

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: Governmental Oversight and Productivity Committee

BILL: CS/SB 190

SPONSOR: Judiciary Committee, Senator Campbell and others

SUBJECT: Student Loans/Attorneys

DATE: February 18, 2005 REVISED: 02/23/05 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cibula</u>	<u>Maclure</u>	<u>JU</u>	Fav/CS
2.	<u>McKay</u>	<u>Wilson</u>	<u>GO</u>	Fav/3 amendments
3.	_____	_____	<u>JA</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see last section for Summary of Amendments

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

I. Summary:

The committee substitute creates a program administered by the Justice Administrative Commission (JAC) to help assistant state attorneys, assistant public defenders, assistant attorneys general, and assistant statewide prosecutors repay student loans used to fund their legal educations. After three years of service, an attorney may be eligible for student loan assistance in the amount of \$3,000 per year. After six years of service, an attorney may be eligible for assistance in the amount of \$5,000 per year. The maximum total amount of student loan assistance permitted is \$44,000 per attorney.

The committee substitute provides that the program shall be annually funded by an appropriation from the General Revenue Fund to the JAC. Funds shall be paid to applicants under the program on a first-come, first-served basis.

This committee substitute creates section 43.201, Florida Statutes.

II. Present Situation:

Government Attorneys

Assistant State Attorneys and Assistant Public Defenders

In Florida, criminal prosecutions are conducted by the state attorney.¹ Florida is divided into 20 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 defender. State attorneys and public defenders are permitted to hire assistants to help them fulfill their duties.³

Attorney General and Statewide Prosecutor

According to the website for the Office of the Attorney General:

The Attorney General is the constitutional, statewide elected official who serves as the attorney for the State of Florida. The Attorney General is responsible for the enforcement of state consumer protection and antitrust laws as well as civil prosecution of criminal racketeering. In the area of criminal law, the Attorney General represents the State when those convicted appeal their convictions, including capital murder cases.

The Attorney General is authorized to issue formal legal opinions at the request of various public officials on questions relating to the application of state law and defends the constitutionality of statutes duly enacted by the Legislature.⁴

Additionally, the website for the Office of the Attorney General describes the Office of Statewide Prosecution as follows:

The Office of Statewide Prosecution was created by constitutional amendment passed by the voters in 1986. Article IV, Section 4 of the Florida Constitution, together with Section 16.56, of the Florida Statutes, sets forth the jurisdiction and authority of the Office. The Office was created because organized criminal activity does not respect the geographic boundaries imposed by judicial circuit lines. The Office is housed within the Department of Legal Affairs.

The mission of the Office is to investigate and prosecute multi-circuit organized crime and to assist other law enforcement officials in their efforts against organized crimes. In order for the Statewide Prosecutor to handle a case, the crime must have occurred in more than one judicial circuit or be part of a conspiracy affecting more than one judicial circuit, and it must be one of the offenses enumerated in the law: bribery; burglary; usury; extortion; gambling;

¹ Section 17, Art. V, State Const.

² Section 18, Art. V, State Const., and s. 27.40(1), F.S.

³ Sections 17 and 18, Art. V, State Const.

⁴ OFFICE OF THE ATTORNEY GENERAL, OVERVIEW, THE ROLE AND FUNCTION OF THE ATTORNEY GENERAL *at* <http://myfloridalegal.com/overview>.

kidnapping; theft; murder; prostitution; perjury; robbery; home-invasion robbery; car-jacking; narcotics violations; antitrust violations; anti-fencing violations; crimes involving fraud and deceit; computer crimes; racketeering; and attempts, solicitations, or conspiracies to commit these offenses. The cases are filed where the majority of offenses are committed, where the criminal organization’s center is operational, or where the case is allowed to be tried by general venue law.⁵

The Office of the Attorney General reports that 116 assistant attorneys general and assistant statewide prosecutors have between three and ten years of experience.

Salary Statistics

The minimum starting salary for assistant public defenders and assistant state attorneys is \$37,565.88.⁶ Individual attorneys, however, can be hired for amounts greater than the minimum salary. Assistant state attorneys and assistant public defenders are considered senior management service for retirement purposes.⁷

Table 1: Assistant State Attorney Salaries

Years of Service	0.01 - 1	3 - 4	5 - 6
Average Salary	\$41,554.84	\$51,108.36	\$55,457.35

Source: Justice Administrative Commission.

Table 2: Assistant Public Defender Salaries

Years of Service	0.01 - 1	3 - 4	5 - 6
Average Salary	\$42,410.18	\$51,282.48	\$54,922.39

Source: Justice Administrative Commission.

The minimum starting salary for attorneys in the Office of the Attorney General is \$34,969.

Table 3: Office of the Attorney General Attorney Salaries

Years of Service	0 - 1	3 - 4	5 - 6
Average Salary	\$39,311	\$47,313	\$52,561

Source: Office of the Attorney General.

Law School Graduate Debt Levels

According to the National Association of Student Financial Aid Administrators, students who graduated from a public law school with student loan debt during the 2002-2003 academic year had an average debt of \$54,025.⁸ Those who graduated from a private law school had an average debt of \$77,183.⁹

⁵ OFFICE OF THE ATTORNEY GENERAL, OFFICE OF STATEWIDE PROSECUTION, GENERAL INFORMATION at <http://myfloridalegal.com/swp>.

⁶ Conversation with staff of the Justice Administrative Commission on January 20, 2005.

⁷ Rule 60S-1.0057(1)(j), F.A.C.

⁸ NATIONAL ASSOCIATION OF STUDENT FINANCIAL AID ADMINISTRATORS, LAW, DENTAL, AND MEDICAL SCHOOL GRADUATES LEAVE WITH SUBSTANTIAL STUDENT LOAN DEBT, SOGAPPP RESULTS REVEAL at <http://www.nasfaa.org/publications/2004/rnsogappp030104.html>

⁹ *Id.*

Student Loan Types

Two types of federal student loans are available to students for law school financing under the Higher Education Act of 1965, as amended.¹⁰ The first is the Perkins Loan, which is a low-interest (5 percent) loan available to students with exceptional financial need.¹¹ The second is the Stafford Loan, which may be subsidized or unsubsidized.¹² 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 \$55,500 for the three-year law school program.

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*, LRAPs are currently offered by some federal agencies, states, law schools, and private employers.^{13 14}

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.¹⁵ 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 2003, federal government agencies “provided more than \$9.1 million in student loan repayment benefits to 2,077 Federal employees.”¹⁶

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.¹⁷ 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

¹⁰ See 20 U.S.C. s. 1070-1089 and U.S. DEPARTMENT OF EDUCATION, FEDERAL STUDENT AID, at <http://www.ed.gov/about/offices/list/fsa/index.html?src=rt>.

¹¹ U.S. DEPARTMENT OF EDUCATION, THE STUDENT GUIDE: FINANCIAL AID FROM THE U.S. DEPARTMENT OF EDUCATION 2002-2003, at http://www.ed.gov/prog_info/SFA/StudentGuide/2002-3/perkins.html.

¹² U.S. DEPARTMENT OF EDUCATION, THE STUDENT GUIDE: FINANCIAL AID FROM THE U.S. DEPARTMENT OF EDUCATION 2002-2003, at http://www.ed.gov/prog_info/SFA/StudentGuide/2002-3/stafford.html.

¹³ 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.

¹⁴ 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 clearinghouse for legal career planning information, and its members include lawyer personnel administrators and law school career services professionals. The 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.

¹⁵ 5 U.S.C. s. 5379.

¹⁶ OFFICE OF PERSONNEL MANAGEMENT, FEDERAL STUDENT LOAN REPAYMENT PROGRAM FISCAL YEAR 2003: REPORT TO THE CONGRESS 3 (May 2004).

¹⁷ See GA. CODE ANN. ss. 20-3-380 through 20-3-387.

length of time.¹⁸ 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.¹⁹

Justice Administrative Commission

The Justice Administrative Commission (JAC) was created to provide administrative services and assistance to state attorneys and public defenders, the office of capital collateral representative of Florida, and the Judicial Qualifications Commission.²⁰ The administrative services and assistance that may be provided by the JAC include preparation of budget requests, voucher schedules, and other forms and reports.²¹

III. Effect of Proposed Changes:

The committee substitute creates a program administered by the Justice Administrative Commission (JAC) to help assistant state attorneys, assistant public defenders, assistant attorneys general, and assistant statewide prosecutors repay student loans used to fund their legal educations. After three years of service, an attorney may be eligible for student loan assistance in the amount of \$3,000 per year. After six years of service, an attorney may be eligible for assistance in the amount of \$5,000 per year. Upon completion of thirteen years of continuous service or full satisfaction of the eligible student loan obligation, payments will cease. The maximum total amount of student loan assistance permitted is \$44,000 per attorney. The committee substitute provides that the payments from the program are made directly to the lender that services the student loan.

The committee substitute provides that the program shall be annually funded by an appropriation from the General Revenue Fund to the JAC. Funds shall be paid to applicants under the program on a first-come, first-served basis.

The committee substitute takes effect July 1, 2005.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹⁸ GA. CODE ANN. ss. 20-3-383 and 20-3-386.

¹⁹ GA. CODE ANN. s. 20-3-386(d).

²⁰ Section 43.16(5)(a), F.S.

²¹ Section 43.16(5)(b), F.S.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

Financial assistance provided under the committee substitute will likely constitute taxable income to the recipient.²²

B. Private Sector Impact:

The availability of student loan assistance for these government attorneys may reduce the number of attorneys who feel compelled to work for private sector law firms in order to earn enough to pay off their student loans.

C. Government Sector Impact:

The Justice Administrative Commission (JAC) estimates that it requires one full-time Operations and Management Consultant (class code 1705, pay grade 23) to perform the duties outlined in this committee substitute. The projected costs associated with the additional employee are \$62,860 for the first year and \$58,299 thereafter.

The JAC estimates that the cost to provide student loan repayment assistance to assistant state attorneys and assistant public defenders is \$2,595,750. The JAC's estimate assumes that 75 percent of all assistant state attorneys and assistant public defenders with three years but less than six years of experience, and 50 percent of all assistant state attorneys and assistant public defenders with six years but less than 13 years of experience have student loans.

The Office of the Attorney General estimates that the cost to provide student loan repayment assistance to assistant attorneys general and assistant statewide prosecutors is \$406,000. This estimate assumes that 80 percent of the attorneys with three to six years of experience and 50 percent of the attorneys with six to 10 years of experience have student loans.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The student loan repayment assistance available under the committee substitute appears to be limited to those loans used to "fund . . . law school education" as opposed to both law school and undergraduate loans. 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 loan is attributable to law school, if graduate and undergraduate student loans have been consolidated.

²² See OFFICE OF PERSONNEL MANAGEMENT, STUDENT LOAN REPAYMENT PROGRAM QUESTIONS AND ANSWERS ON TAX LIABILITY, at <http://www.opm.gov/oca/pay/studentLoan/HTML/QandAsTax.asp>.

The committee substitute states that an eligible career attorney is an assistant state attorney, assistant public defender, assistant attorney general, or assistant statewide prosecutor “who has been employed in *that* capacity for 3 years of continuous service” As such, it appears that if an attorney transfers his or her employment, for example, from a state attorney’s office to a public defender’s office, the attorney may lose eligibility for student loan repayment assistance. The Legislature may wish to clarify whether it intends to discourage such employment transfers.

The committee substitute allows payments to be made even if the eligible career attorney is in delinquency or default on the original eligible student loan. The Legislature may wish to consider whether the definition of eligible student loan should be amended to include only those loans that are not in delinquency or default.

The eligible career attorney submits an affidavit of certification once, at the completion of three years of continuous service, upon receipt of which the commission shall begin yearly payments. In order to ensure that yearly payments are made only to eligible career attorneys still employed, the Legislature may wish to require the affidavit of service be submitted to the Justice Administration Commission yearly.

The bill language assumes that payments are made to a single lender, but it is possible that an eligible career attorney has loans with more than one lender. The Legislature may wish to provide that for eligible career attorneys with multiple eligible student loans, payments be made first on those eligible student loans which have the highest current interest rate, followed by the loan with the next highest rate.

VIII. Summary of Amendments:

Barcode 784416 by Governmental Oversight and Productivity:

Amends definition of “eligible student loan” to require that eligible student loans neither be in default, nor have accrued late fees.

Barcode 792696 by Governmental Oversight and Productivity:

Requires that the affidavit of certification be submitted yearly by the eligible career attorney, as opposed to being submitted only once. The amendment ensures that only eligible career attorneys currently so employed will have payments made on their loans.

Barcode 501618 by Governmental Oversight and Productivity:

If an eligible career attorney has multiple eligible student loans, payments will be made first on loans with higher current interest rates, before being made on loans with lower current interest rates.

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