

**SENATE . . . . . No. 1878**

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**The Commonwealth of Massachusetts**

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**In the Year Two Thousand Nine**  
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An Act establishing the massachusetts cultural trust fund..

*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. The general court finds: that it is in the interest of the commonwealth to  
2 promote the prosperity and general welfare of all citizens by enhancing the vitality of our cities,  
3 towns and neighborhoods; that art, history, and humanities contribute immeasurably to the  
4 quality of life, the economy, tourism industry and education; that cultural organizations  
5 throughout the commonwealth play an invaluable role in ensuring that the benefits of the art,  
6 history, and humanities are extended to the people and communities of the commonwealth; that  
7 these vital cultural organizations have been undercapitalized and have been subject to  
8 inconsistent funding as a result of fluctuating economic conditions; and that the establishment of  
9 a permanent, interest generating fund as an additional source of revenue for nonprofit art,  
10 history, and humanities organizations, specifically for the building of endowments, the  
11 improvement of institutional and financial stability, and investment in arts related economic  
12 development projects is essential to quality of life in the commonwealth.

13           SECTION 2. Chapter 10 of the General Laws is hereby amended by inserting after  
14 section 52, as appearing in the 2004 Official Edition, the following section:-

15           Section 52A. (a) There is hereby established upon the books of the commonwealth a  
16 separate trust fund to be known as the Massachusetts Cultural Trust Fund, the purpose of which  
17 shall be to finance, when fully vested, the operations of the Massachusetts cultural council,  
18 established in section 52, and the activities and programs of organizations, profit or non profit,  
19 public or private, within the commonwealth and concerned with the arts, history, humanities,  
20 interpretive sciences. Said fund shall be considered "fully vested" when the treasurer certifies to  
21 the comptroller, the fiscal affairs division, the house and senate committees on ways and means,  
22 the joint committee on tourism arts and cultural development and the joint committee on  
23 economic development and emerging technologies that the fund has accrued \$1,000,000,000 of  
24 principal. Said fund shall

25           (b) In conjunction with the preparation of the commonwealth's comprehensive annual  
26 financial report, the comptroller shall prepare and issue an annual report detailing the revenues  
27 and expenditures of the fund.

28           (c) The fund shall be managed by the state treasurer. All transactions affecting the fund  
29 including, but not limited to, all amounts credited to and all expenditures, transfers or allocations  
30 made from the fund, shall be recorded by subsidiary on the Massachusetts management  
31 accounting and reporting system.

32           (d) The trust fund shall be classified by the comptroller as a non-budgeted fund of the  
33 commonwealth. Amounts credited to the fund, including both principal and earnings, shall not  
34 be subject to the calculation of the consolidated net surplus pursuant to sections 2H and 5C of  
35 chapter 29.

36 (e) Earnings and interest credited to said fund shall be expended, when the fund is fully  
37 vested, by the Massachusetts Cultural Council, in accordance with the provisions of the strategic  
38 plan for the creative economy, pursuant to the provisions of paragraph (i), to supplant and  
39 supersede the appropriations of the Massachusetts Cultural Council in the preceding fiscal year.

40 (f) The council shall administer the expenditure of the income, earnings and interest in  
41 the Massachusetts Cultural Trust Fund, when fully vested, to (i) finance the operations and grant-  
42 making programs of the council and (ii) finance the facilities, activities and programs of  
43 Massachusetts-based organizations in the creative economy industries, both for-profit and non-  
44 profit, concerned with the arts, humanities, interpretive sciences, community arts and local arts  
45 and (iii) support and leverage investment in the creative economy, including but not limited to  
46 grants, loans, and equity investments in galleries and museums, arts and cultural-based  
47 commercial enterprises, centers of excellence in the arts, organizations and educational  
48 institutions, and real estate developments that include both affordable and market rate housing or  
49 studio space for artists, including but not limited to mill rehabilitation, and so-called second-  
50 story investments, artist live-work space, and the development of gallery streets.

51 (g) No more than 20 per cent of the moneys transferred to the fund each year shall be  
52 deposited within the Massachusetts Development Finance Agency, created pursuant to chapter  
53 23G. The funds shall be invested by the Massachusetts Development Finance Agency in  
54 projects that further the arts including, but not limited to, galleries and museums, arts and  
55 cultural-based companies, organizations and educational institutions, and real estate  
56 developments that include housing or studio space for artists. The monies may be used to make  
57 equity investments or loans. Net earnings on funds so invested shall be remitted to the  
58 Massachusetts Cultural Trust Fund to be reinvested or distributed to the Massachusetts cultural

59 council. The Massachusetts Development Finance Agency shall be allowed to charge related  
60 expenses to the fund including staff time and overhead and out of pocket expenses. Funds  
61 managed by the Massachusetts Development Finance Agency shall be used to further the  
62 mission of the Massachusetts Cultural Trust Fund and as opposed to maximizing financial  
63 returns.

64 (h) The Massachusetts Cultural Trust Fund shall be credited with (1) all amounts  
65 transferred pursuant to subparagraph (1) of section 5C of chapter 29; (2) any appropriation,  
66 grant, gift or other contribution explicitly made to the trust fund; (3) income derived from the  
67 investment of amounts credited to the trust fund.

68 (i) The Massachusetts Cultural Council shall, on annual basis, not later than December 1,  
69 publish a strategic plan on the cultural economy recommending to the Massachusetts General  
70 Court the most effective and prudent uses of the income, earnings and interest available in said  
71 trust fund for the financing of the operations of the Massachusetts Cultural Council and the  
72 financing of the facilities, activities and programs of organizations, both for-profit and non-  
73 profit, within the Commonwealth concerned with the arts, humanities, interpretive sciences,  
74 community arts and local arts.

75 (j) Said strategic plan shall outline the role of state agencies as they support the creative  
76 economy industries, including a projection of any future costs for the Massachusetts Cultural  
77 Council, annualization, and savings resulting from any financing recommendations. Said  
78 financing recommendations shall not be predicated upon unexpended amounts from the current  
79 fiscal year being automatically made available for re-appropriation for the same purpose in the  
80 subsequent fiscal year, but nothing contained herein shall preclude the council from making a

81 recommendation to re-appropriate any unexpended amounts for the same or any other purpose  
82 authorized by this chapter.

83 (k) Said strategic plan shall give priority to the funding of annualization for programs and  
84 services obligated in prior fiscal years before recommending financing for the expansion of  
85 services or the provision of new services.

86 (l) Said strategic plan shall evaluate the performance and effectiveness of all programs  
87 funded by the income, earnings, and interest of said trust fund. The Massachusetts Cultural shall  
88 undertake a sunset review, so-called, of any such program or service that does not achieve  
89 performance expectations. Said commission shall monitor the extent to which funding from the  
90 trust complements or expands upon previously implemented arts and culture programs and  
91 services in the Commonwealth.

92 (m) The comptroller shall promptly certify to the fiscal affairs division, the house and  
93 senate committees on ways and means, the joint committee on tourism, arts, and cultural  
94 development and the joint committee on economic development and emerging technologies the  
95 amount and date when any payments are made or credited to the fund.

96 (n) Not later than October 31 of each year, the comptroller shall certify to the treasurer,  
97 the fiscal affairs division, the house and senate committees on ways and means, the joint  
98 committee on tourism, arts and cultural development and the joint committee on economic  
99 development and emerging technologies the balance in the Massachusetts Cultural Trust Fund  
100 and the total return generated by the principal of the trust fund during the prior 12 month period  
101 ending on June 30.

102 SECTION 3. Chapter 29 of the General Laws is hereby amended by striking out section  
103 5C, as so appearing, and inserting in place thereof the following section:-

104 Section 5C. The comptroller shall annually, on or before October 31, certify to the  
105 commissioner of administration the amount of the consolidated net surplus in the budgetary  
106 funds at the close of the preceding fiscal year. The amounts so certified shall be disposed as  
107 follows:

108 (1) an amount equal to \$100,000,000 shall be transferred to the Massachusetts Cultural  
109 Trust Fund on an annual basis until the state treasurer certifies to the comptroller, the fiscal  
110 affairs divisions the house and senate committees on ways and means, the joint committee on  
111 tourism arts and cultural development and the joint committee on economic development and  
112 emerging technologies that the fund has accrued \$1,000,000,000 in principal.

113 (2) an amount equal to 1/2 of 1 per cent of the total revenue from taxes in the preceding  
114 fiscal year shall be available to be used as revenue for the current fiscal year and 1/2 of 1 per cent  
115 of the total revenue from taxes in the preceding fiscal year shall be transferred to the  
116 Stabilization Fund;

117 (3) any remaining amount of the consolidated net surplus after amounts made available  
118 in clauses (1) and (2) shall be transferred to the Stabilization Fund; and

119 (4) transfers specified in this section shall be made from the undesignated fund balances  
120 in the budgetary funds proportionally from said undesignated fund balances; but, the transfer  
121 shall not cause a deficit in any of those funds.