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## SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair  
2021 - 2022 Regular Session

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### **SB 805 (Rubio) - Small nonprofit performing arts organizations: payroll and paymaster services grants: employment grants**

**Version:** April 20, 2021

**Urgency:** No

**Hearing Date:** May 10, 2021

**Policy Vote:** L., P.E. & R. 4 - 1

**Mandate:** No

**Consultant:** Robert Ingenito

**Bill Summary:** SB 805 would, upon appropriation by the Legislature, (1) establish the California Nonprofit Performing Arts Paymaster to provide low-cost payroll services to small nonprofit performing arts organizations, and (2) establish a grant program for small nonprofit performing arts organizations to hire and pay employees at least the minimum wage.

#### **Fiscal Impact:**

- The bill's fiscal parameters are not identified in the current version of the bill. Specifically, it does not specify the size of the grant program related to paying minimum wage to small nonprofit performing arts organizations staff, nor does it set the size of the Paymaster, thereby creating General Fund cost pressures, likely to be minimally in the millions of dollars over several years.
- The California Arts Council (CAC) indicates that it does not have the administrative capacity to implement the provisions of the bill. Consequently, it would require staff to manage and administer this program as proposed. The specific increase in staffing needs would depend on the size of the grant program.

**Background:** Current law provides an employee a range of workplace benefits and protections, including a minimum hourly wage, unemployment benefits, paid sick leave and access to rest and meal breaks. A worker not classified as an employee is generally classified as an independent contractor, and the determination of whether a worker is an employee or an independent contractor evaluates the nature of the employer's relationship with the worker.

In recent years, the process to determine an individual's classification status has revolved around two types of tests: the "Borello test" and the ABC test. The Borello test involves the principal factor of "whether the person to whom services is rendered has the right to control the manner and means of accomplishing the result desired" in addition to nine other specified factors. The ABC test presumes an individual is an employee unless they meet the following three criteria: (a) they are free from the control and direction of the hirer in connection with the performance of the work, both under the contract for the performance of such work and in fact, (b) they perform work that is outside the usual course of the hiring entity's business, and (c) they are customarily engaged in an independently established trade, occupation or business of the same nature as the work performed for the hiring entity. AB 5 (Gonzalez, Chapter 296, Statutes of 2019) codified a 2018 court case, requiring that employers prove that their

workers can meet a 3 part (ABC) test in order to be lawfully classified as independent contractors.

**Proposed Law:** This bill would, among other things, do the following:

- Define “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.
- Define “Small nonprofit performing arts organization” to mean a nonprofit performing arts organization with an average adjusted gross revenue, as defined, equal to or less than \$1.4 million, with specified adjustments for inflation.
- Define “adjusted gross revenue” (AGR) to mean the average annual revenue received over the preceding three years, in whatever form, received or accrued from whatever source, excluding specified matching funds 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.
- Authorize CAC, 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. CAC shall provide a nonprofit contractor selected with a grant award in an amount necessary to fund the initial startup costs of providing payroll and paymaster services pursuant to this section. The contractor may charge a fee to a small nonprofit performing arts organization that receives those services, but the fee shall not exceed the amount necessary to cover its costs, as specified.
- Include an annual report to CAC 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.
- Establish the Performing Arts Equitable Payroll Fund within the State Treasury. Upon appropriation, CAC 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

**Staff comments:** General Fund support for CAC was 49 million in 2019-20. Of this amount, administrative expenses totaled \$1.7 million, while the remainder went to local assistance. The grant program envisioned by this bill would represent a substantial increase in General Fund support compared to the previous years.

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