

HOUSE No. 4149

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 establishing a live theater pilot program.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>David Biele</i>	<i>4th Suffolk</i>
<i>Ann-Margaret Ferrante</i>	<i>5th Essex</i>
<i>Louis L. Kafka</i>	<i>8th Norfolk</i>
<i>David Paul Linsky</i>	<i>5th Middlesex</i>
<i>Paul McMurtry</i>	<i>11th Norfolk</i>
<i>Claire D. Cronin</i>	<i>11th Plymouth</i>
<i>Jeffrey N. Roy</i>	<i>10th Norfolk</i>
<i>Tackey Chan</i>	<i>2nd Norfolk</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>
<i>Alan Silvia</i>	<i>7th Bristol</i>
<i>Daniel J. Ryan</i>	<i>2nd Suffolk</i>
<i>Aaron Vega</i>	<i>5th Hampden</i>
<i>Adrian C. Madaro</i>	<i>1st Suffolk</i>
<i>James Arciero</i>	<i>2nd Middlesex</i>
<i>Daniel J. Hunt</i>	<i>13th Suffolk</i>
<i>Kenneth I. Gordon</i>	<i>21st Middlesex</i>
<i>Nick Collins</i>	<i>First Suffolk</i>
<i>Carmine Lawrence Gentile</i>	<i>13th Middlesex</i>

Nika C. Elugardo

15th Suffolk

HOUSE No. 4149

By Mr. Biele of Boston, a petition (subject to Joint Rule 12) of David Biele and others for legislation to establish a tax credit program for live theater. Revenue.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act establishing a live theater pilot program.

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 6 of Chapter 62 of the General Laws, as appearing in the 2008 Official Edition, is
2 amended by adding the following section:-

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

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

12 “Commissioner”, the commissioner of revenue.

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

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 for services rendered to and on behalf of an eligible theater
28 production. The expenditure shall be incurred or paid by the applicant for services related to any
29 portion of an eligible theater production from its pre-production stages, including, but not limited
30 to, (a) the writing of the script, (b) casting, (c) hiring of service providers, (d) purchases from
31 vendors, (e) marketing, (f) advertising, (g) public relations, (h) load in, (i) rehearsals, (j)
32 performances, (k) other Eligible theater production related activities (l) load out; provided
33 further, said labor expenditure shall be directly attributable to the eligible theater production and

34 shall be limited to the first \$100,000 of wages incurred or paid to each employee of an eligible
35 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 (24) 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 (24) months after its Massachusetts
42 presentation.

43 “National Tour Launch” means a live stage production that, in its original or adaptive
44 version, is performed in a qualified production facility and opens its National tour in
45 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 one hundred seventy five (175) or more seats, and dressing
56 rooms, 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 (b) Any person, firm, partnership, corporation, trust, estate or other entity that receives an
71 eligible theater production certificate shall be allowed a tax credit equal to thirty-five percent
72 (35%) of the total in state labor costs and twenty –five percent (25%) of the production and
73 performance expenditures and transportation expenditures as well as all out of state labor costs
74 for the eligible theater production and to be computed as provided in this chapter against a tax
75 imposed by this chapter. Said credit shall not exceed five million dollars (\$5,000,000) and shall
76 be limited to certified production cost directly attributable to activities in the state and

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

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

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

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

89 (f) If the company has not claimed the tax credits in whole or part, taxpayers eligible for
90 the tax credits may assign, transfer or convey the tax credits, in whole or in part, by sale or
91 otherwise to any individual or entity and such assignee of the tax credits that have not claimed
92 the tax credits in whole or part may assign, transfer or convey the tax credits, in whole or in part,
93 by sale or otherwise to any individual or entity. The assignee of the tax credits may use acquired
94 credits to offset up to one hundred percent (100%) of the tax liabilities otherwise imposed
95 pursuant to this chapter. The assignee may apply the tax credit against taxes imposed on the
96 assignee for not more than five (5) succeeding tax years. The assignor shall perfect the transfer
97 by notifying the commissioner of revenue, in writing, within thirty (30) calendar days following

98 the effective date of the transfer and shall provide any information as may be required by the
99 commissioner to administer and carry out the provisions of this section.

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

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

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

120 meets the appropriate criteria for conditional eligibility. The notice of initial certification will
121 provide a unique identification number for the production/presentation and is only a statement of
122 conditional eligibility for the production/presentation and, as such, does not grant or convey any
123 Massachusetts tax benefits.

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

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

140 (l) The Massachusetts office of travel and tourism, in consultation as needed with the
141 commissioner of revenue, shall promulgate such rules and regulations as are necessary to carry

142 out the intent and purposes of this chapter in accordance with the general guidelines provided
143 herein for the certification of the production and the resultant production credit.

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

151 (n) No credits shall be issued on or after January 1, 2024 unless the production has
152 received initial certification under this section prior to January 1, 2024.

153 (o) The secretary of housing and economic development, in conjunction with the
154 commissioner of revenue shall make a report on the impact of the live theater pilot program and
155 deliver report to the president of the state senate, the senate committee on ways and means, the
156 speaker of the house of representatives, the house committee on ways and means and the joint
157 committee on economic development and emerging technologies by December 31, 2023. The
158 secretary and commissioner shall collaborate with the live theater industry to collect the relevant
159 data for the report. Said report shall include but not be limited to the following information
160 regarding live theater in Massachusetts during the pilot program:

- 161 1.The number of shows that have come to Massachusetts since passage of this section.
162 2.The number of live show days since passage of this section.

163 3. Analysis of the number of shows and live show days after passage of this section as
164 compared to before passage of this section.

165 4. Total spending by live theater productions on local businesses and vendors including
166 supplies, hotels, car rental, food and beverage, and items related to the live theater production.

167 5. Total spending on local labor to set-up, support and take-down each production
168 including total work hours.

169 6. The number of ticket orders from outside Massachusetts.

170 7. The number of ticket orders from outside the United States.

171 8. The impact on local businesses in proximity to live theaters including hotel room
172 nights, and restaurants.