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**SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT****Senator Dave Cortese, Chair****2021 - 2022 Regular**

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**Bill No:** SB 805**Hearing Date:** April 26, 2021**Author:** Rubio**Version:** April 20, 2021**Urgency:** No**Fiscal:** Yes**Consultant:** Jake Ferrera

**SUBJECT:** Small nonprofit performing arts organizations: payroll and paymaster services  
grants: employment grants

**KEY ISSUE**

Should the Legislature establish the California Nonprofit Performing Arts Paymaster for the purpose of providing low-cost payroll services to small nonprofit performing arts organizations?

**ANALYSIS****Existing law:**

- 1) Establishes the California Arts Council. The goal of this council is to encourage artistic awareness, help independent local groups develop art programs and provide for the exhibition of art works in public buildings throughout California. (Labor Code §§8751-8753)
- 2) 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 §§201, 226.7, 246, 512, 1182.12, & 3600 and UI Code §§1251 & 2601)
- 3) 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 that involved in the work performed.(Labor Code §2750.3)

**This bill:**

- 1) Defines "Nonprofit performing arts organization" to mean a performing arts organization that is exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code and whose primary mission is the creation or presentation of performing arts.

- 2) Defines “Small nonprofit performing arts organization” to mean a nonprofit performing arts organization with an average adjusted gross revenue equal to or less than \$1,400,000 except that this amount shall be adjusted every five years based on the California Consumer Price Index as compiled and reported by the Department of Industrial Relations.
- 3) Defines “Adjusted gross revenue” to mean the average annual revenue received over the preceding three years, in whatever form, received or accrued from whatever source, excluding matching funds received pursuant to Section 8753.8 and excluding revenue earmarked by the grantor or donor solely for capital expenditures or any pass-through funds collected for the benefit of another organization that is received during an organization’s tax year.
- 4) Defines “Capital expenditures” to mean funds used by a company to acquire, up-grade, and maintain fixed assets such as property, plants, buildings, technology, or equipment.
- 5) Authorizes the council, upon appropriation of the Legislature, to establish and administer the California Nonprofit Performing Arts Paymaster for the purpose of providing low-cost payroll services to small nonprofit performing arts organizations.
- 6) Establishes a process by which the council will award a contract to a nonprofit contractor to provide low-cost payroll and paymaster services. This includes an annual report to the council each year on July 31 which details the organizations receiving services, an agreement to provide services for at least 10 years and a cap on the amount the contractor may charge for their services.
- 7) Establishes the Performing Arts Equitable Payroll Fund within the State Treasury. Upon appropriation, the council shall establish and administer a grant program to enable small nonprofit arts organizations to hire and pay employees minimum wage according to the following matching schedule:

\$0- \$250,000 -- 4:1 match of payroll contributions up to 25% of AGR  
\$250,000-\$350,000 -- 3.75 :1 match of payroll contributions up to 25% of AGR  
\$350,000-\$450,000 -- 3.5:1 match of payroll contributions up to 25% of AGR  
\$450,000-\$550,000 -- 3.25:1 match of payroll contributions up to 25% of AGR  
\$550,000-\$650,000 -- 3:1 match of payroll contributions up to 25% of AGR  
\$650,000-\$750,000 --2.75:1 match of payroll contributions up to 25% of AGR  
\$750,000-\$850,000 -- 2.0:1 match of payroll contributions up to 25% of AGR  
\$850,000-\$1,000,000 -- 1:1 match of payroll contributions up to 25% of AGR  
\$1,000,000-\$1,200,000 -- .5:1 match of payroll contributions up to 25% of AGR  
\$1,200,000-\$1,400,000 -- .25:1 match of payroll contributions up to 25% of AGR

## COMMENTS

### 1. Need for this bill?

In the wake of the passage of AB 5, which established the ABC test for determining employment status, many employers are facing major periods of adjustment to the new law. An example of this is the many small nonprofit theaters in many communities. These

institutions have regularly entered into agreements with employees that are somewhat at odds with the ABC test and, as a result, small theaters are facing the prospect of exhausting a large amount of their limited resources simply creating payroll systems that can track their employees. The legislature and this committee are loath to allow instances of payment below the minimum wage; however as the theaters covered by this bill are nonprofit and are relatively small operations, this requirement taken immediately would be exceedingly difficult to comply with. The solution proposed is the creation of a grant program that would match funds of small nonprofit community theaters towards payroll services. This allows the theaters to transition in a way that prioritizes worker rights, while not eliminating the valuable cultural contribution that theaters bring to their communities.

## 2. Proponent Arguments

San Jose Arts Advocates write in support:

“California has historically lacked investment within the arts and unlike regular small organizations; SNPACs are 501(c)(3) charitable organizations established to bring culture, arts and education to all communities. These companies provide access to the arts for participants, from performers, to stage technicians, writers and directors, as well as audiences, many of whom may not have the resources to buy expensive tickets to larger playhouses. SNPACs do not have full control over the size of their workforce. They serve their community and choose seasons based on the stories that resonate with and reflect the community, the artists, and the social context of the times.

Small nonprofit theaters are incubators for playwrights, actors, designers, directors and other artists. They have historically provided networking opportunities and mentorship for BIPOC artists facilitating connections necessary for career advancement and providing performance experience that helps to open doors to work in larger, less accessible companies. Furthermore, SNPACs contribute enormously to the economic growth, social well-being and cultural vitality of the local communities they serve.”

## 3. Opponent Arguments:

The California Labor Federation writes in opposition:

“Over the past four decades, companies of all sizes have increasingly shifted from an employment model to a reliance on independent contractors. This means that millions of workers have been stripped of the most basic rights including minimum wage, overtime, workplace safety, protection from retaliation, recourse for wage theft, access to unemployment benefits, and workers’ compensation coverage. This model also meant that the majority of businesses that follow the law were forced to compete with companies that cheated workers and failed to pay payroll taxes. California loses \$7 billion per year to misclassification.”

## 4. Prior Legislation:

**AB 5 (Gonzalez), Chapter 296, Statutes of 2019:** codifies the 2018 Dynamex decision, requiring that employers prove that their workers can meet a 3 part (ABC) test in order to be lawfully classified as independent contractors.

**SUPPORT**

24th Street Theatre  
Acme Performance Group: DbA Moving Arts  
Arts Orange County  
Circle X Theatre Co.  
Coin & Ghost Theatre Company  
El Teatro Campesino  
Foolsfury Theater  
Jabberwocky Theatre DbA Rogue Machine  
Ophelia's Jump Productions  
Playwrights' Arena  
Sacred Fools Theater Company  
San José Arts Advocates  
Self  
Sierra Madre Playhouse  
The Fountain Theatre  
The Inkwell Theater  
The New American Theatre  
The Open Fist Theatre Company  
The Sacred Fools Theater  
Theatre of Note  
Theatre West

**OPPOSITION**

Alameda Labor Council  
California Iatse Council  
California Labor Federation, Afl-cio  
Entertainment Union Coalition (UNREG)  
Iatse Local 107  
Iatse Local 119  
Iatse Local 122  
Iatse Local 134  
Iatse Local 16  
Iatse Local 33  
Iatse Local 50  
Iatse Local 784  
Iatse Local 874  
Iatse Local B18  
Iatse USA 829  
San Francisco Labor Council, Afl-cio

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