

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 842 Session of 2023

INTRODUCED BY KENYATTA, MADDEN, O'MARA, SANCHEZ, KINSEY, N. NELSON, RABB, PROBST, SALISBURY, HILL-EVANS, GREEN, FIEDLER, SCHLOSSBERG, DELLOSO, D. WILLIAMS, BRENNAN, CEPHAS, SHUSTERMAN, CONKLIN, CIRESI, YOUNG, McANDREW, OTTEN, TAKAC AND CEPEDA-FREYTIZ, APRIL 10, 2023

AS REPORTED FROM COMMITTEE ON COMMERCE, HOUSE OF REPRESENTATIVES, AS AMENDED, OCTOBER 18, 2023

AN ACT

1 Providing for mandatory ~~contract~~ provisions to prevent misuse of <--
2 State grants or loans.

3 The General Assembly of the Commonwealth of Pennsylvania
4 hereby enacts as follows:

5 Section 1. Short title.

6 This act shall be known and may be cited as the Clawback Act.

7 Section 2. Definitions.

8 The following words and phrases when used in this act shall
9 have the meanings given to them in this section unless the
10 context clearly indicates otherwise:

11 "Awarding agency." A Commonwealth agency that awards a State
12 grant or loan under a State grant or loan program.

13 "Commonwealth agency." An executive agency or independent
14 agency.

15 "Executive agency." The Governor and any department, board,
16 commission, authority or other agency or officer of the

1 Commonwealth. The term does not include a court or other agency
2 or officer of the unified judicial system or the General
3 Assembly and its agencies or officers.

4 "Independent agency." A board, commission, authority or
5 other agency or officer of the Commonwealth which is not subject
6 to the policy supervision and control of the Governor. The term
7 does not include a court or other agency or officer of the
8 unified judicial system or the General Assembly and its agencies
9 or officers.

10 "Recipient." A person or entity that receives a State grant
11 or loan award from an awarding agency.

12 "State grant or loan." A State grant or loan authorized by a
13 law of this Commonwealth. The term does not include any of the
14 following:

15 (1) A tax benefit or tax credit as defined in section
16 1701-A.1 of the act of March 4, 1971 (P.L.6, No.2), known as
17 the Tax Reform Code of 1971.

18 (2) A procurement as defined in 62 Pa.C.S. § 103
19 (relating to definitions).

20 (3) Money appropriated or transferred for any other
21 purpose other than a State grant or loan.

22 Section 3. Mandatory ~~contract~~ provisions to prevent misuse of <--
23 State grants or loans.

24 ~~A contract executed for a~~ IF A State grant or loan AGREEMENT <--
25 between an awarding agency and a recipient DOES NOT PROVIDE <--
26 TERMS AND CONDITIONS ENSURING RECIPIENT ACCOUNTABILITY, A STATE
27 GRANT OR LOAN AGREEMENT EXECUTED on or after the effective date
28 of this section shall include, at a minimum, the following:

29 (1) The awarding agency shall notify the recipient in
30 writing upon determining any of the following:

1 (i) The awarding agency improperly awarded the State
2 grant or loan to the recipient.

3 (ii) The benefits of the State grant or loan were
4 improperly conferred.

5 (iii) The recipient failed to comply with the
6 MATERIAL terms of the ~~contract.~~ <--

7 ~~(2) The determination under paragraph (1) may be~~
8 ~~appealed in accordance with 2 Pa.C.S. Ch. 5 Subch. A~~
9 ~~(relating to practice and procedure of Commonwealth~~
10 ~~agencies).~~ STATE GRANT OR LOAN RESULTING IN FRAUD, ABUSE, <--
11 WASTE OR THE FRUSTRATION OF THE INTENDED PURPOSE OF A STATE
12 GRANT OR LOAN.

13 ~~(3)~~ (2) The recipient shall repay the proceeds of the <--
14 State grant or loan, SUBJECT TO THE DETERMINATION UNDER <--
15 PARAGRAPH (1), to the awarding agency upon receipt of the
16 notice under paragraph (1) ~~or final disposition of the appeal~~ <--
17 ~~under paragraph (2), if applicable,~~ and no later than the
18 deadline for repayment ~~specified in the contract.~~ AS <--
19 DETERMINED BY THE AWARDING AGENCY.

20 ~~(4)~~ (3) The repayment under paragraph ~~(3)~~ (2) shall be <--
21 in the form ~~of a check payable to the Commonwealth. The~~ <--
22 ~~recipient shall forward the check to the awarding agency via~~
23 ~~first class mail in a manner specified in the contract.~~ AND <--
24 MANNER DIRECTED BY THE AGENCY.

25 ~~(5)~~ (4) The repayment under paragraph ~~(3)~~ shall (2) MAY <--
26 include the amount of the State grant or loan SUBJECT TO THE <--
27 DETERMINATION UNDER PARAGRAPH (1) and ~~all~~ interest, income, <--
28 accumulations and the monetary equivalent of any appreciation
29 in value of real, personal or mixed property purchased with
30 the proceeds of the State grant or loan. AS DETERMINED BY THE <--

1 AWARDING AGENCY.

2 ~~(6)~~ (5) Upon the failure of the recipient to make the <--
3 repayment under paragraph ~~(3)~~ in a timely manner (2) in <--
4 accordance with the ~~contract~~ STATE GRANT OR LOAN AGREEMENT, <--
5 the awarding agency may assess a civil penalty equal to the
6 repayment required under paragraph ~~(5)~~ (4) plus an additional <--
7 amount specified in the ~~contract~~ STATE GRANT OR LOAN <--
8 AGREEMENT as determined by the awarding agency-, IN <--
9 ACCORDANCE WITH APPLICABLE FEDERAL AND STATE LAWS.

10 ~~(7)~~ (6) In the case of an inability to collect the civil <--
11 penalty under paragraph ~~(6)~~ (5) or failure of a recipient to <--
12 pay all or a portion of the civil penalty, the awarding
13 agency may refer the matter to the Office of Attorney
14 General, which shall institute an action in the appropriate
15 court to recover the penalty.

16 Section 4. Construction.

17 Nothing in this act shall be construed to prohibit a ~~contract~~ <--
18 ~~executed for a~~ AN EXECUTED State grant or loan AGREEMENT between <--
19 an awarding agency and a recipient on or after the effective
20 date of this section from containing conditions, requirements or
21 limitations that are more stringent than required under this
22 act.

23 Section 5. Applicability.

24 ~~This act shall only apply to a contract executed for a State~~ <--
25 ~~grant or loan between an awarding agency and a recipient on or~~
26 ~~after the effective date of this section.~~ THE FOLLOWING SHALL <--
27 APPLY:

28 (1) THIS ACT SHALL ONLY APPLY TO A STATE GRANT OR LOAN
29 AGREEMENT BETWEEN AN AWARDING AGENCY AND A RECIPIENT ON OR
30 AFTER THE EFFECTIVE DATE OF THIS SECTION.

1 (2) THIS ACT SHALL NOT APPLY TO A STATE GRANT OR LOAN TO
2 THE EXTENT THIS ACT CONFLICTS WITH FEDERAL OR STATE LAW.

3 Section 6. Effective date.

4 This act shall take effect in ~~60~~ 120 days.

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