

Date of Hearing: June 15, 2022

ASSEMBLY COMMITTEE ON ARTS, ENTERTAINMENT, SPORTS, TOURISM, AND
INTERNET MEDIA

Tasha Boerner Horvath, Chair

SB 1116 (Portantino) – As Amended May 19, 2022

SENATE VOTE: 29-5

SUBJECT: Arts Council: The Performing Arts Equitable Payroll Fund

SUMMARY: Creates the Performing Arts Equitable Payroll Fund to provide grants to Small Nonprofit Performing Arts Organizations to reimburse a percentage of the first \$10,000 they spend on payroll costs.

Specifically, **this bill:**

- 1) Makes findings and declarations related to the economic benefits and benefits for emerging performers of Small Nonprofit Performing Arts Organizations (SNPAOs), and declares the intent of the Legislature to recognize the importance of SNPAOs for local investment and job creation in the arts, particularly for workers in marginalized communities.
- 2) Creates the Performing Arts Payroll Fund within the State Treasury.
- 3) Defines nonprofit performing arts organization, for purposes of this bill, to mean a performing arts organization that is exempt from taxation as a 501(c)(3), and whose primary mission is the creation of or presentation of performing arts.
- 4) Defines SNPAO, for purposes of this bill, to mean a nonprofit performing arts organization with an Adjusted Gross Revenue (AGR) equal to or less than \$2 million and requires the California Office of the Small Business Advocate (OSBA) to adjust the amount every five years using the California Consumer Price Index as compiled and reported by the Department of Industrial Relations.
- 5) Requires, upon appropriation of the Legislature, the OSBA to establish and administer a grant program using moneys in the Performing Arts Payroll Fund to award one-year grants enabling small nonprofit performing arts organizations to hire and retain employees. The SNPAO shall pay these employees not less than the minimum wage of the location in which it is subject to jurisdiction.
- 6) Allows any SNPAO that has received a grant from the Performing Arts Payroll Fund to apply for grants in future years if they maintain eligibility for the grant program.
- 7) Requires grant recipient SNPAOs to provide the following information to the OSBA:
 - a) Certification providing the funds shall only be used for the compensation of qualifying employees and for the maintenance of compliance with all employee protections owed under state law.
 - b) Organizational information such as venue size, annual budget, the number of employees and independent contractors, the percentage of the budget spent on payroll expenses, and

the organization's harassment, diversity, equity, and inclusion policies, with the dates the policies were created and updated.

- c) Certification that the SNPAO has not misclassified any employee as an independent contractor.
- 8) Requires any organization that has received a grant from the Performing Arts Payroll Fund, when applying for any subsequent grant from the Performing Arts Payroll Fund, to provide any additional information that the OSBA deems necessary to ensure the organization has not used moneys for any other purposes.
- 9) Requires the OSBA to adopt regulations as necessary, to ensure that grant recipients have not used grant moneys for other purposes, and to validate the accuracy of certifications received from funded SNPAOs.
- 10) Stipulates that any SNPAO found to have used grant moneys for other purposes or which provided inaccurate certification shall be ineligible to receive any further grants from the Performing Arts Payroll Fund.
- 11) Authorizes the OSBA to distribute grants to SNPAOs according to a specified schedule that assigns a percentage of the first \$10,000 of payroll expenses to be reimbursed by the Performing Arts Payroll Fund based on AGR of the grant recipient organization per employee per quarter.
- 12) States that if any provision of this bill is declared illegal, invalid, or inoperative the remaining provisions shall remain in full force and effect.

EXISTING LAW:

- 1) Establishes the California Arts Council (CAC) with a myriad of duties including, in relevant part:
 - a) Encourage artistic awareness, participation and expression.
 - b) Help independent local groups develop their own art programs.
 - c) Promote the employment of artists and those skilled in crafts in both the public and private sector.
 - d) Establish grant application criteria and procedure.
 - e) Award prizes or direct grants to individuals or organizations in accordance with such regulations as the council may prescribe. In awarding prizes or directing grants, the council shall notify the offices of the legislators in whose district the recipient resides. (Government Code (GOV) § 8751 & § 8753).
- 2) Prohibits the CAC from making any grants or fund any program which has not been established pursuant to the powers granted to it by the Government Code. (GOV § 8753.5).

- 3) Establishes GO-Biz for the purpose of serving as the lead state entity for economic strategy and marketing of California on issues relating to business development, private sector investment and economic growth. (GOV §§ 12096 – 12098.5)
- 4) Authorizes GO-Biz as the lead entity for economic strategy and the marketing of California on issues relating to business development, private sector investment, and economic growth. Authorizes GO-Biz to market the business and investment opportunities available in California by working in partnership with local, regional, federal, and other state public and private institutions to encourage business development and investment in the state. Authorizes GO-Biz to support small businesses by providing information about accessing capital, complying with regulations, and supporting state initiatives that support small business. (GOV § 12096.3)
- 5) Establishes the OSBA within the GO-Biz and outlines the duties and functions of the Director of OSBA, otherwise known as the Small Business Advocate (Advocate), including representing the views and interests of small businesses before other state agencies whose policies and activities may affect small businesses. (GOV §§ 12098-12098.9)
- 6) Establishes a comprehensive set of protections for employees, including a time-sure minimum wage, meal and rest periods, workers' compensation coverage in the event of an industrial injury, sick leave, disability insurance (DI) in the event of a non-industrial disability, paid family leave, and unemployment insurance (UI). (Labor Code (LAB) §§201, 226.7, 246, 512, 1182.12, & 3600 and UI Code §§1251 & 2601)
- 7) Provides that, except as otherwise stated, a person providing labor or services for remuneration must be considered an employee unless the hiring entity demonstrates that all of the following conditions are satisfied:
 - a) The person is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.
 - b) The person performs work that is outside the usual course of the hiring entity's business.
 - c) The person is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed. (LAB §2750.3)

FISCAL EFFECT: According to the Senate Committee on Appropriations:

This bill would result in a cost pressure to GO-Biz to fund and administer the grant program. Specifically, GO-Biz anticipates the fiscal impact of the bill is unknown, and would depend on the size of the grant pool, eligibility criteria, and other factors which the bill does not define.

COMMENTS:

Double-referred: This bill is referred first to Assembly Arts, Entertainment, Sports, Tourism & Internet Media Committee and second to the Assembly Labor and Employment Committee.

Could the Efforts of This Bill Be Incorporated Into Existing Structures? This bill would establish the Performing Arts Equitable Payroll Fund within the OSBA under GO-Biz to provide grants to SNPAOs to cover employee payroll expenses. However, GO-Biz, OSBA, and CAC already provide grant programs to assist with job growth, small businesses, and SNPAOs. For example, the CAC has provided Arts & Cultural Organizations General Operating Relief grants of up to \$30,000. Local Impact grants support community-driven arts organizations in historically marginalized communities, and Administrators of Color Fellowships support the employment of people of color in the arts sector. The OSBA administers the California Small Business COVID-19 Relief Grant Program, which includes an Arts and Cultural Program to support eligible 501(c)(3) nonprofit cultural organizations, including SNPAOs, through grants ranging from \$5,000 to \$25,000 depending on organization size.

These existing programs and grants raise a question as to whether this bill is necessary in its current form, or whether it would be better to combine it into the already existing structure. It would be helpful to understand how creating a new grant within OSBA will streamline coordination and ensure monies are received by these important organizations.

Is Funding a Barrier to Effective Implementation? Implementation and program maintenance are jeopardized by a lack of dedicated, reliable funding. As such, establishing a program that isn't accompanied by funding means those intended to be helped by this bill may never receive the intended assistance. The Author should continue working to identify and secure proper funding to achieve the goals set out by this measure.

Background

Purpose: This bill is sponsored by the Actor's Equity Association and the Theatre Producers of Southern California. According to the Author, "This bill establishes the Equitable Payroll Fund (EPF), which is a grant program designed to support SNPAOs – and workers directly – by providing substantial reimbursements of payroll expenses. This program will support jobs for anyone hired as an employee by a SNPAO, including both production and non-production employees and administrative staff. It does not apply to independent contractors who qualify as such under the ABC test set out in the Dynamex decision and codified by AB 5. Much like the recent Employee Retention Credit program of the American Rescue Plan and the CARES Act, this bill will help create and sustain jobs for creative workers, one of the hardest hit workforce sectors where recovery still lags far behind others.

"Furthermore, the EPF will begin to stabilize SNPAOs immediately, preventing more closures and helping these organizations grow quickly to self-sustainability. Once an SNPAO reaches midsize, they become eligible for financial support from private foundations and larger donors. Once an SNPAO graduates from the program, the jobs they provide to emerging artists and other creative workers each year will remain, adding vibrancy and diversity to the workforce and strengthening the creative economy altogether. The EPF will provide the greatest percent reimbursement to the smallest organizations. Since labor costs in the performing arts are relatively flat these historically underfunded organizations are the hardest hit and most at risk. As SNPAOs grow, the percentage of payroll expenses that is reimbursed decreases as organizations are better able to absorb these costs. When an SNPAO reaches \$2M, they graduate out of the program."

Small Nonprofit Performing Arts Organizations. SNPAOs are nonprofit organizations whose primary mission is to create or present performing arts. Examples of SNPAOs can include nonprofit local theaters, performing arts education organizations, performing arts event coordinators, local performing arts councils, and related organizations. A majority of SNPAOs in California have AGRs below \$250,000 according to IRS data aggregated by Cause IQ. For many SNPAOs, ticket sales do not always cover production costs, as many expenses occur during the rehearsal/development period when there is no revenue. Contributed revenue (such as grants or donations) will frequently make up a significant portion of an SNPAO's budget. As such, many SNPAOs rely on volunteers or contractors to fulfill organizational functions and control operational costs. This can create barriers for workers who may not be able to volunteer their labor to SNPAOs to gain a foothold in the performing arts industry. In addition, SNPAOs located in underserved communities may struggle to gain adequate funding to employ performing arts professionals compared to SNPAOs in more affluent neighborhoods.

Performing arts organizations were especially impacted by the COVID-19 pandemic as the opportunities for live performing arts events dropped significantly. Job losses at nonprofit arts organizations were reported in October 2021 by Johns Hopkins University to be more than three times worse than in other nonprofit sectors.

In an attempt to stabilize the SNPAO arts incubator pipeline and assist the creative workers they employ, last year's SB 805 (Rubio) sought to establish both a nonprofit paymaster and the equitable payroll fund. However, this bill was vetoed. There were also discussions during last year's budget related to the equitable payroll fund that was ultimately not included in the final budget. The authors of this bill state they believe this new reimbursement model will eliminate potential abuses of the fund and the new reporting requirements will allow them to quantify the positive impacts of the program and ensure better working conditions inside SNPAOs.

GO-Biz. In February 2010, the Little Hoover Commission undertook a review of the state's economic and workforce development programs. In its final report, *Making up for Lost Ground: Creating a Governor's Office of Economic Development*, it analyzed the status and effectiveness of current programs since the 2003 demise of the Technology, Trade and Commerce Agency (TTCA) and recommended creating a new governmental entity to fill the void left by the dismantled agency.

The report called for a single entity to promote greater economic development, foster job creation, serve as a policy advisor and deliver specific services (i.e., permitting, tax, regulatory, and other information) directly to the California business community. In April 2010, then-Governor Schwarzenegger issued Executive Order S-05-10 as a means to operationalize the report recommendations including the creation of the Governor's Office of Economic Development (GOED).

In October 2011, then-Governor Schwarzenegger signed AB 29 (John A. Pérez, Chapter 475, Statutes of 2011), which effectively codified GOED and changed its name to GO-Biz. Since its inception, the office has served thousands of businesses, 95 percent of which are small businesses. The most frequent types of assistance include help with permit streamlining, starting a business, relocation and expansion of businesses, and regulatory challenges.

In March 2012, then-Governor Brown initiated a reorganization process to realign the state's administrative structure. Key changes include dismantling of the Business, Transportation and Housing Agency (BTH) and the shifting of a number of key programs to GO-Biz including the

Small Business Loan Guarantee Program, the California Travel and Tourism Commission, the California Film Commission, the Film California First Program, and the Infrastructure and Economic Development Bank (IBank). Currently, GO-Biz administers the following programs and units:

- The “Made In California” program to encourage consumer product awareness and foster the purchases of products manufactured in California.
- The California Inclusive Innovation Hub Program (iHub2) to incubate and/or accelerate technology and science-based firms, with a focus on underserved regions and communities.
- The California Competes Tax Credit Program under which “businesses that want to come to California or stay and grow in California” can receive an income tax credit.
- The California Business Investment Services Unit, which provides no-fee, tailored site selection services to employers and others who may be considering California for relocation or expansion.
- The California Business Portal, which provides information to California businesses about common questions, permitting, financial options, and more.
- The California Community Reinvestment Grants Program, which was included in Proposition 64 of 2016, authorized GO-Biz to award grants to local health departments and certain nonprofit organizations to support communities disproportionately affected by the War on Drugs.
- Office of the Small Business Advocate which provides information and assistance to small businesses.
- The Zero Emission Vehicles (ZEV) Infrastructure Unit which works to accelerate the deployment of ZEV infrastructure.
- The International Affairs and Business Development Unit, which serves as California’s primary point of contact for expanding international trade and investment relations. This unit focuses on foreign direct investment (services for foreign investors, foreign investment technical assistance, and the EB-5 Investor Visa Program), international trade promotion (STEP program, trade missions, export assistance, and the California-China Trade Office), and international agreements.

Office of Small Business Advocate. Since its inception, GO-Biz has served thousands of businesses, 95 percent of which are small businesses. The most frequent types of assistance include help with permit streamlining, starting a business, relocation and expansion of businesses, and regulatory challenges. In addition to economic development programs, GO-Biz is responsible for specialized assistance to small businesses through the OSBA. OSBA directly serves the small business community through hosting summits, forums, and interagency meetings; maintaining resources for technical assistance, financing, and state procurement; holding webinars, and other outreach methods. OSBA oversees the Capital Infusion Program, which enables the California Small Business Development Center (SBDC) Networks to expand their one-to-one, no-cost, confidential consulting to small business owners. From its inception in

2014 to 2016, the Capital Infusion Program resulted in roughly \$379 million in documented capital infusion and served over 20,000 small business owners across the state. In 2015, GO-Biz launched a new California Business Portal; the site includes a Business Navigator feature, which provides custom information regarding permits, licenses, and incentives that relate specifically to the user's business. OSBA also provides emergency preparedness resources on its website, and is involved in facilitating disaster relief financing efforts for small businesses due to California wildfires.

OSBA coordinates several small business grant programs. These include the California Dream Fund, a one-time \$35 million grant program to seed entrepreneurship and small business creation via microgrants in the State of California. During the COVID-19 pandemic, OSBA has coordinated California Microbusiness (\$2,500) and Small Business (\$5,000 - \$25,000) COVID-19 Relief Grants. These grants have been used to help support California's nonprofit and cultural and arts programs recover from the impacts of the pandemic. OSBA also coordinates several small business loan programs, including the California Rebuilding Fund, the Loan Guarantee Program, Disaster Relief Loan Guarantee Program, and the California Capital Access Program.

California Arts Council. The CAC was signed into law by then-Governor Jerry Brown under the Dixon-Zenovich-Maddy California Arts Act of 1975. The CAC began operations in January 1976 with a budget of \$700,000, seven council members, a director and two deputies. Although the CAC had been in place since 1963, the new CAC was given more authority and a larger budget than the abolished Commission. The CAC mission is to strengthen arts, culture, and creative expression as the tools to cultivate a better California for all. As a state agency, the CAC supports local arts infrastructure and programming statewide through grants, programs, and services. The CAC offers a wide range of grants to arts programs to support arts education, diversity and inclusion within the arts, COVID-19 relief for arts and cultural organizations, local arts investments, and individual artists. Over the last four decades, the CAC has awarded thousands of grants with a total investment of more than \$400 million.

Prior/Related Legislation

SB 805 (Rubio, 2021) sought to establish the California Nonprofit Performing Arts Paymaster for the purpose of providing low-cost payroll services to SNPAOs. (*Status: Vetoed by the Governor*)

AB 2257 (Gonzalez, Chapter 38, Statutes of 2020) was a follow up measure to AB 5 (described below) to clarify existing exemptions under AB 5, clarify the three-part test to determine if a person was an employee or an independent contractor, and exempt youth sports coaches, specialized performers teaching master classes, appraisers, and insurance field services from AB 5's provisions.

AB 5 (Gonzalez, Chapter 296, Statutes of 2019) codified the 2018 Dynamex decision, requiring that employers prove that their workers can meet a three-part test in order to be lawfully classified as independent contractors.

Arguments in Support. Numerous performing arts organizations and individuals have written in support of SB 1116. According to the co-Sponsors, Theatre Producers of Southern California and the Actors' Equity Association, and numerous other organizational and individual supporters, "When properly funded, the performing arts can be an economic engine that drives spending in

local communities and allows workers to prosper. Unfortunately, years of underinvestment has meant that SNPAOs barely had the resources to support hourly wages – financially or administratively. The vast majority of SNPAOs in California have adjusted gross revenues below \$250K. Furthermore, the lion's share of any SNPAOs production costs are incurred during the rehearsal period when there is no revenue. This is why ticket revenue is never enough to cover operating costs, and why contributed revenue (grants, donations etc.) is essential. However, contributed revenue has never been distributed equitably, which makes operations especially challenging when there is a funding shortage."

Arts for LA writes in support and notes,

"...drastic declines in ticket sales due to rolling shutdowns, audience hesitancy to return to in-person performances, reductions in audience capacity to accommodate social distancing considerations, and increased operating costs are causing SNPAOs to close their doors permanently. In Los Angeles, reopened organizations reported an audience attendance of roughly 50%, pre-pandemic levels and a subset of performing arts organizations in Los Angeles are reporting earning slightly more than one-third of their pre-pandemic ticket revenue. These organizations are critical to our cultural ecosystem and urgently need the support of SB 1116 and similar measures."

Solo Opera writes in support and notes,

"Our organization (under \$100,000 yearly budget) found out about AB5 Jan. 2020 and have been complying with the law ever since. It has been such a hardship on us as our budget has gone up 20% in order to meet all the payroll fees, payroll expenses, legal fees for new employment contracts, worker's compensation insurance, HR paperwork, etc. We have worked to make everyone we hire an employee – even if that person only works a couple of hours for us a year. That is how strict the law is, and we are doing our best to follow it.

Because we are a volunteer run admin., we have always been proud to be able to use the majority of our funds to pay those we contract with well. But the added burden of coming up with the extra 20% and extra HR paperwork for a small volunteer run company has forced us to consider closing. To stay open, we have had to make drastic artistic sacrifices and decisions to produce smaller shows/less shows, hire less people, and are not able to afford our theater venue. Founded in 2000, we feel we are moving backwards artistically because of this added financial burden. Our community is also suffering because we are not able to fulfill our mission- especially the extra outreach projects we used to be able to do for minority, disadvantaged persons, youth and seniors. And most importantly, those we normally would hire are losing out on work since we cannot afford to employ them all."

REGISTERED SUPPORT / OPPOSITION:

Support

Actors' Equity (Co-sponsor)
Theatre Producers of Southern California (Co-sponsor)
Alliance of Desert Theatres
Artspace INC (Center Stage Theater)

California Arts Advocates
California Forward Action Fund
California Labor Federation
Casa 0101
Celebration Productions Corporation
Dezart Performs
Jabberwocky Theatre DbA Rogue Machine
Ophelia's Jump Productions
Santa Barbara French Festival
Solo Opera
The Initiative for New and Reimagined Work
The Inkwell Theater
The Open Fist Theatre Company
6 Individuals

Opposition

None on file.

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