. Under s. 43.16(7), F.S., the Administrative Procedure Act does not currently apply to the Justice Administrative Commission. (WITH TITLE AMENDMENT)

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