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OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
and Drafting

Legislative Budget
Office

H.B. 150
134th General Assembly

Bill Analysis

Version: As Introduced

Primary Sponsors: Reps. Hillyer and Leland

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SUMMARY

- Creates the Ohio Public Defender State Loan Repayment Program under which the State Public Defender may repay an attorney's student loans if the attorney agrees to be a public defender for at least three years in a public defender shortage area.
- Establishes the Public Defender Shortage Area and Public Defender Loan Repayment Funds.
- Allows an attorney to claim an income tax deduction for amounts repaid by the State Public Defender under the program.
- Appropriates \$1.5 million in FY 2022 and \$1.5 million in FY 2023 to support the program.
- Creates a 16-member task force to study Ohio's indigent defense system and provide recommendations to the General Assembly regarding the delivery, structure, and funding of indigent defense.

DETAILED ANALYSIS

Who is a public defender?

The bill defines a public defender as either (1) an attorney employed by the State Public Defender (SPD), a county public defender commission, or a joint county public defender commission to represent indigent people in need for at least 35 hours per week, 45 weeks per year or (2) counsel appointed by a court or selected by a indigent person in need in a public defender shortage area for at least 520 hours per year.¹

¹ R.C. 120.61.

Ohio Public Defender State Loan Repayment Program

The bill creates the Ohio Public Defender State Loan Repayment Program. Under the program, the SPD may repay up to \$50,000 of an educational loan taken by an attorney in exchange for the attorney's employment as a public defender in a "public defender shortage area."² The bill requires the Ohio Public Defender Commission to evaluate counties once every two years and to designate by rule a county as a public defender shortage area in which at least one of the following is true:

- The ratio of attorneys to total population is less than or equal to 1:700; or
- The case load of public defenders exceeds the maximum standard set by the Ohio Public Defender Commission; or
- Public defenders are not paid on par with the county prosecutor's office.³

Currently, the Department of Health administers similar loan repayment programs for physicians, dentists, and dental hygienists providing services in health or dental resource shortage areas.⁴

Eligibility

To be eligible to participate in the program, an individual must be either of the following:

- A student enrolled in the final year of law school; or
- An attorney admitted to the practice of law in Ohio for less than eight years who remains in good standing.

In addition, the individual must be a U.S. citizen, U.S. national, or permanent U.S. resident.⁵

Educational expenses

Under the program, an attorney may seek reimbursement for the following educational expenses incurred during law school: tuition, room, board, and other expenses including fees and books. With respect to room, board, and other expenses, the amount of those expenses must be determined reasonable by the SPD.⁶

² R.C. 120.61 to 120.68.

³ R.C. 120.63.

⁴ R.C. 3702.75, 3702.85, and 3702.96, not in the bill.

⁵ R.C. 120.64(A).

⁶ R.C. 120.62.

Repayment amounts

The bill requires the SPD to determine the amounts that will be paid as loan repayments on behalf of program participants. For a three-year service obligation, no repayment may exceed \$30,000.⁷ For one or two additional years, the attorney may receive an additional repayment not exceeding \$20,000.⁸ An attorney may claim an income tax deduction for amounts repaid by the SPD under the program.⁹

Failure to complete service obligation

Under the bill, if an attorney fails to complete the attorney's three-, four-, or five-year service obligation, the attorney must pay the SPD an amount set by rule by the SPD.¹⁰

Application

An individual seeking to participate in the program must apply to the SPD and submit all of the following information:

- The applicant's name, address, and telephone number;
- The law school the applicant is attending or attended, the dates of attendance, and verification of attendance;
- If applicable, the applicant's employer;
- A summary and verification of the educational expenses for which the applicant seeks reimbursement under the program;
- If applicable, verification the applicant has been admitted to the practice of law in Ohio for less than eight years and remains in good standing;
- Verification the applicant is a U.S. citizen, U.S. national, or permanent U.S. resident.¹¹

Approval of an application

The SPD is required to approve an application for participation if funds are available in the Ohio Public Defender State Loan Repayment Fund and the General Assembly has appropriated funds for the program.¹² After approving the application, the SPD must notify the applicant of the approval and enter into discussions with the applicant. The purpose of the

⁷ R.C. 120.66(B)(2)(a).

⁸ R.C. 120.66(B)(2)(b).

⁹ R.C. 5747.01(A)(33), conforming changes in R.C. 5747.10(B)(2).

¹⁰ R.C. 120.66(B)(3).

¹¹ R.C. 120.64(B).

¹² R.C. 120.65.

discussions is to facilitate the attorney's recruitment to employment as a public defender within a public defender shortage area.¹³

Once approved, a participant in the program may be reimbursed for up to \$50,000.¹⁴

Letter of intent

If the SPD and applicant agree on the applicant's placement within a public defender shortage area, the applicant then signs and delivers to the SPD a letter of intent agreeing to the placement.¹⁵

Participation contract

On the signing of a letter of intent, the attorney and SPD may enter into a contract for the attorney's participation in the program. The attorney's employer also may be a party to the contract.

The contract must include all of the following:

- That the attorney agrees to employment as a public defender in the public defender shortage area identified in the letter of intent for at least three years;
- That the SPD agrees to repay the principal and interest of a government or other educational loan so long as the attorney performs the service obligation and the repayment amount does not exceed the limits established under the bill;
- That the attorney agrees to pay the SPD if the attorney fails to complete the service obligation.¹⁶

The contract must also include the following terms:

- The attorney's length of service, which must be at least three years with an optional fourth or fifth year;
- If applicable, the number of weekly hours the attorney will be practicing in the public defender shortage area;
- If applicable, the number of hours per service year the attorney will be practicing in the public defender shortage area;
- The maximum amount the SPD will repay on behalf of the attorney.¹⁷

¹³ R.C. 120.65.

¹⁴ R.C. 120.65.

¹⁵ R.C. 120.65.

¹⁶ R.C. 120.66(B).

¹⁷ R.C. 120.66(C).

If the maximum amount the SPD will repay on behalf of the attorney includes the use of federal funds, then the amount of state funds used to repay the attorney must be equal to the amount of federal funds used.¹⁸

Rulemaking

The bill requires the SPD to adopt rules as necessary to implement and administer the program.¹⁹ The rules must be adopted in accordance with the state's abbreviated statutory rulemaking procedure.²⁰

Funds in the state treasury

The bill creates the Public Defender Shortage Area Fund and Public Defender Loan Repayment Fund to be used to implement and administer the program. The bill authorizes the SPD to accept gifts of money from any source for the implementation and administration of the program. All gifts must be paid into the treasury to the credit of the Public Defender Shortage Area Fund. All damages collected from program participants who fail to fulfill their service obligations must be paid in the treasury to the credit of the Public Defender Loan Repayment Fund.²¹ The bill appropriates \$1.5 million in FY 2022 and \$1.5 million in FY 2023 to the Public Defender Loan Repayment Fund to support the program.²²

Task force to study indigent defense

The bill creates a 16-member task force, with its members to be appointed not later than 90 days after the section's effective date, to study Ohio's indigent defense system and provide recommendations to the General Assembly regarding the delivery, structure, and funding of indigent defense. The Legislative Service Commission must assist the task force as needed, and the task force must report its recommendations to the General Assembly not later than one year after the section's effective date. The task force may reimburse the travel expenses of any experts invited to present to the task force. The bill specifies that, of General Revenue Fund appropriation item 019401, State Legal Defense Services, \$9,100 in FY 2022 and \$900 in FY 2023 is to be used for this purpose.

The task force is to consist of the following voting members: (1) the State Public Defender, (2) the Ohio Public Defender Commission's Chair, (3) the Governor or a designee, (4) the Ohio Supreme Court Chief Justice or a designee, (5) one judge appointed by the Ohio Judicial Conference, (6) one attorney appointed by the Ohio State Bar Association, (7) one public defender appointed by the Ohio Public Defender Commission, (8) one attorney who participates in the assigned counsel system, appointed by the Ohio Public Defender

¹⁸ R.C. 120.66(D).

¹⁹ R.C. 120.68.

²⁰ R.C. 111.15, not in the bill.

²¹ R.C. 120.67.

²² Sections 3, 4, and 5.

Commission, (9) one county commissioner appointed by the president of the County Commissioners’ Association of Ohio, (10) the Attorney General or a designee, (11) three members of the Senate, with two from the majority party appointed by the President and one from the minority party appointed by the Minority Leader, and (12) three members of the House, with two from the majority party appointed by the Speaker and one from the minority party appointed by the Minority Leader. The task force will be co-chaired by one Senate member and one House member, both from the majority party and appointed by their respective leaders.²³

HISTORY

Action	Date
Introduced	02-23-21

H0150-I-134/ec

²³ Section 6.