

31598

AMENDMENTS TO SENATE BILL NO. 805
AS AMENDED IN SENATE MARCH 10, 2021

Amendment 1

In the title, in line 1, strike out “Section 2784.4 to the Labor Code,” and insert:

Sections 8750.5, 8753.7, and 8753.8 to the Government Code,

Amendment 2

In the title, strike out line 2 and insert:

state government.

Amendment 3

On page 2, before line 1, insert:

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

(a) Small nonprofit performing arts companies (SNPACs) create and preserve opportunities for performers and people in the performing arts sector, particularly workers in marginalized communities.

(b) SNPACs are often the on-ramps for emerging performers and people entering the performing arts industries, and they are incubators for new works.

(c) Because of historic undercapitalization of community-based arts and the effects of prolonged shutdown, SNPACs are reducing the number of people they hire and the number of programs they offer.

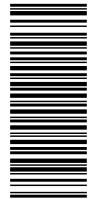
(d) SNPACs present stories that resonate with and reflect the community, the artists, and the social context of the times. The size of cast and the need for designers, choreographers, and other production workers is largely dictated by the requirements of the story being told. It is important to preserve this outlet for First Amendment speech that represents and engages marginalized groups.

(e) SNPACs have historically provided networking, educational, and mentoring opportunities for artists who are Black, Indigenous, or other people of color, facilitating connections necessary for career advancement and have provided performance experience that helps to open doors to work in larger, less accessible companies.

(f) Because of their mission to make theater accessible through low ticket prices and free services, the majority of SNPACs cannot cover the costs of production through tickets sales alone and must, on average, raise funds to cover 40 to 60 percent of the costs of each production.

(g) SNPACs provide substantial economic benefits to their communities through their leveraging effect on the economy from tourism, leisure spending, and engagement of ancillary services.

(h) Workers in the live performing arts experienced one of the state’s highest unemployment rates during the over 15-month-long pandemic shutdown of small live performance venues.



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(i) Each SNPAC creates an average of 64 jobs annually for a cumulative average of 121,436 jobs created by the sector each year.

(j) Establishing a sustainable infrastructure and path for SNPAC growth will improve the health of the entire sector and help small companies grow and increase wages. For many SNPACs, payroll has long been a challenge, because they often have regular turnover as the company of performers and crew will vary from show to show. According to local media reports, paymasters have been charging fees that can drive the employment premium for some California SNPACs as high as 30 percent.

(k) Substantial savings can be achieved by funding regional nonprofit and arts services organizations to act as production worker administration hubs for SNPACs, starting with payroll services. It is, therefore, the intent of the Legislature in enacting this measure to fund paymaster and payroll services.

(l) It is also the intent of the Legislature in enacting this measure to fund SNPACs based on their ability to pay for their labor to ensure they can pay all workers minimum wage. To this end, this measure, upon appropriation by the Legislature, creates a schedule of matching funds based on a calculation of the recipient SNPAC's 3-year average adjusted gross revenue that excludes certain restricted capital expenditure and pass through funds, which cannot be used to pay for a SNPAC's labor.

(m) It is the intent of the Legislature in enacting this act to recognize the special circumstances and the charitable nature of SNPACs while promoting job creation in the sector.

SEC. 2. Section 8750.5 is added to the Government Code, to read:

8750.5. For purposes of this chapter, the following definitions apply:

(a) "Council" means the Arts Council established pursuant to Section 8751.

(b) "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.

(c) "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 or presentation of performing arts.

(d) "Small nonprofit performing arts organization" means 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.

(e) "Adjusted gross revenue" means 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.

(f) "Capital expenditures" means funds used by a company to acquire, up-grade, and maintain fixed assets such as property, plants, buildings, technology, or equipment.

SEC. 3. Section 8753.7 is added to the Government Code, to read:

8753.7. (a) Upon appropriation by the Legislature, the council shall 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.

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(b) (1) The council shall issue a request for proposals and award contracts on a competitive basis to two or more nonprofit contractors to provide low-cost payroll and paymaster services to small nonprofit performing arts organizations.

(2) The council shall establish criteria to rate and rank applicants under this subdivision.

(3) The council shall specify in the request for proposals the contract terms and conditions deemed necessary for the purposes of this section.

(4) A contract entered pursuant to this subdivision shall require the nonprofit contractor to provide the payroll and paymaster services for at least 10 years.

(c) Subject to appropriation by the Legislature, the council shall provide a nonprofit contractor selected pursuant to subdivision (b) with a grant award in an amount necessary to fund the initial startup costs of providing payroll and paymaster services pursuant to this section.

(d) (1) A nonprofit contractor providing payroll and paymaster services pursuant to this section may charge a fee to a small nonprofit performing arts organization that receives those services.

(2) A fee charged pursuant to this subdivision shall not exceed the amount necessary to cover the cost of providing the payroll or paymaster service to the small nonprofit performing arts organization.

(e) A nonprofit contractor that enters a contract with the council pursuant to subdivision (b) shall submit an annual report to the council by July 31 of each year that includes, at a minimum, all of the following information from the preceding fiscal year:

(1) The number of small nonprofit performing arts organizations that received payroll or paymaster services from the contractor pursuant to this section.

(2) A detailed accounting of the cost of providing the payroll and paymaster services to small nonprofit performing arts organizations.

(3) A detailed accounting of all fees charged and collected pursuant to subdivision (d).

(f) The council may adopt regulations for the purpose of establishing and administering this section.

SEC. 4. Section 8753.8 is added to the Government Code, to read:

8753.8. (a) The Performing Arts Equitable Payroll Fund is hereby created in the State Treasury.

(b) 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.

(c) (1) The council shall award a grant to a small nonprofit performing arts organizations in an amount pursuant to the following matching schedule:

(A) For an organization with adjusted gross revenue of two hundred fifty thousand dollars (\$250,000) or less, the award amount shall be four times the lesser of the amount the organization contributes to payroll or 25 percent of the organization's adjusted gross revenue.

(B) For an organization with adjusted gross revenue above two hundred fifty thousand dollars (\$250,000) but not more than three hundred fifty thousand dollars (\$350,000), the award amount shall be three and three-quarters times the lesser of the

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amount the organization contributes to payroll or 25 percent of the organization's adjusted gross revenue.

(C) For an organization with adjusted gross revenue above three hundred fifty thousand dollars (\$350,000) but not more than four hundred fifty thousand dollars (\$450,000), the award amount shall be three and one-half times the lesser of the amount the organization contributes to payroll or 25 percent of the organization's adjusted gross revenue.

(D) For an organization with adjusted gross revenue above four hundred fifty thousand dollars (\$450,000) but not more than five hundred fifty thousand dollars (\$550,000), the award amount shall be three and one-quarter times the lesser of the amount the organization contributes to payroll or 25 percent of the organization's adjusted gross revenue.

(E) For an organization with adjusted gross revenue above five hundred fifty thousand dollars (\$550,000) but not more than six hundred fifty thousand dollars (\$650,000), the award amount shall be three times the lesser of the amount the organization contributes to payroll or 25 percent of the organization's adjusted gross revenue.

(F) For an organization with adjusted gross revenue above six hundred fifty thousand dollars (\$650,000) but not more than seven hundred fifty thousand dollars (\$750,000), the award amount shall be two and three-quarters times the lesser of the amount the organization contributes to payroll or 25 percent of the organization's adjusted gross revenue.

(G) For an organization with adjusted gross revenue above seven hundred fifty thousand dollars (\$750,000) but not more than eight hundred fifty thousand dollars (\$850,000), the award amount shall be two times the lesser of the amount the organization contributes to payroll or 25 percent of the organization's adjusted gross revenue.

(H) For an organization with adjusted gross revenue above eight hundred fifty thousand dollars (\$850,000) but not more than one million dollars (\$1,000,000), the award amount shall be equal to the lesser of the amount the organization contributes to payroll or 25 percent of the organization's adjusted gross revenue.

(I) For an organization with adjusted gross revenue above one million dollars (\$1,000,000) but not more than one million two hundred thousand dollars (\$1,200,000), the award amount shall be 50 percent of the lesser of the amount the organization contributes to payroll or 25 percent of the organization's adjusted gross revenue.

(J) For an organization with adjusted gross revenue above one million two hundred thousand dollars (\$1,200,000) but not more than one million four hundred thousand dollars (\$1,400,000), the award amount shall be 25 percent of the lesser of the amount the organization contributes to payroll or 25 percent of the organization's adjusted gross revenue.

(2) The categories of organizations based on adjusted gross revenue specified in the paragraph (1) shall be adjusted every five years based on the California Consumer Price Index as compiled and reported by the Department of Industrial Relations.

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Amendment 4
On page 2, strike out lines 1 to 14, inclusive

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PROPOSED AMENDMENTS

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PROPOSED AMENDMENTS TO SENATE BILL NO. 805

AMENDED IN SENATE MARCH 10, 2021

SENATE BILL

No. 805

Introduced by Senator Rubio
(Principal coauthor: Senator Allen)

February 19, 2021



An act to add ~~Section 2784.4 to the Labor Code, Sections 8750.5, 8753.7, and 8753.8 to the Government Code~~, relating to employment. state government.

Amendment 1
Amendment 2

LEGISLATIVE COUNSEL'S DIGEST

SB 805, as amended, Rubio. ~~Independent contractors: small-Small nonprofit performing arts organizations: organizations: payroll and paymaster services grants: employment grants.~~

Existing law, the Dixon-Zenovich-Maddy California Arts Act of 1975, establishes the Arts Council, consisting of 11 appointed members. Existing law specifies the duties of the council, including, among others, encouraging artistic awareness, participation, and expression, helping independent local groups develop their own art programs, promoting the employment of artists and those skilled in crafts in both the public and private sector, awarding prizes or directing grants to individuals or organizations, as specified, and establishing grant application criteria and procedure.

This bill would, upon appropriation by the Legislature, require the council to establish and administer the California Nonprofit Performing Arts Paymaster. The bill would require the council to issue a request for proposals and award contracts on a competitive basis to 2 or more nonprofit contractors to provide payroll and paymaster services to small nonprofit performing arts organizations, as defined. The bill

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would require the council to establish a criteria to rate and rank applicants and establish necessary contract terms. The bill would, upon appropriation, require the council to provide a nonprofit contractor selected to provide payroll services with a grant award in an amount necessary to fund the initial startup costs.

This bill would authorize a nonprofit contractor providing services to charge a fee to a nonprofit performing arts organization that receives payroll or paymaster services, provided that the fee does not exceed the cost of providing the services. The bill would require a nonprofit contractor that provides services under these provisions to submit an annual report to the council by July 31 of each year that provides specified information from the prior fiscal year, including, among other things, a detailed accounting of all fees charged and collected.

This bill would establish the Performing Arts Equitable Payroll Fund, and would require the council, upon appropriation by the Legislature, 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. The bill would require the council to award the grants in amounts according to a specified matching schedule based on the adjusted gross revenue, as defined, of the organization.

Existing law charges the Labor Commissioner with the enforcement of labor laws, including worker classification. Existing law requires a 3-part test, commonly known as the “ABC” test, to determine if workers are employees or independent contractors for purposes of the Labor Code, the Unemployment Insurance Code, and the wage orders of the Industrial Welfare Commission. This test is associated with the holding in the case of *Dynamex Operations W. Inc. v. Superior Court* (2018) 4 Cal.5th 903 (Dynamex). Under the ABC test, a person providing labor or services for remuneration is considered an employee rather than an independent contractor unless the hiring entity demonstrates that the person is free from the control and direction of the hiring entity in connection with the performance of the work, the person performs work that is outside the usual course of the hiring entity’s business, and the person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed. Existing law exempts specified occupations and business relationships from the application of these provisions and provides, instead, that these occupations and business relationships are governed by an alternate test, referred to as the Borello test, based on the test

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adopted in S. G. Borello & Sons, Inc. v. Department of Industrial Relations (1989) 48 Cal.3d 341 (Borello).

This bill would exempt from the “ABC” test nonprofit performing arts organizations with annual gross revenues of \$1.9 million or less with respect to workers in positions related to production and would provide that these workers are independent contractors unless otherwise determined by the Borello test. The bill would require a nonprofit performing arts organization operating pursuant to these provisions to procure workers’ compensation insurance for workers who are independent contractors hired in production-related positions. The bill would specify that its provisions are not to be interpreted as limiting the ability of a nonprofit performing arts organization to hire workers pursuant to a union contract.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- + *SECTION 1. The Legislature finds and declares all of the following:*
- + *(a) Small nonprofit performing arts companies (SNPACs) create and preserve opportunities for performers and people in the performing arts sector, particularly workers in marginalized communities.*
- + *(b) SNPACs are often the on-ramps for emerging performers and people entering the performing arts industries, and they are incubators for new works.*
- + *(c) Because of historic undercapitalization of community-based arts and the effects of prolonged shutdown, SNPACs are reducing the number of people they hire and the number of programs they offer.*
- + *(d) SNPACs present stories that resonate with and reflect the community, the artists, and the social context of the times. The size of cast and the need for designers, choreographers, and other production workers is largely dictated by the requirements of the story being told. It is important to preserve this outlet for First Amendment speech that represents and engages marginalized groups.*
- + *(e) SNPACs have historically provided networking, educational, and mentoring opportunities for artists who are Black, Indigenous,*

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- + or other people of color, facilitating connections necessary for career advancement and have provided performance experience that helps to open doors to work in larger, less accessible companies.
- + (f) Because of their mission to make theater accessible through low ticket prices and free services, the majority of SNPACs cannot cover the costs of production through tickets sales alone and must, on average, raise funds to cover 40 to 60 percent of the costs of each production.
- + (g) SNPACs provide substantial economic benefits to their communities through their leveraging effect on the economy from tourism, leisure spending, and engagement of ancillary services.
- + (h) Workers in the live performing arts experienced one of the state's highest unemployment rates during the over 15-month-long pandemic shutdown of small live performance venues.
- + (i) Each SNPAC creates an average of 64 jobs annually for a cumulative average of 121,436 jobs created by the sector each year.
- + (j) Establishing a sustainable infrastructure and path for SNPAC growth will improve the health of the entire sector and help small companies grow and increase wages. For many SNPACs, payroll has long been a challenge, because they often have regular turnover as the company of performers and crew will vary from show to show. According to local media reports, paymasters have been charging fees that can drive the employment premium for some California SNPACs as high as 30 percent.
- + (k) Substantial savings can be achieved by funding regional nonprofit and arts services organizations to act as production worker administration hubs for SNPACs, starting with payroll services. It is, therefore, the intent of the Legislature in enacting this measure to fund paymaster and payroll services.
- + (l) It is also the intent of the Legislature in enacting this measure to fund SNPACs based on their ability to pay for their labor to ensure they can pay all workers minimum wage. To this end, this measure, upon appropriation by the Legislature, creates a schedule of matching funds based on a calculation of the recipient SNPAC's 3-year average adjusted gross revenue that excludes certain restricted capital expenditure and pass through funds, which cannot be used to pay for a SNPAC's labor.

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+ (m) It is the intent of the Legislature in enacting this act to
+ recognize the special circumstances and the charitable nature of
+ SNPACs while promoting job creation in the sector.

+ SEC. 2. Section 8750.5 is added to the Government Code, to
+ read:

+ 8750.5. For purposes of this chapter, the following definitions
+ apply:

+ (a) "Council" means the Arts Council established pursuant to
+ Section 8751.

+ (b) "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.

+ (c) "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 or presentation of performing arts.

+ (d) "Small nonprofit performing arts organization" means 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.

+ (e) "Adjusted gross revenue" means 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.

+ (f) "Capital expenditures" means funds used by a company to
+ acquire, up-grade, and maintain fixed assets such as property,
+ plants, buildings, technology, or equipment.

+ SEC. 3. Section 8753.7 is added to the Government Code, to
+ read:

+ 8753.7. (a) Upon appropriation by the Legislature, the council
+ shall 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.

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- + (b) (1) The council shall issue a request for proposals and award contracts on a competitive basis to two or more nonprofit contractors to provide low-cost payroll and paymaster services to small nonprofit performing arts organizations.
 - + (2) The council shall establish criteria to rate and rank applicants under this subdivision.
 - + (3) The council shall specify in the request for proposals the contract terms and conditions deemed necessary for the purposes of this section.
 - + (4) A contract entered pursuant to this subdivision shall require the nonprofit contractor to provide the payroll and paymaster services for at least 10 years.
 - + (c) Subject to appropriation by the Legislature, the council shall provide a nonprofit contractor selected pursuant to subdivision (b) with a grant award in an amount necessary to fund the initial startup costs of providing payroll and paymaster services pursuant to this section.
 - + (d) (1) A nonprofit contractor providing payroll and paymaster services pursuant to this section may charge a fee to a small nonprofit performing arts organization that receives those services.
 - + (2) A fee charged pursuant to this subdivision shall not exceed the amount necessary to cover the cost of providing the payroll or paymaster service to the small nonprofit performing arts organization.
 - + (e) A nonprofit contractor that enters a contract with the council pursuant to subdivision (b) shall submit an annual report to the council by July 31 of each year that includes, at a minimum, all of the following information from the preceding fiscal year:
 - + (1) The number of small nonprofit performing arts organizations that received payroll or paymaster services from the contractor pursuant to this section.
 - + (2) A detailed accounting of the cost of providing the payroll and paymaster services to small nonprofit performing arts organizations.
 - + (3) A detailed accounting of all fees charged and collected pursuant to subdivision (d).
 - + (f) The council may adopt regulations for the purpose of establishing and administering this section.
- + SEC. 4. Section 8753.8 is added to the Government Code, to read:

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+ 8753.8. (a) *The Performing Arts Equitable Payroll Fund is
+ hereby created in the State Treasury.*

+ (b) *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.*

+ (c) (1) *The council shall award a grant to a small nonprofit
+ performing arts organizations in an amount pursuant to the
+ following matching schedule:*

+ (A) *For an organization with adjusted gross revenue of two
+ hundred fifty thousand dollars (\$250,000) or less, the award
+ amount shall be four times the lesser of the amount the
+ organization contributes to payroll or 25 percent of the
+ organization's adjusted gross revenue.*

+ (B) *For an organization with adjusted gross revenue above two
+ hundred fifty thousand dollars (\$250,000) but not more than three
+ hundred fifty thousand dollars (\$350,000), the award amount shall
+ be three and three-quarters times the lesser of the amount the
+ organization contributes to payroll or 25 percent of the
+ organization's adjusted gross revenue.*

+ (C) *For an organization with adjusted gross revenue above
+ three hundred fifty thousand dollars (\$350,000) but not more than
+ four hundred fifty thousand dollars (\$450,000), the award amount
+ shall be three and one-half times the lesser of the amount the
+ organization contributes to payroll or 25 percent of the
+ organization's adjusted gross revenue.*

+ (D) *For an organization with adjusted gross revenue above four
+ hundred fifty thousand dollars (\$450,000) but not more than five
+ hundred fifty thousand dollars (\$550,000), the award amount shall
+ be three and one-quarter times the lesser of the amount the
+ organization contributes to payroll or 25 percent of the
+ organization's adjusted gross revenue.*

+ (E) *For an organization with adjusted gross revenue above five
+ hundred fifty thousand dollars (\$550,000) but not more than six
+ hundred fifty thousand dollars (\$650,000), the award amount shall
+ be three times the lesser of the amount the organization contributes
+ to payroll or 25 percent of the organization's adjusted gross
+ revenue.*

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- + (F) For an organization with adjusted gross revenue above six hundred fifty thousand dollars (\$650,000) but not more than seven hundred fifty thousand dollars (\$750,000), the award amount shall be two and three-quarters times the lesser of the amount the organization contributes to payroll or 25 percent of the organization's adjusted gross revenue.
- + (G) For an organization with adjusted gross revenue above seven hundred fifty thousand dollars (\$750,000) but not more than eight hundred fifty thousand dollars (\$850,000), the award amount shall be two times the lesser of the amount the organization contributes to payroll or 25 percent of the organization's adjusted gross revenue.
- + (H) For an organization with adjusted gross revenue above eight hundred fifty thousand dollars (\$850,000) but not more than one million dollars (\$1,000,000), the award amount shall be equal to the lesser of the amount the organization contributes to payroll or 25 percent of the organization's adjusted gross revenue.
- + (I) For an organization with adjusted gross revenue above one million dollars (\$1,000,000) but not more than one million two hundred thousand dollars (\$1,200,000), the award amount shall be 50 percent of the lesser of the amount the organization contributes to payroll or 25 percent of the organization's adjusted gross revenue.
- + (J) For an organization with adjusted gross revenue above one million two hundred thousand dollars (\$1,200,000) but not more than one million four hundred thousand dollars (\$1,400,000), the award amount shall be 25 percent of the lesser of the amount the organization contributes to payroll or 25 percent of the organization's adjusted gross revenue.
- + (2) The categories of organizations based on adjusted gross revenue specified in the paragraph (1) shall be adjusted every five years based on the California Consumer Price Index as compiled and reported by the Department of Industrial Relations.

Page 2

- 1 SECTION 1. Section 2784.4 is added to the Labor Code, to
2 read:
3 2784.4. (a) Section 2775 and the holding in Dynamex do not
4 apply to a nonprofit performing arts organization with annual gross
5 revenues of one million nine hundred thousand dollars (\$1,900,000)
6 or less with respect to its workers who are in positions related to

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7 production. These workers are independent contractors unless
8 otherwise determined by the Borello test.

9 (b) A nonprofit performing arts organization operating under
10 this section shall procure workers' compensation insurance for
11 workers who are independent contractors hired in
12 production-related positions. This section shall not be interpreted
13 to limit the ability of a nonprofit performing arts organization to
14 hire workers pursuant to a union contract.

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