

HOUSE No. 3311

The Commonwealth of Massachusetts

PRESENTED BY:

Nick Collins and Paul McMurtry

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 relating to live theater productions.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Nick Collins</i>	<i>4th Suffolk</i>
<i>Paul McMurtry</i>	<i>11th Norfolk</i>
<i>Linda Dorcena Forry</i>	<i>First Suffolk</i>
<i>Kenneth I. Gordon</i>	<i>21st Middlesex</i>
<i>Timothy R. Whelan</i>	<i>1st Barnstable</i>
<i>Thomas A. Golden, Jr.</i>	<i>16th Middlesex</i>
<i>Steven S. Howitt</i>	<i>4th Bristol</i>
<i>Angelo J. Puppolo, Jr.</i>	<i>12th Hampden</i>
<i>David T. Vieira</i>	<i>3rd Barnstable</i>
<i>Adrian Madaro</i>	<i>1st Suffolk</i>
<i>Mathew Muratore</i>	<i>1st Plymouth</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>
<i>Daniel J. Ryan</i>	<i>2nd Suffolk</i>
<i>Carmine L. Gentile</i>	<i>13th Middlesex</i>
<i>Michael F. Rush</i>	<i>Norfolk and Suffolk</i>
<i>Louis L. Kafka</i>	<i>8th Norfolk</i>
<i>Tackey Chan</i>	<i>2nd Norfolk</i>
<i>Aaron Vega</i>	<i>5th Hampden</i>

<i>Elizabeth A. Poirier</i>	<i>14th Bristol</i>
<i>Daniel M. Donahue</i>	<i>16th Worcester</i>
<i>Jeffrey N. Roy</i>	<i>10th Norfolk</i>
<i>Angelo L. D'Emilia</i>	<i>8th Plymouth</i>
<i>Antonio F. D. Cabral</i>	<i>13th Bristol</i>
<i>John H. Rogers</i>	<i>12th Norfolk</i>
<i>Solomon Goldstein-Rose</i>	<i>3rd Hampshire</i>
<i>William C. Galvin</i>	<i>6th Norfolk</i>

HOUSE No. 3311

By Messrs. Collins of Boston and McMurtry of Dedham, a petition (accompanied by bill, House, No. 3311) of Nick Collins, Paul McMurtry and others for legislation to establish a live theater tax credit. Revenue.

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act relating to live theater productions.

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

3 (t) There shall be established a live theater tax credit program under which a live
4 theater company doing business with a Massachusetts based theater venue, theater company,
5 theater presenter or producer may be eligible. The credit may be claimed against the taxes due
6 pursuant to this chapter or Chapter 63. The credit shall be established to support the expansion of
7 pre-Broadway, pre off-Broadway live theater, Broadway tour launches and World Premieres and
8 shall assist in the development of long run show development and growth.

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

11 “Commissioner” means the commissioner of revenue.

12 “Company” means a live theater company, however organized.

13 “Eligible theater production” means a live stage musical or theatrical production or tour
14 being presented in a qualified production facility, as defined in this chapter that is either: (a) a
15 Pre-Broadway production, or (b) a pre off-Broadway production, or (c) a Broadway Tour Launch
16 or (d) a World Premiere.

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

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

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

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

34 directly attributable to the eligible theater production and shall be limited to the first \$100,000 of
35 wages incurred or paid to each employee of an eligible theater production in each tax year.

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

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

43 “Broadway Tour Launch” means a live stage production that, in its original or adaptive
44 version, is performed in a qualified production facility that was originally presented in New York
45 City’s Broadway theater district and opens its US tour in Massachusetts.

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

53 “Qualified Production Facility” means a facility located in the State of Massachusetts in
54 which live theatrical productions are, or are intended to be, exclusively presented that contains at

55 least one stage, a seating capacity of three hundred fifty (350) or more seats, and dressing rooms,
56 storage areas, and other ancillary amenities necessary for the Eligible theater production.

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

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

70 “World Premiere” means a live stage production performed in a qualified production
71 facility of an original work which has never been commercially presented in public before.

72 (2) Any person, firm, partnership, trust, estate or other entity that receives an eligible
73 theater production certificate shall be allowed a tax credit equal to thirty-five percent (35%) of
74 production and performance expenditures which shall consist of payroll and twenty-five percent
75 (25%) of the production and performance expenditures and transportation expenditures for the
76 eligible theater production and to be computed as provided in this chapter against a tax imposed

77 by this chapter. Said credit shall not exceed five million dollars (\$5,000,000) and shall be limited
78 to certified production cost directly attributable to activities in the state and transportation
79 expenditures defined above. The total production budget shall be a minimum of one hundred
80 thousand dollars (\$100,000).

81 (3) No more than five million dollars (\$5,000,000) in total may be issued for any tax year
82 for musical and theatrical production tax credits pursuant to this chapter.

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

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

91 (6) If the company has not claimed the tax credits in whole or part, taxpayers eligible for
92 the tax credits may assign, transfer or convey the tax credits, in whole or in part, by sale or
93 otherwise to any individual or entity and such assignee of the tax credits that have not claimed
94 the tax credits in whole or part may assign, transfer or convey the tax credits, in whole or in part,
95 by sale or otherwise to any individual or entity. The assignee of the tax credits may use acquired
96 credits to offset up to one hundred percent (100%) of the tax liabilities otherwise imposed
97 pursuant to this chapter or Chapter 63, as appropriate. The assignee may apply the tax credit
98 against taxes imposed on the assignee for not more than three (3) succeeding tax years. The

99 assignor shall perfect the transfer by notifying the commissioner of revenue, in writing, within
100 thirty (30) calendar days following the effective date of the transfer and shall provide any
101 information as may be required by the commissioner to administer and carry out the provisions
102 of this section.

103 (7) For purposes of this chapter, any assignment or sales proceeds received by the
104 assignor for its assignment or sale of the tax credits allowed pursuant to this section and Section
105 38GG of Chapter 63 shall be exempt from this title.

106 (8) In the case of a corporation, this credit is only allowed against the tax of a corporation
107 included in a consolidated return that qualifies for the credit and not against the tax of other
108 corporations that may join in the filing of a consolidated tax return, provided, however, that in
109 the case of a corporation that files a consolidated return with one or more other corporations with
110 operations in Massachusetts, the credit will be allowed to be included in a consolidated return
111 with respect to such corporations with operations in Massachusetts only.

112 (9) The applicant or applicants shall properly prepare, sign and submit to the
113 Massachusetts office of travel and tourism an application for initial certification of the theater
114 production. The application shall include such information and data as the office deems
115 reasonably necessary for the proper evaluation and administration of said application, including,
116 but not limited to, any information about the theater production company or their related
117 partners/presenters and a specific Massachusetts live theater or musical production. The office
118 shall review the completed applications and determine whether it meets the requisite criteria and
119 qualifications for the initial certification for the production and/or presentation. If the initial
120 certification is granted, the office shall issue a notice of initial certification of the eligible theater

121 production and/or presentation to the theater production company, co-producer or presenter and
122 to the commissioner. The notice shall state that, after appropriate review, the initial application
123 meets the appropriate criteria for conditional eligibility. The notice of initial certification will
124 provide a unique identification number for the production/presentation and is only a statement of
125 conditional eligibility for the production/presentation and, as such, does not grant or convey any
126 Massachusetts tax benefits.

127 (10) Upon completion of an eligible theater production, the applicant or applicants shall
128 properly prepare, sign and submit to the office an application for final certification of the eligible
129 theater production. The final application shall also contain a cost report and an “accountant’s
130 certification.” The office and commissioner may rely without independent investigation, upon
131 the accountant’s certification, in the form of an opinion, confirming the accuracy of the
132 information included in the cost report. Upon review of a duly completed and filed application
133 and upon no later than thirty (30) days of submission thereof, the commissioner will make a
134 determination pertaining to the final certification of the eligible theater production and the
135 resultant tax credits.

136 (11) Upon completion of an eligible theater production, the applicant or applicants shall
137 deposit an amount equal to 15% of the tax credits received pursuant to this chapter into the
138 Massachusetts Cultural Council Facilities Fund. The Massachusetts Cultural Council shall use
139 these funds to address issues related to the workforce development and sustainability of the
140 Massachusetts live theater industry.

141 (12) Upon determination that the company qualifies for final certification and the
142 resultant tax credits, the commissioner shall issue to the company: (1) an eligible theater

143 production certificate; and (2) a tax credit certificate in an amount in accordance with this section
144 (b) hereof. A musical and theatrical production company is prohibited from using state funds,
145 state loans or state guaranteed loans to qualify for the live theater infrastructure tax credit. All
146 documents that are issued by the office pursuant to this section shall reference the identification
147 number that was issued to the production as part of its initial certification.

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

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

159 (15) No credits shall be issued on or after January 1, 2022 unless the production has
160 received initial certification under this section prior to January 1, 2022.

161 SECTION 2. Chapter 63 of the General Laws, as appearing in the 2008 Official Edition,
162 is further amended by adding the following section:

163 Section 38GG. There shall be established a live theater tax credit program under which a
164 live theater company doing business with a Massachusetts based theater venue, theater company,

165 theater presenter or producer may be eligible. The credit may be claimed against the taxes due
166 pursuant to this chapter or Chapter 62. The credit shall be established to support the expansion of
167 pre-Broadway, pre off-Broadway live theater, Broadway tour launches and World Premieres and
168 shall assist in the development of long run show development and growth.

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

171 “Commissioner” means the commissioner of revenue.

172 “Company” means a live theater company, however organized.

173 “Eligible theater production” means a live stage musical or theatrical production or tour
174 being presented in a qualified production facility, as defined in this chapter that is either: (a) a
175 Pre-Broadway production, or (b) a pre off-Broadway production, or (c) a Broadway Tour Launch
176 or (d) a World Premiere.

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

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

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

185 "Payroll" means all salaries, wages, fees, and other compensation wages including, but
186 not limited to, taxes, benefits, and any other consideration incurred or paid to talent and non-
187 talent employees of the applicant who are residents of the commonwealth of Massachusetts for
188 services rendered to and on behalf of an eligible theater production. The expenditure shall be
189 incurred or paid by the applicant for services related to any portion of an eligible theater
190 production from its pre-production stages, including, but not limited to, (a) the writing of the
191 script, (b) casting, (c) hiring of service providers, (d) purchases from vendors, (e) marketing, (f)
192 advertising, (g) public relations, (h) load in, (i) rehearsals, (j) performances, (k) other eligible
193 theater production related activities, (l) load out; provided further, said labor expenditure shall be
194 directly attributable to the eligible theater production and shall be limited to the first \$100,000 of
195 wages incurred or paid to each employee of an eligible theater production in each tax year.

196 "Pre-Broadway Production" means a live stage production that, in its original or adaptive
197 version, is performed in a qualified production facility having a presentation scheduled for New
198 York City's Broadway theater district within (12) months after its Massachusetts presentation.

199 "Pre-Off Broadway Production" means a live stage production that, in its original or
200 adaptive version, is performed in a qualified production facility having a presentation scheduled
201 for New York City's Off-Broadway's theater district within (12) months after its Massachusetts
202 presentation.

203 "Broadway Tour Launch" means a live stage production that, in its original or adaptive
204 version, is performed in a qualified production facility that was originally presented in New York
205 City's Broadway theater district and opens its US tour in Massachusetts.

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

213 “Qualified Production Facility” means a facility located in the State of Massachusetts in
214 which live theatrical productions are, or are intended to be, exclusively presented that contains at
215 least one stage, a seating capacity of three hundred fifty (350) or more seats, and dressing rooms,
216 storage areas, and other ancillary amenities necessary for the Eligible theater production.

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

221 “Transportation expenditures” means expenditures for the packaging, crating, and
222 transportation both to the state for use in a qualified theater production of sets, costumes, or other
223 tangible property constructed or manufactured out of state, and/or from the state after use in a
224 qualified theater production of sets, costumes, or other tangible property constructed or
225 manufactured in this state and the transportation of the cast and crew to and from the state. Such
226 term shall include the packaging, crating, and transporting of property and equipment used for
227 special and visual effects, sound, lighting, and staging, costumes, wardrobes, make-up and

228 related accessories and materials, as well as any other performance or production-related
229 property and equipment.

230 “World Premiere” means a live stage production performed in a qualified production
231 facility of an original work which has never been commercially presented in public before.

232 (b) Any person, firm, partnership, trust, estate or other entity that receives an eligible
233 theater production certificate shall be allowed a tax credit equal to thirty-five percent (35%) of
234 production and performance expenditures which shall consist of payroll and twenty –five percent
235 (25%) of the production and performance expenditures and transportation expenditures for the
236 eligible theater production and to be computed as provided in this chapter against a tax imposed
237 by this chapter. Said credit shall not exceed five million dollars (\$5,000,000) and shall be limited
238 to certified production cost directly attributable to activities in the state and transportation
239 expenditures defined above. The total production budget shall be a minimum of one hundred
240 thousand dollars (\$100,000).

241 (c) No more than five million dollars (\$5,000,000) in total may be issued for any tax year
242 for musical and theatrical production tax credits pursuant to this chapter or chapter 62.

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

245 (e) If the company has not claimed the tax credits in whole or part, taxpayers eligible for
246 the tax credits may assign, transfer or convey the tax credits, in whole or in part, by sale or
247 otherwise to any individual or entity and such assignee of the tax credits that have not claimed
248 the tax credits in whole or part may assign, transfer or convey the tax credits, in whole or in part,
249 by sale or otherwise to any individual or entity. The assignee of the tax credits may use acquired

250 credits to offset up to one hundred percent (100%) of the tax liabilities otherwise imposed
251 pursuant to this chapter or Chapter 62, as appropriate. The assignee may apply the tax credit
252 against taxes imposed on the assignee for not more than three (3) succeeding tax years. The
253 assignor shall perfect the transfer by notifying the commissioner of revenue, in writing, within
254 thirty (30) calendar days following the effective date of the transfer and shall provide any
255 information as may be required by the commissioner to administer and carry out the provisions
256 of this section.

257 (f) For purposes of this chapter, any assignment or sales proceeds received by the
258 assignor for its assignment or sale of the tax credits allowed pursuant to this section and
259 subsection (t) of section 6 of Chapter 62 shall be exempt from this title.

260 (g) In the case of a corporation, this credit is only allowed against the tax of a corporation
261 included in a consolidated return that qualifies for the credit and not against the tax of other
262 corporations that may join in the filing of a consolidated tax return, provided, however, that in
263 the case of a corporation that files a consolidated return with one or more other corporations with
264 operations in Massachusetts, the credit will be allowed to be included in a consolidated return
265 with respect to such corporations with operations in Massachusetts only.

266 (h) The applicant or applicants shall properly prepare, sign and submit to the
267 Massachusetts office of travel and tourism an application for initial certification of the theater
268 production. The application shall include such information and data as the office deems
269 reasonably necessary for the proper evaluation and administration of said application, including,
270 but not limited to, any information about the theater production company or their related
271 partners/presenters and a specific Massachusetts live theater or musical production. The office

272 shall review the completed applications and determine whether it meets the requisite criteria and
273 qualifications for the initial certification for the production and/or presentation. If the initial
274 certification is granted, the office shall issue a notice of initial certification of the eligible theater
275 production and/or presentation to the theater production company, co-producer or presenter and
276 to the commissioner. The notice shall state that, after appropriate review, the initial application
277 meets the appropriate criteria for conditional eligibility. The notice of initial certification will
278 provide a unique identification number for the production/presentation and is only a statement of
279 conditional eligibility for the production/presentation and, as such, does not grant or convey any
280 Massachusetts tax benefits.

281 (i) Upon completion of an eligible theater production, the applicant or applicants shall
282 properly prepare, sign and submit to the office an application for final certification of the eligible
283 theater production. The final application shall also contain a cost report and an “accountant’s
284 certification.” The office and commissioner may rely without independent investigation, upon
285 the accountant’s certification, in the form of an opinion, confirming the accuracy of the
286 information included in the cost report. Upon review of a duly completed and filed application
287 and upon no later than thirty (30) days of submission thereof, the commissioner will make a
288 determination pertaining to the final certification of the eligible theater production and the
289 resultant tax credits.

290 (j) Upon determination that the company qualifies for final certification and the resultant
291 tax credits, the commissioner shall issue to the company: (1) an eligible theater production
292 certificate; and (2) a tax credit certificate in an amount in accordance with this section (b) hereof.
293 A musical and theatrical production company is prohibited from using state funds, state loans or
294 state guaranteed loans to qualify for the live theater infrastructure tax credit. All documents that

295 are issued by the office pursuant to this section shall reference the identification number that was
296 issued to the production as part of its initial certification.

297 (k) Upon completion of an eligible theater production, the applicant or applicants shall
298 deposit an amount equal to 15% of the tax credits received pursuant to this chapter into the
299 Massachusetts Cultural Council Facilities Fund. The Massachusetts Cultural Council shall use
300 these funds to address issues related to the workforce development and sustainability of the
301 Massachusetts live theater industry.

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

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

313 (n) No credits shall be issued on or after January 1, 2022 unless the production has
314 received initial certification under this section prior to January 1, 2022.