

## SENATE THIRD READING

SB 805 (Rubio)

As Amended June 24, 2021

Majority vote

**SUMMARY**

This bill would task the California Arts Council with the creation and administration of a California Nonprofit Performing Arts Paymaster for the purpose of providing low-cost payroll services to small nonprofit performing arts organizations, as defined. Additionally, it would establish the Performing Arts Equitable Payroll Fund and require the council to establish and administer a grant program using moneys in the fund to award grants for the purpose of enabling small nonprofit performing arts organizations to hire and pay employees at least minimum wage.

**Major Provisions**

- 1) Defines "council" to mean the Arts Council established pursuant to Section 8751 of the Government Code.
- 2) Defines "performing arts" to mean the types of arts that are performed live for a remote or in person audience, including, but not limited to, music, dance, and drama.
- 3) 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.
- 4) Clarifies, performing arts organizations that are eligible to apply may also include organizations that are fiscally sponsored organizations and not a formally established 501(c)(3) nonprofit, for which criteria may be determined by the council.
- 5) Defines "small nonprofit performing arts organization" to mean a nonprofit performing arts organization with an average adjusted gross revenue equal to or less than one million four hundred thousand dollars (\$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.
- 6) 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 the Government Code 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.
- 7) Defines "California nonprofit performing arts paymaster" to mean a person or business entity, contracted by the council and an employer that is a small nonprofit performing arts organization or some other qualifying entity, that does all of the following:
  - a) Calculates, processes, and produces wage payments to the employer's employees under the employer's federal employer identification number.

- b) Withholds and remits applicable taxes to government agencies using the employer's federal employer identification number.
  - c) Issues federal and state income tax forms to the employer's employees using the employer's federal employer identification number.
  - d) Provides workers' compensation and unemployment insurance administration.
- 8) Requires, upon appropriation by the Legislature, the council to establish and administer the California Nonprofit Performing Arts Paymaster for the purpose of providing low-cost payroll and paymaster services to small nonprofit performing arts organizations. The council shall issue a request for proposals, establish criteria to rate and rank applicants, and award contracts on a competitive basis to two or more nonprofit contractors to provide these services.
  - 9) States that a contract entered into pursuant to 8) above shall require the nonprofit contractor to provide the payroll and paymaster services for at least ten years.
  - 10) Requires, upon appropriation by the Legislature, the council to provide a selected nonprofit contractor with a grant award in an amount necessary to fund the initial startup costs of providing payroll and paymaster services pursuant to this section.
  - 11) Authorizes a nonprofit contractor providing payroll and paymaster services pursuant to this section to charge a fee, as specified, to a small nonprofit performing arts organization that receives those services.
  - 12) Requires a selected nonprofit contractor to submit an annual report to the council by July 31 of each year that includes information about the number of nonprofit performing arts organizations served and the costs associated with providing the services from the preceding fiscal year.
  - 13) Authorizes the council to adopt regulations for the purpose of establishing and administering the above provisions.
  - 14) Creates the "Performing Arts Equitable Payroll Fund" within the State Treasury. Upon appropriation by the Legislature, the council shall establish and administer a grant program using moneys in the fund to award grants for the purpose of enabling small nonprofit performing arts organizations to hire and pay employees at least minimum wage.
  - 15) Subjects small nonprofit performing arts organizations to reporting requirements upon application for a grant, including budget size, venue size, number of employees, and number of independent contractors.
  - 16) Requires a small nonprofit performing arts organization to include in its application a certification providing that funds shall only be used for the purposes of an organization's compliance with AB 2257 (Gonzalez), Chapter 38, Statutes of 2020 regarding the classification of employees and independent contractors.
  - 17) Requires the council to award a grant to small nonprofit performing arts organizations in amounts pursuant to a matching schedule that is based upon adjusted gross revenue ranging

from twenty-five thousand dollars (\$25,000) or less to one million four hundred thousand dollars (\$1,400,000).

- 18) States that nothing in the above provisions shall change a small nonprofit performing arts organization's status or its obligations as an employer under Chapter 38 of the Statutes of 2020.

## COMMENTS

This bill seeks to address the employment status of workers in small nonprofit performing arts companies. Specifically, the intent of the bill, as mentioned by the author, is to ensure the proper classification of these workers by creating a statewide payroll and paymaster service as well as by establishing a sliding scale grant based program to assist with employee-associated payroll costs. The payroll grants provided in the bill are conditioned upon key applicant reporting requirements, such as budget size, venue size, and relevant workforce data.

Please see the policy analysis for a complete discussion of this measure.

### According to the Author

According to the Author, "This bill will create a critical funding infrastructure to help assist our small nonprofit performing arts companies (SNPAC) known as the "California Nonprofit Performing Arts Paymaster" which will provide low-cost payroll and paymaster services to SNPACs and establish the Performing Arts Equitable Payroll Fund to ensure that SNPACs can pay all workers' minimum wage. 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. SNPACs contribute enormously to the economic growth, social well-being and cultural vitality of the local communities they serve. Current operating costs are insufficient to allow SNPACs to pay all workers minimum wage. SB 805 is critical to help SNPACs create and preserve job opportunities for performers and people in the performing arts sector, particularly workers in marginalized communities."

### Arguments in Support

California Arts Advocates supports this bill, stating it is "an innovative solution to address the impact of AB 5 on small nonprofit performing arts companies (SNPAC), who act as incubators and onramps for emerging performing arts workers particularly in traditionally underserved and under resourced communities. Our goal is to see arts workers valued for their significant contributions and for there to be corresponding investment to pay arts workers a living wage." Homeboy Industries, adds in their support, "SB 805 is critical to help SNPACs create and preserve job opportunities for people in the performing arts sector, particularly workers in marginalized communities. These small nonprofit theatres contribute enormously to the economic growth, social well-being and cultural vitality of the local communities they serve."

### Arguments in Opposition

Most opposition stakeholders applaud the decision to move this bill's provisions away from an ABC test exemption and towards a payroll grant program. But implementation issues remain. As the California IATSE Council (CIC) writes in opposition to this bill unless this bill is amended to ensure "it lifts up and protects workers in small nonprofit performing arts companies (SNPACs)," saying, "We recognize the importance that small performing arts companies play in our communities, not only to promote cultural diversity, but as an opportunity for individuals to begin careers in the performing arts. There is no disagreement of the need to support these

critical institutions, particularly following the pandemic. Our members, who work in live theater, have been particularly hard by the Pandemic—out of work for over 16 months and even now only slowly able to return. We strongly believe that funding can't be fully divorced from how workers in these smaller performing arts organizations are treated; after all they are the foundation that brings a theater to life. Regrettably, despite several meetings with the author's office and stakeholders, we have made little progress to ensure this bill uplifts these essential workers."

Opposition at this point 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 requested language that would grant a preference to SNPAC grant applicants with a collective bargaining agreement in place and require the CAC to collect and report data on the grant recipients and workforce composition of those grant recipients.

## **FISCAL COMMENTS**

According to the Assembly Appropriations Committee, cost pressures of an unknown amount, potentially in the millions of dollars, depending on the amount of any appropriation made by the Legislature for the two grant programs. Although the final 2021 budget act appropriated \$500,000 to the CAC to establish a non-profit paymaster program, it is unclear if that amount is sufficient to cover the CAC's program administration costs and the grant awards for selected non-profit contractors required by this bill. Additionally, since the final 2021 budget act appropriated \$49.5 million for a related, but ultimately different non-profit performing arts payroll grant program, new General Fund support would be needed to implement the program described by this bill.

## **VOTES**

### **SENATE FLOOR: 34-5-1**

**YES:** Allen, Archuleta, Atkins, Becker, Bradford, Caballero, Cortese, Dodd, Durazo, Eggman, Glazer, Gonzalez, Grove, Hertzberg, Hueso, Hurtado, Jones, Kamlager, Laird, Leyva, Limón, McGuire, Melendez, Min, Newman, Pan, Portantino, Roth, Rubio, Skinner, Stern, Umberg, Wieckowski, Wiener

**NO:** Bates, Borgeas, Nielsen, Ochoa Bogh, Wilk

**ABS, ABST OR NV:** Dahle

### **ASM ARTS, ENTERTAINMENT, SPORTS, TOURISM, AND INTERNET MEDIA: 6-1-0**

**YES:** Quirk-Silva, Valladares, Bloom, Chiu, Friedman, Nazarian

**NO:** Choi

### **ASM LABOR AND EMPLOYMENT: 7-0-0**

**YES:** Kalra, Flora, Lorena Gonzalez, Jones-Sawyer, Reyes, Seyarto, Ward

### **ASM APPROPRIATIONS: 12-0-4**

**YES:** Lorena Gonzalez, Bryan, Calderon, Carrillo, Chau, Gabriel, Eduardo Garcia, Levine, Quirk, Robert Rivas, Akilah Weber, Kalra

**ABS, ABST OR NV:** Bigelow, Megan Dahle, Davies, Fong

**UPDATED**

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