

# SENATE . . . . . No. 2405

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Senate, June 15, 2023 -- Text of amendment (51) (offered by Senator Collins) to the Ways and Means amendment (Senate, No. 2397) to the House Bill to improve the Commonwealth's competitiveness, affordability, and equity.

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## The Commonwealth of Massachusetts

In the One Hundred and Ninety-Third General Court  
(2023-2024)

1 by inserting the following section:-

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

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

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

13 "Commissioner", the commissioner of revenue.

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

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

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

25           “Office” means the Massachusetts Office of Travel and Tourism.

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

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

37 “Pre-Broadway Production” means a live stage production that, in its original or adaptive  
38 version, is performed in a qualified production facility having a presentation scheduled for New  
39 York City’s Broadway theater district within (24) months after its Massachusetts presentation.

40 “Pre-Off Broadway Production” means a live stage production that, in its original or  
41 adaptive version, is performed in a qualified production facility having a presentation scheduled  
42 for New York City’s Off-Broadway s theater district within (24) months after its Massachusetts  
43 presentation.

44 “National Tour Launch” means a live stage production that, in its original or adaptive  
45 version, is performed in a qualified production facility and opens its National tour in  
46 Massachusetts.

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

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

56 least one stage, a seating capacity of one hundred seventy-five (175) or more seats, and dressing  
57 rooms, storage areas, and other ancillary amenities necessary for the Eligible theater production.

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

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

71 (b) Any person, firm, partnership, corporation, trust, estate or other entity that receives an  
72 eligible theater production certificate shall be allowed a tax credit equal to thirty-five percent  
73 (35%) of the total in state labor costs and twenty five percent (25%) of the production and  
74 performance expenditures and transportation expenditures as well as all out of state labor costs  
75 for the eligible theater production and to be computed as provided in this chapter against a tax  
76 imposed by this chapter. Said credit shall not exceed five million dollars (\$5,000,000) and shall  
77 be limited to certified production cost directly attributable to activities in the state and

78 transportation expenditures defined above. The total production budget shall be a minimum of  
79 one hundred thousand dollars (\$100,000).

80 (c) No more than five million dollars (\$5,000,000) in total may be issued for any tax year  
81 for musical and theatrical production tax credits pursuant to this chapter. If the total amount of  
82 allocated credits applied for in any particular year exceeds the aggregate amount of tax credits  
83 allowed for such year under this chapter, such excess shall be treated as having been applied for  
84 on the first day of the subsequent year.

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

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

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

100 assignee for not more than five (5) succeeding tax years. The assignor shall perfect the transfer  
101 by notifying the commissioner of revenue, in writing, within thirty (30) calendar days following  
102 the effective date of the transfer and shall provide any information as may be required by the  
103 commissioner to administer and carry out the provisions of this section.

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

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

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

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

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

136 (k) Upon determination that the company qualifies for final certification and the resultant  
137 tax credits, the commissioner shall issue to the company: (1) an eligible theater production  
138 certificate; and (2) a tax credit certificate in an amount in accordance with section (b) hereof. A  
139 musical and theatrical production company is prohibited from using state funds, state loans or  
140 state guaranteed loans to qualify for the live theater tax credit. All documents that are issued by  
141 the office pursuant to this section shall reference the identification number that was issued to the  
142 production as part of its initial certification.

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

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

154 (n) No credits shall be issued on or after January 1, 2026 unless the production has  
155 received initial certification under this section prior to January 1, 2026.

156 (o) The secretary of housing and economic development, in conjunction with the  
157 commissioner of revenue, shall make a report on the impact of the live theater pilot program and  
158 deliver report to the president of the state senate, the senate committee on ways and means, the  
159 speaker of the house of representatives, the house committee on ways and means and the joint  
160 committee on economic development and emerging technologies by December 31, 2025. The  
161 secretary and commissioner shall collaborate with the live theater industry to collect the relevant  
162 data for the report. Said report shall include but not be limited to the following information  
163 regarding live theater in Massachusetts during the pilot program:

164 1.) The number of shows that have come to Massachusetts since passage of this section.

- 165           2.) The number of live show days since passage of this section.
- 166           3.) Analysis of the number of shows and live show days after passage of this section as  
167 compared to before passage of this section.
- 168           4.) Total spending by live theater productions on local businesses and vendors including  
169 supplies, hotels, car rental, food and beverage, and items related to the live theater production.
- 170           5.) Total spending on local labor to set-up, support and take down each production  
171 including total work hours.
- 172           6.) The number of ticket orders from outside Massachusetts.
- 173           7.) The number of ticket orders from outside the United States.
- 174           8.) The impact on local businesses in proximity to live theaters including hotel room  
175 nights and restaurants.