

4930

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:

1 Section 1. This act shall be known and may be cited as the "public
2 interest legal services loan assistance act."
3 S 2. Declaration of policy and legislative intent. The legislature
4 reaffirms that the efficient and effective provision of high-quality
5 legal services on behalf of the state, its political subdivisions and
6 the populations therein depends on competent, dedicated attorneys making
7 a long-term commitment to public-service work, whether as prosecutors,
8 public defenders or other indigent defense attorneys, civil legal
9 services attorneys, or the equivalent. The legislature finds, however,
10 that because these attorneys often carry significant and increasing
11 student loan debt burdens and have grave difficulty in repaying such
12 debts on the relatively low salaries paid by most public interest posi-
13 tions, many of these attorneys are being forced to leave public service.
14 The loss of so many capable public interest attorneys, often at the very
15 time they have achieved sufficient training and experience to handle the
16 most complex matters of public concern, has had an adverse impact on
17 government generally and reduced the capacity of the criminal and civil
18 justice systems to provide the consistently high-quality legal services
19 the people of New York state deserve. The legislature finds that the
20 difficulty of attracting and retaining well-trained public interest
21 lawyers due to student loan debt frustrates the achievement of important
22 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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1 state and local government, and diminishes public confidence in the
2 criminal and civil justice systems. The legislature therefore recognizes
3 the value of retaining these seasoned public servants in public interest
4 positions and finds that it is in the public interest to provide finan-
5 cial assistance to help these attorneys repay their student loans.
6 Accordingly, the legislature hereby establishes the public interest
7 legal services loan assistance fund.

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

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

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

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

27 4. ALL PAYMENTS OF MONEY FROM THE PUBLIC INTEREST LEGAL SERVICES LOAN
28 ASSISTANCE FUND SHALL BE MADE ON THE AUDIT AND WARRANT OF THE COMP-
29 TROLLER ON VOUCHERS CERTIFIED OR APPROVED BY THE CHIEF ADMINISTRATOR OF
30 THE COURTS.

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

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

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

51 ARTICLE 15-A

52 PUBLIC INTEREST LEGAL SERVICES LOAN ASSISTANCE PROGRAM
53 SECTION 499-A. DEFINITIONS.

54 499-B. PROGRAM ADMINISTRATION.

55 499-C. PUBLIC INTEREST LEGAL SERVICES LOAN ASSISTANCE.

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

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

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

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

15 4. "CIVIL LEGAL SERVICES ATTORNEY" MEANS AN ATTORNEY WHO IS AN EMPLOY-
16 EE OF:

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

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

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

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

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

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

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

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

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

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

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

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