
UNFINISHED BUSINESS

Bill No: SB 805
Author: Rubio (D), et al.
Amended: 9/3/21
Vote: 21

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

SENATE FLOOR: 34-5, 5/26/21
AYES: 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
NOES: Bates, Borgeas, Nielsen, Ochoa Bogh, Wilk
NO VOTE RECORDED: Dahle

ASSEMBLY FLOOR: 51-0, 9/10/21
(ROLL CALL NOT AVAILABLE)

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

SOURCE: Author

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.

Assembly Amendments:

- 1) Allow performing arts organizations that are fiscally sponsored organizations, *not formally established 501(c)(3) nonprofits*, to submit applications to the Arts Council to enter into a contract with a California nonprofit performing arts paymaster.
- 2) Define “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, and completes specified payroll services for that performing arts organization.
- 3) Require the recipient of Arts Council grant funds under this bill to provide specified identifying information to the Arts Council.
- 4) Lower a requirement on the length of time that a nonprofit contractor provide the payroll and paymaster services from at least 10 years to at least five years.
- 5) Remove language that states it is the intent of the legislature to fund small nonprofit performing arts organizations based on their ability to pay all workers minimum wage.
- 6) Remove language creating the Performing Arts Equitable Payroll Fund within the State Treasury. Additionally remove a fund matching schedule that would have provided funds to small nonprofit performing arts organizations based on their adjusted gross revenue.

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 “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, as defined, that does all 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.
- 4) 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.
- 5) 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.
- 6) Requires, upon appropriation by the Legislature, the California Arts Council to establish and administer the California Nonprofit Performing Arts Paymaster program for the purpose of providing low-cost payroll and paymaster services to small nonprofit performing arts organizations.
- 7) 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 five years and a cap on the amount the contractor may charge for their services.
- 7) Requires the recipient of Arts Council grant funds under this bill to provide the following identifying information to the Arts Council.
 - a) Certification providing that the funds will only be used for the organization's compliance with existing law regarding the classification of employees and independent contractors.
 - b) Organizational information, including venue size, budget, and the number of employees and independent contractors.

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 situations where payment below the minimum wage is even a remote possibility; however as the theaters covered by this bill are nonprofit and are relatively small operations, the requirements under the ABC test 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.

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

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 California Arts Council (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.

SUPPORT: (Verified 9/9/21)

24th Street Theatre
About...productions
Acme Performance Group: dba Moving Arts
Actors Co-op Theatre Company
Actors Equity
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
Chicanas, Cholas, Y Chisme Theater Collective

Circle X Theater Company
Claremont Chamber of Commerce
Coin & Ghost Theatre Company
Company of Angels, Inc.
Cornerstone Theater Company, Inc.
Dezart Performs
Donna Morong Casting
El Teatro Campesino
Ferocious Lotus Theatre Company
Foolsfury Theater
Iama Theatre Company
Impro Theatre
Infinite Jest Theatre Company
Jabberwocky Theatre DbA Rogue Machine
Los Altos Stage Company
Neighborhood Stories Novato Theatre Company
Odyssey Theatre Foundation
Open Fist Theater Company
Ophelia's Jump Productions
Playhouse Merced
Playwrights' Arena Theater
Plotline 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
The Chance Theater
The Fountain Theatre
The Group Repertory Theatre
The Inkwell Theater
The Latino Theater Company
The New American Theatre
The Open Fist Theatre Company

The Robey Theatre Company
The Sacred Fools Theater
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

OPPOSITION: (Verified 9/9/21)

None received

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.”

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9/10/21 17:45:53

**** END ****