When Opera Parallèle gave the world premiere of “Today It Rains” in San Francisco in March, the entire show was staffed with freelance artists. The singers portraying painter Georgia O'Keeffe and her friends and loved ones, the instrumentalists playing composer Laura Kaminsky's score, the stage personnel and designers — they all worked as independent contractors on a production budgeted at around $335,000.
But once AB5, California’s groundbreaking “gig work” bill, takes effect on Jan. 1, that model could be taboo.

For Opera Parallèle’s upcoming spring production, Stewart Wallace and Michael Korie’s operatic biography “Harvey Milk,” the company believes it could be required by the new state law to reclassify nearly everyone connected with the show as an employee.

“We’ve already got contracts with the singers, and we’re having to redo all of those,” said Executive Director Debbie Chinn. “All the musicians, all the production staff — we have to bring them on as employees.”

She estimates that doing so will increase the company’s payroll costs by 30%, including at least $75,000 in payroll taxes, plus bookkeeping costs.

Like many industries, the performing arts, which range from garage bands and community theaters to concert musicians and long-established theater and dance companies, could experience seismic changes under AB5. The very word “gig” traditionally applies to musicians, underscoring the temporary and intermittent nature of much arts work.

It’s high time for change, say some performing artists and companies, who hope that AB5 will inspire a higher level of protection and professionalism. But others fear that small companies with limited resources could be driven out of business, removing a vital source of entertainment and training.

Shotgun Players raised additional funds to cover the expense of moving from contractors to employees.

Photo: Yalonda M. James / The Chronicle
“I believe every artist needs to be paid a living wage,” said Michael Ray Wisely, a veteran Bay Area actor who, as a member of Actors’ Equity, always works as an employee. “At least in that way, AB5 is a good thing, because it’s going to challenge arts organizations to make paying their people a priority. The audience has no idea that we’re often paid about what a night manager at 7-Eleven gets.”

But how that will be financed is in question.

“My concern is that we’ll see a massive creative drain out of the state,” said Susie Medak, managing director of Berkeley Repertory Theater. “What will happen to the small dance, theater or opera companies where there is so little income? That’s why they pay stipends. Nobody’s getting rich.”

Many smaller performing arts companies in the Bay Area say that while they support a fair wage for artists and theater makers, they fear AB5 would destabilize them. They hope for an exemption for nonprofit arts companies or for artists who work minimal hours.

Assemblywoman Lorena Gonzalez, D-San Diego, sponsored AB5. She plans to introduce legislation early next year to clarify ambiguities and said she’s cognizant of performing artists’ concerns.

“This will be an ongoing issue, to deal with creatives in a way that makes more sense, but I’m not sure exactly what that will be,” she said.

Actors’ Equity, the national union that represents 51,000 stage actors and stage managers nationally, including about 1,300 in the Bay Area, said it will fight the removal of artists from AB5’s reach.

“We would be concerned about any attempts to exempt actors, stage managers, performing artists from the protections in the bill,” said spokesman Brandon Lorenz. “If there were a movement to exempt part of the performing arts, we would mobilize pretty significantly.”

Figuring out what AB5 will require is not easy. The bill’s language is sometimes ambiguous. It cites a long list of specific exemptions that includes “fine artists.” Gonzalez has said that this term could apply to musicians; she ducked questions about whether it would apply to other performing artists.

What’s particularly at risk, many observers say, is the traditional apprenticeship program that allows performers to work their way up gradually.

“There’s a lot about this law that doesn’t fit the employment model of our industry,” said Julie Baker, executive director of nonprofit organizations Californians for the Arts and California Arts Advocates. “We’ve developed a model in our industry where people expect to
(apprentice) for a few hundred dollars while they work as a waitress or a Lyft driver. That’s very different from most industries."

After filing an appeal, Shotgun Players was able to keep some workers, like directors and designers, as contractors. But now it may have to reclassify them, too, under AB5.

Photo: Yalonda M. James / The Chronicle

Berkeley Rep already hires both Equity and nonunion actors as employees. But other artists, such as designers and directors, work as freelancers, and Medak worries about changing that.

“We’re dealing with creative artists, not factory folks,” Medak said. “We don’t tell them they are obligated to work from 9-5 and take a lunch break. If a director or designer wants to debrief after a rehearsal and spend three hours reconceiving the production, it is not helpful to their process to say, ‘You may not work now, you have to wait until tomorrow at 9 a.m.’ You can’t clock inspiration.”

At a recent San Francisco town hall meeting at Z Space, hosted by Theatre Bay Area, more than 100 people expressed concerns about the upcoming legislation, discussed its impact and heard legal perspectives on the ramifications.

Among them was Christian Heppinstall, a scenic designer who works regularly with the Left Coast Theatre Company, a small San Francisco organization specializing in LGBT works. “A lot of these organizations are based on work by people who are happy to get a stipend for their contributions,” he said. “You think, ‘Hey, I worked a show and got $200, that’s $200 I didn’t have before.’”
Eliminating that option will make life untenable for many arts organizations, said Erica Andracchio, the company’s executive director. “This is the kind of small company where artists can get their feet wet and get some experience. But if I can’t pay them anything, then I can’t do a show.”

Each arts company, perhaps even each individual artist, has different circumstances.

Multimillion-dollar organizations such as the San Francisco Symphony and the San Francisco Ballet already operate with a workforce of full-time employees, and won’t feel much of an effect from the new law. Most symphony and chamber orchestras, for example, the Berkeley Symphony Orchestra, Philharmonia Baroque Orchestra, New Century Chamber Orchestra and others, are stocked with union musicians who are covered by a collective bargaining agreement.

But smaller organizations — theater companies that pay stipends to actors, directors, designers and production workers who support themselves with day jobs — could face an existential crisis.

“This is really a problem for us,” said Mark Streshinsky, general director of West Edge Opera. “Our company has just three full-time employees, and everyone else has a contract. We’ve tried to budget a bit for this, but it’s scary. I can raise more money, but I can’t raise that much more money.”

Some organizations are already well along in reclassifying workers, whether through foresight, good luck or government mandates.

Even those who have their own houses in order, though, express concern about the disruptions AB5 is going to bring to the arts industry in general.

ODC Theater acted more than a decade ago to ensure that everyone at the company — dancers, accompanists, teachers and more — is on the books as an employee, said Executive Director Carma Zisman.

“Thank goodness we took this painful and necessary step,” she said. “But ODC is not an island unto itself. We work really closely with, and exist to serve, other companies all across the Bay Area. Will there be a chilling effect because no one is sure what the law actually means?”

Berkeley’s Shotgun Players was audited by the state Employment Development Department in 2014 and told that, under employment law that predates AB5, it needed to reclassify every nonemployee who had ever worked for it, including everyone from actors and stage carpenters to an auctioneer for a fundraiser — more than 100 people. Most were people with day jobs whom Shotgun paid with stipends.
The effects of AB5 on the performing arts may be far-reaching, though aspects of the law remain unclear, some in the creative community say.

“‘It was really dire for us,’” said Liz Lisle, managing director.

Shotgun changed its workers to employees, and appealed the decision. Ultimately, the pool of people who had to be reclassified was shrunk to actors, stage managers and technical workers. Directors and designers were exempt — but that could change again under AB5.

“As a small company, this was not on our radar,” Lisle said. “We wanted to do it correctly and grow up as an organization.”

Part of that maturation meant raising a new fund to help cover the additional cost — adding about $100,000 to the theater's annual $1.5 million budget.

Shotgun's head start on tackling worker classification could be a model for other companies. Another option would be to approach cities for additional funding such as San Francisco's Proposition E, passed last year, that allocates some of the city's hotel-tax revenue to the arts.

Lisle said donors were receptive.

“The old adage is, ‘The closer you get to the stage, the less you’re paid,’” Lisle said. “When you go to successful working people in the Bay Area and talk about how little actors get paid, they are floored: ‘Are you kidding? That’s a travesty.’ So it's an easy conversation to have with our donors; they're investing in actual people, local actors.”

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