

AMENDMENTS TO SENATE BILL NO. 1116

Amendment 1

In the title, strike out lines 1 and 2 and insert:

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.

Amendment 2

On page 1, before line 1, insert:

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 the 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 connections necessary for career advancement and 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:

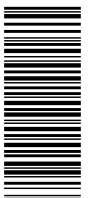
CHAPTER 9.1. THE PERFORMING ARTS EQUITABLE PAYROLL FUND

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) (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 whose 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 fiscally sponsored organization and not a Section 501(c)(3) nonprofit organization, for which criteria may be determined by the office.

(d) "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.

(e) "Payroll expenses" means wages paid to employees, payroll taxes, workers' compensation, unemployment insurance, paymaster fees, and pension, health, and welfare contributions.

(f) "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.

(g) "Small nonprofit performing arts organization" means a nonprofit 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) (1) Upon appropriation by the Legislature, the office shall do each of the following:

(A) 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, to retain, or 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.

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

(2) 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.

(c) 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 shall be used for only the following purposes:

(A) The compensation of any qualifying employee. A qualifying employee shall include, but shall not be limited to, any actor, stage manager, 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 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, the percentage of budget spent on payroll expenses, and the organization's diversity, equity, and inclusion policy, with the dates the policy was created and last updated.

(3) Certification that no tribunal of competent jurisdiction has issued a final judgment finding that the organization has, at any time after the effective date of this section, misclassified any employee as an independent contractor.

(d) 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 (c).

(e) (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 (c).

(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.

(f) 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.

Amendment 3

On page 1, strike out lines 1 to 12, inclusive, and strike out page 2

PROPOSED AMENDMENTS TO SENATE BILL NO. 1116

SENATE BILL

No. 1116

Introduced by Senator Portantino

February 16, 2022

~~An act to amend Section 8753 of the Government Code, relating to state government.~~ *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.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1116, as introduced, Portantino. ~~Arts Council.~~ *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



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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 require any recipient of the grant to provide the office with certified information, including certification that the grant funds will be 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, the percentage of budget spent on payroll expenses, and the organization’s diversity, equity, and inclusion policies; and certification that no tribunal of competent jurisdiction has issued a final judgment finding that the organization has, at any time after the effective date of these provisions, misclassified any employee as an independent contractor.

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.

~~This bill would make nonsubstantive changes to those provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated 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 the 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*

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+ *networking, educational, and mentoring opportunities for artists,*
+ *facilitating connections necessary for career advancement and*
+ *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) (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 whose*
+ *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 fiscally sponsored organization and not a Section*
+ *501(c)(3) nonprofit organization, for which criteria may be*
+ *determined by the office.*

+ *(d) "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.*

- + (e) “Payroll expenses” means wages paid to employees, payroll taxes, workers’ compensation, unemployment insurance, paymaster fees, and pension, health, and welfare contributions.
- + (f) “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.
- + (g) “Small nonprofit performing arts organization” means a nonprofit 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) (1) Upon appropriation by the Legislature, the office shall do each of the following:
 - + (A) 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, to retain, or 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.
 - + (B) Administer each grant for a term of one year.
- + (2) 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.
- + (c) 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 shall be used for only the following purposes:
 - + (A) The compensation of any qualifying employee. A qualifying employee shall include, but shall not be limited to, any actor, stage manager, 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 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, the percentage of budget spent on payroll expenses, and the organization’s diversity, equity, and inclusion policy, with the dates the policy was created and last updated.*
- + (3) *Certification that no tribunal of competent jurisdiction has issued a final judgment finding that the organization has, at any time after the effective date of this section, misclassified any employee as an independent contractor.*
- + (d) *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 (c).*
- + (e) (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 (c).*
- + (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.*
- + (f) *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.

Page 1

1 SECTION 1. ~~Section 8753 of the Government Code is amended~~
 2 to read:

- 3 8753. ~~The council shall:~~
- 4 ~~(a) Encourage artistic awareness, participation and expression.~~
 - 5 ~~(b) Help independent local groups develop their own art~~
6 ~~programs.~~
 - 7 ~~(c) Promote the employment of artists and those skilled in crafts~~
8 ~~in both the public and private sector.~~
 - 9 ~~(d) Provide for the exhibition of works of art in public buildings~~
10 ~~throughout California.~~
 - 11 ~~(e) Enlist the aid of all state agencies in the task of ensuring the~~
12 ~~fullest expression of our artistic potential.~~
 - 13 ~~(f) Adopt regulations in accordance with the provisions of the~~
14 ~~Administrative Procedure Act necessary for proper execution of~~
15 ~~the powers and duties granted to the council by this chapter.~~
 - 16 ~~(g) Employ administrative, technical, and other personnel as~~
17 ~~may be necessary.~~
 - 18 ~~(h) Fix the salaries of the personnel employed pursuant to this~~
19 ~~chapter as nearly as possible to conform to the salaries established~~
20 ~~by the State Personnel Board for classes of positions in the state~~
~~civil service involving comparable duties and responsibilities.~~
 - 21 ~~(i) Appoint advisory committees whenever necessary. Members~~
22 ~~of an advisory committee shall serve without compensation, but~~
23 ~~each may be reimbursed for necessary traveling and other expenses~~
24 ~~incurred in the performance of official duties.~~
 - 25 ~~(j) Request and obtain from any department, division, board,~~
26 ~~bureau, commission, or other agency of the state assistance and~~
27 ~~data as will enable it properly to carry on its power and duties.~~
 - 28 ~~(k) Hold hearings, execute agreements, and perform any acts~~
29 ~~necessary and proper to carry out the purposes of this chapter.~~
 - 30 ~~(l) Accept federal grants for any of the purposes of this chapter.~~

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Amendment 3

PROPOSED AMENDMENTS

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22 ~~(m) Accept only unrestricted gifts, donations, bequests, or grants~~
 23 ~~of funds from private sources and public agencies, for any of the~~
 24 ~~purposes of this chapter. However, the council shall give careful~~
 25 ~~consideration to any donor requests concerning specific~~
 26 ~~dispositions.~~
 27 ~~(n) Establish grant application criteria and procedure.~~
 28 ~~(o) Award prizes or direct grants to individuals or organizations~~
 29 ~~in accordance with regulations as the council may prescribe. In~~
 30 ~~awarding prizes or directing grants, the council shall notify the~~
 31 ~~offices of the legislators in whose district the recipient resides.~~
 32 ~~(p) Have the authority to appoint peer review panels whenever~~
 33 ~~necessary. Each member of a peer review panel may, at the~~
 34 ~~discretion of the council, receive a per diem and honorarium for~~
 35 ~~each day of service and be reimbursed for necessary travel and~~
 36 ~~other expenses incurred in the performance of official duties.~~

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