HOUSE DOCKET, NO. 3123 FILED ON: 2/18/2011

HOUSE . . . . . No. 3301

The Commonwealth of Massachusetts

PRESENTED BY:

Vincent A. Pedone

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 for the design and development of video game and interactive digital media products.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Vincent A. Pedone	*15th Worcester*
Michael O. Moore	☐ *[District]* ☐
Geraldo Alicea	*6th Worcester*
Cleon H. Turner	*1st Barnstable*
James J. Dwyer	*30th Middlesex*
Bradford Hill	*4th Essex*
Matthew A. Beaton	*11th Worcester*
James J. O'Day	*14th Worcester*
Kevin J. Kuros	*8th Worcester*
Thomas A. Golden, Jr.	*16th Middlesex*
Harriette L. Chandler	☐ *[District]* ☐
Paul McMurtry	*11th Norfolk*
Kate Hogan	*3rd Middlesex*

Louis L. Kafka	*8th Norfolk*
Peter V. Kocot	*1st Hampshire*
John D. Keenan	*7th Essex*
Anne M. Gobi	*5th Worcester*
John J. Mahoney	*13th Worcester*
Patricia A. Haddad	*5th Bristol*
Timothy R. Madden	*Barnstable, Dukes and Nantucket*
Lori A. Ehrlich	*8th Essex*
Daniel B. Winslow	*9th Norfolk*
Barry R. Finegold	☐ *[District]* ☐
Mark J. Cusack	*5th Norfolk*
Angelo J. Puppolo, Jr.	*12th Hampden*

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HOUSE . . . . . No. 3301

By Mr. Pedone of Worcester, a petition (accompanied by bill, House, No. 3301) of Vincent A. Pedone and others relative to tax credits for the design and development of video game and interactive digital media products. Revenue.

The Commonwealth of Massachusetts

An Act relative to tax credits 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:

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.

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

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

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

35 “Secretary”, the secretary of economic development.

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

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

48 (b) A taxpayer engaged in the making of a motion picture, video game or interactive
49 digital media shall be allowed a credit against the taxes imposed by this chapter for the
50 employment of persons within the commonwealth in connection with the filming or production
51 of 1 or more motion pictures, video games or interactive digital media in the commonwealth
52 within any consecutive 12 month period. The credit shall be equal to 25 per cent of the total
53 aggregate payroll paid by a motion picture, video game or interactive digital media production
54 company that constitutes Massachusetts source income, when total production costs incurred in
55 the commonwealth equal or exceed $50,000 during the taxable year. For purposes of this
56 subsection, the term “total aggregate payroll” shall not include the salary of any employee whose
57 salary is equal to or greater than $1,000,000.

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

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

70 (e) A taxpayer shall be allowed an additional credit against the taxes imposed by this
71 chapter equal to 2.5 per cent of all Massachusetts production expenses under this section if video
72 game production company producing video games or interactive digital media places within such
73 game or interactive media a promotional logo of the commonwealth of Massachusetts, as
74 approved by the secretary; provided, that the value of such credit shall not exceed $75,000 per
75 game or media per year.

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

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

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

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

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

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

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

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

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

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

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

125 (2) if the sum of the average of the video game production company for the 5 year
126 period is greater than or equal to 105 per cent but less than 110 per cent of the count of full-time
127 equivalent employees during the year the credit in section 38X was earned, the workforce tax
128 credit shall be 20 per cent of the tax credit allowed in subsection (b);

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

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

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

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

146 (e) A taxpayer shall be allowed an additional credit against the taxes imposed by this
147 chapter equal to 2.5 per cent of either the credit allowed in subsections (b) and (c) of section 38X
148 or the credit allowed in subsections (b) and (c) of this section if a video game production
149 company producing video games or interactive digital media places within such game or
150 interactive media a promotional logo of the commonwealth of Massachusetts as approved by the
151 secretary; provided, that the value of such credit shall not exceed $75,000 per game or media per
152 year.

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

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

164 (2) An owner, transferee or assignee desiring to make a transfer, sale or assignment shall
165 submit to the commissioner a statement which describes the amount of tax credit for which the
166 transfer, sale or assignment of tax credit is eligible. The owner, transferee or assignee shall
167 provide to the commissioner such information as the commissioner may require for the proper
168 allocation of the credit. The commissioner shall provide to the taxpayer a certificate of eligibility
169 to transfer, sell or assign the tax credits. The commissioner shall not issue a certificate to a
170 taxpayer that has an outstanding tax obligation with the commonwealth in connection with any
171 motion picture for any prior taxable year. A tax credit shall not be transferred, sold or assigned
172 without a certificate.

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

174 (i) The commissioner, in consultation with the secretary, shall promulgate regulations
175 necessary for the administration of this section.

176 Section 83. A taxpayer engaged in the making of a video game or interactive digital
177 media shall be allowed a workforce training credit against the taxes imposed by this chapter for
178 eligible 2 year on-the-job training wages within the commonwealth. The credit shall be equal to
179 25 per cent of on-the-job wages as determined by the commissioner.

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

195 (b) Beginning June 1, 2011 the department shall annually compile a report on the
196 outcomes and effectiveness of the recapture provisions of this section, including but not limited
197 to: (1) the total number of taxpayers engaged in the making of a video game or interactive digital
198 media receiving a tax credit under sections 38X, 82 or 83; (2) the total number of recipients in
199 violation of this section; (3) the total number of completed recapture efforts; (4) the total number

200 of recapture efforts initiated; and (5) the number of waivers granted. Such report shall be a
201 public record under clause Twenty-sixth of section 7 of chapter 4 and chapter 66.

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