

4016

2015-2016 Regular Sessions

I N   A S S E M B L Y

January 28, 2015

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Introduced by M. of A. MORELLE -- read once and referred to the Committee on Economic Development

AN ACT to amend the economic development law, the urban development corporation act 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 ASSEMBLY, 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,  
26 academics, entrepreneurs, and students, that provisions of existing  
27 economic development programs and incentives can be targeted to increase

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

LBD04543-01-5

1 employment and economic activity in this industry in New York and that  
2 new incentives and programs can also help the industry to achieve crit-  
3 ical mass which in turn will lead to more rapid growth.

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

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

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

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

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

54 A. "DIGITAL GAME DEVELOPMENT" OR "DIGITAL GAME SOFTWARE" COMPANIES  
55 (COLLECTIVELY, "DIGITAL GAME COMPANIES") AND PUBLISHERS ARE COMPANIES  
56 ENGAGED IN DEVELOPING, PRODUCING, OR PUBLISHING ENTERTAINMENT SOFTWARE

1 FOR ONE OR MULTIPLE PLATFORMS OR PLAYING DEVICES THAT MAY OR MAY NOT BE  
2 DOWNLOADED ELECTRONICALLY, INCLUDING COMPANIES THAT ARE OR WOULD BE  
3 CLASSIFIED UNDER NAIC CODE 511210 OR ANY 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-V OF THIS ACT;

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

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

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

24 B. ADMINISTRATION AND IMPLEMENTATION OF INDUSTRY CLUSTERS OF DIGITAL  
25 GAME COMPANIES ESTABLISHED PURSUANT TO ARTICLE 21 OF THE ECONOMIC DEVEL-  
26 OPMENT LAW;

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

31 D. TARGETED TAX INCENTIVES AND BENEFITS FOR THE DIGITAL GAME INDUSTRY;

32 E. HIGH SPEED INTERNET CONNECTION GRANTS;

33 F. ADMINISTRATION OF THE NEW YORK STATE DIGITAL GAME DEVELOPMENT FUND.

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

45 4. THE CORPORATION IS AUTHORIZED TO WORK WITH THE COMMISSIONER OF  
46 ECONOMIC DEVELOPMENT TO PROVIDE SERVICES TO DESIGNATED CLUSTERS OF  
47 DIGITAL GAME DEVELOPMENT AND DIGITAL GAME SOFTWARE COMPANIES AND  
48 PUBLISHERS APPROVED BY THE COMMISSIONER OF ECONOMIC DEVELOPMENT PURSUANT  
49 TO ARTICLE 21 OF THE ECONOMIC DEVELOPMENT LAW AND THE FOLLOWING  
50 PROVISIONS, WHICH SHALL BE CONTROLLING IN THE CASE OF ANY CONFLICT  
51 REGARDING OR LIMITING THE SPONSORSHIP OF PLANS AND ELIGIBILITY OF BUSI-  
52 NESSES, INCLUDING ANY PROVISIONS OF SUBDIVISION 2-A OF SECTION 433 OF  
53 THE ECONOMIC DEVELOPMENT LAW LIMITING THE ELIGIBILITY OF THE TYPES OF  
54 BUSINESSES THAT MAY PARTICIPATE IN THE START-UP NY PROGRAM AUTHORIZED  
55 UNDER ARTICLE 21 OF THE ECONOMIC DEVELOPMENT LAW IN NASSAU COUNTY,

1 SUFFOLK COUNTY, WESTCHESTER COUNTY, OR ANY PROVISIONS OF SUCH LAW  
2 REGARDING NEW YORK CITY.

3 A. THE COMMISSIONER OF ECONOMIC DEVELOPMENT MAY APPROVE ELEVEN PLANS  
4 FOR CLUSTERS OF DIGITAL GAME DEVELOPMENT OR DIGITAL GAME SOFTWARE COMPA-  
5 NIES AND PUBLISHERS AND SUPPORT COMPANIES SUBMITTED OR AMENDED BY THE  
6 PRESIDENT OR CHIEF EXECUTIVE OFFICER OF ANY STATE UNIVERSITY CAMPUS,  
7 COMMUNITY COLLEGE OR CITY UNIVERSITY CAMPUS, OR PRIVATE COLLEGE OR  
8 UNIVERSITY, THAT IS ELIGIBLE TO SPONSOR A TAX-FREE NY AREA PURSUANT TO  
9 SECTIONS 432 AND 435 OF THE ECONOMIC DEVELOPMENT LAW AND THAT ALSO  
10 OFFERS A BACHELOR'S OR MASTER'S DEGREE IN GAME DESIGN OR A SPECIALIZA-  
11 TION IN GAME PROGRAMMING AS PART OF ITS COMPUTER SCIENCE BACHELOR'S OR  
12 MASTER'S PROGRAM. SUCH SUBMITTED OR AMENDED PLANS MAY INCLUDE ALL OR A  
13 PORTION OF THE ELIGIBLE LAND OF SUCH STATE UNIVERSITY CAMPUS, COMMUNITY  
14 COLLEGE OR CITY UNIVERSITY CAMPUS, OR PRIVATE COLLEGE OR UNIVERSITY. IN  
15 EVERY CASE SUCH PLANS AND THE ELIGIBLE BUSINESSES THAT LOCATE IN THE  
16 AREA DESIGNATED BY THE PLAN AND APPROVED BY THE COMMISSIONER SHALL BE  
17 DEEMED TO BE PART OF THE START-UP NY PROGRAM, AUTHORIZED BY SUCH ARTICLE  
18 21 OF THE ECONOMIC DEVELOPMENT LAW, AND APPROVED PURSUANT TO SUCH LAW.  
19 SUCH APPROVAL SHALL ALSO BE DEEMED SUFFICIENT TO QUALIFY FOR ELIGIBILITY  
20 FOR TAX BENEFITS AVAILABLE TO BUSINESSES LOCATED IN A TAX-FREE NY AREA  
21 PURSUANT TO SECTION 39 OF THE TAX LAW AND SUCH OTHER SECTIONS OF LAW AS  
22 ARE DESCRIBED IN SUCH SECTION, PROVIDED THAT SUCH BUSINESS SHALL BE  
23 SUBJECT TO THE REQUIREMENTS OF SUCH SECTION.

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

27 C. IN SUCH PLANS, THE TYPES OF ELIGIBLE BUSINESS OR BUSINESSES THAT  
28 MAY LOCATE ON THAT TAX-FREE NY AREA OR SPACE SHALL INCLUDE DIGITAL GAME  
29 DEVELOPMENT AND DIGITAL GAME SOFTWARE COMPANIES AND PUBLISHERS AND  
30 SUPPORT COMPANIES, WHICH FOR PURPOSES OF THIS SUBDIVISION SHALL BE  
31 DEEMED TO INCLUDE DATA CENTERS, UTILITIES, MOTION CAPTURE STUDIOS, SOFT-  
32 WARE AND HARDWARE MANUFACTURERS, GAME-SPECIFIC SCRIPTWRITERS, ANIMATION  
33 AND PROGRAMMING OUTSOURCERS, AUDIO FACILITIES AND RECRUITING AGENCIES OR  
34 SIMILAR SERVICES.

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

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

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

51 G. SUCH PLANS MAY ALSO ALLOW FOR COLLABORATION OF SUCH COLLEGE,  
52 CAMPUS, OR UNIVERSITY WITH ONE OR MORE OTHER COLLEGES, CAMPUSES, OR  
53 UNIVERSITIES.

54 H. IN NO CASE SHALL A PLAN AUTHORIZED PURSUANT TO THIS SECTION EXCEED  
55 THE TOTAL SQUARE FOOTAGE REQUIREMENTS OF PLANS AUTHORIZED PURSUANT TO

1 SUCH ARTICLE 21 OF THE ECONOMIC DEVELOPMENT LAW, EXCEPT WITH THE PERMIS-  
2 SION OF THE COMMISSIONER OF ECONOMIC DEVELOPMENT.

3 I. FOR PURPOSES OF THIS SECTION AND SECTION THIRTY-NINE-B OF THE TAX  
4 LAW, THE TERMS "COMPETITION" AND "WOULD COMPETE" IN SECTION 440 AND IN  
5 ARTICLE 21 OF THE ECONOMIC DEVELOPMENT LAW SHALL BE DEEMED IN THE CASE  
6 OF DIGITAL GAME COMPANIES TO REFER SOLELY TO THE SAME OR SUBSTANTIALLY  
7 SIMILAR ENTERTAINMENT SOFTWARE.

8 5. ANY OTHER PROVISION OF ANY OTHER LAW TO THE CONTRARY NOTWITHSTAND-  
9 ING, DIGITAL GAME DEVELOPMENT AND DIGITAL GAME SOFTWARE COMPANIES AND  
10 PUBLISHERS SHALL BE DEEMED ELIGIBLE BUSINESSES FOR THE PURPOSES OF  
11 SUBSECTIONS (G) AND (R) OF SECTION 606 OF THE TAX LAW, AND OF SUBDIVI-  
12 SIONS 7 AND 8 OF SECTION 210-B OF SUCH LAW.

13 6. THE CORPORATION IS AUTHORIZED, WITHIN AMOUNTS MADE AVAILABLE TO IT  
14 BY APPROPRIATION THEREFOR AND WITH SUCH OTHER PUBLIC AND PRIVATE FUNDS  
15 AS SHALL ADDITIONALLY BE MADE AVAILABLE, TO PROVIDE MATCHING GRANT FUNDS  
16 TO COLLEGES, CAMPUSES, AND UNIVERSITIES WHOSE PLANS HAVE BEEN APPROVED  
17 PURSUANT TO SUBDIVISION 4 OF THIS SECTION OR TO NEW YORK STATE INCUBA-  
18 TORS OR NEW YORK STATE INNOVATION HOT SPOTS WHICH ARE AFFILIATED WITH  
19 SUCH PLANS IN AMOUNTS NOT TO EXCEED ONE HUNDRED THOUSAND DOLLARS PER  
20 SCHOOL OR INCUBATOR FOR HIGH-SPEED INTERNET SERVICES AND DEVELOPMENT.  
21 THIS SUBDIVISION SHALL EXPIRE AND BE OF NO FURTHER EFFECT ON AND AFTER  
22 JANUARY FIRST, TWO THOUSAND SIXTEEN.

23 7. THE CORPORATION AND THE NEW YORK STATE DIGITAL GAME DEVELOPMENT  
24 ADVISORY BOARD SHALL DEVELOP A PLAN FOR A DIGITAL GAME AND INCUBATOR  
25 OUTREACH PROGRAM TO DEVELOP GAMES THAT ADDRESS COURSE REQUIREMENTS FOR  
26 USE IN SCHOOLS IN THIS STATE. SUCH PLAN SHALL BE PRESENTED TO THE GOVER-  
27 NOR AND THE LEGISLATURE NOT LATER THAN JANUARY THIRTIETH, TWO THOUSAND  
28 SIXTEEN.

29 8. THE CORPORATION SHALL PREPARE AN ANNUAL REPORT TO THE GOVERNOR AND  
30 THE LEGISLATURE. SUCH REPORT SHALL INCLUDE THE FOLLOWING DATA CONCERNING  
31 ACTIVITIES PURSUANT TO THIS SECTION: THE NUMBER OF BUSINESS APPLICANTS,  
32 NUMBER OF BUSINESSES APPROVED, THE NAMES AND ADDRESSES OF THE BUSINESSES  
33 LOCATED WITHIN THE TAX-FREE NY AREAS, TOTAL AMOUNT OF BENEFITS DISTRIB-  
34 UTED, BENEFITS RECEIVED PER BUSINESS, NUMBER OF NET NEW JOBS CREATED,  
35 NET NEW JOBS CREATED PER BUSINESS, NEW INVESTMENT PER BUSINESS, THE  
36 TYPES OF INDUSTRIES REPRESENTED AND SUCH OTHER INFORMATION AS THE  
37 COMMISSIONER DETERMINES NECESSARY TO EVALUATE THE PROGRESS OF THE  
38 PROGRAM. THE REPORT SHALL ALSO PROVIDE INFORMATION AND RECOMMENDATIONS  
39 ON THE NUMBER OF PERSONS NEEDED TO APPROPRIATELY STAFF THE PROGRAM BY  
40 THE CORPORATION. THE FIRST REPORT SHALL BE DUE JANUARY THIRTY-FIRST OF  
41 THE SECOND CALENDAR YEAR AFTER THIS SECTION SHALL HAVE TAKEN EFFECT.

42 S 4. The tax law is amended by adding a new section 39-b to read as  
43 follows:

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

52 (B) ELIGIBILITY. TO BE ELIGIBLE FOR THE DIGITAL GAME DEVELOPMENT TAX  
53 CREDIT, THE TAXPAYER SHALL BE AN ANCHOR TENANT PURSUANT TO SECTION  
54 SIXTEEN-X OF THE URBAN DEVELOPMENT CORPORATION ACT AND SHALL HAVE BEEN  
55 ISSUED AN APPROVED CERTIFICATE OF ELIGIBILITY BY THE COMMISSIONER OF  
56 ECONOMIC DEVELOPMENT PURSUANT TO SUBDIVISION FIVE OF SECTION FOUR

1 HUNDRED THIRTY-THREE OF THE ECONOMIC DEVELOPMENT LAW. THE TAXPAYER SHALL  
2 BE ALLOWED TO CLAIM ONLY THE AMOUNT LISTED ON THE CERTIFICATE OF TAX  
3 CREDIT FOR EACH TAXABLE YEAR.

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

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

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

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

33 (G) ALLOCATION OF CREDIT. THE AGGREGATE AMOUNT OF TAX CREDITS ALLOWED  
34 UNDER THIS SUBDIVISION, IN ANY CALENDAR YEAR SHALL BE FIVE MILLION  
35 DOLLARS IN TWO THOUSAND SIXTEEN, TWO THOUSAND SEVENTEEN AND TWO THOUSAND  
36 EIGHTEEN, AND SEVEN MILLION DOLLARS IN TWO THOUSAND NINETEEN AND THERE-  
37 AFTER. SUCH AGGREGATE AMOUNT OF CREDITS SHALL BE ALLOCATED BASED UPON  
38 THE DATE OF FILING AN APPLICATION FOR ALLOCATION OF CREDIT. IF THE TOTAL  
39 AMOUNT OF ALLOCATED CREDITS APPLIED FOR IN ANY PARTICULAR YEAR EXCEEDS  
40 THE AGGREGATE AMOUNT OF TAX CREDITS ALLOWED FOR SUCH YEAR UNDER THIS  
41 SECTION, SUCH EXCESS SHALL BE TREATED AS HAVING BEEN APPLIED FOR ON THE  
42 FIRST DAY OF THE SUBSEQUENT YEAR.

43 S 5. Severability. If any clause, sentence, paragraph, subdivision,  
44 section or part of this act shall be adjudged by any court of competent  
45 jurisdiction to be invalid, such judgment shall not affect, impair, or  
46 invalidate the remainder thereof, but shall be confined in its operation  
47 to the clause, sentence, paragraph, subdivision, section or part thereof  
48 directly involved in the controversy in which such judgment shall have  
49 been rendered. It is hereby declared to be the intent of the legislature  
50 that this act would have been enacted even if such invalid provisions  
51 had not been included herein.

52 S 6. This act shall take effect on the ninetieth day after it shall  
53 have become a law; provided that section four of this act shall take  
54 effect January 1, 2016.