

SENATE No. 962

The Commonwealth of Massachusetts

PRESENTED BY:

Moore, Richard (SEN)

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 passage of the accompanying bill:

An Act to Promote Business Continuity and Recovery After a Disaster

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Moore, Richard (SEN)	Worcester and Norfolk
John V. Fernandes	10th Worcester
James E. Timilty	Bristol and Norfolk
Jennifer M. Callahan	18th Worcester
Bruce E. Tarr	First Essex and Middlesex

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. S02739 OF .]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT TO PROMOTE BUSINESS CONTINUITY AND RECOVERY AFTER A DISASTER.

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. Notwithstanding the provisions of any other general or special law to the
2 contrary, for the purposes of the act, the following terms shall have the following meanings:

3 “Business Continuity Plan (BCP)” is defined as: A document containing the recovery timeline
4 methodology, test-validated documentation, procedures, and action instructions developed
5 specifically for use in restoring organization operations in the event of a declared disaster. To be
6 effective, most Business Continuity Plans also require testing, skilled personnel, access to vital
7 records, and alternate recovery resources including facilities.

8 “Disaster” or “emergency” is defined as an occurrence such as a hurricane, tornado, flood,
9 earthquake, explosion, hazardous materials accident, war, transportation accident, act of
10 terrorism, mass shooting, fire, famine, or epidemic that causes human suffering or creates human
11 need that the victim cannot alleviate without assistance.

12 Section 2. Chapter 63 of the general laws, as appearing in the 2006 Official Edition, is hereby
13 amended by adding at the end thereof the following new section:

14 Section 3SQ. Business Continuity Tax Deduction. (a) In determining the net income subject to
15 tax under this chapter a domestic or foreign business corporation, at its election, may deduct an
16 amount equal to one half of the expenditures paid or incurred during the taxable year for the
17 purchase of business continuity or business interruption insurance for business operations within
18 the Commonwealth, but in no case shall the deduction exceed the minimum corporate tax
19 payment due.

20 Such deduction shall be allowed only if the insurance remained in full force and effect
21 throughout the taxable year and the corporation maintained a current business continuity or
22 interruption plan on file with the municipal government where the business is located. For
23 purposes of this section, a business continuity or interruption plan is a practiced logistical plan
24 for how an organization will recover and restore partially or completely interrupted critical
25 functions within a specified time after a disaster or extended disruption.

26 Section 3. Section 6 of chapter 64H of the general laws, as appearing in the 2006 Official
27 Edition, is hereby amended by adding after subsection (ww), the following new subsection:

28 (xx) Sale of office equipment and supplies, machinery, vehicles or other equipment to be used by
29 a business that has been substantially destroyed as a result of an emergency.

30 For the purposes of this subsection, the term “emergency” shall mean any situation caused by
31 unforeseen circumstances which render currently used real property unusable or unavailable for
32 the purposes intended and which creates an immediate need for other real property to preserve
33 the health or safety of persons or property.

34 Section 4. Chapter 43D of the general laws, as appearing in the 2006 Official Edition, is hereby
35 amended by adding at the end thereof, the following new section:

36 Section 17. Emergency Permitting.

37 Any municipality which accepts the provisions of this chapter may establish emergency permit
38 granting procedures for the permanent or temporary relocation or rebuilding of property,
39 including commercial entities, in any situation caused by unforeseen circumstances which render
40 currently used real property unusable or unavailable for the purposes intended and which creates
41 an immediate need for other real property to preserve the health or safety of persons or property.

42 Section 5. Small Business Insurance Commission

43 Notwithstanding any general or special law to the contrary, the Small Business Insurance
44 Commission is established to examine the need for guidelines for small business insurance,
45 including, but not limited to, a requirement that the insured have and maintain a continuity of
46 business plan, and a requirement that the business be registered with the local emergency
47 management office.

48 The Commission shall consist of the following: The Commissioner of Insurance, two appointees
49 of the Senate President, 2 appointees of the Speaker of the House, 1 appointee of the Senate
50 Minority Leader, 1 appointee of the House Minority Leader, 1 appointee of the Governor, 1
51 appointee of Associated Industries of Massachusetts, 1 appointee of the Massachusetts Chamber
52 of Commerce and one appointee of the National Federation of Independent Business and 1
53 appointee from the insurance industry with expertise in small business. The Commissioner of
54 Insurance shall be the chair of the committee but shall have no vote except in case of a tie.

55 The Commission shall be responsible for studying the need for insurance guidelines for small
56 business and issue a report of its findings no later than December 31, 2009.

57 Section 6. Section 71 of Chapter 59 of the General Laws, as appearing in the 2006 Official
58 Edition, is hereby amended by adding after the word “bankruptcy,” the following words -:
59 “natural disaster”

60 Section 7. Abatement of Real Property Tax

61 Chapter 59 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by
62 adding the following new section:

63 Section 59B. Abatements for the purpose of natural disasters.

64 Municipalities may establish, relative to sites or portions of sites from or at which there has been
65 a natural disaster, an agreement between the city or town and any eligible person, as defined in
66 section 2 of chapter 21E, regarding the abatement of outstanding interest, penalties, and payment
67 of real estate tax obligations on said sites or portions of sites; provided, however, that said sites
68 or portions of sites are zoned for commercial or industrial uses by the municipality in which said
69 sites or portion of sites exist. Such agreement, for the purpose of continuing cleanup on such
70 sites and redevelopment in such communities, shall include, but shall not be limited to, the
71 amount outstanding, the per cent of interest to accrue if determined applicable by the parties, the
72 description of quantifiable monthly payments, the inception date of such payments, the date of
73 the final payment, late penalties, and any other contractual obligations arranged between the
74 parties. The terms of repayment shall be set at the discretion of the municipality and shall be
75 included in the agreement between the parties. A city or town that accepts this section shall adopt
76 an ordinance or by-law specifying the method for negotiating and approving agreements under

77 this section. Copies of each such agreement shall be signed by the municipal officer required by
78 the ordinance or by-law and by the owner of the property in question, notarized, attested to by
79 the city or town clerk, and provided to the department of environmental protection, the federal
80 Environmental Protection Agency, the commissioner, the city council or board of selectmen, and
81 the owners of the property in question. This section shall take effect in any city or town only
82 upon its acceptance by such city or town.

83 Section 8. Modification of the Payroll Tax

84 Notwithstanding any general or special law to the contrary, there shall be a modification of the
85 payroll tax for six months following the occurrence of a natural disaster for businesses with less
86 than fifty employees that are in the process of rebuilding.

87 Section 9. Transfer of Katrina Funds to Establish a Small Business Recovery Fund

88 Item 1599-2005 of section 2A of chapter 81 of the acts of 2005, as most recently amended by
89 section 28 of chapter 140 of the acts of 2007, is hereby further amended by inserting after the
90 words “responded to that emergency,” the following words:-; provided further, that any
91 unexpended balance shall be transferred to the Massachusetts Small Business Recovery Fund,
92 established pursuant to the provisions of this act.

93 Section 10. Chapter 10 of the general laws, as appearing in the 2006 Official Edition, is hereby
94 amended by adding at the end, thereof, the following new section:

95 Section 70. Disaster Relief and Recovery Fund.

96 There shall be established and set upon the books of the commonwealth a separate fund to be
97 known as the Massachusetts Disaster Relief and Recovery Fund. There shall be credited to the

98 fund such funds as may be transferred or appropriated by the General Court and any income
99 derived from repayment of loans from the fund and income derived from investment of amounts
100 credited to the fund. Amounts credited to the fund shall be received and held in trust for grants to
101 political subdivisions of the commonwealth and loan guarantees to banks for low interest loans
102 to small businesses for relief and recovery efforts following a disaster, provided, however that no
103 loan guarantee shall exceed fifty percent of the loan, and provided further that no interest rate on
104 such loan shall exceed four percent per annum, nor shall any repayment period exceed ten years.
105 Said grants or loans shall be made by the director of the Massachusetts Emergency Management
106 Agency with the approval of the secretary of the executive office of housing and economic
107 development. Revenues and expenditures of the fund shall be reported on the Massachusetts
108 management and accounting and reporting system and maintained by the state treasurer. The
109 Fund shall not exceed a maximum of \$5,000,000. For the purposes of this section a “disaster”
110 shall mean an emergency, other than a level one emergency, as defined by the Massachusetts
111 Comprehensive Emergency Management Plan.

112 A municipality may establish a program of emergency assistance grants of not more than one
113 thousand dollars per business entity to assist with relocation and start-up costs, provided that
114 businesses, to be eligible, must be adequately insured. Said grant shall be repaid when the
115 insurance settlement is finalized.

116 Section 11. Unemployment Compensation for Self-Employed Business Owners

117 Notwithstanding the provisions of any other general or special law to the contrary, the secretary
118 of the executive office of labor and workforce development is hereby authorized and directed to
119 develop an unemployment compensation program for self-employed individuals and for small

120 business owners who may be temporarily displaced as a result of a disaster as defined in this act.
121 Said program shall include recommendations for administration and funding of the program. The
122 secretary shall provide a report to the General Court, together with recommendations for
123 legislation not later than December 1, 2008.