

HOUSE No. 3858

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act relative to clawback provisions on business subsidies..

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 1. Chapter 40 of the General Laws is hereby amended by adding the following section:-

2 Section 62.

3 (a) 1. Scope. For the purposes of sections 116J.993 to 116J.995, the terms defined in
4 this

5 section have the meanings given them.

6 2. "Benefit date" means the date that the recipient receives the business subsidy. If
7 the business subsidy involves the purchase, lease, or donation of physical equipment, then the
8 benefit date begins when the recipient puts the equipment into service. If the business subsidy
9 is for improvements to property, then the benefit date refers to the earliest date of either:

10 (i) when the improvements are finished for the entire project; or

11 (ii) when a business occupies the property. If a business occupies the property and the
12 subsidy grantor expects that other businesses will also occupy the same property, the grantor
13 may assign a separate benefit date for each business when it first occupies the property.

14 3. "Business subsidy" or "subsidy" means a state or local government agency grant,
15 contribution of personal property, real property, infrastructure, the principal amount of a loan at
16 rates below those commercially available to the recipient, any reduction or deferral of any tax
17 or any fee, any guarantee of any payment under any loan, lease, or other obligation, or any
18 preferential use of government facilities given to a business.

19 The following forms of financial assistance are not a business subsidy:

20 (1) a business subsidy of less than \$25,000;

21 (2) assistance that is generally available to all businesses or to a general class of
22 similar businesses, such as a line of business, size, location, or similar general criteria;

23 (3) public improvements to buildings or lands owned by the state or local government
24 that serve a public purpose and do not principally benefit a single business or defined group of
25 businesses at the time the improvements are made;

26 (4) redevelopment property polluted by contaminants as defined in section Chapter
27 21E;

28 (5) assistance provided for the sole purpose of renovating old or decaying building
29 stock or bringing it up to code and assistance provided for designated historic preservation
30 districts, provided that the assistance is equal to or less than 50 percent of the total cost;

31 (6) assistance to provide job readiness and training services if the sole purpose of the
32 assistance is to provide those services;

33 (7) assistance for housing;

34 (8) assistance for pollution control or abatement, including assistance for a tax
35 increment financing hazardous substance subdistrict as defined in this chapter;

36 (9) assistance for energy conservation;

37 (10) tax reductions resulting from conformity with federal tax law;

38 (11) workers' compensation and unemployment insurance;

39 (12) benefits derived from regulation;

40 (13) indirect benefits derived from assistance to educational institutions;

41 (14) funds from bonds allocated to development or redevelopment, bonds issued to
42 refund outstanding bonds, and bonds issued for the benefit of an organization described in
43 section 501(c)(3) of the Internal Revenue Code of 1986, as amended through December 31,
44 1999;

45 (15) assistance for a collaboration between a Massachusetts higher education
46 institution and a business;

47 (16) assistance for a tax increment financing soils condition district;

48 (17) redevelopment when the recipient's investment in the purchase of the site and in
49 site preparation is 70 percent or more of the assessor's current year's estimated market value;

50 (18) general changes in tax increment financing law and other general tax law changes
51 of a principally technical nature;

52 (19) federal assistance until the assistance has been repaid to, and reinvested by, the
53 state or local government agency;

54 (20) funds from dock and wharf bonds issued by Massachusetts Port Authority;

55 (21) business loans and loan guarantees of \$75,000 or less; and

56 (22) federal loan funds provided through the United States department of commerce,
57 economic development administration.

58 4. "Grantor" means any state or local government agency with the authority to grant a
59 business subsidy.

60 5. "Local government agency" includes a statutory or home rule charter city, housing
61 and redevelopment authority, town, county, port authority, economic development authority,
62 community development agency, nonprofit entity created by a local government agency, or any
63 other entity created by or authorized by a local government with authority to provide business
64 subsidies.

65 6. "Recipient" means any for-profit or nonprofit business entity that receives a business
66 subsidy. Only nonprofit entities with at least 100 full-time equivalent positions and with a ratio
67 of highest to lowest paid employee, that exceeds ten to one, determined on the basis of full-time
68 equivalent positions, are included in this definition.

69 6a. "Residence" means the place where an individual has established

70 a permanent home from which the individual has no present intention of moving.

71 7. "State government agency" means any state agency that has the authority to award
72 business subsidies.

73 (b)1. A business subsidy must meet a public purpose which may include, but may not be
74 limited to, increasing the tax base. Job retention may only be used as a public purpose in cases
75 where job loss is specific and demonstrable.

76 2. A business subsidy may not be granted until the grantor has adopted criteria after
77 a public hearing for awarding business subsidies that comply with this section. The criteria may
78 not be adopted on a case-by-case basis. The criteria must set specific minimum requirements
79 that recipients must meet in order to be eligible to receive business subsidies. The criteria must
80 include a specific wage floor for the wages to be paid for the jobs created. The wage floor may
81 be stated as a specific dollar amount or may be stated as a formula that will generate a specific
82 dollar amount. A grantor may deviate from its criteria by documenting in writing the reason for
83 the deviation and attaching a copy of the document to its next annual report to the department.
84 The commissioner of employment and economic development may assist local government
85 agencies in developing criteria. A copy of the criteria must be submitted to the department of
86 housing and economic development along with the first annual report following the enactment
87 of this section or with the first annual report after it has adopted criteria, whichever is earlier.

88 3. (a) A recipient must enter into a subsidy agreement with the grantor of the subsidy
89 that includes:

90 (i) a description of the subsidy, including the amount and type of subsidy, and type of
91 district if the subsidy is tax increment financing;

- 92 (ii) a statement of the public purposes for the subsidy;
- 93 (ii) measurable, specific, and tangible goals for the subsidy;
- 94 (iv) a description of the financial obligation of the recipient if the goals are not met;
- 95 (v) a statement of why the subsidy is needed;
- 96 (vi) a commitment to continue operations in the jurisdiction where the subsidy is used
97 for at least 5 years after the benefit date;
- 98 (vii) the name and address of the parent corporation of the recipient, if any; and
- 99 (viii) a list of all financial assistance by all grantors for the project.

100 (b) Business subsidies in the form of grants must be structured as forgivable loans.
101 For other types of business subsidies, the agreement must state the fair market value of the
102 subsidy to the recipient, including the value of conveying property at less than a fair market
103 price, or other in-kind benefits to the recipient.

104 (c) If a business subsidy benefits more than one recipient, the grantor must assign a
105 proportion of the business subsidy to each recipient that signs a subsidy agreement. The
106 proportion assessed to each recipient must reflect a reasonable estimate of the recipient's share
107 of the total benefits of the project.

108 (d) The state or local government agency and the recipient must both sign the subsidy
109 agreement and, if the grantor is a local government agency, the agreement must be approved by
110 the local elected governing body.

111 (e) Notwithstanding the provision in paragraph (a), clause (6), a recipient may be
112 authorized to move from the jurisdiction where the subsidy is used within the 5 year period after
113 the benefit date if, after a public hearing, the grantor approves the recipient's request to move.
114 For the purpose of this paragraph, if the grantor is a state government.

115 4 The subsidy agreement, in addition to any other goals, must include:

116 (1) goals for the number of jobs created, which may include separate goals for the
117 number of part-time or full-time jobs, or, in cases where job loss is specific and demonstrable,
118 goals for the number of jobs retained; (2) wage goals for any jobs created or retained; and (3)
119 wage goals for any jobs to be enhanced through increased wages. After a public hearing, if the
120 creation or retention of jobs is determined not to be a goal, the wage and job goals may be set at
121 zero.

122 In addition to other specific goal time frames, the wage and job goals must contain
123 specific goals to be attained within two years of the benefit date.

124 5. (a) Before granting a business subsidy that exceeds \$500,000 for a state
125 government grantor and \$100,000 for a local government grantor, the grantor must provide
126 public notice and a hearing on the subsidy. A public hearing and notice under this subdivision is
127 not required if a hearing and notice on the subsidy is otherwise required by law.

128 (b) Public notice of a proposed business subsidy under this subdivision by a state
129 government grantor, must be published in the state register. Public notice of a proposed
130 business subsidy under this subdivision by a local government grantor must be published in a
131 local newspaper of general circulation. The public notice must identify the location at which
132 information about the business subsidy, including a summary of the terms of the subsidy, is

133 available. Published notice should be sufficiently conspicuous in size and placement to
134 distinguish the notice from the surrounding text. The grantor must make the information
135 available in printed paper copies and, if possible, on the Internet. The government agency must
136 provide at least a 10 day notice for the public hearing.

137 (c) The public notice must include the date, time, and place of the hearing.

138 (d) If more than one non-public grantor provides a business subsidy to the same
139 recipient, the non-public grantors may designate one non-public grantor to hold a single public
140 hearing regarding the business subsidies provided by all non-public grantors.

141 6. The subsidy agreement must specify the recipient's obligation if the recipient does
142 not fulfill the agreement. At a minimum, the agreement must require a recipient failing to meet
143 subsidy agreement goals to pay back the assistance plus interest to the grantor or, at the
144 grantor's option, to the general fund or municipal treasurer

145 provided that repayment may be prorated to reflect partial fulfillment of goals. The
146 interest rate must be set at no less than the implicit price deflator for government consumption
147 expenditures and gross investment for state and local governments prepared by the bureau of
148 economic analysis of the United States department of commerce for the 12-month period
149 ending March 31 of the previous year. The grantor, after a public hearing, may extend for up to
150 one year the period for meeting the wage and job goals under subdivision 4 provided in a
151 subsidy agreement. A grantor may extend the period for meeting other goals under subdivision
152 3, paragraph (a), clause (3), by documenting in writing the reason for the extension and
153 attaching a copy of the document to its next annual report to the department.

154 A recipient that fails to meet the terms of a subsidy agreement may not receive a
155 business subsidy from any grantor for a period of 5 years from the date of failure or until a
156 recipient satisfies its repayment obligation under this subdivision, whichever occurs first.

157 Before a grantor signs a business subsidy agreement, the grantor must check with the
158 compilation and summary report required by this section to determine if the recipient is eligible
159 to receive a business subsidy.

160 7. Reports by recipients to grantors. (a) A business subsidy grantor must monitor the
161 progress by the recipient in achieving agreement goals.

162 (b) A recipient must provide information regarding goals and results for 2 years after
163 the benefit date or until the goals are met, whichever is later. If the goals are not met, the
164 recipient must continue to provide information on the subsidy until the subsidy is repaid. The
165 information must be filed on forms developed by the commissioner in cooperation with
166 representatives of local government. Copies of the completed forms must be sent to the local
167 government agency that provided the subsidy or to the commissioner if the grantor is a state
168 agency. The report must include:

169 (1) the type, public purpose, and amount of subsidies and type of district, if the
170 subsidy is tax increment financing;

171 (2) the hourly wage of each job created with separate bands of wages;

172 (3) the sum of the hourly wages and cost of health insurance provided by the employer
173 with separate bands of wages;

174 (4) the date the job and wage goals will be reached;

175 (5) a statement of goals identified in the subsidy agreement and an update on
176 achievement of those goals;

177 (6) the location of the recipient prior to receiving the business subsidy;

178 (7) why the recipient did not complete the project outlined in the subsidy agreement at
179 their previous location, if the recipient was previously located at another site in Minnesota;

180 (8) the name and address of the parent corporation of the recipient, if any;

181 (9) a list of all financial assistance by all grantors for the project; and

182 (10) other information the commissioner may request.

183 A report must be filed no later than March 1 of each year for the previous year. The
184 local agency must forward copies of the reports received by recipients to the commissioner by
185 April 1.

186 (c) Financial assistance that is excluded from the definition of "business subsidy"
187 contained herein is subject to the reporting requirements of this subdivision, except that the
188 report of the recipient must include instead:

189 (1) the type, public purpose, and amount of the financial assistance, and type of
190 district if the assistance is tax increment financing;

191 (2) progress towards meeting goals stated in the assistance agreement and the public
192 purpose of the assistance;

193 (3) if the agreement includes job creation, the hourly wage of each job created with
194 separate bands of wages;

195 (4) if the agreement includes job creation, the sum of the hourly wages and cost of
196 health insurance provided by the employer with separate bands of wages;

197 (5) the location of the recipient prior to receiving the assistance; and

198 (6) other information the grantor requests.

199 (d) If the recipient does not submit its report, the local government agency must mail
200 the recipient a warning within one week of the required filing date. If, after 14 days of the
201 postmarked date of the warning, the recipient fails to provide a report, the recipient must pay to
202 the grantor a penalty of \$100 for each subsequent day until the report is filed. The maximum
203 penalty shall not exceed \$1,000.

204 8. (a) Local government agencies of a local government with a population of more
205 than 2,500 and state government agencies, regardless of whether or not they have awarded any
206 business subsidies, must file a report by April 1 of each year with the commissioner. Local
207 government agencies of a local government with a population of 2,500 or less are exempt from
208 filing this report if they have not awarded a business subsidy in the past 5 years. The report
209 must include a list of recipients that did not complete the recipient report required under
210 subdivision 7 and a list of recipients that have not met their job and wage goals within 2 years
211 and the steps being taken to bring them into compliance or to recoup the subsidy.

212 If the commissioner has not received the report by April 1 from an entity required to
213 report, the commissioner shall issue a warning to the government agency. If the commissioner
214 has still not received the report by June 1 of that same year from an entity required to report,
215 then that government agency may not award any business subsidies until the report has been
216 filed.

217 (b) The commissioner of employment and economic development must provide
218 information on reporting requirements to state and local government agencies.

219 9. Compilation and summary report. The department of housing and
220 economic development must publish a compilation and summary of the results
221 of the reports for the previous 2 calendar years by December 1 of 2010 and every other
222 year thereafter. The reports of the government agencies to the department and the compilation
223 and summary report of the department must be made available to the public.

224 The commissioner must coordinate the production of reports so that useful
225 comparisons across time periods and across grantors can be made. The commissioner may add
226 other information to the report as the commissioner deems necessary to evaluate business
227 subsidies. Among the information in the summary and compilation report, the commissioner
228 must include:

229 (1) total amount of subsidies awarded in each development region of the state;

230 (2) distribution of business subsidy amounts by size of the business subsidy;

231 (3) distribution of business subsidy amounts by time category;

232 (4) distribution of subsidies by type and by public purpose;

233 (5) percent of all business subsidies that reached their goals;

234 (6) percent of business subsidies that did not reach their goals by 2 years from the
235 benefit date;

236 (7) total dollar amount of business subsidies that did not meet their goals after 2 years
237 from the benefit date;

238 (8) percent of subsidies that did not meet their goals and that did not receive
239 repayment;

240 (9) list of recipients that have failed to meet the terms of a subsidy agreement in the
241 past 5 years and have not satisfied their repayment obligations;

242 (10) number of part-time and full-time jobs within separate bands of wages; and

243 (11) benefits paid within separate bands of wages.

244 10. The department of housing and economic development

245 must publish a compilation of granting agencies' criteria policies

246 adopted in the previous 2 calendar years by December 1 of 2010

247 and every other year thereafter.

248 (c) An appropriation rider in an appropriation to the department of housing and economic

249 development that specifies that the appropriation be granted to a particular business or class of

250 businesses must contain a statement of the expected benefits associated with the grant. At a

251 minimum, the statement must include goals for the number of jobs created or enhanced, wages

252 paid, and the tax revenue increases due to the grant. The wage and job goals must contain

253 specific goals to be attained within 2 years of the benefit date. The statement must specify the

254 recipient's obligation if the recipient does not attain the goals. At a minimum, the statement must

255 require a recipient failing to meet the job and wage goals to pay back the assistance plus interest

256 to the department of housing and economic development provided that repayment may be
257 prorated to reflect partial fulfillment of goals. The legislature, after a public hearing, may extend
258 for up to 1 year the period for meeting the goals provided in the statement.

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