HOUSE DOCKET, NO. 2455 FILED ON: 1/15/2015

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

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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:

SECTION 1. Chapter 40 of the General Laws is hereby amended by inserting after section 60A the following section:-

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

"Executive office", executive office of housing and community development.

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

10 “Secretary”, secretary of housing and community development.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

86 The total amount of credits that may be authorized by the secretary in a calendar year
87 pursuant to this section and section 38N of chapter 63 shall not exceed an annual cap equal to
88 $50,000,000 minus the credits granted and carryforwards of credits from prior years pursuant to
89 subsection (q)(5) of section of 6 of this chapter and section 38BB(5) of said chapter 63, and shall
90 include: (1) refundable credits granted during the year pursuant to this section or said section
91 38N of said chapter 63; (2) nonrefundable credits granted during the year pursuant to this section
92 or said section 38N of said chapter 63, to the extent that such nonrefundable credits are estimated
93 by the commissioner to offset tax liabilities during the year; and (3) carryforwards of credits
94 from prior years under this section or said section 38N of said chapter 63, to the extent that such
95 credit carryforwards are estimated by the commissioner to offset tax liabilities during the year.

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

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

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

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

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

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

121 SECTION 4. Chapter 63 of the General Laws is hereby amended by striking out section
122 38N and inserting in place thereof the following section:-

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

140 The total amount of credits that may be authorized by the economic assistance
141 coordinating council or the secretary of housing and economic development in a calendar year
142 under subsection (g) of section 6 of chapter 62 and this section shall not exceed an annual cap
143 equal to $50,000,000 minus the credits granted and carryforwards of credits from prior years
144 under subsection (5) of section 38BB of this chapter and paragraph (5) of subsection (q) of
145 section 6 of chapter 62 and shall include: (1) refundable credits granted during the year under
146 said subsection (g) of said section 6 of said chapter 62 or this section; (2) nonrefundable credits
147 granted during the year under said subsection (g) of said section 6 of said chapter 62 or this
148 section, to the extent that such nonrefundable credits are estimated by the commissioner to offset
149 tax liabilities during the year; and (3) carryforwards of credits from prior years under said
150 subsection (g) of said section 6 of said chapter 62 or this section, to the extent that such credit
151 carryforwards are estimated by the commissioner to offset tax liabilities during the year. Of these
152 allowable credits, the economic assistance coordinating council may award not more than
153 $5,000,000 in a calendar year to certified enhanced expansion projects, as defined in sections 3A
154 and 3F of chapter 23A, and not more than $5,000,000 for certified manufacturing retention
155 projects, as defined in said sections 3A and 3F of said chapter 23A. Any portion of the annual
156 cap not awarded by the economic assistance coordinating council in a calendar year may be
157 applied to awards by the secretary of housing and economic development in a subsequent year.
158 The economic assistance coordinating council shall provide the commissioner with any
159 documentation that the commissioner deems necessary to confirm compliance with the annual
160 cap and the commissioner shall provide a report confirming compliance with the annual cap to
161 the secretary of administration and finance and the secretary of housing and economic
162 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.

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

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

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

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

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

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

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

221 SECTION 5. Chapter 63 of the General Laws is hereby amended by striking out section
222 38O and inserting in place thereof the following section:-

223 Section 38O. A corporation whose excise under this chapter is based on net income may,
224 in determining such net income, deduct an amount equal to 20 per cent of the cost of renovating
225 any abandoned or underutilized building located within either an economic opportunity area as
226 determined by the economic assistance coordinating council established by section 3B of chapter
227 23A or within a gateway municipality tax increment financing area as approved by the secretary
228 of the executive office of housing and community development.