HOUSE DOCKET, NO. 2042 FILED ON: 1/17/2013

HOUSE . . . . . No. 2662

The Commonwealth of Massachusetts

PRESENTED BY:

John J. Mahoney

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying:

An Act relative to tax credits, education and training for the design and development of video game and interactive digital media products.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
John J. Mahoney	*13th Worcester*
Michael O. Moore	*Second Worcester*

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HOUSE . . . . . No. 2662

By Mr. Mahoney of Worcester, a petition (accompanied by bill, House, No. 2662) of John J. Mahoney and Michael O. Moore relative to tax credits for digital media products. Revenue.

The Commonwealth of Massachusetts

An Act relative to tax credits, education and training for the design and development of video game and interactive digital media products.

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

An Act relative to tax credits, education and training for the design and development of video game and interactive digital media products.

SECTION 1. Chapter 63 of the General Laws is hereby amended by striking out section 38X and inserting in place thereof the following section:

Section 38X. (a) As used in this section the following words shall, unless the context clearly requires otherwise, have the following meanings:-

"Commissioner", the commissioner of revenue.

"Motion picture", a feature-length film, a video, a digital media project, a television series defined as a season not to exceed 27 episodes, or a commercial made in the commonwealth, in whole or in part, for theatrical or television viewing or as a television pilot. The term " motion picture" shall not include a production featuring news, current events, weather and financial market reports, talk show, game show, sporting events, awards show or other gala event, a production whose sole purpose is fundraising, a long-form production that primarily markets a product or service, a production containing obscene material or performances.

"Motion picture production company", a company including its subsidiaries engaged in the business of producing motion pictures, videos, television series, or commercials intended for a theatrical release or for television viewing. The term "motion picture production company" shall not mean or include any company which is more than 25 per cent owned, affiliated, or controlled, by any company or person which is in default on a loan made or guaranteed by the commonwealth.

21 “Massachusetts production expense”, a production expense for the motion picture, video
22 game or interactive digital media clearly and demonstrably incurred in the commonwealth.

23 “Principal photography”, the phase of production during which the motion picture is
24 actually filmed. The term shall not include preproduction or postproduction.

25 “Production expense” or “production cost”, preproduction, production and
26 postproduction expenditures directly incurred in the production of a motion picture, video game
27 or interactive digital media. The term shall include wages and salaries paid to individuals
28 employed in the production of the motion picture, video game or interactive digital media; the
29 costs of set construction and operation, editing and related services, photography, sound
30 synchronization, lighting, wardrobe, make-up and accessories; film processing, transfer, sound
31 mixing, special and visual effects; music; location fees and the cost of purchase or rental of
32 facilities and equipment or any other production expense as may be determined by the
33 department of revenue to be an eligible production expense. The term shall not include costs
34 incurred in marketing or advertising a motion picture, video game or interactive digital media,
35 any costs related to the transfer of tax credits or any amounts paid to persons or businesses as a
36 result of their participation in profits from the exploitation of the production.

37 “Secretary”, the secretary of economic development.

38 "Video game” or “interactive digital media", interactive software that: (i) is produced for
39 distribution on or accessed via electronic media, including without limitation software that may
40 be accessed via or downloaded from the Internet or mobile networks and software that are
41 distributed on optical media or embedded in or downloadable to electronic devices, including
42 without limitation mobile phones, portable game systems, computers, tablets, and personal
43 digital assistants (PDA) or other handheld electronic devices; (ii) users may interact with via an
44 electronic device, which may include without limitation a computer, a game system, a mobile
45 phone, tablet, a PDA or other handheld electronic devices, in order to achieve a goal or set of
46 goals; and (iii) include an appreciable quantity of text, sound, fixed images, animated images, or
47 3-D geometry.

48 “Video game studio” or “interactive digital media studio”, a permanent facility within the
49 commonwealth used primarily for the design, production or development of video games or
50 interactive digital media products.

51 (b) A taxpayer engaged in the making of a motion picture, video game or interactive
52 digital media shall be allowed a credit against the taxes imposed by this chapter for the
53 employment of persons within the commonwealth in connection with the filming or production
54 of 1 or more motion pictures, video games or interactive digital media in the commonwealth
55 within any consecutive 12 month period. The credit shall be equal to 25 per cent of the total
56 aggregate payroll paid by a motion picture, video game or interactive digital media production
57 company that constitutes Massachusetts source income, when total production costs incurred in

58 the commonwealth equal or exceed $50,000 during the taxable year. For purposes of this
59 subsection, the term “total aggregate payroll” shall not include the salary of any employee whose
60 salary is equal to or greater than $1,000,000.

61 (c) A taxpayer shall be allowed an additional credit against the taxes imposed by this
62 chapter equal to 25 per cent of all Massachusetts production expenses, not including the payroll
63 expenses used to claim a credit pursuant to subsection (b), where the motion picture, video game
64 or interactive digital media is also eligible for a credit pursuant to subsection (b) and either
65 Massachusetts production expenses exceed 50 per cent of the total production expenses for a
66 motion picture or at least 50 per cent of the total principal photography days of the film or the
67 production of the video game or interactive digital media take place in the commonwealth.

68 (d) A taxpayer shall be allowed an additional credit against the taxes imposed by this
69 chapter equal to 5 per cent of all Massachusetts production expenses under this section if video
70 game studio or interactive digital media studio is located in a gateway municipality, as defined
71 by section 3A of chapter 23A; provided, that the value of such credit shall not exceed $500,000
72 per year.

73 (e) The tax credit shall be taken against the taxes imposed under this chapter and shall, at
74 the election of the taxpayer, be refundable to the extent provided for in section 32E. Any amount
75 of the tax credit that exceeds the tax due for a taxable year may be carried forward by the
76 taxpayer to any of the 5 subsequent taxable years.

77 (f)(1) All or any portion of tax credits issued in accordance with the provisions of this
78 section may be transferred, sold or assigned to other taxpayers with tax liabilities under this
79 chapter or chapter 62. Any tax credit that is transferred, sold or assigned and taken against taxes
80 imposed by this chapter. Any amount of the tax credit that exceeds the tax due for a taxable year
81 may be carried forward by the transferee, buyer or assignee to any of the 5 subsequent taxable
82 years from which a certificate is initially issued by the department of revenue.

83 (2) An owner, transferee or assignee desiring to make a transfer, sale or assignment shall
84 submit to the commissioner a statement which describes the amount of tax credit for which the
85 transfer, sale or assignment of tax credit is eligible. The owner, transferee or assignee shall
86 provide to the commissioner such information as the commissioner may require for the proper
87 allocation of the credit. The commissioner shall provide to the taxpayer a certificate of eligibility
88 to transfer, sell or assign the tax credits. The commissioner shall not issue a certificate to a
89 taxpayer that has an outstanding tax obligation with the commonwealth in connection with any
90 motion picture, video game or interactive digital media for any prior taxable year. A tax credit
91 shall not be transferred, sold or assigned without a certificate. The commissioner shall direct,
92 assign and issue a certificate equal to 10 per cent of the annual total of all tax credits earned in
93 the prior year to the Massachusetts Digital Games Institute for game development education and

94 training programs and activities. These credits may be refunded at 80 per cent of face value or
95 transferred, sold or assigned to other taxpayers with tax liabilities.

96 (g) The commissioner, in consultation with the secretary, shall promulgate regulations
97 necessary for the administration of this subsection.

98 SECTION 2. Said chapter 63 of the general laws is hereby further amended by adding
99 the following three sections:-

100 Section 82. (a) As used in this section and in section 83, the following terms shall have
101 the following meaning:

102 "Eligible labor expenditures", compensation and benefits paid to employees working on
103 the development, creation, production, maintenance, and distribution of video games or
104 interactive digital media as defined in section 38X, as well as employees supporting technical or
105 production infrastructure, including but not limited to, computer support staff.

106 "Video game production company", a company including its subsidiaries engaged in the
107 business of producing video games or interactive digital media as defined in section 38X. The
108 term "video game production company" shall not mean or include any company which is more
109 than 25 per cent owned, affiliated, or controlled, by any company or person which is in default
110 on a loan made by the commonwealth or a loan guaranteed by the commonwealth.

111 (b) A taxpayer engaged in the making of a video game or interactive digital media shall
112 be allowed a credit against the taxes imposed by this chapter for the employment of persons
113 within the commonwealth in connection with the filming or production of 1 or more video games
114 or interactive digital media in the commonwealth within any consecutive 12 month period. The
115 credit shall be equal to 35 per cent of the eligible labor expenditures paid by a video game or
116 interactive digital media production company that constitutes Massachusetts source income,
117 when eligible labor expenditures incurred in the commonwealth equal or exceed $50,000 during
118 the taxable year.

119 (c) A taxpayer engaged in the making of a video game or interactive digital media shall
120 be allowed an additional workforce credit against the taxes imposed by this chapter for eligible
121 labor expenditures within the commonwealth. The credit shall be equal to the following:

122 (1) if the sum of the average of the video game production company for the 5 year
123 period is greater than or equal to 100 per cent but less than 105 per cent of the count of full-time
124 equivalent employees during the year the credit in section 38X was earned, the workforce tax
125 credit shall be 10 per cent of the tax credit allowed in subsection (b);

126 (2) if the sum of the average of the video game production company for the 5 year
127 period is greater than or equal to 105 per cent but less than 110 per cent of the count of full-time

128 equivalent employees during the year the credit in section 38X was earned, the workforce tax
129 credit shall be 20 per cent of the tax credit allowed in subsection (b);

130 (3) if the sum of the average of the video game production company for the 5 year
131 period is greater than or equal to 110 per cent but less than 115 per cent of the count of full-time
132 equivalent employees during the year the credit in section 38X was earned, the workforce tax
133 credit shall be 30 per cent of the tax credit allowed in subsection (b);

134 (4) if the sum of the average of the video game production company for the 5 year
135 period is greater than or equal to 115 per cent but less than 120 per cent of the count of full-time
136 equivalent employees during the year the credit in section 38X was earned, the workforce tax
137 credit shall be 40 per cent of the tax credit allowed in subsection (b); and

138 (5) if the sum of the average of the video game production company for the 5 year
139 period is greater than or equal to 120 per cent of the count of full-time equivalent employees
140 during the year the credit in section 38X was earned, the workforce tax credit shall be 50 per cent
141 of the tax credit allowed in subsection (b).

142 (d) A taxpayer shall be allowed an additional credit against the taxes imposed by this
143 chapter equal to 5 per cent of either the credit allowed in subsections (b) and (c) of section 38X
144 or the credit allowed in subsections (b) and (c) of this section if a video game production
145 company is located in a gateway municipality, as defined by section 3A of chapter 23A;
146 provided, that the value of such credit shall not exceed $500,000 per year.

147 (e) The tax credit shall be taken against the taxes imposed under this chapter and shall, at
148 the election of the taxpayer, be refundable to the extent provided for in section 32E. Any amount
149 of the tax credit that exceeds the tax due for a taxable year may be carried forward by the
150 taxpayer to any of the 5 subsequent taxable years.

151 (f)(1) All or any portion of tax credits issued in accordance with the provisions of this
152 section may be transferred, sold or assigned to other taxpayers with tax liabilities under this
153 chapter or chapter 62. Any tax credit that is transferred, sold or assigned and taken against taxes
154 imposed by this chapter or said chapter 62 shall not be refundable. Any amount of the tax credit
155 that exceeds the tax due for a taxable year may be carried forward by the transferee, buyer or
156 assignee to any of the 5 subsequent taxable years from which a certificate is initially issued by
157 the department of revenue.

158 (2) An owner, transferee or assignee desiring to make a transfer, sale or assignment shall
159 submit to the commissioner a statement which describes the amount of tax credit for which the
160 transfer, sale or assignment of tax credit is eligible. The owner, transferee or assignee shall
161 provide to the commissioner such information as the commissioner may require for the proper
162 allocation of the credit. The commissioner shall provide to the taxpayer a certificate of eligibility
163 to transfer, sell or assign the tax credits. The commissioner shall not issue a certificate to a

164 taxpayer that has an outstanding tax obligation with the commonwealth in connection with any
165 motion picture for any prior taxable year. A tax credit shall not be transferred, sold or assigned
166 without a certificate. The commissioner shall direct, assign and issue a certificate equal to 10 per
167 cent of the annual total of all tax credits earned in the prior year to the Massachusetts Digital
168 Games Institute for game development education and training programs and activities. These
169 credits may be refunded at 80 per cent of face value or transferred, sold or assigned to other
170 taxpayers with tax liabilities.

171 (g) A taxpayer shall be allowed either the credits under this section or section 38X.

172 (h) The commissioner, in consultation with the secretary, shall promulgate regulations
173 necessary for the administration of this section.

174 Section 83. A taxpayer engaged in the making of a video game or interactive digital
175 media shall be allowed a workforce training credit against the taxes imposed by this chapter for
176 eligible 2 year on-the-job training wages within the commonwealth. The credit shall be equal to
177 25 per cent of on-the-job wages as determined by the commissioner.

178 Section 84. (a) If a taxpayer, engaged in the making of a video game or interactive
179 digital media receiving a tax credit under section 82, discontinues operations in the
180 commonwealth during the first 2 and one-half years of applying for such credit, the taxpayer
181 shall forfeit all credits taken by the taxpayer during such 2 and one-half year period. In the event
182 of the forfeiture of such credits, the department shall initiate proceedings against the taxpayer to
183 recover wrongfully exempted state income taxes and the taxpayer shall promptly repay to the
184 department any wrongfully exempted state income taxes. The forfeited amount of credits shall
185 be deemed assessed on the date the department initiates proceedings against such recipient and
186 the recipient shall promptly repay to the department any wrongfully exempted state income
187 taxes. The secretary of economic development may elect to waive enforcement of any such
188 forfeiture based on a finding that the waiver is necessary to avert an imminent and demonstrable
189 hardship to the recipient. If a waiver is granted, the recipient shall agree to contractual recapture
190 provisions. The existence of any waiver granted under this section, the date of the granting of
191 such waiver, and a brief summary of the reasons supporting the granting of such waiver shall be
192 disclosed consistent with the provisions of this section.

193 (b) Beginning June 1, 2013 the department shall annually compile a report on the
194 outcomes and effectiveness of the recapture provisions of this section, including but not limited
195 to: (1) the total number of taxpayers engaged in the making of a video game or interactive digital
196 media receiving a tax credit under sections 38X, 82 or 83; (2) the total number of recipients in
197 violation of this section; (3) the total number of completed recapture efforts; (4) the total number
198 of recapture efforts initiated; and (5) the number of waivers granted. Such report shall be a
199 public record under clause Twenty-sixth of section 7 of chapter 4 and chapter 66.

200 (c) The commissioner, in consultation with the secretary, shall promulgate regulations
201 necessary for the administration of this section.