

**HOUSE . . . . . No. 2606**

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**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 adoption of the accompanying bill:

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:	DATE ADDED:
<i>John J. Mahoney</i>	<i>13th Worcester</i>	<i>1/15/2015</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>	<i>2/2/2015</i>
<i>Daniel M. Donahue</i>	<i>16th Worcester</i>	<i>11/22/2019</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>	<i>11/22/2019</i>
<i>Kate D. Campanale</i>	<i>17th Worcester</i>	<i>11/22/2019</i>

**HOUSE . . . . . No. 2606**

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By Mr. Mahoney of Worcester, a petition (accompanied by bill, House, No. 2606) of John J. Mahoney and others relative to tax credits for digital media products. Revenue.

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[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE HOUSE, NO. 2662 OF 2013-2014.]

**The Commonwealth of Massachusetts**

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

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:*

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

3           SECTION 1. Chapter 63 of the General Laws is hereby amended by striking out section  
4 38X and inserting in place thereof the following section:

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

7           “Commissioner”, the commissioner of revenue.

8           “Motion picture”, a feature-length film, a video, a digital media project, a television  
9 series defined as a season not to exceed 27 episodes, or a commercial made in the

10 commonwealth, in whole or in part, for theatrical or television viewing or as a television pilot.  
11 The term “ motion picture” shall not include a production featuring news, current events, weather  
12 and financial market reports, talk show, game show, sporting events, awards show or other gala  
13 event, a production whose sole purpose is fundraising, a long-form production that primarily  
14 markets a product or service, a production containing obscene material or performances.

15 “Motion picture production company”, a company including its subsidiaries engaged in  
16 the business of producing motion pictures, videos, television series, or commercials intended for  
17 a theatrical release or for television viewing. The term “motion picture production company”  
18 shall not mean or include any company which is more than 25 per cent owned, affiliated, or  
19 controlled, by any company or person which is in default on a loan made or guaranteed by the  
20 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.