

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

BILL: CS/SB 142

INTRODUCER: Judiciary Committee, Senator Ring and others

SUBJECT: Student Loans

DATE: January 8, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
2.	<u>McVaney</u>	<u>McVaney</u>	<u>GO</u>	Favorable
3.	_____	_____	<u>AED</u>	_____
4.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 142 creates the “For the Greater Good Attorney Student Loan Repayment Program” within the Florida Department of Education. The program provides student loan repayment assistance to eligible attorneys employed in the public sector. Funding for the program is contingent upon a specific appropriation in the General Appropriations Act.

Under the bill, an attorney is eligible for loan repayment assistance for any student loan not in default which was issued or guaranteed by a state or the federal government, if the attorney:

- Is working full-time in the public sector in Florida, by the state or a local government or the Federal Government;
- Is a member of the Florida Bar who has not received any disciplinary action;
- Has completed no less than four years and no more than 10 years of government service;
- Earns less than \$65,000 in salary; and
- Is not eligible for any other state, local, or federal grant or private fund that assists in student loan repayment.

The bill authorizes up to \$3,000 in loan payments annually for qualifying attorneys having at least 4 and up to 7 years of government employment. When an attorney reaches 7 years of employment, the amount authorized increases to \$5,000. When the attorney completes 10 years of service, loan payments cease.

An attorney must apply annually to the Department of Education for the loan repayment assistance.

II. Present Situation:

The Higher Education Act of 1965

Title IV of the Higher Education Act of 1965 established a federal loan program for eligible student and parent borrowers.¹ The program is known as the William D. Ford Federal Direct Loan Program (Direct Loan program).²

Today, the U.S. Department of Education oversees a variety of loan programs within the Direct Loan program.³ These programs include the following offerings:

- Federal Perkins Loan, a loan made by the recipient's school, for undergraduate and graduate students who qualify based on financial need. Total loan amounts are capped.
- Direct Subsidized Loan, a loan available to undergraduate students enrolled at least half-time and with demonstrated financial need. Students are not charged interest during certain time periods, such as while they are attending school.
- Direct Unsubsidized Loan, a loan available to undergraduate and graduate students who are enrolled at least half-time. Financial need is irrelevant. Interest accrues regularly.
- Direct PLUS Loan, a loan for parent borrowers of dependent students attending school as undergraduate or graduate-level students. Interest accrues regularly.
- Direct Consolidation Loan, an optional loan that combines one or more federal student loans into one new loan to streamline billing into a single monthly payment.
- Federal Family Education Loan Program (FFEL), a program in which private lenders provided students loans that the federal government guaranteed. These loans included subsidized Federal Stafford Loans, unsubsidized Federal Stafford Loans, FFEL PLUS Loans, and FFEL Consolidation Loans. In 2010, Congress passed the Health Care and Education Reconciliation Act. The Act effectively ended the FFEL, and therefore the practice of the government providing guaranteed loans.⁴ As of July 1, 2010, no new FFEL Program loans were made. Still, some loans taken out before this date continue in repayment.⁵

Law School Costs and Debt

Many law school students in Florida graduate with considerable debt. The table below details debt of recent law school graduates by public and private school attended in Florida.⁶ The report

¹ Pub. L. 89-329 (Nov. 8, 1965).

² Federal Student Aid, U.S. Department of Education, *Public Service Loan Forgiveness*, <https://studentaid.ed.gov/repay-loans/forgiveness-cancellation/charts/public-service> (last visited Oct. 8, 2015).

³ Federal Student Aid, U.S. Department of Education, *About Us*, <https://studentaid.ed.gov/about> (last visited Oct. 8, 2015).

⁴ Federal Student Aid, U.S. Department of Education, *Federal Family Education Loan Program Lender and Guaranty Agency Reports*, <https://studentaid.ed.gov/about/data-center/lender-guaranty> (last visited Oct. 8, 2015).

⁵ Federal Student Aid, U.S. Department of Education, *Subsidized and Unsubsidized Loans*, <https://studentaid.ed.gov/types/loans/subsidized-unsubsidized#eligibility> (last visited Oct. 8, 2015).

⁶ U.S. NEWS & WORLD REPORT GRAD COMPASS, *Which law school graduates have the most debt?*, <http://grad-schools.usnews.rankingsandreviews.com/best-graduate-schools/top-law-schools/grad-debt-rankings/> (last visited Oct. 9, 2014).

from which the information is detailed below does not expressly indicate whether the amount of debt identified includes debt incurred for undergraduate or education other than for law school.

Name of Institution	Average Indebtedness of 2015 Graduates	Percent of Grads having Debt
Ave Maria School of Law	\$132,236	87%
Nova Southeastern University	\$136,450	86%
Florida Coastal School of Law	\$162,785	93%
Florida International University	\$ 89,815	88%
Florida State University	\$ 80,375	85%
Stetson University	\$148,394	83%
St. Thomas University	\$140,808	91%
University of Florida	\$ 82,410	79%

In fact, the Florida Coastal School of Law ranks fourth in the country for highest average indebtedness of 2015 graduates.⁷

Loan Assistance and Forgiveness Programs

Federal Program

Congress created the Public Service Loan Forgiveness (PSLF) Program to encourage individuals to commit to public service, an area typically known for lower pay. The federal government provides loan forgiveness to applicants who work in certain public service jobs, including government organizations at the federal, state, or local level and private, not-for-profit organizations that provide public interest law services.

Loan forgiveness is available for government-held loans that are not in default. Additionally, the applicant must have made 120 monthly payments to qualify. The 120-month payment period started on October 1, 2007, so that the first loans will not be cancelled until October 1, 2017.⁸

Additionally, parents who received a Direct PLUS loan (on behalf of their child's education) may be eligible for loan forgiveness if the parent borrower works for a public service organization.⁹

The Florida Bar Foundation Loan Repayment Assistance Program (LRAP)

The Florida Bar Foundation operates a Loan Repayment Assistance Program (LRAP) for attorneys employed at Florida legal aid and legal services organizations. The LRAP serves organizations that receive general support funding from The Florida Bar Foundation. Money is available to assist attorneys with student loan payments through proceeds on the Bar's "Interest on Trust Accounts," or IOTA program. Staff attorneys who qualify for the benefit receive a \$5,000 annual loan to pay down student loan debt. The annual loan issued by The Florida Bar is

⁷ *Id.*

⁸ Federal Student Aid, *supra* note 1.

⁹ *Id.*

then forgiven, provided that the attorneys remain employed at qualifying organizations for a minimum of 12 months full-time or part-time (at least 50 percent of the full-time hours).¹⁰

Legislation in Other States

A total of 7 states have adopted legislation that offers loan assistance to lawyers working in certain public sector jobs. These states are California, Georgia, Illinois, Maryland, Nebraska, New Mexico, and Texas. Of these, only Maryland and New Mexico have funded their programs.¹¹

Law Schools

Many law schools offer loan repayment assistance to law school graduates working in the public interest sector. Pursuant to a survey request, 133 law schools responded that they have a loan repayment assistance program. Of the law schools in Florida, only the St. Thomas University School of Law responded affirmatively.¹²

Federal Income Taxation Implications for Cancellation of Debt or Loan Repayments

Under federal tax law, gross income includes income from the discharge of any indebtedness of \$600 or more in any calendar year.¹³ However, two types of student loan assistance may be tax free: student loan cancellation and student loan repayment assistance.

Under federal law¹⁴, to qualify for tax-free treatment, the loan must have been made by a qualified lender to assist the student in attending an eligible educational institution and contain a provision that all or part of the debt will be cancelled if the student works:

- For a certain period of time;
- In certain professions (including medicine, nursing, teaching and law); and
- For any of a broad class of employers.

Student loan repayments made to the student are tax free if received for any of the following:

- The National Health Service Corps (NHSC) Loan Repayment Program;
- A state education loan repayment program eligible for funds under the Public Health Service Act; or
- Any other state loan repayment or loan forgiveness program that is intended to provide for the increased availability of health services in underserved or health professional shortage areas (as determined by the state).

The following loan forgiveness and cancellation programs are eligible for tax-free status:

¹⁰ The Florida Bar Foundation, *General Grant Support Program*, <http://www.flabarfndn.org/grant-programs/lap/loan.aspx> (last visited Oct. 9, 2015).

¹¹ American Bar Association, *State Loan Repayment Assistance*, http://www.americanbar.org/groups/legal_aid_indigent_defendants/initiatives/loan_repayment_assistance_programs/state_loan_repayment_assistance_programs.html (last visited Oct. 9, 2015).

¹² Equal Justice Works, *Law School LRAPS*, <http://www.equaljusticeworks.org/ed-debt/students/loan-repayment-assistance-programs/school-LRAPs/law-school-list> (last visited Oct. 9, 2015).

¹³ 26 U.S.C. s. 61(a)(12).

¹⁴ 26 U.S.C. s. 108(f).

- Public Service Loan Forgiveness;
- Teacher Loan Forgiveness;
- National Health Service Corps Loan Repayment Program;
- Perkins Loan Cancellation and Discharge for teachers in teacher shortage areas, members of the US Armed Forces (service in combat pay areas), nurses, medical technicians, firefighters, law enforcement or corrections officers, public defenders, librarians and speech pathologists serving certain schools, Head Start workers, special education teachers, child or family services workers and professional providers of early intervention services, and faculty at tribal colleges and universities;
- College or University Loan Repayment Assistance Programs for service in national need areas; and
- Law School Loan Repayment Assistance Programs.

III. Effect of Proposed Changes:

The bill establishes the “For the Greater Good Attorney Student Loan Repayment Program” within the Florida Department of Education (DOE). The program provides student loan repayment assistance to eligible attorneys employed in the public sector. The bill authorizes the DOE to adopt rules to administer the program.

Funding for the program is contingent upon, and funded entirely through appropriations from the General Revenue Fund. As such, even if the bill passes, the program cannot be implemented without funding.

The program is intended to attract more attorneys to public service, and help government agencies retain attorneys, thereby reducing turnover and costs of repeated trainings.

Under the bill, an attorney is eligible for loan repayment assistance for any student loan not in default which was issued or guaranteed by a state or the Federal Government, if the attorney:

- Is working full-time in the public sector in Florida, by the state or a local government or the federal government;
- Is a member of the Florida Bar who has not received any disciplinary action;
- Has completed no more than 10 years of government service;
- Earns less than \$65,000 in salary as reported to the Internal Revenue Service; and
- Is not eligible for any other state, local, or federal grant or private fund that assists in student loan repayment.

Qualifying Loans and Payments

To be a qualifying loan, the loan must be secured for a law school education, government-held, and not in default. The bill, however, does not explain how DOE will segregate law school loans that have been consolidated with other education loans.

Loans eligible for repayment are limited to student loans issued or guaranteed by a state or the Federal Government. Loans that are privately-held do not qualify. The bill further declares that the payments are not taxable income.¹⁵

The annual allowance for loan repayment assistance is:

- \$3,000 if the attorney has at least 4 years, and up to 7 years of employment in the public sector; and
- \$5,000 if the attorney has more than 7, but no more than 10 years of employment in the public sector.

Process for Application and Payment

The Florida Department of Education will administer the program and make payment on the loans.

To apply for loan repayment assistance, an attorney must annually submit a certification affidavit to his or her employer within 30 days after his or her employment anniversary. The affidavit must certify that the attorney is an eligible career attorney with one or more eligible student loans as of his or her last employment anniversary. Within 60 days after the most recent employment anniversary, the employer must submit the affidavit to the DOE.

Once approved, the DOE will make payments to the financial institution that services an attorney's student loan. However, if an attorney has multiple loans, the DOE must prioritize payments to the loan having the highest current interest rate.

Because the program is contingent upon appropriations by the Legislature, the Legislature may choose not to fund the program or to underfund the program. If funds appropriated are insufficient to make full payments for all eligible attorneys, the DOE must uniformly prorate payments.

The bill takes effect July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of a state tax shares with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

¹⁵ This provision is most likely unnecessary because Florida does not impose a personal income tax. For federal tax purposes, the federal law determines whether loan repayment assistance is taxable income.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The attorneys receiving this benefit will enjoy a reduction in personal liabilities. However, based on the federal tax laws, the attorney may be subject to additional federal personal income taxes.

Increasing payments based on years of service provides an incentive for attorneys to make a long-term commitment to public service.

Florida attorneys employed in any public sector position, whether by the state or a local government or the Federal Government may qualify for loan repayment assistance.

C. Government Sector Impact:

Employers in the public sector may benefit from this program by having decreased turnover.

DOE, as the agency designated to administer the program, will likely incur a fiscal impact from the bill. A fiscal impact may result from costs to operate the program and from rulemaking. The bill does not address funding for DOE.

The appropriation needed to fund this program is unknown at this time due to the broad reach of the program. Under the bill, any attorney in the public sector may qualify for loan repayment. Also, the pool of employers is broad, including any local, state, or federal organization. Finally, the bill excludes from participation attorneys who are eligible for any other kind of repayment program. As a number of other programs offer loan repayment, ascertaining the number of attorneys who do not qualify on this basis is difficult.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Although the Federal Family Education Loan Program (FFEL) no longer exists, some applicants for loan assistance under the bill may have received private loans through the FFEL, which were then consolidated into a Direct Loan. The bill provides that only loans issued through the Higher

Education Act (Direct Loan program) qualify for assistance. The Higher Education Act created the FFEL. Therefore, under this bill, borrowers may receive loan assistance for loans that were initially privately-held.

Also, the bill provides that payments on loans are not taxable income. Florida does not tax state income. Therefore, whether loan repayment assistance is taxable income will be determined by federal law.

VIII. Statutes Affected:

This bill creates section 1009.675 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes: (Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Judiciary on December 1, 2015:

- Broadens the pool of potential participants from assistant state attorneys, assistant public defenders, assistant attorneys general, and assistant statewide prosecutors to any attorney employed by the state or a local government or the Federal Government;
- Changes the administering bodies from the Justice Administrative Commission and the Office of the Attorney General to the Department of Education;
- Creates the “For the Greater Good Attorney Student Loan Repayment Program” and houses the Program in the DOE;
- Removes the cap on the dollar amount of payments that can be made for each attorney;
- Requires qualifying attorneys to earn less than \$65,000, be a member of the Florida Bar without prior disciplinary action, and not be eligible for other loan repayment programs;
- Excludes from participation attorneys who are eligible for any other repayment program; and
- Reduces the number of eligible years for repayments by revising the required number of years of work in the public sector from 3 to 12 years, to 4 to 10 years.

B. Amendments:

None.