

SENATE No. 01495

The Commonwealth of Massachusetts

PRESENTED BY:

Richard T. Moore

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 to promote business continuity and recovery after a disaster.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Richard T. Moore</i>	<i>Worcester and Norfolk</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>Kevin Kuros</i>	<i>8th Worcester</i>
<i>Bruce E. Tarr</i>	<i>First Essex and Middlesex</i>
<i>James E. Timilty</i>	<i>Bristol and Norfolk</i>

SENATE No. 01495

By Mr. Moore, petition (accompanied by bill, Senate, No. 1495) of Timilty, Tarr, Kuros and other members of the General Court for legislation to promote business continuity and recovery after a disaster [Joint Committee on Revenue].

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
□ SENATE
□ , NO. 962 OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act to promote business continuity and recovery after a disaster.

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. Notwithstanding the provisions of any other general or special law to the
2 contrary, for the purposes of the act, the following terms shall have the following meanings:
3 “Business Continuity Plan (BCP)” is defined as: A document containing the recovery timeline
4 methodology, test-validated documentation, procedures, and action instructions developed
5 specifically for use in restoring organization operations in the event of a declared disaster. To be
6 effective, most Business Continuity Plans also require testing, skilled personnel, access to vital
7 records, and alternate recovery resources including facilities.

8 “Disaster” or “emergency” is defined as an occurrence such as a hurricane, tornado, flood,
9 earthquake, explosion, hazardous materials accident, war, transportation accident, act of
10 terrorism, mass shooting, fire, famine, or epidemic that causes human suffering or creates human
11 need that the victim cannot alleviate without assistance.

12 SECTION 2. Chapter 63 of the general laws, as appearing in the 2008 Official
13 Edition, is hereby amended by adding at the end thereof the following new section:

14 Section 3SQ. Business Continuity Tax Deduction. (a) In determining the net income
15 subject to tax under this chapter a domestic or foreign business corporation, at its election, may
16 deduct an amount equal to one half of the expenditures paid or incurred during the taxable year
17 for the purchase of business continuity or business interruption insurance for business operations
18 within the Commonwealth, but in no case shall the deduction exceed the minimum corporate tax
19 payment due.

20 Such deduction shall be allowed only if the insurance remained in full force and effect
21 throughout the taxable year and the corporation maintained a current business continuity or
22 interruption plan on file with the municipal government where the business is located. For
23 purposes of this section, a business continuity or interruption plan is a practiced logistical plan
24 for how an organization will recover and restore partially or completely interrupted critical
25 functions within a specified time after a disaster or extended disruption.

26 SECTION 3. Section 6 of chapter 64H of the general laws, as appearing in the 2008
27 Official Edition, is hereby amended by adding after subsection (ww), the following new
28 subsection:

29 (xx) Sale of office equipment and supplies, machinery, vehicles or other equipment to be used by
30 a business that has been substantially destroyed as a result of an emergency.

31 For the purposes of this subsection, the term “emergency” shall mean any situation caused by
32 unforeseen circumstances which render currently used real property unusable or unavailable for
33 the purposes intended and which creates an immediate need for other real property to preserve
34 the health or safety of persons or property.

35 SECTION 4. Chapter 43D of the general laws, as appearing in the 2008 Official
36 Edition, is hereby amended by adding at the end thereof, the following new section:

37 Section 17. Emergency Permitting.

38 Any municipality which accepts the provisions of this chapter may establish emergency permit
39 granting procedures for the permanent or temporary relocation or rebuilding of property,
40 including commercial entities, in any situation caused by unforeseen circumstances which render
41 currently used real property unusable or unavailable for the purposes intended and which creates
42 an immediate need for other real property to preserve the health or safety of persons or property.

43 SECTION 5. Small Business Insurance Commission

44 Notwithstanding any general or special law to the contrary, the Small Business Insurance
45 Commission is established to examine the need for guidelines for small business insurance,
46 including, but not limited to, a requirement that the insured have and maintain a continuity of
47 business plan, and a requirement that the business be registered with the local emergency
48 management office.

49 The Commission shall consist of the following: The Commissioner of Insurance, two
50 appointees of the Senate President, 2 appointees of the Speaker of the House, 1 appointee of the
51 Senate Minority Leader, 1 appointee of the House Minority Leader, 1 appointee of the Governor,
52 1 appointee of Associated Industries of Massachusetts, 1 appointee of the Massachusetts
53 Chamber of Commerce and one appointee of the National Federation of Independent Business
54 and 1 appointee from the insurance industry with expertise in small business. The Commissioner
55 of Insurance shall be the chair of the committee but shall have no vote except in case of a tie.

56 The Commission shall be responsible for studying the need for insurance guidelines
57 for small business and issue a report of its findings no later than December 31, 2012.

58 SECTION 6. Section 71 of Chapter 59 of the General Laws, as appearing in the 2008
59 Official Edition, is hereby amended by adding after the word “bankruptcy,” the following words
60 -: “natural disaster”

61 SECTION 7. Abatement of Real Property Tax

62 Chapter 59 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by
63 adding the following new section:

64 Section 59B. Abatements for the purpose of natural disasters.

65 Municipalities may establish, relative to sites or portions of sites from or at which there has been
66 a natural disaster, an agreement between the city or town and any eligible person, as defined in
67 section 2 of chapter 21E, regarding the abatement of outstanding interest, penalties, and payment
68 of real estate tax obligations on said sites or portions of sites; provided, however, that said sites
69 or portions of sites are zoned for commercial or industrial uses by the municipality in which said

70 sites or portion of sites exist. Such agreement, for the purpose of continuing cleanup on such
71 sites and redevelopment in such communities, shall include, but shall not be limited to, the
72 amount outstanding, the per cent of interest to accrue if determined applicable by the parties, the
73 description of quantifiable monthly payments, the inception date of such payments, the date of
74 the final payment, late penalties, and any other contractual obligations arranged between the
75 parties. The terms of repayment shall be set at the discretion of the municipality and shall be
76 included in the agreement between the parties. A city or town that accepts this section shall adopt
77 an ordinance or by-law specifying the method for negotiating and approving agreements under
78 this section. Copies of each such agreement shall be signed by the municipal officer required by
79 the ordinance or by-law and by the owner of the property in question, notarized, attested to by
80 the city or town clerk, and provided to the department of environmental protection, the federal
81 Environmental Protection Agency, the commissioner, the city council or board of selectmen, and
82 the owners of the property in question. This section shall take effect in any city or town only
83 upon its acceptance by such city or town.

84 SECTION 8. Modification of the Payroll Tax

85 Notwithstanding any general or special law to the contrary, there shall be a modification of the
86 payroll tax for six months following the occurrence of a natural disaster for businesses with less
87 than fifty employees that are in the process of rebuilding.

88 SECTION 9. Transfer of Katrina Funds to Establish a Small Business Recovery Fund

89 Item 1599-2005 of section 2A of chapter 81 of the acts of 2005, as most recently amended by
90 section 28 of chapter 140 of the acts of 2007, is hereby further amended by inserting after the
91 words “responded to that emergency,” the following words:-; provided further, that any

92 unexpended balance shall be transferred to the Massachusetts Small Business Recovery Fund,
93 established pursuant to the provisions of this act.

94 SECTION 10. Chapter 10 of the general laws, as appearing in the 2008 Official
95 Edition, is hereby amended by adding at the end, thereof, the following new section:

96 Section 70. Disaster Relief and Recovery Fund.

97 There shall be established and set upon the books of the commonwealth a separate
98 fund to be known as the Massachusetts Disaster Relief and Recovery Fund. There shall be
99 credited to the fund such funds as may be transferred or appropriated by the General Court and
100 any income derived from repayment of loans from the fund and income derived from investment
101 of amounts credited to the fund. Amounts credited to the fund shall be received and held in trust
102 for grants to political subdivisions of the commonwealth and loan guarantees to banks for low
103 interest loans to small businesses for relief and recovery efforts following a disaster, provided,
104 however that no loan guarantee shall exceed fifty percent of the loan, and provided further that
105 no interest rate on such loan shall exceed four percent per annum, nor shall any repayment period
106 exceed ten years. Said grants or loans shall be made by the director of the Massachusetts
107 Emergency Management Agency with the approval of the secretary of the executive office of
108 housing and economic development. Revenues and expenditures of the fund shall be reported on
109 the Massachusetts management and accounting and reporting system and maintained by the state
110 treasurer. The Fund shall not exceed a maximum of \$5,000,000. For the purposes of this section
111 a “disaster” shall mean an emergency, other than a level one emergency, as defined by the
112 Massachusetts Comprehensive Emergency Management Plan.

113 A municipality may establish a program of emergency assistance grants of not more than one
114 thousand dollars per business entity to assist with relocation and start-up costs, provided that
115 businesses, to be eligible, must be adequately insured. Said grant shall be repaid when the
116 insurance settlement is finalized.

117 SECTION 11. Unemployment Compensation for Self-Employed Business Owners

118 Notwithstanding the provisions of any other general or special law to the contrary, the
119 secretary of the executive office of labor and workforce development is hereby authorized and
120 directed to develop an unemployment compensation program for self-employed individuals and
121 for small business owners who may be temporarily displaced as a result of a disaster as defined
122 in this act. Said program shall include recommendations for administration and funding of the
123 program. The secretary shall provide a report to the General Court, together with
124 recommendations for legislation not later than December 1, 2012.