SENATE DOCKET, NO. 992 FILED ON: 1/17/2013

SENATE . . . . . No. 1340

The Commonwealth of Massachusetts

PRESENTED BY:

John Hart, Jr.

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 the preservation and expansion of live musical and theatrical productions.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
John Hart, Jr.	*First Suffolk*
Michael O. Moore	*Second Worcester*
Harriette L. Chandler	*First Worcester*
Stephen M. Brewer	*Worcester, Hampden, Hampshire and Middlesex*

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By Mr. Hart, a petition (accompanied by bill, Senate, No. 1340) of John Hart, Jr., Michael O. Moore, Harriette L. Chandler and Stephen M. Brewer for legislation relative to the preservation and expansion of live musical and theatrical productions. Revenue.

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

An Act relative to the preservation and expansion of live musical and theatrical productions.

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

Section 1. Section 6 of Chapter 62 of the General Laws, as appearing in the 2008 Official Edition, is further amended by adding the following section:

Section 38DD. There shall be established a live theater infrastructure tax credit program under which a live theater company doing business with a Massachusetts based theater venue, theater company, theater presenter or producer may be eligible. The credit may be claimed against the taxes due pursuant to this chapter. The credit shall be established to support the expansion of pre-Broadway and pre off-Broadway live theater and Broadway tour launches and shall assist in the development of long run show development and growth.

(a) As used in this section the following words shall, unless the context clearly requires otherwise, have the following meanings:

"Commissioner", the commissioner of revenue.

"Eligible theater production" means a live stage musical or theatrical production or tour being presented in a qualified production facility, as defined in this chapter that is either: (a) a Pre-Broadway production, or (b) a pre off-Broadway production, or (c) a Broadway Tour Launch.

"Eligible theater production certificate" means a certificate issued by the Massachusetts Office of Travel and Tourism certifying that the production is an eligible theater production that meets the guidelines of this chapter.

19 “Advertising and public relations expenditure” means costs incurred within the state by
20 the Eligible theater productions for goods or services related to the marketing, public relations,
21 creation and placement of print, electronic, television, billboards and other forms of advertising
22 to promote the Eligible theater production.

23 “Office” means the Massachusetts office of travel and tourism.

24 "Payroll" means all salaries, wages, fees, and other compensation wages including, but
25 not limited to, taxes, benefits, and any other consideration incurred or paid to talent and non-
26 talent employees of the applicant for services rendered to and on behalf of an eligible theater
27 production. The expenditure shall be incurred or paid by the applicant for services related to any
28 portion of an eligible theater production from its pre-production stages, including, but not limited
29 to, (a) the writing of the script, (b) casting, (c) hiring of service providers, (d) purchases from
30 vendors, (e) marketing, (f) advertising, (g) public relations, (h) load in, (i) rehearsals, (j)
31 performances, (k) other Eligible theater production related activities (l) load out; provided
32 further, said labor expenditure shall be directly attributable to the eligible theater production and
33 shall be limited to the first $100,000 of wages incurred or paid to each employee of an eligible
34 theater production in each tax year.

35 “Pre-Broadway Production” means a live stage production that, in its original or adaptive
36 version, is performed in a qualified production facility having a presentation scheduled for New
37 York City’s Broadway theater district within (12) months after its Massachusetts presentation.

38 “Pre-Off Broadway Production” means a live stage production that, in its original or
39 adaptive version, is performed in a qualified production facility having a presentation scheduled
40 for New York City’s Off-Broadway’s theater district within (12) months after its Massachusetts
41 presentation.

42 “Broadway Tour Launch ” means a live stage production that, in its original or adaptive
43 version, is performed in a qualified production facility and opens its US tour in Massachusetts.

44 “Production and Performance Expenditures” means a contemporaneous exchange of cash
45 or cash equivalent for goods or services related to development, production, performance or
46 operating expenditures incurred in this state for a qualified theater production including, but not
47 limited to, expenditures for design, construction and operation, including sets, special and visual
48 effects, costumes, wardrobes, make-up, accessories, costs associated with sound, lighting,
49 staging, payroll, transportation expenditures, advertising and public relations expenditures,
50 facility expenses, rentals, per diems, accommodations and other related costs.

51 “Qualified Production Facility” means a facility located in the State of Massachusetts in
52 which live theatrical productions are, or are intended to be, exclusively presented that contains at
53 least one stage, a seating capacity of five hundred (500) or more seats, and dressing rooms,
54 storage areas, and other ancillary amenities necessary for the Eligible theater production.

55 “Massachusetts Office of Travel and Tourism” means the office within the secretariat of
56 economic development that has been established in order to market Massachusetts as a leisure
57 travel destination in order to generate state and local tax revenues, create jobs, and support
58 travel-related businesses.

59 “Transportation expenditures” means expenditures for the packaging, crating, and
60 transportation both to the state for use in a qualified theater production of sets, costumes, or other
61 tangible property constructed or manufactured out of state, and/or from the state after use in a
62 qualified theater production of sets, costumes, or other tangible property constructed or
63 manufactured in this state and the transportation of the cast and crew to and from the state. Such
64 term shall include the packaging, crating, and transporting of property and equipment used for
65 special and visual effects, sound, lighting, and staging, costumes, wardrobes, make-up and
66 related accessories and materials, as well as any other performance or production-related
67 property and equipment.

68 (b) Any person, firm, partnership, trust, estate or other entity that receives an eligible
69 theater production certificate shall be allowed a tax credit equal to thirty-five percent (35%) of
70 the total in state labor costs and twenty –five percent (25%) of the production and performance
71 expenditures and transportation expenditures as well as all out of state labor costs for the eligible
72 theater production and to be computed as provided in this chapter against a tax imposed by this
73 chapter. Said credit shall not exceed three million dollars ($3,000,000) and shall be limited to
74 certified production cost directly attributable to activities in the state and transportation
75 expenditures defined above. The total production budget shall be a minimum of one hundred
76 thousand dollars ($100,000).

77 (c) No more than ten million dollars ($10,000,000) in total may be issued for any tax year
78 for musical and theatrical production tax credits pursuant to this chapter.

79 (d) The tax credit shall be allowed against the tax for the taxable period in which the
80 credit is earned and can be carried forward for not more than five (5) succeeding tax years.

81 (e) Credits allowed to a company, which is a subchapter S corporation, partnership, or a
82 limited liability company that is taxed as a partnership, shall be passed through respectively to
83 persons designated as partners, members or owners on a pro rata basis or pursuant to an executed
84 agreement among such persons designated as subchapter S corporation shareholders, partners, or
85 members documenting an alternate distribution method without regard to their sharing of other
86 tax or economic attributes of such entity.

87 (f) If the company has not claimed the tax credits in whole or part, taxpayers eligible for
88 the tax credits may assign, transfer or convey the tax credits, in whole or in part, by sale or
89 otherwise to any individual or entity and such assignee of the tax credits that have not claimed
90 the tax credits in whole or part may assign, transfer or convey the tax credits, in whole or in part,
91 by sale or otherwise to any individual or entity. The assignee of the tax credits may use acquired

92 credits to offset up to one hundred percent (100%) of the tax liabilities otherwise imposed
93 pursuant to this chapter. The assignee may apply the tax credit against taxes imposed on the
94 assignee for not more than three (5) succeeding tax years. The assignor shall perfect the transfer
95 by notifying the commissioner of revenue, in writing, within thirty (30) calendar days following
96 the effective date of the transfer and shall provide any information as may be required by the
97 commissioner to administer and carry out the provisions of this section.

98 (g) For purposes of this chapter, any assignment or sales proceeds received by the
99 assignor for its assignment or sale of the tax credits allowed pursuant to this section shall be
100 exempt from this title.

101 (h) In the case of a corporation, this credit is only allowed against the tax of a corporation
102 included in a consolidated return that qualifies for the credit and not against the tax of other
103 corporations that may join in the filing of a consolidated tax return.

104 (i) The applicant shall properly prepare, sign and submit to the Massachusetts office of
105 travel and tourism an application for initial certification of the theater production. The
106 application shall include such information and data as the office deems reasonably necessary for
107 the proper evaluation and administration of said application, including, but not limited to, any
108 information about the theater production company and a specific Massachusetts live theater or
109 musical production. The office shall review the completed application and determine whether it
110 meets the requisite criteria and qualifications for the initial certification for the production. If the
111 initial certification is granted, the office shall issue a notice of initial certification of the eligible
112 theater production to the theater production company and to the commissioner. The notice shall
113 state that, after appropriate review, the initial application meets the appropriate criteria for
114 conditional eligibility. The notice of initial certification will provide a unique identification
115 number for the production and is only a statement of conditional eligibility for the production
116 and, as such, does not grant or convey any Massachusetts tax benefits.

117 (j) Upon completion of an eligible theater production, the applicant shall properly
118 prepare, sign and submit to the office an application for final certification of the eligible theater
119 production. The final application shall also contain a cost report and an "accountant's
120 certification." The office and commissioner may rely without independent investigation, upon
121 the accountant's certification, in the form of an opinion, confirming the accuracy of the
122 information included in the cost report. Upon review of a duly completed and filed application
123 and upon no later than thirty (30) days of submission thereof, the commissioner will make a
124 determination pertaining to the final certification of the eligible theater production and the
125 resultant tax credits.

126 (k) Upon determination that the company qualifies for final certification and the resultant
127 tax credits, the commissioner shall issue to the company: (1) an eligible theater production
128 certificate; and (2) a tax credit certificate in an amount in accordance with this section (b) hereof.

129 A musical and theatrical production company is prohibited from using state funds, state loans or
130 state guaranteed loans to qualify for the live theater infrastructure tax credit. All documents that
131 are issued by the office pursuant to this section shall reference the identification number that was
132 issued to the production as part of its initial certification.

133 (l) The Massachusetts office of travel and tourism, in consultation as needed with the
134 commissioner of revenue, shall promulgate such rules and regulations as are necessary to carry
135 out the intent and purposes of this chapter in accordance with the general guidelines provided
136 herein for the certification of the production and the resultant production credit.

137 (m) If information comes to the attention of the Massachusetts Office of Travel and
138 Tourism that is materially inconsistent with representations made in an application, the office
139 may deny the requested certification. In the event that tax credits or a portion of tax credits are
140 subject to recapture for ineligible costs and such tax credits have been transferred, assigned
141 and/or allocated, the state will pursue its recapture remedies and rights against the applicant of
142 the theater production tax credits. No redress shall be sought against assignees, sellers,
143 transferees or allocates of such credits.

144 (n) No credits shall be issued on or after January 1, 2021 unless the production has
145 received initial certification under this section prior to January 1, 2021.