

**HOUSE . . . . . No. 2471**

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 regarding pre-Broadway productions.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Nick Collins</i>	<i>4th Suffolk</i>
<i>Paul McMurtry</i>	<i>11th Norfolk</i>
<i>Ann-Margaret Ferrante</i>	<i>5th Essex</i>
<i>Tackey Chan</i>	<i>2nd Norfolk</i>
<i>Aaron Vega</i>	<i>5th Hampden</i>
<i>Ellen Story</i>	<i>3rd Hampshire</i>
<i>Angelo J. Puppolo, Jr.</i>	<i>12th Hampden</i>
<i>Louis L. Kafka</i>	<i>8th Norfolk</i>
<i>Stephen L. DiNatale</i>	<i>3rd Worcester</i>
<i>Cory Atkins</i>	<i>14th Middlesex</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>
<i>Daniel M. Donahue</i>	<i>16th Worcester</i>
<i>Linda Dorcena Forry</i>	<i>First Suffolk</i>
<i>Jeffrey N. Roy</i>	<i>10th Norfolk</i>
<i>Kenneth I. Gordon</i>	<i>21st Middlesex</i>
<i>James Arciero</i>	<i>2nd Middlesex</i>
<i>Gailanne M. Cariddi</i>	<i>1st Berkshire</i>
<i>Tricia Farley-Bouvier</i>	<i>3rd Berkshire</i>

<i>Bruce E. Tarr</i>	<i>First Essex and Middlesex</i>
<i>Peter V. Kocot</i>	<i>1st Hampshire</i>
<i>Barbara L'Italien</i>	<i>Second Essex and Middlesex</i>
<i>William C. Galvin</i>	<i>6th Norfolk</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>
<i>Jennifer L. Flanagan</i>	<i>Worcester and Middlesex</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>
<i>John J. Mahoney</i>	<i>13th Worcester</i>
<i>Anne M. Gobi</i>	<i>Worcester, Hampden, Hampshire and Middlesex</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>
<i>Thomas A. Golden, Jr.</i>	<i>16th Middlesex</i>
<i>Michelle M. DuBois</i>	<i>10th Plymouth</i>
<i>Daniel J. Hunt</i>	<i>13th Suffolk</i>
<i>Paul R. Heroux</i>	<i>2nd Bristol</i>
<i>Jerald A. Parisella</i>	<i>6th Essex</i>

**HOUSE . . . . . No. 2471**

By Messrs. Collins of Boston and McMurtry of Dedham, a petition (accompanied by bill, House, No. 2471) of Nick Collins and others for legislation to establish a live theater tax credit program . Revenue.

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court  
(2015-2016)

An Act regarding pre-Broadway 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 Official  
2 Edition, is further amended by adding the following section:

3 Section 38DD. There shall be established a live theater tax credit program under which a  
4 live 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. The credit shall be established to support the expansion of pre-  
7 Broadway and pre off-Broadway live theater and Broadway tour launches and shall assist in the  
8 development of long run show development and growth.

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

11 “Commissioner”, the commissioner of revenue.

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

16           “Eligible theater production certificate” means a certificate issued by the Massachusetts  
17 Office of Travel and Tourism certifying that the production is an eligible theater production that  
18 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 three hundred fifty (350) 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 three million dollars (\$3,000,000) in total may be issued for any tax  
78 year 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 of such companies on a pro rata basis or  
84 pursuant to an executed agreement among such persons designated as subchapter S corporation  
85 shareholders, partners, or members documenting an alternate distribution method without regard  
86 to their sharing of other 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, provided, however, that in  
104 the case of a corporation that files a consolidated return with one or more other corporations with  
105 operations in Massachusetts, the credit will be allowed to be included in a consolidated return  
106 with respect to such corporations with operations in Massachusetts only.

107 (i) The applicant or applicants shall properly prepare, sign and submit to the  
108 Massachusetts office of travel and tourism an application for initial certification of the theater  
109 production. The application shall include such information and data as the office deems  
110 reasonably necessary for the proper evaluation and administration of said application, including,  
111 but not limited to, any information about the theater production company or their related  
112 partners/presenters and a specific Massachusetts live theater or musical production. The office  
113 shall review the completed applications and determine whether it meets the requisite criteria and  
114 qualifications for the initial certification for the production and/or presentation. If the initial  
115 certification is granted, the office shall issue a notice of initial certification of the eligible theater  
116 production and/or presentation to the theater production company, co-producer or presenter and  
117 to the commissioner. The notice shall state that, after appropriate review, the initial application  
118 meets the appropriate criteria for conditional eligibility. The notice of initial certification will  
119 provide a unique identification number for the production/presentation and is only a statement of

120 conditional eligibility for the production/presentation and, as such, does not grant or convey any  
121 Massachusetts tax benefits.

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

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

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

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

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