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SB-1116 Arts Council: The Performing Arts Equitable Payroll Fund. (2021-2022)

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Senate Bill No. 1116

CHAPTER 731

An act to add Chapter 9.1 (commencing with Section 8757) to Division 1 of Title 2 of the Government Code, relating to state government.

[Approved by Governor September 29, 2022. Filed with Secretary of State September 29, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1116, Portantino. Arts Council: The Performing Arts Equitable Payroll Fund.

The Dixon-Zenovich-Maddy California Arts Act of 1975 establishes the Arts Council, consisting of 11 appointed members. The act specifies the duties of the council, including providing for the exhibition of art works in public buildings throughout California. Existing law establishes the Office of Small Business Advocate within the Governor's Office of Business and Economic Development. Existing law authorizes the Governor to appoint the Director of the Office of Small Business Advocate who serves as the Small Business Advocate. Existing law requires the advocate to serve as the principal advocate in the state on behalf of small businesses, to represent the views and interests of small businesses before other state agencies, and to enlist the cooperation and assistance of public and private agencies, businesses, and other organizations in disseminating information about the programs and services provided by state government that are of benefit to small businesses, among other things.

This bill would create in the State Treasury the Performing Arts Equitable Payroll Fund. The bill would require the Office of Small Business Advocate to establish and administer a grant program, funded by the Performing Arts Equitable Payroll Fund, upon appropriation by the Legislature, for the purpose of enabling small nonprofit performing arts organizations, as defined, to hire and retain employees. The bill would limit the eligibility of applicants for the grant program to applicants that submit specified information, and, in some cases, information that has been attested to, including founding documents for the organizations, various policies and statements of the organization, financial records of the organization, or of its fiscal sponsor; and evidence of its production and advertisement of performing arts events that it has made open to the public. The bill would exclude various organizations from eligibility, as specified. The bill would require any recipient of the grant to provide the office with certified information, including certification that the grant funds were used for only the specified purposes allowed by these provisions; organizational information including venue size where applicable, annual budget, the number of employees and independent contractors in the last budget year, and the percentage of budget spent on payroll expenses; and certification that there have been no final judgments relating to employee misclassification at any time after the effective date of these provisions.

This bill would require the office to adopt regulations as necessary for ensuring that grant recipients have not used moneys for other purposes and for validating the accuracy of certifications provided. The bill would authorize the office to distribute the grant according to a specified schedule that assigns a percentage of the first \$10,000 of payroll expenses to be reimbursed based on the adjusted gross revenue, as defined, of the grant recipient organization per employee per quarter.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares each of the following:

- (a) It is the intent of the Legislature to recognize the special circumstances and charitable nature of small nonprofit performing arts organizations (SNPAOs) while promoting job creation in the sector.
- (b) SNPAOs create and preserve opportunities for performers and people in the performing arts sector, including workers in marginalized communities.
- (c) SNPAOs are often the onramps for emerging performers and people entering the performing arts industry and are incubators for new works. SNPAOs have historically provided networking, educational, and mentoring opportunities for artists, facilitating the connections necessary for career advancement, and SNPAOs have provided performance experience that helps to open doors to work in larger, less accessible companies.
- (d) SNPAOs provide substantial economic benefits to their communities through their leveraging effect on the economy from tourism, leisure spending, and engagement of ancillary services.

SEC. 2. Chapter 9.1 (commencing with Section 8757) is added to Division 1 of Title 2 of the Government Code, to read:

CHAPTER 9.1. The Performing Arts Equitable Payroll Fund

8757. For purposes of this chapter, the following definitions apply:

- (a) "Adjusted gross revenue" means the average annual revenue received over the preceding three years, in whatever form, received or accrued from whatever source, excluding funds received pursuant to Section 8753.6 and excluding revenue earmarked by the grantor or donor solely for capital expenditures or any passthrough funds collected for the benefit of another organization that is received during the tax year of an organization.
- (b) "Capital expenditures" means funds used by a company to acquire, upgrade, or maintain fixed assets, including property, plants, buildings, technology, or equipment.
- (c) "Fiscally sponsored performing arts organization" means a performing arts organization that is fiscally sponsored under a Model C contract by a nonprofit organization that is exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code, and the performing arts organization's primary mission is the creation of or presentation of performing arts.
- (d) (1) "Nonprofit performing arts organization" means a performing arts organization that is exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code, and the performing arts organization's primary mission is the creation of or presentation of performing arts.

(2) Performing arts organizations that are eligible to apply for grants from the Performing Arts Equitable Payroll Fund established in Section 8757.1 may also include an organization that is a Model C fiscally sponsored organization and not a Section 501(c)(3) nonprofit organization, for which criteria may be determined by the office.
- (e) "Office" means the Office of Small Business Advocate within the Governor's Office of Business and Economic Development pursuant to subdivision (b) of Section 12098, unless stated otherwise.
- (f) "Payroll expenses" means wages paid to employees, payroll taxes, workers' compensation, unemployment insurance, paymaster fees, and pension, health, and welfare contributions.
- (g) "Performing arts" means the types of arts that are performed live for a remote or in-person audience, including, but not limited to, music, dance, and drama.
- (h) "Small nonprofit performing arts organization" means a nonprofit performing arts organization, or a Model C fiscally sponsored performing arts organization, with an adjusted gross revenue equal to or less than two million dollars (\$2,000,000). The office shall adjust this amount every five years using the California Consumer Price Index as compiled and reported by the Department of Industrial Relations.

8757.1. (a) The Performing Arts Equitable Payroll Fund is hereby created in the State Treasury.

(b) Upon appropriation by the Legislature, the office shall do each of the following:

- (1) 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 retain employees. The organization shall pay these employees not less than

the minimum wage of the city, county, or city and county of which it is subject to jurisdiction or not less than the state minimum wage, whichever is greater.

(2) Administer each grant for a term of one year.

(c) (1) The office shall develop criteria to evaluate eligibility for the grant program in accordance with this chapter. Included in that criteria, a small nonprofit performing arts organization shall be deemed eligible by the office if it submits the following:

(A) A demonstration that its production and advertisement of performing arts events are open to the public by providing to the office at least three of the following documents from three of the small nonprofit performing arts organization's productions:

- (i) A box office report.
- (ii) Evidence of paid advertisements.
- (iii) Social media posts and internet website listings advertising the production.
- (iv) Email blasts advertising the production.
- (v) Reviews of the production.
- (vi) A copy of the playbill for the production.

(B) Demonstrate its eligibility by providing to the office all of the following information about, policies of, and statements of the organization:

- (i) Certification of compliance with the California requirement on sexual harassment training pursuant to Section 12950.1.
- (ii) Diversity, equity, and inclusion policy with the dates the policy was created and last updated.
- (iii) Harassment policy with the dates the policy was created and last updated.
- (iv) Internet website hyperlink.
- (v) Mission statement.

(2) The office shall deem a nonprofit performing arts organization eligible when it submits, in addition to the requirements listed in paragraph (1), all of the following:

- (A) The Internal Revenue Service (IRS) determination letter recognizing the organization as tax-exempt under the subsection for which it applied.
- (B) The articles of incorporation for the organization, including any amendments.
- (C) A certified Business Entity Certificate of Status showing an active status of the organization from the Secretary of State.
- (D) (i) Financial records, including the organization's filed IRS Form 990 documents from the previous three years.
 - (ii) Where a nonprofit performing arts organization cannot produce filed IRS Form 990 documents from the previous three years, it shall attest it actively produced qualifying work in three of the previous five years and provide the filed IRS Form 990 documentation that corresponds to those years.

(3) The office shall deem a fiscally sponsored performing arts organization eligible for the grant program when it submits, in addition to the requirements listed in paragraph (1), all of the following:

- (A) A letter evidencing the agreement between the organization and its fiscal sponsor.
- (B) The board minutes of the fiscal sponsor that show the date the fiscal sponsor approved the sponsorship.
- (C) A certified Business Entity Certificate of Status showing an active status of the fiscal sponsor from the Secretary of State.
- (D) An attestation by the fiscal sponsor that the sponsored organization is a performing arts organization.
- (E) Financial records, including the following:

- (i) Detailed financial information for passthrough funds going to the fiscally sponsored organization.
- (ii) Profit and Loss statements of fiscally sponsored organization corresponding to the same period.
- (iii) (I) The filed IRS Form 990 documents of the fiscal sponsor from the previous three years.

(II) Where a fiscally sponsored performing arts organization did not actively produce qualifying work in the previous three years, the fiscal sponsor shall do all of the following:

- (ia) Attest that the fiscally sponsored performing arts organization was active in three of the previous five years.
- (ib) Provide its IRS Form 990 documents for the years in which the fiscally sponsored performing arts organization did actively produce qualifying work.
- (ic) Provide detailed information regarding passthrough funds going to the fiscally sponsored performing arts organization.
- (id) Provide profit and loss statements of the fiscally sponsored performing arts organization that correspond to the years in which it was active.

(d) The office shall not consider applications from the following organizations, as the following organizations shall not be eligible for the grant program:

- (1) After school programs for youth.
- (2) A nonprofit organization that is exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code and that raises money for a single arts organization.
- (3) Conservatory programs.
- (4) Foundations.
- (5) Individual artists who are fiscally sponsored.
- (6) Model A, Model B, Model D, Model F, or Model L fiscally sponsored organizations or projects.
- (7) Social clubs.
- (8) Summer camps.
- (9) Youth educational programs or schools.
- (10) Youth performing arts groups, including, but not limited to, youth symphonies, youth choirs, and youth theater groups.

(e) As a condition of the receipt of grant funds, a recipient of a grant described in this section shall provide the following information to the office:

- (1) Certification providing that the funds were used for only the following purposes:
 - (A) The payroll expenses, as defined in subdivision (f) of Section 8757, excluding payroll taxes and unemployment insurance of any qualifying employee. A qualifying employee shall include, but shall not be limited to, any actor, administrator, choreographer, dancer, designer, director, musician, producer, stage manager, technician, or worker hired by the organization as an employee. An independent contractor, volunteer, or intern shall not be considered a qualifying employee for the purposes of a grant awarded pursuant to this section.
 - (B) Maintaining compliance with all protections owed under state and federal law to workers classified as employees.
- (2) Organizational information, including venue size where applicable, annual budget, the number of employees and independent contractors in the last budget year, and the percentage of budget spent on payroll expenses.
- (3) Certification that the organization has no final judgments relating to employee misclassification at any time after the effective date of this section.

(f) (1) Any organization that has received a grant from the fund may apply for grants in any future years for which the organization maintains eligibility pursuant to the terms set forth herein.

- (2) Any organization that has received a grant from the fund shall, when applying for any subsequent grant from the fund, provide any additional information that the office deems necessary for ensuring that the organization has not used moneys from

the fund for purposes other than those set forth in paragraph (1) of subdivision (e).

(g) (1) The office shall adopt regulations as are necessary for each of the following:

(A) Ensuring that grant recipients have not used moneys for other purposes.

(B) Validating the accuracy of certifications provided pursuant to paragraph (3) of subdivision (e).

(2) Any organization that the office finds has used moneys for other purposes, or that has provided inaccurate certification, shall be ineligible to receive any further grants from the fund. The office may also require those organizations to repay previous funding.

(h) The office shall award a grant to a small nonprofit performing arts organization in an amount pursuant to the following reimbursement schedule:

(1) For organizations with an adjusted gross revenue of up to two hundred fifty thousand dollars (\$250,000), the fund shall reimburse 80 percent of the first ten thousand dollars (\$10,000) of the organization's payroll expenses for work performed in the State of California per employee per quarter.

(2) For organizations with an adjusted gross revenue of not less than two hundred fifty thousand one dollars (\$250,001) and not more than four hundred fifty thousand dollars (\$450,000), the fund shall reimburse 75 percent of the first ten thousand dollars (\$10,000) of the organization's payroll expenses for work performed in the State of California per employee per quarter.

(3) For organizations with an adjusted gross revenue of not less than four hundred fifty thousand one dollars (\$450,001) and not more than six hundred fifty thousand dollars (\$650,000), the fund shall reimburse 70 percent of the first ten thousand dollars (\$10,000) of the organization's payroll expenses for work performed in the State of California per employee per quarter.

(4) For organizations with an adjusted gross revenue of not less than six hundred fifty thousand one dollars (\$650,001) and not more than eight hundred fifty thousand dollars (\$850,000), the fund shall reimburse 60 percent of the first ten thousand dollars (\$10,000) of the organization's payroll expenses for work performed in the State of California per employee per quarter.

(5) For organizations with an adjusted gross revenue of not less than eight hundred fifty thousand one dollars (\$850,001) and not more than one million dollars (\$1,000,000), the fund shall reimburse 50 percent of the first ten thousand dollars (\$10,000) of the organization's payroll expenses for work performed in the State of California per employee per quarter.

(6) For organizations with an adjusted gross revenue of not less than one million one dollars (\$1,000,001) and not more than one million two hundred fifty thousand dollars (\$1,250,000), the fund shall reimburse 40 percent of the first ten thousand dollars (\$10,000) of the organization's payroll expenses for work performed in the State of California per employee per quarter.

(7) For organizations with an adjusted gross revenue of not less than one million two hundred fifty thousand one dollars (\$1,250,001) and not more than one million five hundred thousand dollars (\$1,500,000), the fund shall reimburse 30 percent of the first ten thousand dollars (\$10,000) of the organization's payroll expenses for work performed in the State of California per employee per quarter.

(8) For organizations with an adjusted gross revenue of not less than one million five hundred thousand one dollars (\$1,500,001) and not more than one million seven hundred fifty thousand dollars (\$1,750,000), the fund shall reimburse 25 percent of the first ten thousand dollars (\$10,000) of the organization's payroll expenses for work performed in the State of California per employee per quarter.

(9) For organizations with an adjusted gross revenue of not less than one million seven hundred fifty thousand one dollars (\$1,750,001) and not more than two million dollars (\$2,000,000), the fund shall reimburse 20 percent of the first ten thousand dollars (\$10,000) of the organization's payroll expenses for work performed in the State of California per employee per quarter.

8757.2. If any provision or application of this chapter is declared illegal, invalid, or inoperative, in whole or in part, by any court of competent jurisdiction, the remaining provisions and portions thereof shall remain in full force and effect.