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I N S E N A T E

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Introduced by Sens. GOLDEN, GALLIVAN, BALL, GRIFFO, ROBACH, VALESKY --
read twice and ordered printed, and when printed to be committed to
the Committee on Commerce, Economic Development and Small Business

AN ACT to amend the economic development law, the urban development
corporation act, the state finance law and the tax law, in relation to
establishing the New York state digital game development and incentive
act

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. Legislative intent. The legislature hereby finds that the
2 educational and entertainment game industry makes up a large and rapidly
3 growing share of the national and world economy, outselling movies,
4 music, and DVDs; that its diversity includes entertainment and educa-
5 tional games, triple-A games and apps, large and small companies, indi-
6 vidual entrepreneurs, and a strong higher education academic component;
7 that it pays high annual average salaries to its employees; and that its
8 audience is adult and large, with 58 percent of Americans playing video
9 games, 45 percent of whom are female players, and that the average age
10 of a game player is 30 years old and the average age of most frequent
11 game purchasers is 35 years old.

12 The legislature further finds that New York's game development and
13 publishing companies are among the foremost in the country and that its
14 academic game design institutions are cited as among the country's best,
15 yet it lags other states in industry jobs, opportunities, and economics,
16 ranking 4th among states as of 2009 with a contribution of 268.8 million
17 dollars to the economy, and 5,474 direct and indirect jobs, behind Cali-
18 fornia, where the industry contributes 2.2 billion dollars to the econo-
19 my, Washington with a contribution of 480 million dollars, and Texas
20 with a contribution of 492 million dollars; that many students leave New
21 York to seek opportunities for creative work in other states; and that
22 companies are moving employees to areas that make more economic sense to
23 their bottom lines, despite a stated desire to stay in New York.

24 The legislature further finds and declares, based in discussions and
25 interviews with game development and publishing industry leaders,

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

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academics, entrepreneurs, and students, that provisions of existing economic development programs and incentives can be targeted to increase employment and economic activity in this industry in New York and that new incentives and programs can also help the industry to achieve critical mass which in turn will lead to more rapid growth.

The legislature therefore declares that the provisions of this act will help New York state reach its potential as a home to game development and publishing companies and entrepreneurs, increasing employment, growth and opportunity for all citizens of this state, and raising New York's profile as a game development capital, and that enactment of this act is therefore in every sense in the interests of the people of this state.

S 2. Section 433 of the economic development law is amended by adding a new subdivision 5 to read as follows:

5. THE COMMISSIONER MAY ISSUE A CERTIFICATE OF ELIGIBILITY UPON APPLICATION BY A COMPANY THAT IS AN ANCHOR TENANT PURSUANT TO SECTION SIXTEEN-W OF THE URBAN DEVELOPMENT CORPORATION ACT THAT IS ENGAGED OR IS ABOUT TO ENGAGE IN AN ELIGIBLE PRODUCTION. THE COMMISSIONER MAY GRANT APPROVAL OF SUCH CERTIFICATE OF ELIGIBILITY WHEN THE COMPANY PROVIDES AN AUDIT BY A CERTIFIED PUBLIC ACCOUNTANT WHO MEETS CRITERIA ESTABLISHED BY THE COMMISSIONER OF THE QUALIFIED PRODUCTION THAT INCLUDES AN ITEMIZED REPORT OF QUALIFIED EXPENDITURES AND SUCH OTHER INFORMATION AS THE COMMISSIONER MAY REQUIRE SHOWING THAT THE PRODUCTION MET ELIGIBILITY REQUIREMENTS ESTABLISHED IN SECTION THIRTY-NINE-C OF THE TAX LAW. FOR PURPOSES OF THIS SUBDIVISION, AN ELIGIBLE PRODUCTION IS A PRODUCTION WITH QUALIFIED EXPENDITURES OF FIVE HUNDRED THOUSAND DOLLARS OR MORE, OF WHICH AT LEAST SIXTY PERCENT ARE INCURRED IN THIS STATE. QUALIFIED EXPENDITURES MUST BE CUSTOMARY AND REASONABLE PURCHASES OF TANGIBLE PERSONAL PROPERTY OR SERVICES FROM A BUSINESS IN THIS STATE ON OR AFTER THE DATE ON WHICH AN APPLICANT SUBMITS AN APPLICATION FOR THE CERTIFICATE OF ELIGIBILITY, WHICH SHALL BE NOT EARLIER THAN JANUARY FIRST, TWO THOUSAND FIFTEEN. THE COMMISSIONER SHALL FORWARD A COPY OF ANY CERTIFICATE OF ELIGIBILITY AND ANY APPROVAL THEREOF TO THE COMMISSIONER OF THE DEPARTMENT OF TAXATION AND FINANCE. SUCH CERTIFICATE SHALL INCLUDE A CALCULATION OF THE AMOUNT AND SCHEDULE UNDER WHICH SUCH CREDITS MAY BE CLAIMED BY THE ANCHOR TENANT OVER A FOUR YEAR PERIOD. QUALIFIED EXPENDITURES FOR AN ELIGIBLE PRODUCTION INCLUDE: THE PAYROLL FOR NEW YORK STATE RESIDENTS PROVIDING SERVICES IN THIS STATE TO THE PRODUCTION FOR CODING AND DESIGN, SET CONSTRUCTION AND OPERATION, PHOTOGRAPHY, SOUND AND LIGHTING, FILMING, FILM PROCESSING AND FILM EDITING, EDITING, SOUND MIXING, ART, DIGITAL PROGRAMMING, ONLINE PROGRAMMING, QUALITY ASSURANCE TESTING, MOTION CAPTURE, SPECIAL EFFECTS, VISUAL EFFECTS AND OTHER POST-PRODUCTION SERVICES, TO A MAXIMUM OF ONE HUNDRED THOUSAND DOLLARS PER SUCH RESIDENT, INDEXED FOR INFLATION; PAYMENT FOR BELOW-THE-LINE GOODS OR SERVICES PROVIDED BY A NEW YORK BUSINESS RELATED TO THE PRODUCTION, AS DEFINED FURTHER BY THE COMMISSIONER AFTER CONSULTATION WITH THE URBAN DEVELOPMENT CORPORATION AND THE NEW YORK DIGITAL GAME DEVELOPMENT ADVISORY BOARD ESTABLISHED IN SECTION SIXTEEN-W OF THE URBAN DEVELOPMENT CORPORATION ACT; AND ANY OTHER TRANSACTION, SERVICE OR ACTIVITY DEEMED ESSENTIAL TO SUCH PRODUCTION AND AUTHORIZED BY THE COMMISSIONER.

S 3. Section 1 of chapter 174 of the laws of 1968, constituting the New York state urban development corporation act, is amended by adding a new section 16-w to read as follows:

S 16-W. THE NEW YORK STATE DIGITAL GAME DEVELOPMENT AND INCENTIVE ACT.
1. AS USED IN THIS SECTION:

1 A. "DIGITAL GAME DEVELOPMENT" OR "DIGITAL GAME SOFTWARE" COMPANIES AND
2 PUBLISHERS ARE COMPANIES CLASSIFIED UNDER NAIC CODE 511210 OR ANY
3 SUCCESSOR THERETO;

4 B. THE "NEW YORK DIGITAL GAME DEVELOPMENT ADVISORY BOARD" OR "ADVISORY
5 BOARD" MEANS THE NEW YORK GAME DEVELOPMENT ADVISORY BOARD CREATED PURSU-
6 ANT TO THIS SECTION;

7 C. "NEW YORK STATE INCUBATOR" OR "NEW YORK STATE INNOVATION HOT SPOT"
8 HAVE THE SAME MEANINGS AS "NEW YORK STATE INCUBATORS" AND "NEW YORK
9 STATE INNOVATION HOT SPOTS" AS USED IN SECTION SIXTEEN OF THIS ACT;

10 D. "ANCHOR TENANT" MEANS ENTITIES SO DESIGNATED BY THE COMMISSIONER OF
11 ECONOMIC DEVELOPMENT THAT ARE SUBSIDIARIES OF OR NEW VENTURES OWNED
12 WHOLLY OR IN PART BY DIGITAL GAME DEVELOPMENT OR DIGITAL GAME SOFTWARE
13 COMPANIES AND PUBLISHERS RESIDENT IN NEW YORK STATE THAT ESTABLISH OPER-
14 ATIONS IN A DIGITAL GAME CLUSTER IN THE START-UP NY PROGRAM.

15 2. THE CORPORATION SHALL TAKE THE STEPS AUTHORIZED AND REQUIRED IN
16 THIS SECTION, IN ORDER TO ENHANCE ECONOMIC DEVELOPMENT IN THE DIGITAL
17 GAME INDUSTRY AND TO CREATE OPPORTUNITIES FOR EMPLOYMENT, JOB CREATION,
18 AND PRODUCT DEVELOPMENT IN NEW YORK STATE, AND RECOGNITION OF EMERGING
19 AND CURRENT TALENT. THOSE STEPS INCLUDE BUT ARE NOT LIMITED TO CREATION,
20 PLANNING, DEVELOPMENT, AND IMPLEMENTATION OF:

21 A. THE NEW YORK STATE DIGITAL GAME DEVELOPMENT ADVISORY BOARD;

22 B. THE NEW YORK DIGITAL GAME SUMMIT AND SUPPORT OF EVENTS;

23 C. THE NEW YORK DIGITAL GAME DEVELOPMENT COMPETITION;

24 D. ADMINISTRATION AND IMPLEMENTATION OF DIGITAL GAME CLUSTERS IN THE
25 START-UP NY PROGRAM;

26 E. DEVELOPMENT OF COLLABORATIONS WITH NEW YORK STATE-BASED DIGITAL
27 GAME COMPANIES AND ENTREPRENEURS, GAME DESIGN ACADEMIC INSTITUTIONS, NEW
28 YORK INCUBATORS AND NEW YORK INNOVATION HOT SPOTS TO FURTHER THE INTENT
29 OF THIS PROGRAM;

30 F. TARGETED TAX INCENTIVES AND BENEFITS FOR THE DIGITAL GAME INDUSTRY;

31 G. HIGH SPEED INTERNET CONNECTION GRANTS;

32 H. ADMINISTRATION OF THE NEW YORK STATE DIGITAL GAME DEVELOPMENT FUND.

33 3. THERE IS HEREBY CREATED THE NEW YORK STATE DIGITAL GAME DEVELOPMENT
34 ADVISORY BOARD, WHOSE PURPOSE SHALL BE TO ADVISE AND CONSULT WITH THE
35 CORPORATION ON THE DEVELOPMENT OF THE PROGRAM CREATED BY THIS SECTION.
36 THE BOARD SHALL CONSIST OF TWELVE MEMBERS APPOINTED BY THE GOVERNOR; OF
37 THE TWELVE, TWO SHALL BE ON THE RECOMMENDATION OF THE SPEAKER OF THE
38 ASSEMBLY, TWO BY THE TEMPORARY PRESIDENT AND MAJORITY COALITION LEADERS
39 OF THE SENATE, AND ONE EACH BY THE MINORITY LEADERS OF THE SENATE AND
40 THE ASSEMBLY. MEMBERS OF THE BOARD SHALL BE EXECUTIVES OF DIGITAL GAME
41 COMPANIES RESIDENT IN NEW YORK STATE, ACADEMICS OR DEANS FROM ACADEMIC
42 GAME DESIGN PROGRAMS, AND SUCCESSFUL ENTREPRENEURS WITH AT LEAST FIVE
43 YEARS EXPERIENCE IN THE INDUSTRY AND ONE OR MORE SUCCESSFUL GAMES.

44 4. THE CORPORATION IS AUTHORIZED AND DIRECTED, WITHIN AMOUNTS MADE
45 AVAILABLE TO IT BY APPROPRIATION THEREFOR AND SUCH OTHER PUBLIC AND
46 PRIVATE FUNDS AS SHALL ADDITIONALLY BE MADE AVAILABLE, TO PROVIDE LOANS
47 AND GRANTS FOR SERVICES AND EXPENSES RELATED TO PLANNING AND IMPLEMENT-
48 ING A NEW YORK STATE DIGITAL GAME SUMMIT, TO SUPPORT AND PROMOTE OTHER
49 LOCAL AND REGIONAL DIGITAL GAME EVENTS, AND TO ORGANIZE STATE REPRESENTATION AT NATIONAL DIGITAL GAME EVENTS DEEMED AFTER CONSULTATION WITH THE NEW YORK STATE DIGITAL GAME DEVELOPMENT ADVISORY BOARD TO BE SIGNIFICANT AND APPROPRIATE TO RAISING NEW YORK'S PROFILE AND STATUS IN THE GAME DEVELOPMENT INDUSTRY. PRIOR TO TAKING SUCH ACTIONS, THE CORPORATION SHALL CONSULT WITH AND DEVELOP A PLAN TO MAXIMIZE THE EFFECT OF SUCH ACTIVITIES WITH THE NEW YORK DIGITAL GAME DEVELOPMENT ADVISORY BOARD.

1 GENERAL REQUIREMENTS AND PARAMETERS FOR THESE ACTIVITIES SHALL BE AS
2 FOLLOWS:

3 A. NEW YORK STATE GAME SUMMIT SHALL BE A MULTI-DAY CONVENTION AND
4 CELEBRATION OF NEW YORK'S DIGITAL GAME INDUSTRY, INCLUDING ENTREPRE-
5 NEURS, STUDENTS, ACADEMIC INSTITUTIONS, AND COMPANIES, TO BE HELD IN NEW
6 YORK CITY AT A TIME WHEN THERE IS THE LEAST AMOUNT OF COMPETITION FROM
7 OTHER NATIONAL AND IN-STATE EVENTS, AT A VENUE WITH A HISTORY AND INTER-
8 EST IN DIGITAL GAMING OR IN CONVENTIONS WHICH ARE ABLE TO HOUSE THE
9 LAUNCH OF A GROWING EVENT. THE GAME SUMMIT WILL ALSO INCLUDE THE FINALS
10 OF THE NEW YORK DIGITAL GAME DEVELOPMENT COMPETITION, CREATED AND
11 AUTHORIZED BY THIS SECTION, AND SHALL INCLUDE DEMONSTRATIONS AND
12 DISCUSSIONS OF GAMES, EDUCATIONAL FORUMS IN WHICH EDUCATORS CAN LEARN
13 ABOUT USING GAMES IN THE CLASSROOM, AND OTHER ACTIVITIES DEEMED APPRO-
14 PRIATE BY THE CORPORATION TO SUCH AN EVENT. THE CORPORATION SHALL PART-
15 NER WITH AND SUPPORT ONE OR MORE PRIVATE ENTITIES AND TRADE ASSOCIATIONS
16 THAT CREATE AND IMPLEMENT THE SUMMIT.

17 B. REGIONAL SUPPORT SHALL INCLUDE SUPPORT OF AND COLLABORATIONS WITH
18 REGIONAL AND LOCAL DIGITAL GAME PUBLISHERS AND DEVELOPER EVENTS, FOR THE
19 PURPOSE OF CREATING AN ECOSYSTEM OF RELATED GATHERINGS, MEETINGS, AND
20 COMPETITIONS IN THIS STATE.

21 C. REPRESENTATION AT EVENTS WILL ENTAIL THE CORPORATION ORGANIZING
22 AND/OR PARTICIPATING IN REPRESENTATION OF NEW YORK DIGITAL GAME COMPA-
23 NIES, ENTREPRENEURS, ACADEMICS, AND OTHERS AT MAJOR GAME EVENTS AND
24 VENUES.

25 5. THE CORPORATION IS AUTHORIZED, WITHIN AMOUNTS MADE AVAILABLE TO IT
26 BY APPROPRIATION THEREFOR AND WITH SUCH OTHER PUBLIC AND PRIVATE FUNDS
27 AS SHALL ADDITIONALLY BE MADE AVAILABLE, TO PLAN AND IMPLEMENT THE NEW
28 YORK STATE DIGITAL GAME DEVELOPMENT COMPETITION, THE PURPOSE OF WHICH
29 SHALL BE TO ANNUALLY RECOGNIZE AND ENCOURAGE EMERGING TALENT IN GAME
30 DEVELOPMENT IN THIS STATE THROUGH A THREE STAGE JUDGED COMPETITION FOR
31 PRIZES OVER A PERIOD NOT LONGER THAN TWENTY-FOUR MONTHS. THE CORPORATION
32 SHALL CONSULT WITH AND DEVELOP A PLAN FOR THE GAME DEVELOPMENT COMPETI-
33 TION WITH THE NEW YORK DIGITAL GAME DEVELOPMENT ADVISORY BOARD. GENERAL
34 REQUIREMENTS AND PARAMETERS FOR THESE ACTIVITIES ARE AS FOLLOWS:

35 A. THE FIRST COMPETITION SHALL TAKE PLACE WITHIN EACH ECONOMIC DEVEL-
36 OPMENT REGION IN THE STATE, AND SHALL RESULT IN TEN WINNERS PER REGION.
37 NOTHING CONTAINED HEREIN SHALL PREVENT TWO OR MORE REGIONS FROM COLLAB-
38 ORATING IN THIS STAGE OF THE COMPETITION, AND THE CORPORATION SHALL
39 ESTABLISH RULES OR GUIDELINES TO GOVERN SUCH COLLABORATIONS. THE SECOND
40 COMPETITION SHALL TAKE PLACE AMONG THE WINNERS OF THE FIRST COMPETITION,
41 AND SHALL RESULT IN TEN WINNERS. THIS COMPETITION SHALL BE SCHEDULED AT
42 DIFFERENT VENUES WITHIN THE STATE EACH YEAR TO ASSURE GEOGRAPHICAL
43 BALANCE. THE FINAL COMPETITION SHALL RESULT IN TWO WINNERS AND SHALL BE
44 CONDUCTED AS PART OF THE NEW YORK STATE DIGITAL GAME SUMMIT. WINNERS OF
45 THE FIRST COMPETITION SHALL RECEIVE PRIZES OF TEN THOUSAND DOLLARS EACH.
46 WINNERS OF THE SECOND COMPETITION SHALL RECEIVE MATCHING FUND PRIZES OF
47 UP TO ONE HUNDRED THOUSAND DOLLARS EACH. WINNERS OF THE THIRD COMPETI-
48 TION SHALL RECEIVE PRIZES OF FIVE HUNDRED THOUSAND DOLLARS EACH.

49 B. EACH COMPETITION SHALL BE JUDGED BY A SEVEN-MEMBER PANEL OF INDUS-
50 TRY OFFICIALS, ENTREPRENEURS, ACADEMICS, AND ECONOMIC DEVELOPMENT OFFI-
51 CIALS IN THE REGION OR IN THE STATE AS APPROPRIATE TO THE LEVEL OF THE
52 COMPETITION, SELECTED BY THE CORPORATION BASED ON RECOMMENDATIONS FROM
53 THE COMMUNITY, THE GAMING INDUSTRY, AND GOVERNMENT AND OTHER OFFICIALS
54 IN THE REGION. THE PANELS SHOULD INCLUDE A PREPONDERANCE OF JUDGES WHO
55 ARE INDUSTRY OFFICIALS, ENTREPRENEURS, ACADEMICS, AND SUCH JUDGES SHOULD
56 HAVE A BACKGROUND IN OR KNOWLEDGE OF DIGITAL GAMES, GAME PUBLISHING, AND

1 GAME DEVELOPMENT AND AN UNDERSTANDING OF COMMERCIAL APPEAL AND MARKET-
2 BILITY OF GAMES.

3 C. THE CORPORATION SHALL ESTABLISH CRITERIA FOR ELIGIBILITY OF COMPE-
4 TITION ENTRANTS THAT REQUIRE RESIDENCY IN THIS STATE AND THAT LIMIT
5 ENTRANTS TO NEW AND EMERGING TALENT AND EARLY SEED STAGE STARTUP ENTRE-
6 PRENEURS AS EVIDENCED BY FACTORS SUCH AS THAT THE ENTRANT HAS NOT
7 PUBLISHED A GAME PREVIOUSLY OR, IF SUCH ENTRANT HAS PUBLISHED A GAME IT
8 HAS EARNED A SMALL AMOUNT AS DETERMINED BY THE CORPORATION, OR THAT SUCH
9 ENTRANT IS CURRENTLY A CLIENT OF A NEW YORK STATE INCUBATOR OR NEW YORK
10 STATE INNOVATION HOT SPOT, AND THE COMPANY HAS BEEN IN EXISTENCE FOR
11 LESS THAN THREE YEARS, AND OTHER SIMILAR FACTORS.

12 D. FACTORS TO BE INCLUDED IN JUDGING EACH PHASE OF THE COMPETITION ARE
13 AS FOLLOWS:

14 (I) FOR THE FIRST PHASE ENTRANTS SHOULD SHOW CONCEPTUALIZATION, A
15 DESIGN DOCUMENT, AND PRE-PRODUCTION WITH CODING COMPLETED TO AT LEAST A
16 DIGITAL PROTOTYPE THAT SHOWS HOW THE GAME WOULD WORK. ADDITIONALLY, THE
17 JUDGES SHALL CONSIDER THE QUALITY OF THE GAME CONCEPT, THE PITCH OF THE
18 INDIVIDUAL TEAMS, THE TEAM DYNAMIC, AND THE LEVEL OF REAL, SUBSTANTIAL,
19 AND CONTINUING CONTROL OF THE I.P. WINNERS SHALL USE THE FUNDS TO LINK
20 WITH NEW YORK STATE INCUBATORS FOR COUNSELING AND MENTORING AND TO
21 DEVELOP THE NECESSARY BUSINESS ATTRIBUTES AS WELL AS ADDITIONAL PRODUCT
22 COMPLETION NECESSARY FOR THE NEXT PHASE OF THE COMPETITION;

23 (II) FOR THE SECOND PHASE COMPETITION AMONG THE WINNERS OF THE FIRST
24 PHASE, ENTRANTS SHOULD BE IN PRE-PRODUCTION, AND SHOULD HAVE RAISED
25 FUNDS FROM INVESTORS OR FUNDING SITES OR OTHER SOURCES. PRIZES WILL BE A
26 MATCH TO SUCH FUNDS, UP TO ONE HUNDRED THOUSAND DOLLARS, PLUS ACCESS TO
27 INCUBATOR SPACE AND MENTORING, SKILL BUILDING, AND OTHER SERVICES AVAIL-
28 ABLE TO BEING AN INCUBATOR CLIENT, AS NEGOTIATED AND DEVELOPED BY THE
29 CORPORATION. JUDGES WILL LOOK AT ASPECTS OF THE PRODUCT AS WELL AS THE
30 BUSINESS PROPOSAL. COMPETITORS SHOULD HAVE COMPLETED AND SUBMITTED
31 EVIDENCE SATISFACTORY TO THE CORPORATION OF:

32 (A) A BUSINESS TEAM (BAIL TEAM) AND A BUSINESS AND MARKETING PLAN;

33 (B) A STRATEGIC MONETIZATION INVESTMENT AND FUNDING PLAN;

34 (C) A BUSINESS (INCLUDING A DBA, OR ANY OTHER FORM OF BUSINESS ORGAN-
35 IZATION);

36 (D) A COMPLETED PRODUCT PLAN FOR MARKETING AND FINAL DEVELOPMENT;

37 (E) PROOF OF CONCEPT CONSISTING AT LEAST OF A "VERTICAL SLICE" OF THE
38 GAME, MEANING AT LEAST ONE LEVEL OF PLAY, POLISH AND FINISH, WITH THE
39 INFRASTRUCTURE LARGELY COMPLETED;

40 (F) PUBLIC TESTING OR ACCEPTANCE OR OTHER EVIDENCE OF MARKETING VALUE
41 OF THE GAME;

42 (III) FOR THE THIRD PHASE COMPETITION AMONG WINNERS OF THE SECOND
43 PHASE, ENTRANTS MUST HAVE A COMPLETED GAME SUBMITTED FOR JUDGING, AND
44 UPDATE THE INFORMATION REQUIRED IN PHASE TWO OF THE COMPETITION. CONTE-
45 STANTS SHOULD ALSO REVEAL WHAT THEY INTEND TO DO WITH THE AWARD MONEY IF
46 THEY WIN.

47 E. AS A CONDITION OF RECEIPT OF AWARDS RECEIVED IN PHASES TWO AND
48 THREE, CONTESTANTS SHALL AGREE TO REMAIN RESIDENT IN THE STATE FOR GAME
49 DEVELOPMENT PURPOSES FOR A PERIOD OF THREE YEARS, AND TO RETURN THE
50 AWARD TO THE STATE SHOULD THEY LEAVE OR SELL THE GAME OR THE GAME COMPA-
51 NY PRIOR TO THAT THREE-YEAR PERIOD. WINNERS IN PHASES TWO AND THREE
52 SHALL ALSO AGREE, AS A CONDITION OF RECEIPT OF THE AWARD, TO CONTRIBUTE
53 ONE PERCENT OF PROFITS OF THE GAME TO THE NEW YORK STATE DIGITAL GAME
54 DEVELOPMENT FUND CREATED PURSUANT TO SECTION NINETY-NINE-V OF THE STATE
55 FINANCE LAW, FOR A PERIOD OF THREE YEARS AFTER PUBLICATION OF THE GAME,

1 OR UNTIL THE AMOUNT CONTRIBUTED MATCHES THE AMOUNT OF THE AWARD
2 RECEIVED, WHICHEVER TIME PERIOD IS LESS.

3 F. THE CORPORATION SHALL TAKE SUCH STEPS AS ARE NECESSARY OR CONVEN-
4 IENT IN ASSOCIATION WITH GAME PUBLISHERS TO PROVIDE OPPORTUNITIES FOR
5 PHASE TWO AWARD RECIPIENTS TO OBTAIN CONSIDERATION OF PUBLICATION OF
6 THEIR GAMES.

7 6. THE CORPORATION IS AUTHORIZED TO WORK WITH THE COMMISSIONER OF
8 ECONOMIC DEVELOPMENT TO PROVIDE SERVICES TO DESIGNATED CLUSTERS OF
9 DIGITAL GAME DEVELOPMENT AND DIGITAL GAME SOFTWARE COMPANIES AND
10 PUBLISHERS APPROVED BY THE COMMISSIONER OF ECONOMIC DEVELOPMENT PURSUANT
11 TO ARTICLE 21 OF THE ECONOMIC DEVELOPMENT LAW AND THE FOLLOWING
12 PROVISIONS, WHICH SHALL BE CONTROLLING IN THE CASE OF ANY CONFLICT
13 REGARDING OR LIMITING THE SPONSORSHIP OF PLANS AND ELIGIBILITY OF BUSI-
14 NESSES, INCLUDING ANY PROVISIONS OF SUBDIVISION 2-A OF SECTION 433 OF
15 THE ECONOMIC DEVELOPMENT LAW LIMITING THE ELIGIBILITY OF THE TYPES OF
16 BUSINESSES THAT MAY PARTICIPATE IN THE START-UP NY PROGRAM IN NASSAU
17 COUNTY, SUFFOLK COUNTY, WESTCHESTER COUNTY, OR ANY PROVISIONS OF SUCH
18 LAW REGARDING NEW YORK CITY.

19 A. THE COMMISSIONER OF ECONOMIC DEVELOPMENT MAY APPROVE ELEVEN PLANS
20 FOR CLUSTERS OF DIGITAL GAME DEVELOPMENT OR DIGITAL GAME SOFTWARE COMPA-
21 NIES AND PUBLISHERS AND SUPPORT COMPANIES SUBMITTED OR AMENDED BY THE
22 PRESIDENT OR CHIEF EXECUTIVE OFFICER OF ANY STATE UNIVERSITY CAMPUS,
23 COMMUNITY COLLEGE OR CITY UNIVERSITY CAMPUS, OR PRIVATE COLLEGE OR
24 UNIVERSITY, THAT IS ELIGIBLE TO SPONSOR A TAX-FREE NY AREA PURSUANT TO
25 SECTIONS 432 AND 435 OF THE ECONOMIC DEVELOPMENT LAW AND THAT ALSO
26 OFFERS A BACHELOR'S OR MASTER'S DEGREE IN GAME DESIGN OR A SPECIALIZA-
27 TION IN GAME PROGRAMMING AS PART OF ITS COMPUTER SCIENCE BACHELOR'S OR
28 MASTER'S PROGRAM. SUCH SUBMITTED OR AMENDED PLANS MAY INCLUDE ALL OR A
29 PORTION OF THE ELIGIBLE LAND OF SUCH STATE UNIVERSITY CAMPUS, COMMUNITY
30 COLLEGE OR CITY UNIVERSITY CAMPUS, OR PRIVATE COLLEGE OR UNIVERSITY. IN
31 EVERY CASE SUCH PLANS AND THE ELIGIBLE BUSINESSES THAT LOCATE IN THE
32 AREA DESIGNATED BY THE PLAN AND APPROVED BY THE COMMISSIONER SHALL BE
33 DEEMED TO BE PART OF THE START-UP NY PROGRAM, AUTHORIZED BY SUCH ARTICLE
34 21 OF THE ECONOMIC DEVELOPMENT LAW, AND APPROVED PURSUANT TO SUCH LAW.
35 SUCH APPROVAL SHALL ALSO BE DEEMED SUFFICIENT TO QUALIFY FOR ELIGIBILITY
36 FOR TAX BENEFITS AVAILABLE TO BUSINESSES LOCATED IN A TAX-FREE NY AREA
37 PURSUANT TO SECTION 39 OF THE TAX LAW AND SUCH OTHER SECTIONS OF LAW AS
38 ARE DESCRIBED IN SUCH SECTION, PROVIDED THAT SUCH BUSINESS SHALL BE
39 SUBJECT TO THE REQUIREMENTS OF SUCH SECTION.

40 B. APPROVALS OF SUCH PLANS SHALL INCLUDE AT LEAST ONE IN EACH ECONOMIC
41 DEVELOPMENT REGION OF THE STATE WHERE THERE IS AN APPLICANT, AND TWO IN
42 THE NEW YORK CITY ZONE.

43 C. IN SUCH PLANS, THE TYPES OF ELIGIBLE BUSINESS OR BUSINESSES THAT
44 MAY LOCATE ON THAT TAX-FREE NY AREA OR SPACE SHALL INCLUDE DIGITAL GAME
45 DEVELOPMENT AND DIGITAL GAME SOFTWARE COMPANIES AND PUBLISHERS AND
46 SUPPORT COMPANIES, WHICH FOR PURPOSES OF THIS SUBDIVISION SHALL BE
47 DEEMED TO INCLUDE DATA CENTERS, UTILITIES, MOTION CAPTURE STUDIOS, SOFT-
48 WARE AND HARDWARE MANUFACTURERS, GAME-SPECIFIC SCRIPTWRITERS, ANIMATION
49 AND PROGRAMMING OUTSOURCERS, AUDIO FACILITIES AND RECRUITING AGENCIES OR
50 SIMILAR SERVICES.

51 D. SUCH PLANS MAY INCLUDE, IN ADDITION TO OTHER ELIGIBLE BUSINESSES,
52 PROVISION FOR ONE OR MORE ANCHOR TENANTS THAT ARE SUBSIDIARIES OF OR NEW
53 VENTURES OWNED WHOLLY OR IN PART BY COMPANIES RESIDENT IN NEW YORK
54 STATE, NOTWITHSTANDING THAT THEY MAY BE RELATED PERSONS WITHIN THE MEAN-
55 ING OF SUBDIVISION 8 OF SECTION 431 OF THE ECONOMIC DEVELOPMENT LAW,
56 PROVIDED THAT THEY MEET THE CRITERIA OF ADDING NET NEW JOBS AS DEFINED

1 IN SUBDIVISION 5 OF SUCH SECTION AND REQUIRED PURSUANT TO SECTION 433 OF
2 SUCH LAW.

3 E. SUCH PLANS MAY ALSO UTILIZE AN ELIGIBLE SPACE THAT IS OWNED OR
4 CONTROLLED BY SUCH COLLEGE, CAMPUS, OR UNIVERSITY IN AN URBAN CORE AREA
5 OR AN AREA DESCRIBED IN PARAGRAPH (B) OF SUBDIVISION 1 OF SECTION 432 OF
6 THE ECONOMIC DEVELOPMENT LAW, NOTWITHSTANDING ITS LOCATION IN NASSAU
7 COUNTY, SUFFOLK COUNTY, OR WESTCHESTER COUNTY, OR IN NEW YORK CITY.

8 F. ANY SUCH PLAN MUST INCLUDE AN AFFILIATION WITH A NEW YORK STATE
9 INCUBATOR OR NEW YORK STATE INNOVATION HOT SPOT, TO PROVIDE SERVICES TO
10 ELIGIBLE COMPANIES THAT LOCATE IN THE TAX-FREE NY AREA.

11 G. SUCH PLANS MAY ALSO ALLOW FOR COLLABORATION OF SUCH COLLEGE,
12 CAMPUS, OR UNIVERSITY WITH ONE OR MORE OTHER COLLEGES, CAMPUSES, OR
13 UNIVERSITIES.

14 H. IN NO CASE SHALL A PLAN AUTHORIZED PURSUANT TO THIS SECTION EXCEED
15 THE TOTAL SQUARE FOOTAGE REQUIREMENTS OF PLANS AUTHORIZED PURSUANT TO
16 SUCH ARTICLE 21 OF THE ECONOMIC DEVELOPMENT LAW, EXCEPT WITH THE PERMIS-
17 SION OF THE COMMISSIONER OF ECONOMIC DEVELOPMENT.

18 7. ANY OTHER PROVISION OF ANY OTHER LAW TO THE CONTRARY NOTWITHSTAND-
19 ING, DIGITAL GAME DEVELOPMENT AND DIGITAL GAME SOFTWARE COMPANIES AND
20 PUBLISHERS SHALL BE DEEMED ELIGIBLE BUSINESSES FOR THE PURPOSES OF
21 SUBSECTIONS (G) AND (R) OF SECTION 606 OF THE TAX LAW, AND OF SUBDIVI-
22 SIONS 12-E AND 12-F OF SECTION 210 OF SUCH LAW.

23 8. THE CORPORATION IS AUTHORIZED, WITHIN AMOUNTS MADE AVAILABLE TO IT
24 BY APPROPRIATION THEREFOR AND WITH SUCH OTHER PUBLIC AND PRIVATE FUNDS
25 AS SHALL ADDITIONALLY BE MADE AVAILABLE, TO PROVIDE MATCHING GRANT FUNDS
26 TO COLLEGES, CAMPUSES, AND UNIVERSITIES WHOSE PLANS HAVE BEEN APPROVED
27 PURSUANT TO SUBDIVISION 6 OF THIS SECTION OR TO NEW YORK STATE INCUBA-
28 TORS OR NEW YORK STATE INNOVATION HOT SPOTS WHICH ARE AFFILIATED WITH
29 SUCH PLANS IN AMOUNTS NOT TO EXCEED ONE HUNDRED THOUSAND DOLLARS PER
30 SCHOOL OR INCUBATOR FOR HIGH-SPEED INTERNET SERVICES AND DEVELOPMENT.
31 THIS SUBDIVISION SHALL EXPIRE AND BE OF NO FURTHER EFFECT ON AND AFTER
32 JANUARY 1, TWO THOUSAND FIFTEEN.

33 9. THE CORPORATION AND THE NEW YORK STATE DIGITAL GAME DEVELOPMENT
34 ADVISORY BOARD SHALL DEVELOP A PLAN FOR A DIGITAL GAME AND INCUBATOR
35 OUTREACH PROGRAM TO DEVELOP GAMES THAT ADDRESS COURSE REQUIREMENTS FOR
36 USE IN SCHOOLS IN THIS STATE. SUCH PLAN SHALL BE PRESENTED TO THE GOVER-
37 NOR AND THE LEGISLATURE NOT LATER THAN JANUARY THIRTIETH, TWO THOUSAND
38 FIFTEEN.

39 10. THE CORPORATION SHALL PREPARE AN ANNUAL REPORT TO THE GOVERNOR AND
40 THE LEGISLATURE. SUCH REPORT SHALL INCLUDE THE FOLLOWING DATA CONCERNING
41 ACTIVITIES PURSUANT TO THIS SECTION: THE NUMBER OF BUSINESS APPLICANTS,
42 NUMBER OF BUSINESSES APPROVED, THE NAMES AND ADDRESSES OF THE BUSINESSES
43 LOCATED WITHIN THE TAX-FREE NY AREAS, TOTAL AMOUNT OF BENEFITS DISTRIB-
44 UTED, BENEFITS RECEIVED PER BUSINESS, NUMBER OF NET NEW JOBS CREATED,
45 NET NEW JOBS CREATED PER BUSINESS, NEW INVESTMENT PER BUSINESS, THE
46 TYPES OF INDUSTRIES REPRESENTED AND SUCH OTHER INFORMATION AS THE
47 COMMISSIONER DETERMINES NECESSARY TO EVALUATE THE PROGRESS OF THE
48 PROGRAM. THE REPORT SHALL ALSO PROVIDE INFORMATION AND RECOMMENDATIONS
49 ON THE NUMBER OF PERSONS NEEDED TO APPROPRIATELY STAFF THE PROGRAM BY
50 THE CORPORATION. THE FIRST REPORT SHALL BE DUE JANUARY THIRTY-FIRST OF
51 THE SECOND CALENDAR YEAR AFTER THIS SECTION SHALL HAVE TAKEN EFFECT.

52 S 4. The state finance law is amended by adding a new section 99-v to
53 read as follows:

54 S 99-V. NEW YORK STATE DIGITAL GAME DEVELOPMENT FUND. 1. THERE IS
55 HEREBY ESTABLISHED IN THE JOINT CUSTODY OF THE COMPTROLLER AND THE
56 COMMISSIONER OF ECONOMIC DEVELOPMENT AN ACCOUNT IN THE MISCELLANEOUS

1 SPECIAL REVENUE FUND TO BE KNOWN AS THE "NEW YORK STATE DIGITAL GAME
2 DEVELOPMENT FUND".

3 2. SUCH ACCOUNT SHALL CONSIST OF MONIES DEPOSITED INTO IT FROM THE
4 REQUIREMENTS ESTABLISHED PURSUANT TO PARAGRAPH E OF SUBDIVISION FIVE OF
5 SECTION SIXTEEN-W OF THE URBAN DEVELOPMENT CORPORATION ACT.

6 3. ALL MONIES IN THE ACCOUNT SHALL BE AVAILABLE, SUBJECT TO APPROPRI-
7 ATION, FOR THE PAYMENT OF EXPENSES AND PRIZES OF THE NEW YORK DIGITAL
8 GAME DEVELOPMENT COMPETITION.

9 S 5. The tax law is amended by adding a new section 39-c to read as
10 follows:

11 S 39-C. DIGITAL GAME DEVELOPMENT TAX CREDIT. (A) ALLOWANCE OF CREDIT.
12 A TAXPAYER SUBJECT TO TAX UNDER ARTICLE NINE-A OR TWENTY-TWO OF THIS
13 CHAPTER SHALL BE ALLOWED A CREDIT AGAINST SUCH TAX. THE AMOUNT OF THE
14 CREDIT, ALLOWABLE FOR FOUR CONSECUTIVE TAX YEARS, IS EQUAL TO THE AMOUNT
15 DETERMINED BY THE COMMISSIONER OF ECONOMIC DEVELOPMENT, BUT SHALL NOT
16 EXCEED NINETEEN PERCENT OF QUALIFIED EXPENDITURES, INCLUDING BONUS
17 AMOUNTS AS HEREIN PROVIDED.

18 (B) ELIGIBILITY. TO BE ELIGIBLE FOR THE DIGITAL GAME DEVELOPMENT TAX
19 CREDIT, THE TAXPAYER SHALL BE AN ANCHOR TENANT PURSUANT TO SECTION
20 SIXTEEN-W OF THE URBAN DEVELOPMENT CORPORATION ACT AND SHALL HAVE BEEN
21 ISSUED AN APPROVED CERTIFICATE OF ELIGIBILITY BY THE COMMISSIONER OF
22 ECONOMIC DEVELOPMENT PURSUANT TO SUBDIVISION FIVE OF SECTION FOUR
23 HUNDRED THIRTY-THREE OF THE ECONOMIC DEVELOPMENT LAW. THE TAXPAYER SHALL
24 BE ALLOWED TO CLAIM ONLY THE AMOUNT LISTED ON THE CERTIFICATE OF TAX
25 CREDIT FOR EACH TAXABLE YEAR.

26 (C) THE CREDIT AUTHORIZED BY THIS SECTION SHALL BE FOR FIFTEEN PERCENT
27 OF QUALIFIED EXPENDITURES. THE TAXPAYER SHALL RECEIVE AN ADDITIONAL FOUR
28 PERCENT OF QUALIFIED EXPENDITURES IF MORE THAN TWENTY-FIVE PERCENT OF
29 SUCH EXPENDITURES OCCURRED FOR PURCHASE OF SERVICES, GOODS, AND USE OF
30 PERSONNEL FROM WITHIN THE CLUSTER OF DIGITAL GAME DEVELOPMENT OR DIGITAL
31 GAME SOFTWARE COMPANIES AND PUBLISHERS AND SUPPORT COMPANIES WHERE THE
32 ANCHOR TENANT IS RESIDENT.

33 (D) CREDITS AUTHORIZED PURSUANT TO THIS SECTION SHALL NOT EXCEED A
34 TOTAL AMOUNT OF SIX MILLION DOLLARS FOR ANY INDIVIDUAL ELIGIBLE
35 PRODUCTION UNDERTAKEN BY ANY SUCH ANCHOR TENANT TAXPAYER AND SHALL
36 EXPIRE FOUR YEARS AFTER THE DATE ON WHICH THE TAX CREDITS ARE ISSUED. IF
37 THE AMOUNT OF THE CREDIT AND CARRYOVERS OF SUCH CREDIT ALLOWED UNDER
38 THIS SECTION FOR ANY TAXABLE YEAR SHALL EXCEED THE TAXPAYER'S TAX FOR
39 SUCH YEAR, ANY AMOUNT OF CREDIT OR CARRYOVERS OF SUCH CREDIT THUS NOT
40 DEDUCTIBLE IN SUCH TAXABLE YEAR MAY BE CARRIED OVER TO THE FOLLOWING
41 YEAR OR YEARS AND MAY BE DEDUCTED FROM THE TAX FOR SUCH YEAR OR YEARS.

42 (E) NOTWITHSTANDING ANY PROVISION OF THIS CHAPTER, THE COMMISSIONER OR
43 THE COMMISSIONER'S DESIGNEE IS AUTHORIZED TO RELEASE THE NAME OF EACH
44 TAXPAYER CLAIMING THE CREDIT AND THE AMOUNT OF THE CREDIT EARNED BY EACH
45 TAXPAYER. HOWEVER, IF THE TAXPAYER CLAIMS A CREDIT BECAUSE THE TAXPAYER
46 IS A MEMBER OF A LIMITED LIABILITY COMPANY, A PARTNER IN A PARTNERSHIP
47 OR A SHAREHOLDER IN A SUBCHAPTER S CORPORATION, ONLY THE NAME OF A
48 LIMITED LIABILITY COMPANY, PARTNERSHIP OR SUBCHAPTER S CORPORATION AND
49 THE AMOUNT OF CREDIT EARNED BY THAT ENTITY MAY BE RELEASED.

50 (F) CREDIT RECAPTURE. IF A CERTIFICATE OF ELIGIBILITY ISSUED BY THE
51 COMMISSIONER OF ECONOMIC DEVELOPMENT IS REVOKED, THE AMOUNT OF CREDIT
52 DESCRIBED IN THIS SECTION AND CLAIMED BY THE TAXPAYER PRIOR TO THAT
53 REVOCATION SHALL BE ADDED BACK TO TAX IN THE TAXABLE YEAR IN WHICH ANY
54 SUCH REVOCATION BECOMES FINAL.

55 (G) ALLOCATION OF CREDIT. THE AGGREGATE AMOUNT OF TAX CREDITS ALLOWED
56 UNDER THIS SUBDIVISION, IN ANY CALENDAR YEAR SHALL BE FIVE MILLION

1 DOLLARS IN TWO THOUSAND FIFTEEN, TWO THOUSAND SIXTEEN AND TWO THOUSAND
2 SEVENTEEN, AND SEVEN MILLION DOLLARS IN TWO THOUSAND EIGHTEEN AND THERE-
3 AFTER. SUCH AGGREGATE AMOUNT OF CREDITS SHALL BE ALLOCATED BASED UPON
4 THE DATE OF FILING AN APPLICATION FOR ALLOCATION OF CREDIT. IF THE TOTAL
5 AMOUNT OF ALLOCATED CREDITS APPLIED FOR IN ANY PARTICULAR YEAR EXCEEDS
6 THE AGGREGATE AMOUNT OF TAX CREDITS ALLOWED FOR SUCH YEAR UNDER THIS
7 SECTION, SUCH EXCESS SHALL BE TREATED AS HAVING BEEN APPLIED FOR ON THE
8 FIRST DAY OF THE SUBSEQUENT YEAR.

9 S 6. Severability. If any clause, sentence, paragraph, subdivision,
10 section or part of this act shall be adjudged by any court of competent
11 jurisdiction to be invalid, such judgment shall not affect, impair, or
12 invalidate the remainder thereof, but shall be confined in its operation
13 to the clause, sentence, paragraph, subdivision, section or part thereof
14 directly involved in the controversy in which such judgment shall have
15 been rendered. It is hereby declared to be the intent of the legislature
16 that this act would have been enacted even if such invalid provisions
17 had not been included herein.

18 S 7. This act shall take effect on the ninetieth day after it shall
19 have become a law; provided that section five of this act shall take
20 effect January 1, 2015.