



House of Representatives

File No. 630

General Assembly

February Session, 2002

(Reprint of File No. 386)

Substitute House Bill No. 5402
As Amended by House
Amendment Schedule "A"

Approved by the Legislative Commissioner
May 4, 2002

**AN ACT CLARIFYING THE PENALTY ON APPLICATIONS FOR
FINANCIAL ASSISTANCE FROM QUASI-PUBLIC AGENCIES.**

Be it enacted by the Senate and House of Representatives in General
Assembly convened:

1 Section 1. (NEW) (*Effective July 1, 2002*) As used in sections 1 to 4,
2 inclusive, of this act:

3 (1) "Awarding authority" means the Commissioner of Economic and
4 Community Development, the board of directors of the Connecticut
5 Development Authority, the board of directors of Connecticut
6 Innovations, Incorporated, and the head of any other quasi-public
7 agency, as defined in section 1-120 of the general statutes, as amended,
8 and any state agency authorized to award state assistance, as defined
9 in subdivision (2) of this section.

10 (2) "State assistance" means any grant, loan, loan guarantee or
11 issuance of tax benefit not of general applicability for the purpose of
12 economic development that is (A) made to a business entity operated
13 for profit, and (B) in an amount greater than one million dollars or
14 that, if added to any other such state assistance made to the same

15 business entity during the preceding two years, would total greater
16 than one million dollars.

17 Sec. 2. (NEW) (*Effective July 1, 2002*) (a) The terms and conditions of
18 any agreement for state assistance under any program of the general
19 statutes to a business entity operated for profit administered by the
20 Department of Economic and Community Development, Connecticut
21 Development Authority and Connecticut Innovations, Incorporated,
22 shall include provisions for (1) specific goals for the creation and
23 retention of full-time and part-time jobs and for periodic reports by the
24 recipient on progress in achieving such goals if the primary purpose of
25 the state assistance is job creation or retention, and (2) a requirement
26 that an applicant for any type of state assistance, except grants and
27 loans of a term of less than one year, provide the agency with
28 appropriate security for such financial assistance, including, but not
29 limited to, a letter of credit, a lien on real property or a security interest
30 in goods, equipment, inventory or other property of any kind and that
31 the recipient of such state assistance will remain in substantial material
32 compliance with state and federal law.

33 (b) If a recipient fails to create or retain the number of jobs in this
34 state stipulated in an agreement for state assistance and such failure is
35 due to circumstances within the control of such recipient, the recipient
36 shall repay an amount that is in proportion to the number of jobs that
37 it failed to create or retain unless the awarding authority deems it is in
38 the best interests of the state or the community in which the recipient
39 is located to revise such job creation goals. In such event, the parties
40 shall enter into a revised agreement subject to the approvals required
41 by subsection (c) of this section. Upon request of the awarding
42 authority, a recipient shall provide information necessary to determine
43 compliance with this section, including information showing the
44 compensation paid to employees on jobs created as a result of the state
45 assistance.

46 (c) The awarding authority, in its discretion, may modify the terms
47 and conditions of any state assistance, including, but not limited to,

48 forgiveness of repayment of a loan, revision of job creation and
49 retention goals or changes to interest rates, provided such awarding
50 authority notifies the State Bond Commission or the appropriate board
51 of directors, if any, of the modification.

52 Sec. 3. (NEW) (*Effective October 1, 2002*) If an awarding authority
53 finds that a recipient of state assistance is not in substantial compliance
54 with any other provision of the agreement and such noncompliance is
55 within the recipient's control, the awarding authority shall provide
56 written notice, by registered mail, to the recipient and shall order the
57 recipient to come into compliance with such agreement not less than
58 one hundred eighty days following receipt of such notice. Failure to
59 comply with reporting requirements set forth in such agreement shall
60 constitute a default. If the recipient fails to come into compliance with
61 such agreement within the one-hundred-eighty-day period, the
62 awarding authority may (1) rescind the agreement and require that the
63 state be made whole by the repayment by the recipient of (A) the
64 amount of any grant made, (B) the amount of any loan outstanding,
65 including any interest necessary to make the state whole, or (C) the
66 amount of any tax benefit received, or (2) impose a penalty on such
67 recipient, for the period of failure to comply, at the rate of one per cent
68 per month or any part thereof of the amount of the grant, tax benefit or
69 loan outstanding. The awarding authority may foreclose on any
70 collateral or bond related to such grant, tax benefit or loan for the
71 purpose of payment of such penalty and any costs incurred by the
72 awarding authority in connection with collection of such penalty.

73 Sec. 4. (NEW) (*Effective July 1, 2002*) If the terms and conditions of an
74 agreement for state assistance, except an agreement for grants only,
75 provide for security, the awarding authority providing such state
76 assistance shall have a lien on such security in an amount equal to the
77 amount that is due on such state assistance or other appropriate
78 security for such financial assistance. Any such lien shall have priority
79 over all other subsequent liens except state tax liens, except if the
80 awarding authority determines it is not in the best interests of the state
81 to have such priority. The awarding authority shall notify the State

82 Bond Commission or the appropriate board of directors, if any, of such
83 determination.

This act shall take effect as follows:	
Section 1	<i>July 1, 2002</i>
Sec. 2	<i>July 1, 2002</i>
Sec. 3	<i>October 1, 2002</i>
Sec. 4	<i>July 1, 2002</i>

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact: Minimal Fiscal Impact

Municipal Impact: None

Explanation

The financial assistance agreement requirements, bond commission approvals and the additional procedures established in the amendment are anticipated to result in a minimal workload increase to the state and the quasi-public agencies. It is estimated that these requirements could impact 20-25 Department of Economic and Community Development (DECD) agreements per year, which could divert 1/4 full time employee per year away from current duties or require additional minimal resources (GO bond funds). Approximately 20-25 Connecticut Development Authority (CDA) and 10 Connecticut Innovations, Inc (CII) agreements could be impacted resulting in a minimal workload increase within resources. The security requirements are already instituted to some degree under current procedures when applicable. Job creation/retention as a primary goal impacts a majority of DECD and CDA agreements but would not impact CII agreements. The job creation/retention requirements are current practice in many cases.

Any increase in revenue or savings due to the penalty, repayment, recoveries, and lien provisions are anticipated to be minimal.

To the extent that any of the requirements could increase the time involved or slow down the process for assistance, or that the additional requirements reduce the number of applicants, there could be a cost savings to various financial assistance programs.

House "A" strikes the file and the associated fiscal impact and replaces it with the provisions above.

OLR Amended Bill Analysis

sHB 5402 (as amended by House "A")*

AN ACT CLARIFYING THE PENALTY ON APPLICATIONS FOR FINANCIAL ASSISTANCE FROM QUASI-PUBLIC AGENCIES**SUMMARY:**

This bill establishes a procedure to ensure that businesses receiving state economic development assistance comply with the terms and conditions of their assistance agreements. The procedure requires state agencies providing this type of assistance to notify businesses when they fail to comply with the agreements and to recover the assistance if the businesses subsequently fail to comply. It also requires the agencies to impose liens on any security they required as a condition for receiving assistance.

The bill permits the Department of Economic and Community Development (DCED), the Connecticut Development Authority (CDA), and Connecticut Innovations, Incorporated (CII) to recover state assistance if the businesses that received it fail to meet their job creation and retention goals when it was in their power to do so. It also allows these agencies to modify terms and conditions for providing state assistance when it is in the best interest of the state or local community. The modifications include forgiving loan repayments, revising job creation and retention goals, and changing interest rates. The State Bond Commission must be notified about those changes.

*House Amendment "A" eliminates the original bill's language, which required quasi-public agencies to subject applicants for financial assistance to the statutory penalty for false statements for all material information they submit that the agency uses to make a decision.

EFFECTIVE DATE: July 1, 2002, except for the compliance notice and penalty provision, which is effective October 1, 2002.

STATE ASSISTANCE

State assistance means any economic development grant, loan, loan guarantee, or tax benefit made to a for-profit business that exceeds \$1 million or that totals that amount when added to state assistance it received during the preceding two years.

GENERAL COMPLIANCE

Procedure

The bill allows an state or quasi-public agency to penalize an assistance recipient that does not comply with the assistance agreement if it was in the recipient's power to do so. When a recipient fails to comply, the agency must send a written notice by registered mail to the recipient ordering it to comply with the agreement within 180 days. If the recipient fails to comply within that time, the awarding authority may penalize the recipient by:

1. rescinding the agreement and requiring the recipient to repay the full amount any grant, outstanding loan (including interest), or tax benefit;
2. imposing a penalty of 1% per month of any part of a grant, outstanding loan, or tax benefit; or
3. foreclosing on any collateral or bond related to such a grant, loan, or tax benefit for repayment or to cover costs in connection with the penalty.

Lien on Security

The bill requires that an awarding authority put a lien on security it requires under any agreement, except one for grants, or require some other type of appropriate security. The amount of the lien must equal the amount due on state assistance. The lien has priority over all subsequent liens except state tax liens. The awarding authority may waive this right when it is in the best interest of the state or local community.

ECONOMIC DEVELOPMENT AGENCY COMPLIANCE

Job Creation Compliance

The bill requires that an agreement for state financial assistance for

businesses administered by DECD, CDA, or CII in conjunction with statutory programs must include certain provisions. In cases where the agency provides assistance specifically to create or retain jobs, the agreements must include goals for achieving that purpose and require the businesses to submit periodic reports on their progress toward meeting those goals. Agreements must also require recipients to provide security in the form of a letter of credit. All agreements, except those for grants or loans, must require security, which can be in the form of a letter of credit, lien on real property, or security in personal or any other type of property. The agreements must also require the businesses to remain in substantial material compliance with state and federal law.

The bill requires an assistance recipient to provide compliance information, including compensation paid to employees of jobs created as a result of state assistance, upon request by the awarding authority. If an assistance recipient fails to create and retain the agreed upon number of jobs and it was within the recipient's control to do so, the awarding authority may require it to repay an amount that is proportionate to the number of jobs that it failed to create or retain. But the agency may allow the recipient to revise its job goals if it is in the state or community's best interest.

Agreement Revision

The awarding authority may revise an agreement when it is in the best interest of the state or local community not to penalize the assistance recipient. The awarding authority may, at its discretion, modify the terms or conditions of state assistance, including loan repayment forgiveness and revision of job retention and creation goals. The State Bond Commission must approve any change to an assistance agreement.

BACKGROUND

Quasi-Public Agencies

Quasi-public agencies are: CDA, CII, Connecticut Housing Finance Authority, State Housing Authority, Health and Educational Facilities Authority, Connecticut Higher Education Supplemental Loan Authority, Connecticut Resource Recovery Authority, Connecticut Hazardous Waste Management Service, Connecticut Coastline Port

Authority, Capital City Economic Development Authority, and the Connecticut Lottery Corporation.

COMMITTEE ACTION

Commerce Committee

Joint Favorable Substitute Change of Reference

Yea 25 Nay 0

Judiciary Committee

Joint Favorable Report

Yea 40 Nay 0