

6548--A

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 --
committee discharged, bill amended, ordered reprinted as amended and
recommitted to said committee

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.

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

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1 The legislature further finds and declares, based in discussions and
2 interviews with game development and publishing industry leaders,
3 academics, entrepreneurs, and students, that provisions of existing
4 economic development programs and incentives can be targeted to increase
5 employment and economic activity in this industry in New York and that
6 new incentives and programs can also help the industry to achieve crit-
7 ical mass which in turn will lead to more rapid growth.

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

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

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

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

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

3 A. "DIGITAL GAME DEVELOPMENT" OR "DIGITAL GAME SOFTWARE" COMPANIES
4 (COLLECTIVELY, "DIGITAL GAME COMPANIES") AND PUBLISHERS ARE COMPANIES
5 ENGAGED IN DEVELOPING, PRODUCING, OR PUBLISHING ENTERTAINMENT SOFTWARE
6 FOR ONE OR MULTIPLE PLATFORMS OR PLAYING DEVICES THAT MAY OR MAY NOT BE
7 DOWNLOADED ELECTRONICALLY, INCLUDING COMPANIES THAT ARE OR WOULD BE
8 CLASSIFIED UNDER NAIC CODE 511210 OR ANY SUCCESSOR THERETO;

9 B. THE "NEW YORK DIGITAL GAME DEVELOPMENT ADVISORY BOARD" OR "ADVISORY
10 BOARD" MEANS THE NEW YORK GAME DEVELOPMENT ADVISORY BOARD CREATED PURSU-
11 ANT TO THIS SECTION;

12 C. "NEW YORK STATE INCUBATOR" OR "NEW YORK STATE INNOVATION HOT SPOT"
13 HAVE THE SAME MEANINGS AS "NEW YORK STATE INCUBATORS" AND "NEW YORK
14 STATE INNOVATION HOT SPOTS" AS USED IN SECTION SIXTEEN-V OF THIS ACT;

15 D. "ANCHOR TENANT" MEANS ENTITIES OR PERSONS SO DESIGNATED BY THE
16 COMMISSIONER OF ECONOMIC DEVELOPMENT THAT ARE DIGITAL GAME COMPANIES, OR
17 ARE SUBSIDIARIES OF OR NEW VENTURES OWNED WHOLLY OR IN PART BY DIGITAL
18 GAME COMPANIES. AN ENTITY OR PERSON CANNOT BE AN ANCHOR TENANT UNLESS IT
19 IS RESIDENT IN NEW YORK STATE AND ESTABLISHES OPERATIONS PURSUANT TO THE
20 START-UP NY PROGRAM AUTHORIZED UNDER ARTICLE 21 OF THE ECONOMIC DEVELOP-
21 MENT LAW IN AN INDUSTRY CLUSTER OF DIGITAL GAME COMPANIES.

22 2. THE CORPORATION SHALL TAKE THE STEPS AUTHORIZED AND REQUIRED IN
23 THIS SECTION, IN ORDER TO ENHANCE ECONOMIC DEVELOPMENT IN THE DIGITAL
24 GAME INDUSTRY AND TO CREATE OPPORTUNITIES FOR EMPLOYMENT, JOB CREATION,
25 AND PRODUCT DEVELOPMENT IN NEW YORK STATE, AND RECOGNITION OF EMERGING
26 AND CURRENT TALENT. THOSE STEPS INCLUDE BUT ARE NOT LIMITED TO CREATION,
27 PLANNING, DEVELOPMENT, AND IMPLEMENTATION OF:

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

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

30 C. THE NEW YORK DIGITAL GAME DEVELOPMENT COMPETITION;

31 D. ADMINISTRATION AND IMPLEMENTATION OF INDUSTRY CLUSTERS OF DIGITAL
32 GAME COMPANIES ESTABLISHED PURSUANT TO ARTICLE 21 OF THE ECONOMIC DEVEL-
33 OPMENT LAW;

34 E. DEVELOPMENT OF COLLABORATIONS WITH NEW YORK STATE-BASED DIGITAL
35 GAME COMPANIES AND ENTREPRENEURS, GAME DESIGN ACADEMIC INSTITUTIONS, NEW
36 YORK INCUBATORS AND NEW YORK INNOVATION HOT SPOTS TO FURTHER THE INTENT
37 OF THIS PROGRAM;

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

39 G. HIGH SPEED INTERNET CONNECTION GRANTS;

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

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

52 4. THE CORPORATION IS AUTHORIZED AND DIRECTED, WITHIN AMOUNTS MADE
53 AVAILABLE TO IT BY APPROPRIATION THEREFOR AND SUCH OTHER PUBLIC AND
54 PRIVATE FUNDS AS SHALL ADDITIONALLY BE MADE AVAILABLE, TO PROVIDE LOANS
55 AND GRANTS FOR SERVICES AND EXPENSES RELATED TO PLANNING AND IMPLEMENT-
56 ING A NEW YORK STATE DIGITAL GAME SUMMIT, TO SUPPORT AND PROMOTE OTHER

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

10 A. NEW YORK STATE GAME SUMMIT SHALL BE A MULTI-DAY CONVENTION AND CELEBRATION OF NEW YORK'S DIGITAL GAME INDUSTRY, INCLUDING ENTREPRENEURS, STUDENTS, ACADEMIC INSTITUTIONS, AND COMPANIES, TO BE HELD IN NEW YORK CITY AT A TIME WHEN THERE IS THE LEAST AMOUNT OF COMPETITION FROM OTHER NATIONAL AND IN-STATE EVENTS, AT A VENUE WITH A HISTORY AND INTEREST IN DIGITAL GAMING OR IN CONVENTIONS WHICH ARE ABLE TO HOUSE THE LAUNCH OF A GROWING EVENT. THE GAME SUMMIT WILL ALSO INCLUDE THE FINALS OF THE NEW YORK DIGITAL GAME DEVELOPMENT COMPETITION, CREATED AND AUTHORIZED BY THIS SECTION, AND SHALL INCLUDE DEMONSTRATIONS AND DISCUSSIONS OF GAMES, EDUCATIONAL FORUMS IN WHICH EDUCATORS CAN LEARN ABOUT USING GAMES IN THE CLASSROOM, AND OTHER ACTIVITIES DEEMED APPROPRIATE BY THE CORPORATION TO SUCH AN EVENT. THE CORPORATION SHALL PARTNER WITH AND SUPPORT ONE OR MORE PRIVATE ENTITIES AND TRADE ASSOCIATIONS THAT CREATE AND IMPLEMENT THE SUMMIT.

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

28 C. REPRESENTATION AT EVENTS WILL ENTAIL THE CORPORATION ORGANIZING AND/OR PARTICIPATING IN REPRESENTATION OF NEW YORK DIGITAL GAME COMPANIES, ENTREPRENEURS, ACADEMICS, AND OTHERS AT MAJOR GAME EVENTS AND VENUES.

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

42 A. THE FIRST COMPETITION SHALL TAKE PLACE WITHIN EACH ECONOMIC DEVELOPMENT REGION IN THE STATE, AND SHALL RESULT IN TEN WINNERS PER REGION. NOTHING CONTAINED HEREIN SHALL PREVENT TWO OR MORE REGIONS FROM COLLABORATING IN THIS STAGE OF THE COMPETITION, AND THE CORPORATION SHALL ESTABLISH RULES OR GUIDELINES TO GOVERN SUCH COLLABORATIONS. THE SECOND COMPETITION SHALL TAKE PLACE AMONG THE WINNERS OF THE FIRST COMPETITION, AND SHALL RESULT IN TEN WINNERS. THIS COMPETITION SHALL BE SCHEDULED AT DIFFERENT VENUES WITHIN THE STATE EACH YEAR TO ASSURE GEOGRAPHICAL BALANCE. THE FINAL COMPETITION SHALL RESULT IN TWO WINNERS AND SHALL BE CONDUCTED AS PART OF THE NEW YORK STATE DIGITAL GAME SUMMIT. WINNERS OF THE FIRST COMPETITION SHALL RECEIVE PRIZES OF TEN THOUSAND DOLLARS EACH. WINNERS OF THE SECOND COMPETITION SHALL RECEIVE MATCHING FUND PRIZES OF UP TO ONE HUNDRED THOUSAND DOLLARS EACH. WINNERS OF THE THIRD COMPETITION SHALL RECEIVE PRIZES OF FIVE HUNDRED THOUSAND DOLLARS EACH.

1 B. EACH COMPETITION SHALL BE JUDGED BY A SEVEN-MEMBER PANEL OF INDUS-
2 TRY OFFICIALS, ENTREPRENEURS, ACADEMICS, AND ECONOMIC DEVELOPMENT OFFI-
3 CIALS IN THE REGION OR IN THE STATE AS APPROPRIATE TO THE LEVEL OF THE
4 COMPETITION, SELECTED BY THE CORPORATION BASED ON RECOMMENDATIONS FROM
5 THE COMMUNITY, THE GAMING INDUSTRY, AND GOVERNMENT AND OTHER OFFICIALS
6 IN THE REGION. THE PANELS SHOULD INCLUDE A PREPONDERANCE OF JUDGES WHO
7 ARE INDUSTRY OFFICIALS, ENTREPRENEURS, ACADEMICS, AND SUCH JUDGES SHOULD
8 HAVE A BACKGROUND IN OR KNOWLEDGE OF DIGITAL GAMES, GAME PUBLISHING, AND
9 GAME DEVELOPMENT AND AN UNDERSTANDING OF COMMERCIAL APPEAL AND MARKET-
10 BILITY OF GAMES.

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

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

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

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

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

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

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

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

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

48 (F) PUBLIC TESTING OR ACCEPTANCE OR OTHER EVIDENCE OF MARKETING VALUE
49 OF THE GAME;

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

55 E. AS A CONDITION OF RECEIPT OF AWARDS RECEIVED IN PHASES TWO AND
56 THREE, CONTESTANTS SHALL AGREE TO REMAIN RESIDENT IN THE STATE FOR GAME

1 DEVELOPMENT PURPOSES FOR A PERIOD OF FIVE YEARS, AND TO RETURN THE AWARD
2 TO THE STATE SHOULD THEY LEAVE OR SELL THE GAME OR THE GAME COMPANY
3 PRIOR TO THAT FIVE-YEAR PERIOD. WINNERS IN PHASES ONE AND TWO SHALL ALSO
4 AGREE, AS A CONDITION OF RECEIPT OF THE AWARD, TO CONTRIBUTE ONE PERCENT
5 OF PROFITS OF THE GAME TO THE NEW YORK STATE DIGITAL GAME DEVELOPMENT
6 FUND CREATED PURSUANT TO SECTION NINETY-NINE-V OF THE STATE FINANCE LAW,
7 FOR A PERIOD OF THREE YEARS AFTER PUBLICATION OF THE GAME, OR UNTIL THE
8 AMOUNT CONTRIBUTED MATCHES THE AMOUNT OF THE AWARD RECEIVED, WHICHEVER
9 TIME PERIOD IS LESS.

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

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

27 A. THE COMMISSIONER OF ECONOMIC DEVELOPMENT MAY APPROVE ELEVEN PLANS
28 FOR CLUSTERS OF DIGITAL GAME DEVELOPMENT OR DIGITAL GAME SOFTWARE COMPA-
29 NIES AND PUBLISHERS AND SUPPORT COMPANIES SUBMITTED OR AMENDED BY THE
30 PRESIDENT OR CHIEF EXECUTIVE OFFICER OF ANY STATE UNIVERSITY CAMPUS,
31 COMMUNITY COLLEGE OR CITY UNIVERSITY CAMPUS, OR PRIVATE COLLEGE OR
32 UNIVERSITY, THAT IS ELIGIBLE TO SPONSOR A TAX-FREE NY AREA PURSUANT TO
33 SECTIONS 432 AND 435 OF THE ECONOMIC DEVELOPMENT LAW AND THAT ALSO
34 OFFERS A BACHELOR'S OR MASTER'S DEGREE IN GAME DESIGN OR A SPECIALIZA-
35 TION IN GAME PROGRAMMING AS PART OF ITS COMPUTER SCIENCE BACHELOR'S OR
36 MASTER'S PROGRAM. SUCH SUBMITTED OR AMENDED PLANS MAY INCLUDE ALL OR A
37 PORTION OF THE ELIGIBLE LAND OF SUCH STATE UNIVERSITY CAMPUS, COMMUNITY
38 COLLEGE OR CITY UNIVERSITY CAMPUS, OR PRIVATE COLLEGE OR UNIVERSITY. IN
39 EVERY CASE SUCH PLANS AND THE ELIGIBLE BUSINESSES THAT LOCATE IN THE
40 AREA DESIGNATED BY THE PLAN AND APPROVED BY THE COMMISSIONER SHALL BE
41 DEEMED TO BE PART OF THE START-UP NY PROGRAM, AUTHORIZED BY SUCH ARTICLE
42 21 OF THE ECONOMIC DEVELOPMENT LAW, AND APPROVED PURSUANT TO SUCH LAW.
43 SUCH APPROVAL SHALL ALSO BE DEEMED SUFFICIENT TO QUALIFY FOR ELIGIBILITY
44 FOR TAX BENEFITS AVAILABLE TO BUSINESSES LOCATED IN A TAX-FREE NY AREA
45 PURSUANT TO SECTION 39 OF THE TAX LAW AND SUCH OTHER SECTIONS OF LAW AS
46 ARE DESCRIBED IN SUCH SECTION, PROVIDED THAT SUCH BUSINESS SHALL BE
47 SUBJECT TO THE REQUIREMENTS OF SUCH SECTION.

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

51 C. IN SUCH PLANS, THE TYPES OF ELIGIBLE BUSINESS OR BUSINESSES THAT
52 MAY LOCATE ON THAT TAX-FREE NY AREA OR SPACE SHALL INCLUDE DIGITAL GAME
53 DEVELOPMENT AND DIGITAL GAME SOFTWARE COMPANIES AND PUBLISHERS AND
54 SUPPORT COMPANIES, WHICH FOR PURPOSES OF THIS SUBDIVISION SHALL BE
55 DEEMED TO INCLUDE DATA CENTERS, UTILITIES, MOTION CAPTURE STUDIOS, SOFT-
56 WARE AND HARDWARE MANUFACTURERS, GAME-SPECIFIC SCRIPTWRITERS, ANIMATION

1 AND PROGRAMMING OUTSOURCERS, AUDIO FACILITIES AND RECRUITING AGENCIES OR
2 SIMILAR SERVICES.

3 D. SUCH PLANS MAY INCLUDE, IN ADDITION TO OTHER ELIGIBLE BUSINESSES,
4 PROVISION FOR ONE OR MORE ANCHOR TENANTS THAT ARE SUBSIDIARIES OF OR NEW
5 VENTURES OWNED WHOLLY OR IN PART BY COMPANIES RESIDENT IN NEW YORK
6 STATE, NOTWITHSTANDING THAT THEY MAY BE RELATED PERSONS WITHIN THE MEAN-
7 ING OF SUBDIVISION 8 OF SECTION 431 OF THE ECONOMIC DEVELOPMENT LAW,
8 PROVIDED THAT THEY MEET THE CRITERIA OF ADDING NET NEW JOBS AS DEFINED
9 IN SUBDIVISION 5 OF SUCH SECTION AND REQUIRED PURSUANT TO SECTION 433 OF
10 SUCH LAW.

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

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

19 G. SUCH PLANS MAY ALSO ALLOW FOR COLLABORATION OF SUCH COLLEGE,
20 CAMPUS, OR UNIVERSITY WITH ONE OR MORE OTHER COLLEGES, CAMPUSES, OR
21 UNIVERSITIES.

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

26 I. FOR PURPOSES OF THIS SECTION AND SECTION THIRTY-NINE-C OF THE TAX
27 LAW, THE TERMS "COMPETITION" AND "WOULD COMPETE" IN SECTION 440 AND IN
28 ARTICLE 21 OF THE ECONOMIC DEVELOPMENT LAW SHALL BE DEEMED IN THE CASE
29 OF DIGITAL GAME COMPANIES TO REFER SOLELY TO THE SAME OR SUBSTANTIALLY
30 SIMILAR ENTERTAINMENT SOFTWARE.

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

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

46 9. THE CORPORATION AND THE NEW YORK STATE DIGITAL GAME DEVELOPMENT
47 ADVISORY BOARD SHALL DEVELOP A PLAN FOR A DIGITAL GAME AND INCUBATOR
48 OUTREACH PROGRAM TO DEVELOP GAMES THAT ADDRESS COURSE REQUIREMENTS FOR
49 USE IN SCHOOLS IN THIS STATE. SUCH PLAN SHALL BE PRESENTED TO THE GOVER-
50 NOR AND THE LEGISLATURE NOT LATER THAN JANUARY THIRTIETH, TWO THOUSAND
51 FIFTEEN.

52 10. THE CORPORATION SHALL PREPARE AN ANNUAL REPORT TO THE GOVERNOR AND
53 THE LEGISLATURE. SUCH REPORT SHALL INCLUDE THE FOLLOWING DATA CONCERNING
54 ACTIVITIES PURSUANT TO THIS SECTION: THE NUMBER OF BUSINESS APPLICANTS,
55 NUMBER OF BUSINESSES APPROVED, THE NAMES AND ADDRESSES OF THE BUSINESSES
56 LOCATED WITHIN THE TAX-FREE NY AREAS, TOTAL AMOUNT OF BENEFITS DISTRIB-

UTED, BENEFITS RECEIVED PER BUSINESS, NUMBER OF NET NEW JOBS CREATED, NET NEW JOBS CREATED PER BUSINESS, NEW INVESTMENT PER BUSINESS, THE TYPES OF INDUSTRIES REPRESENTED AND SUCH OTHER INFORMATION AS THE COMMISSIONER DETERMINES NECESSARY TO EVALUATE THE PROGRESS OF THE PROGRAM. THE REPORT SHALL ALSO PROVIDE INFORMATION AND RECOMMENDATIONS ON THE NUMBER OF PERSONS NEEDED TO APPROPRIATELY STAFF THE PROGRAM BY THE CORPORATION. THE FIRST REPORT SHALL BE DUE JANUARY THIRTY-FIRST OF THE SECOND CALENDAR YEAR AFTER THIS SECTION SHALL HAVE TAKEN EFFECT.

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

S 99-V. NEW YORK STATE DIGITAL GAME DEVELOPMENT FUND. 1. THERE IS HEREBY ESTABLISHED IN THE JOINT CUSTODY OF THE COMPTROLLER AND THE COMMISSIONER OF ECONOMIC DEVELOPMENT AN ACCOUNT IN THE MISCELLANEOUS SPECIAL REVENUE FUND TO BE KNOWN AS THE "NEW YORK STATE DIGITAL GAME DEVELOPMENT FUND".

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

3. ALL MONIES IN THE ACCOUNT SHALL BE AVAILABLE, SUBJECT TO APPROPRIATION, FOR THE PAYMENT OF EXPENSES AND PRIZES OF THE NEW YORK DIGITAL GAME DEVELOPMENT COMPETITION.

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

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

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

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

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

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

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

(G) ALLOCATION OF CREDIT. THE AGGREGATE AMOUNT OF TAX CREDITS ALLOWED UNDER THIS SUBDIVISION, IN ANY CALENDAR YEAR SHALL BE FIVE MILLION DOLLARS IN TWO THOUSAND FIFTEEN, TWO THOUSAND SIXTEEN AND TWO THOUSAND SEVENTEEN, AND SEVEN MILLION DOLLARS IN TWO THOUSAND EIGHTEEN AND THEREAFTER. SUCH AGGREGATE AMOUNT OF CREDITS SHALL BE ALLOCATED BASED UPON THE DATE OF FILING AN APPLICATION FOR ALLOCATION OF CREDIT. IF THE TOTAL AMOUNT OF ALLOCATED CREDITS APPLIED FOR IN ANY PARTICULAR YEAR EXCEEDS THE AGGREGATE AMOUNT OF TAX CREDITS ALLOWED FOR SUCH YEAR UNDER THIS SECTION, SUCH EXCESS SHALL BE TREATED AS HAVING BEEN APPLIED FOR ON THE FIRST DAY OF THE SUBSEQUENT YEAR.

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

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