

SENATE No. 1721

The Commonwealth of Massachusetts

PRESENTED BY:

Mark C. Montigny

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 economic development tax credits.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Mark C. Montigny</i>	<i>Second Bristol and Plymouth</i>	
<i>Michael D. Brady</i>	<i>Second Plymouth and Bristol</i>	<i>1/31/2019</i>
<i>Jonathan D. Zlotnik</i>	<i>2nd Worcester</i>	<i>1/31/2019</i>

SENATE No. 1721

By Mr. Montigny, a petition (accompanied by bill, Senate, No. 1721) of Mark C. Montigny, Michael D. Brady and Jonathan D. Zlotnik for legislation relative to economic development tax credits. Revenue.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 1571 OF 2017-2018.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act relative to economic development tax credits.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 62C, as appearing in the 2014 Official Edition, is hereby amended
2 by inserting after section 89 the following:-

3 Section 90. Sunsets for Tax Incentive Programs

4 (a) For the purposes of Sections 90-92 inclusive, "Tax Incentive" is defined as

5 1. the tax credit in subsection (j) of section 6 of chapter 62 and section 38Q of
6 chapter 63;

7 2. the dairy farmer tax credit in subsection (o) of said section 6 of said chapter 62
8 and the dairy farm tax credit in section 38Z of said chapter 63;

9 3. the U.S.F.D.A. user fees credit in section 31M of said chapter 63 and subsection
10 (n) of said section 6 of said chapter 62;

11 4. the film tax credit in subsection (b) of section 38X of said chapter 63 and
12 subsection (l) of said section 6 of said chapter 62;

13 5. the credit for cost of qualifying property in subsection (m) of said section 6 of
14 said chapter 62 and section 38U of said chapter 63;

15 6. the life sciences refundable jobs credit in subsection (r) of said section 6 of said
16 chapter 62 and section 38CC of said chapter 63;

17 7. the deductions for qualifying clinical testing expenses in section 38V of said
18 chapter 63;

19 8. the credit for qualified research expenses in section 38W of said chapter 63;

20 9. the historic rehabilitation tax credit in section 38R of said chapter 63 and section
21 6J of said chapter 62;

22 10. the low-income housing tax credit in section 31H of said chapter 63 and section 6I
23 of said chapter 62;

24 11. the medical device tax credit in section 31L of said chapter 63 and section 6I/2 of
25 said chapter 62;

26 12. the refundable research credit in subsection (j) of section 38M of said chapter 63;

27 13. the economic development incentive program in subsection (g) of said section 6
28 of said chapter 62 and section 38N of said chapter 63;

29 14. the donated land tax credit in subsection (p) of said section 6 of said chapter 62
30 and section 38AA of said chapter 63;

31 15. the abandoned building renovation deduction in section 38O of chapter 63;

32 16. the credit for company shuttle van purchase or lease expenses in section 31E of
33 chapter 63; and

34 17. any transferrable or refundable credits under chapter 62 and 63 established on or
35 after July 1, 2010.

36 (b) For the purposes of Sections 90-92 inclusive, “Sunset Provision” is defined as,
37 text contained in law requiring the law to expire and lose force of law unless reauthorized by an
38 act of the legislature.

39 (c) Notwithstanding any general or special law to the contrary, all tax incentive as
40 defined in subsection (a) shall expire within one year of the passage of this act unless
41 reauthorized by an act of the legislature after review and examination of each such tax incentive.
42 Upon each reauthorization, the legislature shall include a sunset provision to take effect within 3
43 years of the date of reauthorization.

44 (d) Any future program that awards a transferable or refundable tax credit to any
45 taxpayer shall include a sunset provision with an expiration date set up to 3 years after of the
46 initial passage of the program. Upon each reauthorization, the legislature shall include a sunset
47 provision to take effect within 3 years of the date of reauthorization.

48 (e) The Inspector General in consultation with the Department of Revenue shall:-

49 (1) review and evaluate each tax incentive with a sunset provision scheduled to take
50 effect in a given year.

51 (2) Upon reviewing each tax incentive, recommend to continue the tax incentive
52 without changes, amend the tax incentive, or eliminate the tax incentive.

53 (3) submit a written report containing an explanation of the recommendations to the
54 legislature. The report shall include a detailed description of the committee's reasoning,
55 analyses, and any data collected pursuant to paragraph (4) of this subsection.

56 (4) consider the following factors when evaluating and reviewing a tax incentive:

57 (i) Whether the tax incentive is achieving the policy goals and purposes that it was
58 intended to address

59 (ii) The revenue forgone to administer the tax incentive

60 (iii) The benefit derived from the tax incentive

61 (iv) The extent to which the tax incentive is helping residents, businesses, or other entities
62 within the commonwealth

63 (v) Number of jobs created by the tax incentive (if applicable)

64 (vi) Any other information the Inspector General deems valuable in considering whether
65 or not the tax incentive program achieved its desired public policy outcome

66 (5) use any available resources to evaluate each tax incentive including, but not
67 limited to, commissioning a report from any agency, such as the Department of Revenue,
68 detailing the tax incentive program and consisting of any content that the subcommittee deems

69 necessary, referring to other states evaluations of similar tax incentives, or citing academic
70 studies or surveys of similar tax incentive programs.

71 SECTION 2. Chapter 62C is hereby amended by inserting after section 90 the following:-

72 Section 91 Clawback Provision for Tax Incentives

73 (a) Any law containing a sunset provision pursuant to section 90 of chapter 62C shall
74 include a clawback provision.

75 (1) The clawback provision, so called, which permits the commonwealth to recoup
76 foregone tax receipt from tax incentives recipients who fail to achieve or meet stated goals and
77 benchmarks, including but not limited to job creation goals set for in their tax credit programs.

78 (2) Whenever a benefit is claimed, awarded, or otherwise obtained pursuant to a law
79 containing a sunset provision as defined in section 90 of chapter 62C, the awarding entity must
80 include explicit goals and benchmarks to be achieved by the recipient tax payer.

81 (3) Whenever a benefit is claimed, awarded, or otherwise obtained pursuant to a law
82 containing a sunset provision as defined in section 90 of chapter 62C, the awarding entity must
83 inform the recipient about the clawback provision by providing a copy of this section and
84 explaining ramifications of his or her failure to meet the stated goals and benchmarks.

85 SECTION 3. Chapter 62C is hereby amended by inserting after section 91 the following:-

86 Section 92

87 (a) Before submitting any new tax incentive program for legislative approval, the
88 governor shall include in the governor's legislative proposal or bill for the new tax incentive the
89 following:

90 (1) The new tax incentive's clearly specified public policy purpose, goals, and desired
91 outcomes

92 (2) A finding that the tax credit incentive is expected to be highly effective at achieving
93 the stated public policy purposes

94 (3) Estimates of forgone revenue from the new tax credit incentive

95 (4) For discretionary grant like tax incentives, an overall annual dollar cap on foregone
96 revenue

97 (5) For discretionary grant like tax credit programs, the criteria to be applied by the
98 administering agency in making discretionary awards of tax credit programs and

99 (6) For discretionary grant like tax credit programs, provisions for the tax credit
100 program's administration including, but not limited to, clear written conditions and
101 commitments, public disclosure of recipients and tax benefits, if tax incentive conditions are not
102 met by the recipient, threshold for further review and enforcements including the use of the tax
103 incentive's clawback provision, and a competitive award process.