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THIRD READING

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Bill No: SB 805  
Author: Rubio (D), et al.  
Amended: 5/20/21  
Vote: 21

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SENATE LABOR, PUB. EMP. & RET. COMMITTEE: 4-1, 4/26/21  
AYES: Cortese, Durazo, Laird, Newman  
NOES: Ochoa Bogh

SENATE APPROPRIATIONS COMMITTEE: 5-2, 5/20/21  
AYES: Portantino, Bradford, Kamlager, Laird, Wieckowski  
NOES: Bates, Jones

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

**SOURCE:** Author

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**DIGEST:** This bill establishes 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 (AGR) 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 awards schedule:

\$0-25,000 AGR -- the lesser of 4.5 times payroll contributions or \$25,000.

\$25,000-\$50,000 AGR -- the lesser of 4.5 times payroll contributions or \$50,000.

\$50,000-\$75,000 AGR -- the lesser of 4.25 times payroll contributions or \$75,000.

\$75,000-\$100,000 AGR -- the lesser of 4.25 times payroll contributions or \$100,000.

\$100,000-\$150,000 AGR -- the lesser of 4 times payroll contributions or \$150,000.

\$150,000-\$200,000 AGR -- the lesser of 4 times payroll contributions or \$200,000.

\$200,000-\$250,000 AGR -- the lesser of 4 times payroll contributions or \$250,000.

\$250,000-\$350,000 AGR -- the lesser of 3.75 times payroll contributions or \$280,000.

\$350,000-\$450,000 AGR -- the lesser of 3.5 times payroll contributions or \$350,000.

\$450,000-\$550,000 AGR -- the lesser of 3 times payroll contributions or \$375,000.

\$550,000-\$650,000 AGR -- the lesser of 2.5 times payroll contributions or \$375,000.

\$650,000-\$750,000 AGR -- the lesser of 2 times payroll contributions or \$350,000.

\$750,000-\$850,000 AGR -- the lesser of 1.5 times payroll contributions or \$300,000.

\$850,000-\$1,000,000 AGR -- the lesser of 1 times payroll contributions or \$225,000.

\$1,000,000-\$1,200,000 AGR -- the lesser of .5 times payroll contributions or \$135,000.

\$1,200,000-\$1,400,000 AGR -- the lesser of .25 times payroll contributions or \$80,000.

- 8) Requires that the categories of organizations based on adjusted gross revenue be adjusted every five years based on the California Consumer Price Index, as reported by the Department of Industrial Relations.

### **Comments**

*Need for this bill?* In the wake of the passage of AB 5 (Gonzalez, Chapter 296, Statutes of 2019), 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 the Senate Labor, Public Employment and Retirement 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.

*Appropriations Amendments.* Amendments taken in the Senate Appropriations Committee make the following changes:

- 1) Numerous adjustments to the grant award schedule, both to theater AGR thresholds and to actual grant award amounts.

2) Addition of a coauthor.

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: Yes Local: No

According to the Senate Appropriations Committee, this 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 indicates that it does not have the administrative capacity to implement the provisions of this 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.

**SUPPORT:** (Verified 5/20/21)

24th Street Theatre  
About...productions  
Acme Performance Group: DbA Moving Arts  
Actors Co-op Theatre Company  
Altadena Arts  
Anaheim Ballet  
Arts Orange County  
Asian Pacific Americans Friends of The Theater  
Bay Area Women's Theatre Festival  
Boston Court Pasadena  
California Arts Advocates  
Casa 0101  
Chance Theater  
Chicanas, Cholas, Y Chisme Theater Collective  
Circle X Theatre Company  
Claremont Chamber of Commerce  
Coin & Ghost Theatre Company  
Company of Angels, Inc.  
Cornerstone Theater Company, Inc.  
Dezart Performs  
Dolores Huerta Foundation  
Donna Morong Casting  
El Teatro Campesino  
Ferocious Lotus Theatre Company

Foolsfury Theater  
Fountain Theatre  
Group Repertory Theatre  
Iama Theatre Company  
Impro Theatre  
Infinite Jest Theatre Company  
Inkwell Theater  
Jabberwocky Theatre DbA Rogue Machine  
Latino Theater Company  
Los Altos Stage Company  
Neighborhood Stories  
New American Theatre  
Novato Theatre Company  
Odyssey Theatre Foundation  
Open Fist Theater Company  
Ophelia's Jump Productions  
Playhouse Merced  
Playwrights' Arena Theater  
Plotline Theatre Company  
Robey Theatre Company  
Rogue Machine Theatre  
Sacred Fools Theater Company  
San Jose Arts Advocates  
Shotgun Players  
Sierra Madre Playhouse  
Skylight Theatre Company  
Skypilot Theatre Company  
South Bay Musical Theatre  
South Valley Civic Theatre  
Svcreates  
Teatro Visión  
Theatre Bay Area  
Theatre of Note  
Theatre West  
Theatrical Producers League of Los Angeles  
Town Hall Theatre Company  
Towne Street Theatre  
Watts Village Theater Company  
One individual

**OPPOSITION:** (Verified 5/20/21)

Alameda Labor Council  
Black University  
Breath of Fire Latina Theater Ensemble  
California IATSE Council  
California Labor Federation, AFL-CIO  
Celebration Productions Corporation  
Entertainment Union Coalition  
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 Building and Construction Trades Council  
San Francisco Labor Council, AFL-CIO

**ARGUMENTS IN SUPPORT:** San Jose Arts Advocates write, “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.”

**ARGUMENTS IN OPPOSITION:** Opposition continues to center around worker safety and pay concerns. Many opposition stakeholders applaud the decision to move the bill's provisions away from an ABC test exemption and towards a payroll grant program. Opposition at this point primarily have sought clarifying language that theaters would still be the employers of any people working in the theater, rather than a payroll company in charge of payroll services. Labor stakeholders have also expressed an interest in language that would ease worker access to union resources and organizing opportunities.

Prepared by: Jake Ferrera / L., P.E. & R. / (916) 651-1556  
5/25/21 10:44:34

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