

AB 100: Paving the Path for Law Graduate Legislative Fellowships

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I. Introduction

At a time when the California state government must begin to prepare for the retirement of thousands of attorney employees, not enough is being done to attract and expose recent law school graduates to public service work.

The California state government needs employees with legal educations to cope with a soon-to-be-retiring legal workforce. In addition, legislators require counsel to assist in drafting legal documents and interpreting bill language and other documents. Meanwhile, nearly half of law graduates are unemployed or underemployed. The pressure to pay back crushing loan debt makes higher-paying jobs in law firms necessary for students who would otherwise want to work for the state.

A positive program to encourage interest in public law can help fulfill the state's needs and provide new employment, recruiting for permanent positions, and loan forgiveness opportunities during this time of limited employment for law school graduates. AB 100 (Alejo) would pave the way for a privately funded law graduate fellowship program. Fellows would work for one year within the legislative branch, although the bill allows for expansion to the executive and judicial branches. In addition, fellows would be enrolled in classes through The University of the Pacific McGeorge School of Law, which would allow them to defer loan repayment and earn credits toward a Masters of Law degree.

II. Background

Both potential employers and potential fellows are facing employment issues that AB 100 can begin to solve. This is Assembly Member Alejo's second attempt to create a law graduate

fellowship program within the legislature, but it is the first time a coalition of interested parties have rallied behind the proposal to help it succeed.

A. Evidence of the Problem

More than 36 percent of the state's attorneys are age 55 and over, according to statistics from the California Department of Human Resources. That means 1,625 attorneys out of 4,457 total state-employed attorneys will probably be retiring in the next 10 years. Further, 63 percent of state attorneys are 45 and older, so the California government is facing a potential attorney shortage.

Twenty percent of the class of 2013 did not have jobs nine months after graduation, and another 25 percent were in part-time or non-legal jobs, according to the American Bar Association's (ABA) compiled law school statistics. A majority of law school graduates carry more than \$140,000 in debt, which is \$50,000 more than debt loads 10 years ago, per the New America Education Policy Program.

B. Prior Attempts to Address the Problem

Assembly Member Alejo introduced AB 1800 during the 2013-14 Session. The bill would have created the California Law Fellowship Program, which would have offered licensed attorneys limited-term placement opportunities in public sector legal positions within the executive, legislative, and judicial branches of state government. The program would have provided each participating attorney with the opportunity to practice law in the public sector and encouraged each participating attorney to seek permanent employment in the public sector at the conclusion of the fellowship.

AB 1800 was very conceptual, so it did not actually create a program within its text or specify how the program would be funded or managed. Although there were funding discussions

with the California State Bar, some decision makers in the legislature did not want the Bar to be involved. As a result of the lack of specificity in the language and the lack of agreement between interested parties, the bill died in committee.

C. Interested Parties

The most interested and involved party in AB 100 is The University of the Pacific McGeorge School of Law. The school agreed to not only create and administer the educational component, but to also manage the program's funding when the organization that was originally proposed to be the manager could no longer participate. During the bill language development, the school's administration worked with Assembly Member Alejo's office and the Legislative and Public Policy Clinic team to develop a program concept that would work for the school and the state.

Other American Bar Association-accredited law schools in California will be consulted to fully cultivate the fellowship program. Deans from several law schools, including UC Davis and UC Irvine, have expressed their support for the bill concept. In addition, students at these and other schools are officially supporting AB 100. Nine schools' Student Bar Associations so far have agreed to sign a support letter.

The legislature itself is an interested party. AB 100 directs the Senate Committee on Rules, the Assembly Committee on Rules, or the Joint Committee on Rules to select fellows and execute an agreement regarding the program. Although the committees need to be involved, this raised concerns during the process because the committee members wanted to ensure the program would be implemented and carried out in an efficient way. To better allow for a streamlining all of the legislature's current fellowship programs, AB 100 became a two-year bill so the legislature could take a comprehensive look at the fellowships' processes.

When AB 100 was in the conceptual stage, Assembly Member Alejo hoped it could encompass the executive and judicial branches, as well as the legislative branch. One issue, however, was that California Attorneys, Administrative Law Judges, and Hearing Officers in State Employment (CASE) might oppose the bill if it included the executive branch. CASE is the union representing attorneys in the executive branch, and could have perceived the fellows as competing with CASE members for jobs. But the organization may have also recognized that the program's introduction into the executive branch would eventually create new CASE members. Ultimately, it was decided that AB 100 would leave the potential for future participation in the executive branch, and CASE has not opposed the bill.

III. Alternative Solutions

For the present solution, the bill language was crafted to meet the specific needs of recent graduates from multiple ABA accredited California law schools. During this development process, other types of fellowship structures were examined.

A. California Council on Science and Technology

California Council on Science and Technology (CCST) is the entity that administers the California Science and Technology Fellowship. CCST is a nonpartisan, not-for-profit 501(c)(3) corporation established by Assembly Concurrent Resolution (ACR 162) in 1988 by a unanimous vote of the California Legislature. This fellowship program was created through a contractual agreement between CCST and the Senate Rules Committee.

The bill acknowledging the contract (AB 573 in 2009) essentially "requests" that a coalition of public and private schools create the fellowship program, which occurred after the bill was chaptered. California Science and Technology Fellowships place professional scientists

and engineers in the California State Legislature for one-year appointments. Fellows work hands-on with policymakers to develop solutions to scientific and technical issues in California.

To apply for a California Science and Technology Fellowship, applicants are required to have a PhD or equivalent level degree, or, in the alternative, an MS degree in an engineering discipline, plus at least three years post-degree experience. Additionally, an applicant must be a U.S. citizen or have suitable immigration status for non-residents. The base stipend is \$45,000 in addition to reimbursement for up to \$4,000 in actual relocation costs (for moves over 50 miles). There are additional allowances for health insurance, travel and professional development activities.

B. Sacramento State Capital Fellows Program

The Sacramento State Capital Fellows Program consists of four fellowship programs: Assembly, Senate, Executive, and Judicial. The program is open to anyone who is at least 20 years old and a graduate from a university or four-year college. Fellows work full-time for 10 to 11 months. They receive health benefits, a monthly stipend of \$2,550, and are employees of Sacramento State. Sacramento State personnel facilitate the application process. Once fellows are accepted, they are automatically enrolled as unclassified graduate students at Sacramento State. A portion of the units earned may be applied to graduate programs upon completion of the fellowship.

This program was created through a budget line item. For recent application periods, the program has received about 1,500 applicants, but only 10 to 18 applicants are chosen to participate in each program (18 Assembly, 18 Senate, 10 Judicial, and a varying number of Executive fellows).

The Sacramento State Capital Fellows Program provides the accepted students with the following several services. First, there is a six-week orientation about working in government, which features keynote speakers from different government sectors. Then, prior to their assignments, the Fellowship provides a list of open positions to the fellows (resulting from direct meetings and relationship built over the years). This is followed by a type of matching process of fellows to positions. Informally, the Legislature leadership has to approve the list for Assembly and Senate placements, but this is not required. Each fellow is provided a mentor, who also serves as the point of contact for Sacramento State to ensure quality work is provided to the fellow and for feedback.

C. Other States' Programs

Only one other state, Washington, has a legislative internship program specifically designed for law students. The program, however, takes place during law school and only provides class credit to students. Thus, it is more analogous to a semester in practice than a post-graduate program like the California Law Fellowship Program.

Each state's undergraduate legislative fellowship or internship program demonstrates variations on the same few factors. They range from three to thirteen months long. Some states guarantee a position for each participating school, but most have all applicants compete for every position.

Many programs include an educational component, but they are structured in different ways. Some, like Alaska, provide credit for the work itself at a specific college or a few different colleges. In Kentucky, interns attend two weekly guest speaker seminars and take two classes, but schools are not required to award credit for participation.

Stipends and pay vary between states. For example, Ohio pays fellows as full-time staff, while Pennsylvania awards a stipend of \$750 every two weeks. Some states also include benefits, like moving expenses in Alaska and transportation in Delaware.

IV. Preferred Solution

The preferred solution is the creation of a privately funded fellowship program for law school graduates to work for one year within the legislative branch. The program must be privately funded because fluctuations in the state budget and current allocations to legislators for staff salaries make a state-funded fellowship impracticable. One of the reasons the Sacramento State Capital Fellows Program is state funded is its longevity. After the recent recession, and with current efforts to keep legislative spending lean, we are simply not in a period of time when the state would agree to fund an additional fellowship program.

It is important for the program to have an academic component. AB 100 names Pacific McGeorge School of Law as the educational entity, so that fellows can earn credit towards a Master of Laws. This academic component, coupled with fellows' employment through McGeorge's non-profit organization, gives participants the option to either defer their loan repayments or to choose income-based repayment through the Public Service Loan Forgiveness Program. Providing one of the two loan options is critical to attract talented applicants, but the idea that a fellow could qualify for either program provides flexibility. For example, married graduates may not qualify for Public Service Loan Forgiveness if they file their taxes jointly because their joint incomes may exceed the program cap. But, for most other students, the Public Service Loan Forgiveness Program is better than deferment because deferred loans continue to accrue interest and will have to be paid in full if a graduate does not work in public service.

One important thing that AB 100 must do is to lift the gift ban to enable private funds to support the fellowship program. The gift ban prevents legislators from receiving gifts from a single source that totals \$460, so an essential part of the AB 100 is language stating that the fellow's services are not considered a "gift." As such, the services of a fellow will not be regarded as compensation, a reward, or a gift to a legislator--thus removing the Code of Ethics ban against receiving such services.

V. Excerpts of the Legal Drafting

There are several key parts of AB 100. The bill names The University of the Pacific, McGeorge School of Law, supported by a coalition of law schools, to fundraise, manage, and administer the program, and employ fellows. It also lifts the gift ban so that legislators may receive services through a privately funded program. Finally, it directs the Rules Committees to manage the program on the legislature's behalf. Below are selected excerpts of the relevant language.

A. Request to McGeorge: California Government Code § 8050(d)

The Legislature requests that The University of the Pacific McGeorge School of Law, in consultation with California law schools accredited by the American Bar Association, and with any other appropriate person or entity, do all of the following with respect to the California Law Fellowship Program:

- (1) Create the program to provide law graduates a post-graduate educational experience and provide the Legislature and other governmental entities with legal assistance and advice.
- (2) House and administer the program, including managing funding and processing applications.

B. Lift of the Gift Ban: California Government Code § 8050(f), § 8924.7(b)

It is the intent of the Legislature that participation in the program by an attorney or other qualifying law school graduate, by a state agency, or by a public official within a state agency shall not

constitute a gift of public money or thing of value for purposes of Section 6 of Article XVI of the California Constitution, a gift for purposes of the Political Reform Act of 1974 (Title 9 (commencing with Section 81000)), or a gift, bequest, or favor for purposes of the Code of Judicial Ethics adopted pursuant to subdivision (m) of Section 18 of Article VI of the California Constitution.

The services of a California Law Fellow, whose placement with the Legislature is duly authorized by the Senate Committee on Rules, the Assembly Committee on Rules, or the Joint Committee on Rules, as appropriate, are not compensation, a reward, or a gift to a Member of the Legislature for purposes of paragraph (4) of subdivision (b) of Section 8920.

C. Directions to Rules Committees: California Government Code § 8924.7(d)

For purposes of this section, a California Law Fellow is “duly authorized by the Senate Committee on Rules, the Assembly Committee on Rules, or the Joint Committee on Rules” only if both of the following requirements are satisfied:

(1) The California Law Fellow has been selected according to criteria, and pursuant to a process, approved by the Senate Committee on Rules, the Assembly Committee on Rules, or the Joint Committee on Rules.

(2) The program has executed an agreement with the Senate Committee on Rules, the Assembly Committee on Rules, or the Joint Committee on Rules whereby the California Law Fellow is bound to abide by standards of conduct, economic interest disclosure requisites, and other requirements specified by the Senate Committee on Rules, the Assembly Committee on Rules, or the Joint Committee on Rules.

VI. Explanation of the Real World Efforts to Change the Law

Passage of the legislation will enable ABA law schools, with McGeorge as the lead, to establish a contractual relationship with the California State Legislature. At the outset, AB 100 had the advantage of a passionate Assembly Member who made this a priority bill for this legislative cycle. Opposition seemed limited in terms of funding or organizational opposition, so

much of the work was to get the word out and build a coalition. Overall, the effort required the following work:

- 1) Research past efforts to create similar programs, namely the Sacramento State Capital Fellows Program and the California Science and Technology Fellowship program.
- 2) Reach out to possible allies.
- 3) Draft materials for advocacy and to distribute to Assembly offices.
- 4) Reach out to other ABA California schools by contacting other Student Bar Associations throughout the year.
- 5) Search for a central sponsor to house the program. Originally, this was going to be the Foundation for Democracy and Justice, a foundation sponsored through the California Bar Association. Ultimately, the foundation floundered and the entity became McGeorge School of Law.
- 6) Meet with Assembly Member offices in order to educate them about AB 100 and to answer any questions they had about the bill.

VII. Remaining Work

The bill's hearing was postponed until 2016 due to concerns raised about the Sacramento State Capital Fellows Program and California Science and Technology Fellowship. While concrete answers about those issues were not provided, it was implied that the Assembly Rules Chair was going to consider a larger overhaul of existing fellowship programs before adding a new program. This does not mean the program is dead, but rather that the bill will likely be moving forward with that reform as part of a larger package.

Future work on AB 100 will need to cover the following areas:

A. Meet with Sacramento State and CSST

Any changes that occur to the Sacramento State Capital Fellows Program and California Science and Technology Fellowship program could potentially impact the purpose and goals of the California Law Fellowship Program. Since AB 100 may be part of a larger reform, working with the two existing programs will be important.

B. Meet with Rules Committee Chair's Office for Updates

At the time of this writing, the bill's future and the future changes to the other two fellowships is up in the air without specifics. By next year, the Chairman's office should have some ideas on what needs to change to fix the problems in the other programs

C. Meet with Committee Members' Staffers Before a Hearing

The legislative staff will not pay attention much to AB 100 until it is close to a hearing. Given that the bill did not receive a hearing this year, it will be up for a hearing next year by the end of April. The 15 offices we met with in spring 2015 will need to be re-approached, and additional offices of members on the committee or committees that hear the bill should be contacted. The first round of meetings had a positive reception, but since the bill's hearing was delayed by a year, staff did not have a lot of questions or concerns at the time.

D. Prepare to Speak Before the Committee

The bill's proponents must be ready to speak before a committee. In addition to using the existing talking points and research materials, speakers should develop an "elevator pitch" and brief committee statement. Also, it is critical to listen closely to legislative office staff questions as they might indicate what those members themselves will ask at a hearing.

E. Research Loan Deferral and Repayment Requirements

How the loan deferral and repayment programs would work with the creation of an educational component at McGeorge School of Law was not fleshed out beyond a short meeting

with Joe Pinkas. Frankly, it was not important to have the full details ready because most of this would be addressed after enactment. However, since this is a two-year bill, all the loan deferral and repayment processes available to applicants should be determined, as well as what steps McGeorge School of Law would need to take in order to invoke those options. Deferring a loan will require both accreditation and some compliance with the federal loan regulations. It is uncertain if something can be done about private loans.

F. Draft Dean Mootz Support Letter

A letter from Dean Mootz in support of AB 100 will need to be submitted once the bill comes up for a hearing. Dean Mootz has pledged “full institutional support” to the Legislature if requested by statute to launch the California Law Fellowship Program.

G. Reach Out to New Partners for Support Letters for AB 100

Given that AB 100 may be operating under a different set of parameters next year due to discussions of changing the other two fellowship programs, it is important that the California Law Fellowship Program does not get glossed over as “just another fellowship.” A lot of effort should be focused on reaching out to the attorney-based associations for their support and willingness to submit a support letter for AB 100. This will ensure that the discussions keep AB 100 alive and avoid the possibility of its mission and existence being swallowed up by reforms.