S T A T E O F N E W Y O R K

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2011-2012 Regular Sessions

I N A S S E M B L Y

February 9, 2011

Introduced by M. of A. BRENNAN, ROSENTHAL, MILLMAN, PHEFFER, ORTIZ, CAHILL, JAFFEE, WRIGHT, SCHIMEL, HOOPER, N. RIVERA -- Multi-Sponsored by -- M. of A. BROOK-KRASNY, GOTTFRIED, PEOPLES-STOKES, ROBINSON -- read once and referred to the Committee on Judiciary

AN ACT to amend the state finance law and the judiciary law, in relation to the retention of qualified public service attorneys through assistance in repaying student loans

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. This act shall be known and may be cited as the "public interest legal services loan assistance act."

S 2. Declaration of policy and legislative intent. The legislature reaffirms that the efficient and effective provision of high-quality legal services on behalf of the state, its political subdivisions and the populations therein depends on competent, dedicated attorneys making a long-term commitment to public-service work, whether as prosecutors, public defenders or other indigent defense attorneys, civil legal services attorneys, or the equivalent. The legislature finds, however, that because these attorneys often carry significant and increasing student loan debt burdens and have grave difficulty in repaying such debts on the relatively low salaries paid by most public interest positions, many of these attorneys are being forced to leave public service. The loss of so many capable public interest attorneys, often at the very time they have achieved sufficient training and experience to handle the most complex matters of public concern, has had an adverse impact on government generally and reduced the capacity of the criminal and civil justice systems to provide the consistently high-quality legal services the people of New York state deserve. The legislature finds that the difficulty of attracting and retaining well-trained public interest lawyers due to student loan debt frustrates the achievement of important constitutional and statutory policy objectives, increases the cost of

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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state and local government, and diminishes public confidence in the criminal and civil justice systems. The legislature therefore recognizes the value of retaining these seasoned public servants in public interest positions and finds that it is in the public interest to provide financial assistance to help these attorneys repay their student loans. Accordingly, the legislature hereby establishes the public interest legal services loan assistance fund.

S 3. The state finance law is amended by adding a new section 99-t to read as follows:

S 99-T. PUBLIC INTEREST LEGAL SERVICES LOAN ASSISTANCE FUND. 1. THERE IS HEREBY ESTABLISHED IN THE JOINT CUSTODY OF THE STATE COMPTROLLER AND THE CHIEF ADMINISTRATOR OF THE COURTS A SPECIAL FUND TO BE KNOWN AS THE "PUBLIC INTEREST LEGAL SERVICES LOAN ASSISTANCE FUND" OF THE STATE OF NEW YORK.

2. THE PUBLIC INTEREST LEGAL SERVICES LOAN ASSISTANCE FUND SHALL CONSIST OF THE MONIES DEPOSITED THEREIN PURSUANT TO SUBDIVISION ONE OF SECTION FOUR HUNDRED SIXTY-FIVE OF THE JUDICIARY LAW, AND ALL MONIES DEPOSITED THEREIN OR TRANSFERRED THERETO FROM ANY OTHER FUND OR SOURCE PURSUANT TO LAW, INCLUDING VOLUNTARY CONTRIBUTIONS, TOGETHER WITH ANY INTEREST ACCRUED THEREON.

3. ALL MONIES IN THE PUBLIC INTEREST LEGAL SERVICES LOAN ASSISTANCE FUND SHALL BE AVAILABLE, SUBJECT TO APPROPRIATIONS, FOR THE PAYMENT OF SERVICES AND EXPENSES AS PROVIDED FOR IN THE PUBLIC INTEREST LEGAL SERVICES LOAN ASSISTANCE PROGRAM AUTHORIZED BY ARTICLE FIFTEEN-A OF THE JUDICIARY LAW, INCLUDING THE COSTS TO THE UNIFIED COURT SYSTEM INCURRED IN THE ADMINISTRATION OF SUCH PROGRAM.

4. ALL PAYMENTS OF MONEY FROM THE PUBLIC INTEREST LEGAL SERVICES LOAN ASSISTANCE FUND SHALL BE MADE ON THE AUDIT AND WARRANT OF THE COMPTROLLER ON VOUCHERS CERTIFIED OR APPROVED BY THE CHIEF ADMINISTRATOR OF THE COURTS.

S 4. Subdivision 1 of section 465 of the judiciary law, as amended by section 6 of part K of chapter 56 of the laws of 2010, is amended to read as follows:

1. Every person applying for examination for admission to practice as an attorney and counselor at law shall pay a fee of [two] FOUR hundred [fifty] dollars, or seven hundred fifty dollars if, to qualify to take the bar examination, the person must satisfy the rules of the court of appeals for the admission of attorneys and counselors at law governing the study of law in a foreign country, for each taking or retaking of the examination, or if dispensation has been received from the taking of the examination, [four] FIVE hundred dollars for credential review for admission on motion. All such fees shall be paid into the state treasury in the manner provided by section one hundred twenty-one of the state finance law, PROVIDED THAT ONE HUNDRED FIFTY DOLLARS OF EACH FEE FOR THE TAKING OR RETAKING OF THE EXAMINATION AND ONE HUNDRED DOLLARS OF EACH FEE FOR CREDENTIAL REVIEW FOR ADMISSION ON MOTION SHALL BE DEPOSITED IN THE PUBLIC INTEREST LEGAL SERVICES LOAN ASSISTANCE FUND ESTABLISHED PURSUANT TO SECTION NINETY-NINE-T OF THE STATE FINANCE LAW.

S 5. The judiciary law is amended by adding a new article 15-A to read as follows:

ARTICLE 15-A

PUBLIC INTEREST LEGAL SERVICES LOAN ASSISTANCE PROGRAM

SECTION 499-A. DEFINITIONS.
499-B. PROGRAM ADMINISTRATION.
499-C. PUBLIC INTEREST LEGAL SERVICES LOAN ASSISTANCE.

S 499-A. DEFINITIONS. AS USED IN THIS ARTICLE:

1. "ELIGIBLE ATTORNEY" MEANS AN ATTORNEY ADMITTED TO PRACTICE LAW IN NEW YORK STATE WHO DURING THE STATE FISCAL YEAR FOR WHICH SUCH ATTORNEY SEEKS REIMBURSEMENT FOR THE PAYMENT OF A STUDENT LOAN EXPENSE WAS EMPLOYED EITHER AS A PROSECUTOR, AN INDIGENT DEFENSE ATTORNEY, OR A CIVIL LEGAL SERVICES ATTORNEY; AND WHO HAS BOTH HELD A DEGREE FROM A LAW SCHOOL FOR NOT MORE THAN ELEVEN YEARS AND WAS WITHIN THE ELIGIBLE PERIOD DURING THE TIME FOR WHICH SUCH PERSON IS SEEKING SUCH REIMBURSEMENT.

2. "PROSECUTOR" MEANS A FULL-TIME DISTRICT ATTORNEY, AS DEFINED IN SUBDIVISION THIRTY-TWO OF SECTION 1.20 OF THE CRIMINAL PROCEDURE LAW.

3. "INDIGENT DEFENSE ATTORNEY" MEANS AN ATTORNEY WHO IS A FULL-TIME EMPLOYEE OF ANY OF THE AGENCIES DESIGNATED BY SUBDIVISIONS ONE AND TWO OF SECTION SEVEN HUNDRED TWENTY-TWO OF THE COUNTY LAW, AND WHO IS ENGAGED FULL-TIME IN THE PRACTICE OF CRIMINAL LAW ON BEHALF OF PERSONS CHARGED WITH A CRIME WHO ARE FINANCIALLY UNABLE TO OBTAIN COUNSEL.

4. "CIVIL LEGAL SERVICES ATTORNEY" MEANS AN ATTORNEY WHO IS AN EMPLOYEE OF:

(A) THE STATE OR ANY POLITICAL SUBDIVISION THEREOF, INCLUDING ALL PUBLIC INSTRUMENTALITIES THEREUNDER, AND WHO IS ENGAGED IN THE FULL-TIME PRACTICE OF LAW ON BEHALF OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF; OR

(B) A NOT-FOR-PROFIT CORPORATION OF THIS STATE THAT IS (I) EXEMPT FROM THE PAYMENT OF FEDERAL INCOME TAXES PURSUANT TO SECTION 501(C)(3) OF THE INTERNAL REVENUE CODE, AND (II) ESTABLISHED FOR THE PURPOSE OF PROVIDING LEGAL SERVICES THAT INCLUDE CIVIL LEGAL SERVICES TO PERSONS WITHIN NEW YORK STATE WHOSE ANNUAL INCOME DOES NOT EXCEED ONE HUNDRED FIFTY PERCENT OF THE PREVAILING POVERTY GUIDELINES ISSUED BY THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES OR ANY SUCCESSOR AGENCY; AND WHO IS ENGAGED IN THE FULL-TIME PRACTICE OF LAW ON BEHALF OF SUCH PERSONS.

5. "ELIGIBLE PERIOD" MEANS THE SIX-YEAR PERIOD BETWEEN THE COMPLETION OF THE THIRD YEAR AND BEFORE THE COMMENCEMENT OF THE TENTH YEAR OF EMPLOYMENT AS A PROSECUTOR AS DEFINED IN SUBDIVISION TWO OF THIS SECTION, OR INDIGENT DEFENSE ATTORNEY AS DEFINED IN SUBDIVISION THREE OF THIS SECTION, OR CIVIL LEGAL SERVICES ATTORNEY AS DEFINED IN SUBDIVISION FOUR OF THIS SECTION. FOR PURPOSES OF THIS ARTICLE, ALL PERIODS OF TIME DURING WHICH AN ADMITTED ATTORNEY WAS EMPLOYED AS A PROSECUTOR, INDIGENT DEFENSE ATTORNEY OR CIVIL LEGAL SERVICES ATTORNEY SHALL BE COMBINED.

6. "STUDENT LOAN EXPENSE" MEANS THE TOTAL PAYMENTS IN SATISFACTION OF THE CUMULATIVE TOTAL OF THE ELIGIBLE ATTORNEY'S OUTSTANDING STUDENT LOAN DEBT COVERING THE TUITION AND OTHER COSTS OF ATTENDANCE AT A LAW SCHOOL, INCLUDING INTEREST, REQUIRED TO BE MADE BY THE ELIGIBLE ATTORNEY DURING A STATE FISCAL YEAR. FOR PURPOSES OF THIS ARTICLE, THE AMOUNT OF THE STUDENT LOAN EXPENSE SHALL BE REDUCED BY THE TOTAL OF ALL GRANTS, SCHOLARSHIPS, REIMBURSEMENTS, LOAN FORGIVENESS OR SIMILAR REDUCTIONS TO THE ATTORNEY'S INDEBTEDNESS THAT THE ATTORNEY HAS RECEIVED OR SHALL RECEIVE IN OR FOR SUCH YEAR.

S 499-B. PROGRAM ADMINISTRATION. THE CHIEF ADMINISTRATOR OF THE COURTS SHALL ADMINISTER THE PUBLIC INTEREST LEGAL SERVICES LOAN ASSISTANCE PROGRAM AND SHALL PROMULGATE RULES AND REGULATIONS CONSISTENT WITH THIS ARTICLE TO GOVERN THE ADMINISTRATION OF SUCH PROGRAM. THE CHIEF ADMINISTRATOR SHALL CREATE AN APPLICATION PROCESS TO DETERMINE ELIGIBILITY FOR APPLICANTS TO RECEIVE STUDENT LOAN EXPENSE GRANTS PURSUANT TO THIS ARTICLE.

S 499-C. PUBLIC INTEREST LEGAL SERVICES LOAN ASSISTANCE. 1. (A) AN ELIGIBLE ATTORNEY MAY APPLY, CONSISTENT WITH THIS ARTICLE AND THE RULES AND REGULATIONS PROMULGATED BY THE CHIEF ADMINISTRATOR, FOR THE REIMBURSEMENT OF STUDENT LOAN EXPENSE PAYMENTS MADE BY THE ELIGIBLE

ATTORNEY DURING A STATE FISCAL YEAR THAT FALLS COMPLETELY WITHIN THE ELIGIBLE PERIOD FOR SUCH ATTORNEY. SUCH APPLICATION SHALL BE FILED AT SUCH TIME AS THE CHIEF ADMINISTRATOR MAY REQUIRE.

(B) AN ELIGIBLE ATTORNEY, TO RECEIVE REIMBURSEMENT OF A STUDENT LOAN EXPENSE UNDER THIS ARTICLE, MAY APPLY FOR SUCH REIMBURSEMENT UPON THE COMPLETION OF THE FIRST YEAR OF HIS OR HER ELIGIBLE PERIOD, AND MAY APPLY FOR SUCH REIMBURSEMENT ANNUALLY THEREAFTER UPON THE COMPLETION OF THE SECOND THROUGH SIXTH YEARS OF SUCH ELIGIBLE PERIOD; PROVIDED, HOWEVER, THAT EACH SUCH APPLICATION SHALL BE ONLY FOR HIS OR HER STUDENT LOAN EXPENSE PAYMENTS DURING THE PREVIOUS STATE FISCAL YEAR.

2. DURING EACH STATE FISCAL YEAR COMMENCING ON OR AFTER APRIL FIRST, TWO THOUSAND TWELVE, THE STATE SHALL APPORTION AND PAY TO EACH ELIGIBLE ATTORNEY, PURSUANT TO THIS ARTICLE AND SUBJECT TO THE AVAILABILITY OF APPROPRIATIONS THEREFOR, AN AMOUNT EQUAL TO THE LESSER OF THE STUDENT LOAN EXPENSE OF SUCH ELIGIBLE ATTORNEY OR SIX THOUSAND DOLLARS. THE STATE ASSISTANCE APPORTIONED UNDER THIS SECTION SHALL BE DETERMINED BY THE CHIEF ADMINISTRATOR AND PAID OUT OF THE PUBLIC INTEREST LEGAL SERVICES LOAN ASSISTANCE FUND. IN THE EVENT THAT THE MONIES APPROPRIATED FROM SUCH FUND DURING A STATE FISCAL YEAR FOR PURPOSES OF MAKING ASSISTANCE PAYMENTS ARE NOT SUFFICIENT TO PAY FULLY THE AMOUNTS APPORTIONED DURING SUCH FISCAL YEAR TO ALL ELIGIBLE ATTORNEYS ENTITLED THERETO, EACH ELIGIBLE ATTORNEY SHALL BE ENTITLED TO RECEIVE ONLY AN AMOUNT REPRESENTING THE SAME PROPORTION TO THE TOTAL MONIES APPROPRIATED, LESS NECESSARY ADMINISTRATIVE COSTS, AS THE AMOUNT APPORTIONED TO HIM OR HER BEARS TO THE TOTAL AMOUNT APPORTIONED TO ALL ELIGIBLE ATTORNEYS FOR SUCH FISCAL YEAR.

S 6. Subdivision 1 of section 212 of the judiciary law is amended by adding a new paragraph (w) to read as follows:

(W) ADMINISTER THE PUBLIC INTEREST LEGAL SERVICES LOAN ASSISTANCE PROGRAM PURSUANT TO ARTICLE FIFTEEN-A OF THIS CHAPTER.

S 7. This act shall take effect September 1, 2012; provided, however, that the provisions of sections three and four of this act shall take effect September 1, 2011; and further provided, however, that the chief administrator of the courts is immediately authorized to promulgate any rules and regulations necessary to implement the provisions of this act.