

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

Funding of the Offices of the Public Defender

The offices of the public defender are funded by the Legislature. Public defenders are authorized to appoint and pay assistant public defenders. Current law 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.²

The salaries of public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant regional counsel are provided for in the General Appropriations Act and are paid by the state in equal monthly installments.³ Public defenders from each circuit are authorized to set the salaries of the assistants in an amount not to exceed 100 percent of the public defender’s salary.⁴ These salaries “shall be paid from funds appropriated for that purpose.”⁵

Public defenders are required to jointly develop a coordinated classification and pay plan, which must be submitted to the Justice Administrative Commission, the President of the Senate, and the Speaker of the House of Representatives on or before January 1 of each year.⁶

Payment of Bonuses by State Agencies

Lump-sum salary bonuses by state agencies may be provided only if specifically appropriated or provided pursuant to s. 110.1245 or s. 216.1815, F.S.⁷ These two provisions allow agencies to provide bonuses to agency employees who have been frugal with state money. In the first instance, “cost-saving sharing” awards are permissible for state employees who develop methods to decrease state expenditures.⁸ In the second instance, an agency with funds remaining at the end of a fiscal year due to internal savings may submit a request to the Legislative Budget

² Section 27.53(1), F.S.

³ Section 27.5301(1), F.S.

⁴ Section 27.5301(2), F.S.

⁵ *Id.*

⁶ Section 27.53(1) and (3), F.S. The pay plan must be established according to the policies and procedures of the Executive Office of the Governor established in s. 216.181, F.S.

⁷ Section 216.181(10)(b), F.S.

⁸ Section 110.1245(1)(b), F.S. 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. Employees or groups of employees must meet certain criteria in order to qualify for the bonus awards. s. 110.1245(2)(b).

Commission to retain a percentage of the surplus money for salary increases or other expenditures.⁹

Reversion of State Funds

In the event a state agency has a surplus of unallocated funds remaining at the end of a fiscal year, those funds revert back to the General Revenue Fund.¹⁰

III. Effect of Proposed Changes:

Under this bill, public defenders would be authorized to use unallocated funds for lump-sum bonuses without satisfying the current statutory prerequisites for lump-sum bonus awards, which require that the funds be specifically appropriated by the Legislature or authorized by the Legislative Budget Commission. At a minimum, the bill appears to give public defenders the ability to include salary bonuses within their annual classification and pay plans.

The bill amends the statute that prescribes the conditions under which lump-sum bonuses may be awarded to include a specific reference to the statute under which pay plans are developed by the offices of the public defender. In this manner, the bill appears to envision that the submission of pay plans that include bonuses would authorize payment of bonuses by public defenders.

Other state agencies, including state attorneys, would continue to be limited to providing lump-sum bonuses to employees as permitted in s. 110.1245, F.S., and s. 216.1815, F.S.

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.

⁹ Section 216.1815(5), F.S. The amount to be retained by the agency cannot be less than 5 percent or more than 25 percent of the annual savings. *Id.* Additionally, the salary increases or other expenditures must not create a recurring cost to the state in excess of the recurring savings achieved by the agency. *Id.*

¹⁰ Section 216.301, F.S.

B. Private Sector Impact:

None anticipated.

C. Government Sector Impact:

The bill may have a positive effect on the ability of the offices of the public defender 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 enables them to “take up the slack” when turnover occurs, would be the real beneficiaries of the public defender bonuses.

The provisions of the bill do not require an expenditure.

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.