

**HOUSE . . . . . No. 03301**

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 bill:

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

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Vincent A. Pedone</i>	<i>15th Worcester</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>
<i>Geraldo Alicea</i>	<i>6th Worcester</i>
<i>Cleon H. Turner</i>	<i>1st Barnstable</i>
<i>James J. Dwyer</i>	<i>30th Middlesex</i>
<i>Bradford Hill</i>	<i>4th Essex</i>
<i>Matthew Beaton</i>	<i>11th Worcester</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>
<i>Kevin Kuros</i>	<i>8th Worcester</i>
<i>Thomas A. Golden, Jr.</i>	<i>16th Middlesex</i>
<i>Harriette L. Chandler</i>	<i>First Worcester</i>
<i>Paul McMurtry</i>	<i>11th Norfolk</i>
<i>Kate Hogan</i>	<i>3rd Middlesex</i>
<i>Louis L. Kafka</i>	<i>8th Norfolk</i>
<i>Peter V. Kocot</i>	<i>1st Hampshire</i>
<i>John D. Keenan</i>	<i>7th Essex</i>

<i>Anne M. Gobi</i>	<i>5th Worcester</i>
<i>John Mahoney</i>	<i>13th Worcester</i>
<i>Patricia A. Haddad</i>	<i>5th Bristol</i>
<i>Timothy R. Madden</i>	<i>Barnstable, Dukes and Nantucket</i>
<i>Lori A. Ehrlich</i>	<i>8th Essex</i>
<i>Daniel Winslow</i>	<i>9th Norfolk</i>
<i>Barry R. Finegold</i>	<i>Second Essex and Middlesex</i>
<i>Mark Cusack</i>	<i>5th Norfolk</i>
<i>Angelo J. Puppolo, Jr.</i>	<i>12th Hampden</i>

# HOUSE . . . . . No. 03301

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

## The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

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:*

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

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

5 “Commissioner”, the commissioner of revenue.

6 “Motion picture”, a feature-length film, a video, a digital media project, a television series  
7 defined as a season not to exceed 27 episodes, or a commercial made in the commonwealth, in  
8 whole or in part, for theatrical or television viewing or as a television pilot. The term “ motion  
9 picture” shall not include a production featuring news, current events, weather and financial  
10 market reports, talk show, game show, sporting events, awards show or other gala event, a

11 production whose sole purpose is fundraising, a long-form production that primarily markets a  
12 product or service, a production containing obscene material or performances.

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

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

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

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

33 transfer of tax credits or any amounts paid to persons or businesses as a result of their  
34 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 digital  
49 media shall be allowed a credit against the taxes imposed by this chapter for the employment of  
50 persons within the commonwealth in connection with the filming or production of 1 or more  
51 motion pictures, video games or interactive digital media in the commonwealth within any  
52 consecutive 12 month period. The credit shall be equal to 25 per cent of the total aggregate  
53 payroll paid by a motion picture, video game or interactive digital media production company  
54 that constitutes Massachusetts source income, when total production costs incurred in the

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

58 (c) A taxpayer shall be allowed an additional credit against the taxes imposed by this chapter  
59 equal to 25 per cent of all Massachusetts production expenses, not including the payroll expenses  
60 used to claim a credit pursuant to subsection (b), where the motion picture, video game or  
61 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 chapter  
66 equal to 5 per cent of all Massachusetts production expenses under this section if video game  
67 studio or interactive digital media studio is located in a gateway municipality, as defined by  
68 section 3A of chapter 23A; provided, that the value of such credit shall not exceed \$500,000 per  
69 year.

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

76 (f) The tax credit shall be taken against the taxes imposed under this chapter and shall, at the  
77 election of the taxpayer, be refundable to the extent provided for in section 32E. Any amount of  
78 the tax credit that exceeds the tax due for a taxable year may be carried forward by the taxpayer  
79 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 section  
81 may be transferred, sold or assigned to other taxpayers with tax liabilities under this chapter or  
82 chapter 62. Any tax credit that is transferred, sold or assigned and taken against taxes imposed by  
83 this chapter. Any amount of the tax credit that exceeds the tax due for a taxable year may be  
84 carried forward by the transferee, buyer or assignee to any of the 5 subsequent taxable years  
85 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 submit  
87 to the commissioner a statement which describes the amount of tax credit for which the transfer,  
88 sale or assignment of tax credit is eligible. The owner, transferee or assignee shall provide to the  
89 commissioner such information as the commissioner may require for the proper allocation of the  
90 credit. The commissioner shall provide to the taxpayer a certificate of eligibility to transfer, sell  
91 or assign the tax credits. The commissioner shall not issue a certificate to a taxpayer that has an  
92 outstanding tax obligation with the commonwealth in connection with any motion picture, video  
93 game or interactive digital media for any prior taxable year. A tax credit shall not be transferred,  
94 sold or assigned without a certificate.

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

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

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

101 “Eligible labor expenditures”, compensation and benefits paid to employees working on the  
102 development, creation, production, maintenance, and distribution of video games or interactive  
103 digital media as defined in section 38X, as well as employees supporting technical or production  
104 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 be  
111 allowed a credit against the taxes imposed by this chapter for the employment of persons within  
112 the commonwealth in connection with the filming or production of 1 or more video games or  
113 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 be  
119 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 period is  
122 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 period is  
126 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 period is  
130 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 period is  
134 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 period is  
138 greater than or equal to 120 per cent of the count of full-time equivalent employees during the

139 year the credit in section 38X was earned, the workforce tax credit shall be 50 per cent of the tax  
140 credit allowed in subsection (b).

141 (d) A taxpayer shall be allowed an additional credit against the taxes imposed by this chapter  
142 equal to 5 per cent of either the credit allowed in subsections (b) and (c) of section 38X or the  
143 credit allowed in subsections (b) and (c) of this section if a video game production company is  
144 located in a gateway municipality, as defined by section 3A of chapter 23A; provided, that the  
145 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 chapter  
147 equal to 2.5 per cent of either the credit allowed in subsections (b) and (c) of section 38X or the  
148 credit allowed in subsections (b) and (c) of this section if a video game production company  
149 producing video games or interactive digital media places within such game or interactive media  
150 a promotional logo of the commonwealth of Massachusetts as approved by the secretary;  
151 provided, that the value of such credit shall not exceed \$75,000 per game or media per year.

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

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

161 of the 5 subsequent taxable years from which a certificate is initially issued by the department of  
162 revenue.

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

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

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

174 Section 83. A taxpayer engaged in the making of a video game or interactive digital media shall  
175 be allowed a workforce training credit against the taxes imposed by this chapter for eligible 2  
176 year on-the-job training wages within the commonwealth. The credit shall be equal to 25 per cent  
177 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 digital media  
179 receiving a tax credit under section 82, discontinues operations in the commonwealth during the  
180 first 2 and one-half years of applying for such credit, the taxpayer shall forfeit all credits taken by  
181 the taxpayer during such 2 and one-half year period. In the event of the forfeiture of such  
182 credits, the department shall initiate proceedings against the taxpayer to recover wrongfully

183 exempted state income taxes and the taxpayer shall promptly repay to the department any  
184 wrongfully exempted state income taxes. The forfeited amount of credits shall be deemed  
185 assessed on the date the department initiates proceedings against such recipient and the recipient  
186 shall promptly repay to the department any wrongfully exempted state income taxes. The  
187 secretary of economic development may elect to waive enforcement of any such forfeiture based  
188 on a finding that the waiver is necessary to avert an imminent and demonstrable hardship to the  
189 recipient. If a waiver is granted, the recipient shall agree to contractual recapture provisions. The  
190 existence of any waiver granted under this section, the date of the granting of such waiver, and a  
191 brief summary of the reasons supporting the granting of such waiver shall be disclosed consistent  
192 with the provisions of this section.

193 (b) Beginning June 1, 2011 the department shall annually compile a report on the outcomes and  
194 effectiveness of the recapture provisions of this section, including but not limited to: (1) the total  
195 number of taxpayers engaged in the making of a video game or interactive digital media  
196 receiving a tax credit under sections 38X, 82 or 83; (2) the total number of recipients in violation  
197 of this section; (3) the total number of completed recapture efforts; (4) the total number of  
198 recapture efforts initiated; and (5) the number of waivers granted. Such report shall be a public  
199 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 necessary  
201 for the administration of this section.