

SENATE No. 1495

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 adoption 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>James B. Eldridge</i>	
<i>Kevin J. Kuros</i>	<i>8th Worcester</i>
<i>Bruce E. Tarr</i>	
<i>James E. Timilty</i>	

SENATE No. 1495

By Mr. Moore, a petition (accompanied by bill, Senate, No. 1495) of Richard T. Moore, James B. Eldridge, Kevin J. Kuros, Bruce E. Tarr and others for legislation to promote business continuity and recovery after a disaster. 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
2 law to the contrary, for the purposes of the act, the following terms shall have the following
3 meanings:

4 “Business Continuity Plan (BCP)” is defined as: A document containing the recovery
5 timeline methodology, test-validated documentation, procedures, and action instructions
6 developed specifically for use in restoring organization operations in the event of a declared
7 disaster. To be effective, most Business Continuity Plans also require testing, skilled personnel,
8 access to vital records, and alternate recovery resources including facilities.

9 “Disaster” or “emergency” is defined as an occurrence such as a hurricane, tornado,
10 flood, earthquake, explosion, hazardous materials accident, war, transportation accident, act of

11 terrorism, mass shooting, fire, famine, or epidemic that causes human suffering or creates human
12 need that the victim cannot alleviate without assistance.

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

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

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

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

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

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

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

38 Section 17. Emergency Permitting.

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

44 SECTION 5. Small Business Insurance Commission

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

50 The Commission shall consist of the following: The Commissioner of
51 Insurance, two appointees of the Senate President, 2 appointees of the Speaker of the House, 1
52 appointee of the Senate Minority Leader, 1 appointee of the House Minority Leader, 1 appointee

53 of the Governor, 1 appointee of Associated Industries of Massachusetts, 1 appointee of the
54 Massachusetts Chamber of Commerce and one appointee of the National Federation of
55 Independent Business and 1 appointee from the insurance industry with expertise in small
56 business. The Commissioner of Insurance shall be the chair of the committee but shall have no
57 vote except in case of a tie.

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

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

63 SECTION 7. Abatement of Real Property Tax

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

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

67 Municipalities may establish, relative to sites or portions of sites from or at which there
68 has been a natural disaster, an agreement between the city or town and any eligible person, as
69 defined in section 2 of chapter 21E, regarding the abatement of outstanding interest, penalties,
70 and payment of real estate tax obligations on said sites or portions of sites; provided, however,
71 that said sites or portions of sites are zoned for commercial or industrial uses by the municipality
72 in which said sites or portion of sites exist. Such agreement, for the purpose of continuing
73 cleanup on such sites and redevelopment in such communities, shall include, but shall not be

74 limited to, the amount outstanding, the per cent of interest to accrue if determined applicable by
75 the parties, the description of quantifiable monthly payments, the inception date of such
76 payments, the date of the final payment, late penalties, and any other contractual obligations
77 arranged between the parties. The terms of repayment shall be set at the discretion of the
78 municipality and shall be included in the agreement between the parties. A city or town that
79 accepts this section shall adopt an ordinance or by-law specifying the method for negotiating and
80 approving agreements under this section. Copies of each such agreement shall be signed by the
81 municipal officer required by the ordinance or by-law and by the owner of the property in
82 question, notarized, attested to by the city or town clerk, and provided to the department of
83 environmental protection, the federal Environmental Protection Agency, the commissioner, the
84 city council or board of selectmen, and the owners of the property in question. This section shall
85 take effect in any city or town only upon its acceptance by such city or town.

86 SECTION 8. Modification of the Payroll Tax

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

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

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

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

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

99 Section 70. Disaster Relief and Recovery Fund.

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

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

120 SECTION 11. Unemployment Compensation for Self-Employed Business
121 Owners

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