

**HOUSE . . . . . No. 2711**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

*David Biele*

*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 creating a pilot program to enhance economic and community development through live theatrical arts.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>David Biele</i>	<i>4th Suffolk</i>	<i>1/19/2023</i>

**HOUSE . . . . . No. 2711**

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By Representative Biele of Boston, a petition (accompanied by bill, House, No. 2711) of David Biele for legislation to establish a tax credit program for live theater. Revenue.

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**The Commonwealth of Massachusetts**

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

An Act creating a pilot program to enhance economic and community development through live theatrical arts.

*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 amended by adding the following subsection:

3 Section 38DD. (a) Notwithstanding any general or special law to the contrary, there is  
4 hereby established a pilot program for a live theater tax credit for which a live theater company  
5 doing business with a Massachusetts-based theater venue, theater company, theater presenter or  
6 producer may be eligible. The credit shall be established to support the expansion of pre-  
7 Broadway productions, pre-off Broadway productions and national tour launches, as those terms  
8 are defined in paragraph (1) of subsection (aa) of section 6 of chapter 62 of the General Laws,  
9 and shall assist in the development of long run show development and growth.

10 (b)(1) An applicant for a live theater tax credit shall properly prepare, sign and submit to  
11 the office of travel and tourism an application for initial certification of the theater production.  
12 The initial application shall include information and data the office deems necessary for the

13 evaluation and administration of the application, including, but not limited to, any information  
14 about the theater production company or its related partners or presenters and a specific  
15 Massachusetts live theater or musical production. (2) The office of travel and tourism shall  
16 review the completed application and determine whether it meets the requisite criteria and  
17 qualifications for the initial certification for the production. If the initial certification is granted,  
18 the office shall issue a notice of initial certification of the eligible theater production or  
19 presentation to the theater production company, co-producer or presenter and to the  
20 commissioner of revenue. The notice shall state that, after appropriate review, the initial  
21 application meets the appropriate criteria for eligibility. The notice of initial certification shall  
22 provide a unique identification number for the production and shall be a statement of conditional  
23 eligibility for the production and shall not grant or convey any Massachusetts tax credits or other  
24 benefits.

25 (c)(1) Upon completion of an eligible theater production, the applicant shall properly  
26 prepare, sign and submit to the office of travel and tourism an application for final certification  
27 of the eligible theater production. The final application shall contain a cost report and an  
28 accountant's certification; provided, that an eligible theater production, as defined in paragraph  
29 (1) subsection (aa) of section 6 of chapter 62 of the General Laws, shall not use state funds, state  
30 loans or state guaranteed loans to qualify for the live theater tax credit. The office of travel and  
31 tourism and commissioner of revenue may rely, without independent investigation, upon an  
32 accountant's certification, in the form of an opinion, confirming the accuracy of the information  
33 included in the cost report. (2) Upon review of a duly completed and filed application and not  
34 later than 30 days after submission, the office of travel and tourism, in consultation with the  
35 commissioner of revenue, shall make a determination pertaining to the final certification of the

36 eligible theater production and the tax credits pursuant to said subsection (aa) of said section 6 of  
37 said chapter 62 and section 38KK of chapter 63 of the General Laws. Upon final determination  
38 of eligibility, the office shall issue a final certificate.

39 (d)(1) If the office of travel and tourism or the department of revenue receives  
40 information that is materially inconsistent with representations made in an application, the office  
41 may deny the requested certification.

42 (2) If a tax credit or a portion of a tax credit is subject to recapture for ineligible costs and  
43 such tax credit has been transferred, assigned or allocated, the commonwealth shall pursue its  
44 recapture remedies and rights against the recipient of the theater production tax credit. No  
45 redress shall be sought against assignees, sellers, transferees or allocates of such credit

46 (e) All documents that are issued by the office of travel and tourism pursuant to this  
47 section shall reference the identification number issued to the production as part of its initial  
48 certification.

49 (f) The office of travel and tourism, in consultation with the commissioner of revenue,  
50 shall promulgate rules and regulations to carry out this section.

51 (g) The secretary of housing and economic development, in conjunction with the  
52 commissioner of revenue, shall report on the impact of the live theater tax credit pursuant to  
53 subsection (aa) of section 6 of chapter 62 and section 38KK of chapter 63 of the General Laws  
54 and shall submit the report to the clerks of the house of representatives and the senate, the house  
55 and senate committees on ways and means and the joint committee on economic development  
56 and emerging technologies not later than December 31, 2027. The secretary and commissioner  
57 shall collaborate with the live theater industry to collect the relevant data for the report. Said

58 report shall include, but not be limited to, the following information regarding live theater in the  
59 commonwealth during the pilot program:

60 (i) the number of shows that have been presented in the commonwealth since enactment  
61 of this section;

62 (ii) the number of live show days since enactment of this section;

63 (iii) an analysis of the number of shows and live show days after enactment of this  
64 section as compared to before enactment of this section;

65 (iv) the total spending by live theater productions on local businesses and vendors,  
66 including supplies, hotels, car rental, food and beverage, and items related to the live theater  
67 production;

68 (v) the total expenditure on local labor to set up, support and take down each production,  
69 including total labor hours;

70 (vi) the number of ticket orders from outside the commonwealth;

71 (vii) the number of ticket orders from outside the United States; and

72 (viii) the impact on local businesses in proximity to live theaters, including hotels and  
73 restaurants.

74 (h) No tax credit pursuant to subsection (aa) of section 6 of chapter 62 or section 38KK  
75 of chapter 63 of the General Laws shall be issued on or after January 1, 2028 unless the  
76 production has received initial certification under this section prior to January 1, 2028.

77 SECTION 2. Chapter 63 is hereby further amended by inserting after section 38JJ the  
78 following section:-

79 Section 38KK. (a) As used in this section the following words shall, unless the context  
80 clearly requires otherwise, have the following meanings:

81 “Advertising and public relations expenditure”, a cost incurred within the commonwealth  
82 by an eligible theater production for goods or services related to the marketing, public relations,  
83 creation and placement of print, electronic, television, billboards or other forms of advertising to  
84 promote the eligible theater production.

85 “Eligible theater production”, a live stage musical, dance or theatrical production or tour  
86 being presented in a qualified production facility that is either: (a) a pre-Broadway production;  
87 (b) a pre-off Broadway production; or (c) a national tour launch.

88 “Eligible theater production certificate”, a final certificate issued by the office, in  
89 consultation with the commissioner, certifying that a production is an eligible theater production  
90 that meets the rules or regulations of the office.

91 “National tour launch”, a live stage production that, in its original or adaptive version, is  
92 performed in a qualified production facility and opens its national tour in the commonwealth.

93 “Office”, the office of travel and tourism established in section 13E of chapter 23A.

94 “Payroll”, all salaries, wages, fees and other compensation, including, but not limited to,  
95 taxes, benefits and any other consideration incurred or paid to talent and non-talent employees of  
96 the applicant for services rendered within the commonwealth to and on behalf of an eligible  
97 theater production; provided, that the payroll expenditure shall be incurred or paid by the

98 applicant for services related to any portion of an eligible theater production from its pre  
99 production stages, including, but not limited to: (a) the writing of the script, (b) casting, (c) hiring  
100 of service providers, (d) purchases from vendors, (e) marketing, (f) advertising, (g) public  
101 relations, (h) load in, (i) rehearsals, (j) performances, (k) other eligible theater production related  
102 activities, and (l) load out; and provided further, that the payroll expenditure shall be directly  
103 attributable to the eligible theater production and shall be limited to the first \$100,000 of wages  
104 incurred or paid to each employee of an eligible theater production in each tax year.

105 “Pre-Broadway production”, a live stage production that, in its original or adaptive  
106 version, is performed in a qualified production facility having a presentation scheduled for New  
107 York City’s Broadway theater district within 24 months after its presentation in the  
108 commonwealth.

109 “Pre-off Broadway production”, a live stage production that, in its original or adaptive  
110 version, is performed in a qualified production facility having a presentation scheduled for New  
111 York City’s off-Broadway theater district within 24 months after its presentation in the  
112 commonwealth.

113 “Production and performance expenditures”, a contemporaneous exchange of cash or  
114 cash equivalent for goods or services related to development, production, performance or  
115 operating expenditures incurred in the commonwealth for a qualified theater production,  
116 including, but not limited to, expenditures for design, construction and operation, including sets,  
117 special and visual effects, costumes, wardrobes, make-up, accessories, costs associated with  
118 sound, lighting, staging, advertising and public relations expenditures, facility expenses, rentals,  
119 per diems, accommodations and other related costs.

120 “Qualified production facility”, a facility located in the commonwealth in which live  
121 theater productions are, or are intended to be, exclusively presented that contains at least 1 stage,  
122 a seating capacity of not less than 175 seats, dressing rooms, storage areas and other ancillary  
123 amenities necessary for the eligible theater production.

124 “Transportation expenditures”, expenditures for the packaging, crating and transportation  
125 both to the commonwealth for use in a qualified theater production of sets, costumes or other  
126 tangible property constructed or manufactured out of state, or from the commonwealth after use  
127 in a qualified theater production of sets, costumes or other tangible property constructed or  
128 manufactured in the commonwealth and the transportation of the cast and crew to and from the  
129 commonwealth; provided, that “transportation expenditures” shall include the packaging, crating  
130 and transporting of property and equipment used for special and visual effects, sound, lighting  
131 and staging, costumes, wardrobes, make-up and related accessories and materials and any other  
132 performance or production-related property and equipment.

133 (b) Any taxpayer that receives an eligible theater production certificate shall be allowed a  
134 tax credit against taxes imposed by this chapter. The credit shall be equal to 35 per cent of the  
135 total in-state payroll costs and 25 per cent of the production and performance expenditures and  
136 transportation expenditures and all out of state payroll costs for the eligible theater production  
137 directly attributable to activities in the commonwealth. The credit shall not be greater than  
138 \$5,000,000 and shall be limited to (i) in-state payroll costs, (ii) production and performance  
139 expenditures, (iii) transportation expenditures, and (iv) all out of state payroll costs, directly  
140 attributable to activities in the commonwealth. The eligible theater production budget shall be  
141 not less than \$100,000.

142 (c) Not more than \$5,000,000 in total may be issued for any tax year for tax credits  
143 pursuant to this section. If the total amount of allocated credits applied for in any particular year  
144 exceeds the aggregate amount of tax credits allowed for such year, the excess shall be treated as  
145 having been applied on the first day of the subsequent year.

146 (d) The tax credit shall be allowed against the tax for the taxable period in which the  
147 credit is issued and any amount of the tax credit that exceeds the tax due for a taxable year may  
148 be carried forward for not more than 5 succeeding tax years.

149 (e) If a taxpayer has not claimed the tax credits in whole or part, a taxpayer eligible for  
150 the tax credits may assign, transfer or convey the tax credits, in whole or in part, by sale or  
151 otherwise to any individual or entity and such assignee of the tax credits that have not claimed  
152 the tax credits, in whole or in part, may assign, transfer or convey the tax credits, in whole or in  
153 part, by sale or otherwise to any individual or entity. The assignee of the tax credits may use  
154 acquired credits to offset up to 100 per cent of the tax liabilities otherwise imposed pursuant to  
155 this chapter. The assignee may apply the tax credits against taxes imposed on the assignee for not  
156 more than 5 succeeding tax years from the date an eligible theater production certificate is first  
157 issued by the office. The assignor shall perfect the transfer by notifying the commissioner, in  
158 writing, within 30 calendar days following the effective date of the transfer and shall provide any  
159 information as may be required by the commissioner to administer and carry out this section.

160 (f) Any assignment or sales of proceeds received by the assignor for its assignment or  
161 sale of the tax credits allowed pursuant to this section shall be exempt from tax under this  
162 chapter.

163 (g) The credit shall only be allowed against the tax of a corporation included in a  
164 consolidated return that qualifies for the credit and shall not be allowed against the tax of other  
165 corporations that may join in the filing of a consolidated tax return; provided, however, that in  
166 the case of a corporation that files a consolidated return with 1 or more other corporations with  
167 operations in the commonwealth, the credit shall be allowed to be included in a consolidated  
168 return with respect to such corporations with operations only in the commonwealth.

169 (h) Credits allowed to a company that is a S corporation, as defined in section 1361 of the  
170 Code, partnership or a limited liability company that is taxed as a partnership shall be passed  
171 through respectively to persons designated as partners, members or owners of such companies on  
172 a pro rata basis or pursuant to an executed agreement among such persons designated as S  
173 corporation shareholders, partners or members documenting an alternate distribution method  
174 without regard to their sharing of other tax or economic attributes of such entity.

175 (i) Upon determination by the office, in consultation with the commissioner, that the  
176 taxpayer qualifies for an eligible theater production certificate, the commissioner shall issue to  
177 the taxpayer a tax credit in an amount in accordance with subsection (b).

178 (j) The commissioner shall promulgate such rules and regulations necessary for the  
179 administration of this section.