

HOUSE No. 2525**The Commonwealth of Massachusetts**

PRESENTED BY:

Thomas A. Golden, Jr.

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 adoption of the accompanying bill:

An Act relative to small scale commercial development for gateway cities.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Thomas A. Golden, Jr.</i>	<i>16th Middlesex</i>	<i>1/15/2015</i>
<i>Rady Mom</i>	<i>18th Middlesex</i>	<i>1/24/2015</i>
<i>David M. Nangle</i>	<i>17th Middlesex</i>	<i>11/18/2019</i>
<i>Stephen L. DiNatale</i>	<i>3rd Worcester</i>	<i>11/18/2019</i>
<i>Angelo J. Puppolo, Jr.</i>	<i>12th Hampden</i>	<i>11/18/2019</i>
<i>Dennis A. Rosa</i>	<i>4th Worcester</i>	<i>11/18/2019</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>	<i>11/18/2019</i>
<i>Robert M. Koczera</i>	<i>11th Bristol</i>	<i>11/18/2019</i>
<i>Thomas M. McGee</i>	<i>Third Essex</i>	<i>11/18/2019</i>
<i>Marcos A. Devers</i>	<i>16th Essex</i>	<i>11/18/2019</i>
<i>Eileen M. Donoghue</i>	<i>First Middlesex</i>	<i>11/18/2019</i>
<i>RoseLee Vincent</i>	<i>16th Suffolk</i>	<i>11/18/2019</i>
<i>Leah Cole</i>	<i>12th Essex</i>	<i>11/18/2019</i>
<i>James Arciero</i>	<i>2nd Middlesex</i>	<i>11/18/2019</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>	<i>11/18/2019</i>

HOUSE No. 2525

By Mr. Golden of Lowell, a petition (accompanied by bill, House, No. 2525) of Thomas A. Golden, Jr., and others relative to providing tax incentives for small scale commercial development in gateway municipalities. Revenue.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 3413 OF 2013-2014.]

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-2016)

An Act relative to small scale commercial development for gateway cities.

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 40 of the General Laws is hereby amended by inserting after
2 section 60A the following section:-

3 Section 60B. For the purposes of this section, the following terms shall have the
4 following meanings:-

5 “Executive office”, executive office of housing and community development.

6 “Gateway municipality”, a municipality with a population greater than 35,000 and less
7 than 250,000, a median household income below the commonwealth's average and a rate of
8 educational attainment of a bachelor's degree or above that is below the commonwealth's
9 average.

“Secretary”, secretary of housing and community development.

(b) Notwithstanding any general or special law to the contrary, a city or town, by vote of its town meeting, town council or city council, with the approval of the mayor where required by law, on its own behalf or in conjunction with 1 or more cities or towns and pursuant to regulations issued by the secretary of the executive office of housing and economic development, may adopt and implement a gateway municipality tax increment financing plan, referred to as a GM-TIF plan in this section, intended to encourage commercial rental and build-out opportunities in multi-story commercial buildings in gateway municipalities. Any such GM-TIF plan shall:

(i) designate 1 or more areas of such gateway municipality a gateway municipality tax increment financing area, referred to as a GM-TIF area subject to the approval of the secretary under regulations adopted by the executive office consistent with this section.

(ii) describe in detail the commercial development contemplated for such GM-TIF area as of the date of adoption of the GM-TIF plan that shall be eligible for the GM-TIF;

(iii) authorize tax increment exemptions from property taxes, under clause Fifty-first of section 5 of chapter 59, for a specified term not to exceed 30 years, for any parcel of real property which is located in the GM-TIF area and for which an agreement has been executed with the owner of the parcel under clause (iv); provided, however, that the GM-TIF plan shall specify the level of exemptions expressed as exemption percentages, not to exceed 100 per cent, to be used in calculating the exemptions for the parcel, and for personal property situated on that parcel, as provided under said clause Fifty-first of said section 5 of said chapter 59; provided, further, that the exemption for each parcel of real property shall be calculated using an

adjustment factor for each fiscal year of the specified term equal to the product of the inflation factors for each fiscal year since the parcel first became eligible for such exemption pursuant to this clause; provided, further, that the inflation factor for each fiscal year shall be a ratio:

(a) the numerator of which shall be the total assessed value of all parcels of all commercial and industrial real estate that is assessed at full and fair cash value for the current fiscal year minus the new growth adjustment for the current fiscal year attributable to the commercial and industrial real estate as determined by the commissioner of revenue under paragraph (f) of section 21C of said chapter 59; and

(b) the denominator of which shall be the total assessed value for the preceding fiscal year of all the parcels included in the numerator, except that such ratio shall not be less than 1;

(iv) include executed agreements between such city or town and each eligible owner of a parcel of real property which is located in a GM-TIF area. Each such agreement shall include the following: (1) all material representations of the parties which served as a basis for the descriptions contained in the GM-TIF plan in accordance with clause (ii) and which served as a basis for the granting of a GM-TIF exemption; (2) any terms considered appropriate by the city or town relative to compliance with the GM-TIF agreement including, but not limited to, that which shall constitute a default by the property owner and the remedies that shall be instituted between the parties for any such defaults, including an early termination of the agreement; (3) provisions requiring that 75 per cent of the eligible workforce shall receive training that is designed to retain employment in such city or town; (4) a detailed recitation of all other benefits and responsibilities inuring to and assumed by the parties to such agreement; and (5) a provision that such agreement shall be binding upon subsequent owners of such parcel of real property;

(v) delegate to 1 board, agency or officer of the city or town the authority to execute agreements in accordance with clause (iv); and

(vi) be certified as an approved GM-TIF plan by the department pursuant to regulations adopted by said department if the department finds, based on the information submitted in support of the GM-TIF plan by the city or town and such additional investigation as the council shall make, and incorporate in its minutes, that the plan is consistent with the requirements of this section and shall further the public purpose of retaining or encouraging increased industrial and commercial manufacturing activity in the commonwealth. A city or town may at any time revoke its designation of a GM-TIF area and, as a consequence of such revocation, shall immediately cease the execution of any additional agreements pursuant to clause (iv). The board, agency or officer of the city or town authorized pursuant to clause (v) to execute agreements shall forward to the board of assessors a copy of each such agreement, together with a list of the parcels included therein. An executed and approved GM-TIF shall be recorded in the registry of deeds or the registry district of the land court for the county wherein such land lies.

SECTION 2. Section 2 of chapter 40Q of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by inserting after the word “council”, in line 14, the following words:- or (3) a designated gateway municipality tax increment financing area pursuant to section 60B of chapter 40.

Paragraph (a) of Part B of section 3 of chapter 62 of the General Laws is hereby amended by adding the following subparagraph:-

(16) An amount equal to 20 per cent of the cost of improving any commercial building in a gateway municipality tax increment financing area as approved by the secretary of housing and economic development.

SECTION 3. Section 6 of chapter 62 of the General Laws is hereby amended by adding the following subsection:-

(s) (1) A credit shall be allowed against the tax liability imposed by this chapter, to the extent authorized by the secretary of housing and economic development, up to an amount equal to 50 per cent of such liability in any taxable year; provided, however, that the 50 per cent limitation shall not apply where the credit is refundable under paragraph (5) for approved projects for commercial rental and build-out opportunities in multi-story commercial buildings in gateway municipalities. A lessee may be eligible for a credit pursuant to this subsection for real property leased pursuant to an operating lease.

The total amount of credits that may be authorized by the secretary in a calendar year pursuant to this section and section 38N of chapter 63 shall not exceed an annual cap equal to \$50,000,000 minus the credits granted and carryforwards of credits from prior years pursuant to subsection (q)(5) of section 6 of this chapter and section 38BB(5) of said chapter 63, and shall include: (1) refundable credits granted during the year pursuant to this section or said section 38N of said chapter 63; (2) nonrefundable credits granted during the year pursuant to this section or said section 38N of said chapter 63, to the extent that such nonrefundable credits are estimated by the commissioner to offset tax liabilities during the year; and (3) carryforwards of credits from prior years under this section or said section 38N of said chapter 63, to the extent that such credit carryforwards are estimated by the commissioner to offset tax liabilities during the year.

The secretary shall provide the commissioner of revenue with any documentation that the commissioner deems necessary to confirm compliance with the annual cap and the commissioner shall provide a report confirming compliance with the annual cap to the secretary of administration and finance.

(2) Any taxpayer entitled to a credit under this subsection for any taxable year may carry over and apply to the tax for any one or more of the next succeeding ten taxable years, the portion, as reduced from year to year, of those credits which exceed the tax for the taxable year; provided, however, that in no event shall the taxpayer apply the credit to the tax for any taxable year beginning more than five years after the approved project ceases to qualify as such under the provisions of section 60B of chapter 40.

(3) For purposes of this subsection, the commissioner of revenue may aggregate the activities of all entities, whether or not incorporated, under common control as defined in subsection (f) of section forty-one of the Code.

(4) The commissioner of revenue shall promulgate such rules and regulations necessary to implement the provisions of this subsection. Such rules and regulations may provide for the adjustment of prices and elimination of transactions between related taxpayers to ensure that all amounts upon which the credit is based reasonably reflect fair market value. In addition, such rules and regulations shall include provisions to prevent the generation of multiple credits with respect to the same property.

(5) If a credit allowed under paragraph (1) exceeds the tax otherwise due under this chapter, 100 per cent of the balance of such credit may, at the option of the taxpayer and to the extent authorized pursuant to the economic assistance coordinating council, be refundable to the

taxpayer for the taxable year in which qualified property giving rise to that credit is placed in service. If such credit balance is refunded to the taxpayer, the credit carryover provisions of paragraph (2) shall not apply.

SECTION 4. Chapter 63 of the General Laws is hereby amended by striking out section 38N and inserting in place thereof the following section:-

Section 38N (a) A corporation subject to tax under this chapter that participates in a certified project, as defined in sections 3A and 3F of chapter 23A , or undertakes a development under an approved gateway municipality tax increment finance plan pursuant to section 60B of chapter 40, may take a credit against the excise imposed by this chapter to the extent authorized by the economic assistance coordinating council established by section 3B of said chapter 23A or the secretary of housing and economic development, in an amount not to exceed 50 per cent of such liability in a taxable year; provided, however, that the 50 per cent limitation shall not apply if the credit is refundable under subsection (b): (i) for certified expansion projects and certified enhanced expansion projects, as defined in said sections 3A and 3F of said chapter 23A, an amount up to 10 per cent; (ii) for certified manufacturing retention projects, as defined in said sections 3A and 3F of said chapter 23A, an amount up to 40 per cent of the cost of any property that would qualify for the credit allowed by section 31A if the property were purchased by a manufacturing corporation or a business corporation engaged primarily in research and development and is used exclusively in a certified project, as defined in said sections 3A and 3F of said chapter 23A; or (iii) for approved projects for commercial rental and build-out opportunities in multi-story commercial buildings in gateway municipalities. A lessee may be eligible for a credit under this subsection for real property leased under an operating lease.

The total amount of credits that may be authorized by the economic assistance coordinating council or the secretary of housing and economic development in a calendar year under subsection (g) of section 6 of chapter 62 and this section shall not exceed an annual cap equal to \$50,000,000 minus the credits granted and carryforwards of credits from prior years under subsection (5) of section 38BB of this chapter and paragraph (5) of subsection (q) of section 6 of chapter 62 and shall include: (1) refundable credits granted during the year under said subsection (g) of said section 6 of said chapter 62 or this section; (2) nonrefundable credits granted during the year under said subsection (g) of said section 6 of said chapter 62 or this section, to the extent that such nonrefundable credits are estimated by the commissioner to offset tax liabilities during the year; and (3) carryforwards of credits from prior years under said subsection (g) of said section 6 of said chapter 62 or this section, to the extent that such credit carryforwards are estimated by the commissioner to offset tax liabilities during the year. Of these allowable credits, the economic assistance coordinating council may award not more than \$5,000,000 in a calendar year to certified enhanced expansion projects, as defined in sections 3A and 3F of chapter 23A, and not more than \$5,000,000 for certified manufacturing retention projects, as defined in said sections 3A and 3F of said chapter 23A. Any portion of the annual cap not awarded by the economic assistance coordinating council in a calendar year may be applied to awards by the secretary of housing and economic development in a subsequent year. The economic assistance coordinating council shall provide the commissioner with any documentation that the commissioner deems necessary to confirm compliance with the annual cap and the commissioner shall provide a report confirming compliance with the annual cap to the secretary of administration and finance and the secretary of housing and economic development.

163 The credit allowed under this section may be taken by an eligible corporation; provided,
164 however, that the credit allowed by section 31A or section 31H shall not be taken by such
165 corporation. For purposes of this paragraph, the corporation need not be a manufacturing
166 corporation or a business corporation engaged primarily in research and development. If such
167 property is disposed of or ceases to be in qualified use within the meaning of section 31A or
168 ceases to be used exclusively in a certified project before the end of the certified project's
169 certification period, or if a certified project's certification is revoked, the recapture provisions of
170 subsection (e) of section 31A shall apply. If such property is disposed of after the certified
171 project's certification period but before the end of such property's useful life, the recapture
172 provisions of subsection (e) of section 31A shall apply. The expiration of a certified project's
173 certification or an approval by the secretary of housing and economic development shall not
174 require the application of the recapture provisions of subsection (e) of section 31A.

175 As used in this paragraph, "EACC" shall mean the economic assistance coordinating
176 council established in section 3B of chapter 23A. A credit allowed under this section pursuant to
177 the EACC's approval may be taken only after the taxpayer completes a report signed by an
178 authorized representative of the corporation and files the report with the EACC within 2 years
179 after the initial project certification by the EACC and annually thereafter. The report shall
180 contain pertinent employment data needed to determine whether the taxpayer has reasonably
181 satisfied the employment projections set forth in its original project proposal granted pursuant to
182 section 3F of said chapter 23A. Paragraph (3) of section 3F of said chapter 23A shall apply to tax
183 benefits awarded under this section. Nothing in this section shall limit the authority of the
184 commissioner to make adjustments to a corporation's liability upon audit.

(b) If a credit allowed to a taxpayer under clause (ii) of subsection (a) exceeds the excise otherwise due under this chapter, 100 per cent of the balance of such credit may, at the option of the taxpayer and to the extent authorized by the economic assistance coordinating council, be refundable to the taxpayer for the taxable year in which qualified property giving rise to that credit is placed in service. If such credit balance is refunded to the taxpayer, the credit carryover provisions of subsection (d) shall not apply. The amount of credit eligible to be refunded shall be determined without regard to the limitations in subsections (a) and (c).

(c) In the case of a corporation that is subject to a minimum excise under any provision of this chapter, the amount of the credit allowed by this section shall not reduce the excise to an amount less than such minimum excise.

(d) Any corporation entitled to a credit under this section for any taxable year may carry over and apply to its excise for any one or more of the next succeeding ten taxable years, the portion, as reduced from year to year, of those credits which were not allowed by paragraph (a) or paragraph (c) or which exceed the excise for the taxable year; provided, however, that in no event shall the corporation apply the credit to its excise for any taxable year beginning more than five years after the certified project or economic opportunity area ceases to qualify as such under the provisions of chapter twenty-three A.

(e) In the case of corporations filing a combined return of income under section thirty-two B, a credit generated by an individual member corporation under the provisions of this section shall first be applied against the separately determined excise attributable to that member, subject to the limitations of paragraph (a) or paragraph (c). A member corporation with an excess credit may apply its excess credit against the excise of another group member, to the extent that

such other member corporation can use additional credits under the limitation of said paragraph (a) or paragraph (c). Unused, unexpired credits generated by member corporations shall be carried over from year to year by the individual corporation that generated the credit. Nothing in this section shall alter the provisions of paragraph (h) of section thirty-one A.

(f) For purposes of this section, the commissioner of revenue may aggregate the activities of all corporations that are members of a controlled group of corporations and, in addition, may aggregate the activities of all entities, whether or not incorporated, under common control as defined in subsection (f) of section forty-one of the Code.

(g) The commissioner of revenue shall promulgate such rules and regulations as are necessary to implement the provisions of this section. Such rules and regulations may provide the adjustment of intercompany prices and elimination of intercompany transactions to ensure that all amounts upon which the credit is based reasonably reflect fair market value. In addition, such rules and regulations shall include provisions to prevent the generation of multiple credits with respect to the same property.

SECTION 5. Chapter 63 of the General Laws is hereby amended by striking out section 38O and inserting in place thereof the following section:-

Section 38O. A corporation whose excise under this chapter is based on net income may, in determining such net income, deduct an amount equal to 20 per cent of the cost of renovating any abandoned or underutilized building located within either an economic opportunity area as determined by the economic assistance coordinating council established by section 3B of chapter 23A or within a gateway municipality tax increment financing area as approved by the secretary of the executive office of housing and community development.