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H.P. 1163

House of Representatives, April 27, 2021

**Resolve, Directing the Department of Economic and Community
Development To Create and Administer a Fund for Live
Entertainment Venue, Performer and Worker and Public Art
Recovery Grants**

(EMERGENCY)

Received by the Clerk of the House on April 23, 2021. Referred to the Committee on Innovation, Development, Economic Advancement and Business pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative COLLINGS of Portland.
Cosponsored by Senator BALDACCI of Penobscot and
Representatives: DODGE of Belfast, LANDRY of Farmington, ROBERTS of South Berwick,
ROEDER of Bangor, SACHS of Freeport, TALBOT ROSS of Portland, Senators: HICKMAN
of Kennebec, MAXMIN of Lincoln.

1 **Emergency preamble. Whereas,** acts and resolves of the Legislature do not
2 become effective until 90 days after adjournment unless enacted as emergencies; and

3 **Whereas,** the State is currently in a prolonged state of emergency and a global
4 pandemic has decimated certain industries such as live entertainment; and

5 **Whereas,** the health of these affected industries is crucial because they are major
6 industries in the State, contributing substantially to the state economy and representing tens
7 of thousands of jobs; and

8 **Whereas,** many of these industries were not able to operate profitably, if at all, in
9 2020 and are unable financially to wait until the economy returns to normal and may fail
10 or go out of business in the near future, especially if the adverse effects of the pandemic
11 last throughout the remainder of this year; and

12 **Whereas,** many performers and other workers who produced or supported live
13 entertainment are of modest means and are suffering financially by not receiving work or
14 revenue during the state of emergency; and

15 **Whereas,** in the judgment of the Legislature, these facts create an emergency within
16 the meaning of the Constitution of Maine and require the following legislation as
17 immediately necessary for the preservation of the public peace, health and safety; now,
18 therefore, be it

19 **Sec. 1. Department of Economic and Community Development to create**
20 **and administer fund to provide live entertainment venue, performer and**
21 **worker and public art recovery grants. Resolved:** That the Department of
22 Economic and Community Development shall create and administer a fund, referred to in
23 this resolve as "the fund," to operate a program to provide live entertainment venue,
24 performer and worker and public art recovery grants, referred to in this resolve as "the
25 program." The sources of funds for the fund are any funds derived from the Federal
26 Government through stimulus or relief measures to counter the effects of the pandemic
27 related to coronavirus disease 2019, or COVID-19, that are received by the State in 2021
28 and are eligible to be used for the purposes of the program, funds appropriated by the State
29 and funds from any other public or private sources. The purpose of the program is to
30 compensate eligible businesses, performers and workers for revenue and profits lost in
31 calendar year 2020 as a result of state-directed closures or economic disruptions due to the
32 restrictions enacted to limit the spread of COVID-19. An application may be made by an
33 eligible business, performer or worker at any time and the department shall issue grants on
34 a first-come, first-served basis until the fund is fully depleted.

35 For purposes of this resolve, the following terms have the following meanings.

36 1. "Live entertainment" means a performance conducted in-person by one or more
37 individuals to entertain an audience, including theater, music, other performing arts,
38 cinema, sports, demonstration of or instruction in an activity or performing a task, lectures
39 or horse or harness racing.

40 2. "Live entertainment venue" means a business that operates a facility providing live
41 entertainment and that charges a fee for admission to view or experience the live
42 entertainment.

1 3. "Nonemployee income" means income derived by an individual from service
2 provided as an independent contractor under the Maine Revised Statutes, Title 26, section
3 1043, subsection 11, paragraph E.

4 4. "Performer or worker" means an individual who derives nonemployee income from
5 services as a live entertainment performer or from producing or supporting live
6 entertainment.

7 **Sec. 2. Business eligibility. Resolved:** That a business in the State may participate
8 in the program if the business:

9 1. Has a sales and use tax account with the Department of Administrative and Financial
10 Services, Maine Revenue Services;

11 2. Had revenues and profits in calendar year 2020 that were less than revenues and
12 profits in calendar year 2019;

13 3. Had gross annual sales between \$24,000 and \$12,000,000 in calendar year 2019;

14 4. Operates a live entertainment venue located in the State;

15 5. Is current and in good standing with all payroll taxes, sales taxes and state income
16 taxes;

17 6. Is in good standing with the Department of Labor;

18 7. Is not in bankruptcy;

19 8. Has not permanently ceased all operations; and

20 9. Is in consistent compliance with and not subject to any current or past enforcement
21 actions regarding COVID-19 prevention checklist requirements of the Department of
22 Economic and Community Development.

23 **Sec. 3. Performer or worker eligibility. Resolved:** That a performer or worker
24 who has derived more than \$1,000 in nonemployee income between March 1, 2019 and
25 February 29, 2020 may participate in the program.

26 **Sec. 4. Allowable business uses of grant funds. Resolved:** That a business
27 receiving a grant under the program may use the funds for operational or COVID-19-
28 related expenses including:

29 1. Payroll costs and expenses;

30 2. Rent or mortgage payments for business facilities;

31 3. Utility payments;

32 4. Purchase of personal protective equipment required by the Department of Economic
33 and Community Development or to protect the business's employees, vendors or
34 customers;

35 5. Business-related equipment;

36 6. Investments that support the business's long-term sustainability;

37 7. Expenses incurred to replenish inventory or other necessary reopening expenses;
38 and

39 8. Other necessary operating expenses.

1 **Sec. 5. Prohibited business expenses. Resolved:** That a business receiving a
2 grant under the program may not use the funds for:

- 3 1. Depreciation expenses;
- 4 2. Personal entertainment;
- 5 3. Lobbying;
- 6 4. Goods or services for personal use;
- 7 5. Fines, penalties, damages or other settlements;
- 8 6. Operations outside the State;
- 9 7. An expense that was reimbursed by another government program; or
- 10 8. Any other expense determined by the Department of Economic and Community
11 Development to not carry out the purposes of the program.

12 **Sec. 6. Amount of grant; taxable income. Resolved:** That a grant from the
13 program for a business must be in the amount that the eligible business lost in revenue and
14 profits in calendar year 2020 determined by gross sales reported to the Department of
15 Administrative and Financial Services, Maine Revenue Services in calendar year 2020 as
16 compared with gross sales reported to Maine Revenue Services in calendar year 2019. For
17 a business not in operation in calendar year 2019, the amount of the grant must be
18 determined based upon the average loss of revenues and profits for a business of similar
19 activity, licensing and gross sales. The amount calculated under this section for a business
20 grant must be reduced by the amount of any grant or forgiven government recovery or
21 stimulus loan received by the business subsequent to March 1, 2020. The amount of a grant
22 for a performer or worker is based upon the reported live entertainment nonemployee
23 income received by the performer or worker between March 31, 2018 and February 29,
24 2020 that is reported to the Department of Administrative and Financial Services, Maine
25 Revenue Services. Funds received under the program are reportable income for tax filing
26 purposes and are subject to audit. The State shall issue a statement of miscellaneous income
27 to a grant recipient to be included with the grant recipient's state and federal tax filings.
28 Priority for a business grant under this section must be given to a business under section 2
29 that has received less than 45% of the business's 2019 gross revenue from another
30 emergency or recovery grant program.

31 **Sec. 7. Public art program. Resolved:** That a governmental entity, including a
32 school, library or government office, may apply for a grant under the program for the
33 installation or performance of art that is publicly accessible and installed or staged in public
34 space or the public realm. For the purposes of the program, "art" must be construed
35 broadly, and may include a mural, sculpture, painting, audio or visual presentation, digital
36 presentation, musical or theatrical performance, demonstration of or instruction in an
37 activity or performing a task or a lecture. A recipient of a grant under this section shall
38 endeavor to contract or commission a provider, maker or performer of the public art that
39 resides or is located in the State to the extent possible.

40 **Sec. 8. Distribution of funds. Resolved:** That the Department of Economic and
41 Community Development shall distribute the available funds as follows.

- 42 1. Fifty percent of funds received by the fund to businesses under section 2;

1 2. Twenty-five percent of funds received by the fund to performers and workers under
2 section 3; and

3 3. Twenty-five percent of funds received by the fund to public art programs under
4 section 7.

5 **Sec. 9. Violations. Resolved:** That a violation of the provisions of this resolve or
6 a misuse of funds received under this resolve may result in a forfeiture of funds received
7 and any other punishment, fine, penalty and interest due pursuant to law.

8 **Sec. 10. Contingent allocation of federal funds. Resolved:** That if funds are
9 received from the Federal Government in 2021 that are eligible to be used to carry out the
10 purposes of this resolve, \$20,000,000 of the federal funds must be allocated to the fund
11 established in section 1.

12 **Sec. 11. Appropriations and allocations. Resolved:** That the following
13 appropriations and allocations are made.

14 **DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT**

15 Initiative: To provide funds for the disbursement of live entertainment venue, performer
16 and worker and public art recovery grants.

17 GENERAL FUND	2021-22	2022-23
18 All Other	\$10,000,000	\$0
19		
20 GENERAL FUND TOTAL	<u>\$10,000,000</u>	<u>\$0</u>

21 **Emergency clause.** In view of the emergency cited in the preamble, this legislation
22 takes effect when approved.

23 **SUMMARY**

24 This resolve directs the Department of Economic and Community Development to
25 create and administer a fund to provide grants to live entertainment venues including
26 businesses and performers and nonemployee workers, to compensate for the loss of revenue
27 and profits due to state-ordered closures or restrictions to prevent the spread of the
28 coronavirus disease 2019, or COVID-19, and for public art to be funded partly by any
29 federal funds received by the State in 2021 eligible to be used for that purpose. For the
30 purpose of this resolve, a live entertainment venue includes any business operation
31 providing entertainment, including theater, music, other performing arts, cinema, sports,
32 lectures or horse or harness racing, at a venue in which customers attend in person to view
33 the entertainment. The program is based on the Maine Tourism, Hospitality and Retail
34 Recovery Grant Program operated by the department to disburse past federal stimulus and
35 recovery funds to counter the adverse economic effects of the COVID-19 pandemic. This
36 resolve appropriates \$10,000,000 to the fund and directs that \$20,000,000 of any funds
37 received from the Federal Government in 2021 that are eligible to be used for the purposes
38 of this resolve be allocated to the fund.