

## MALC 2010 ARTISTS UNDER THE DOME- TALKING POINTS

### TIPS

- 1) First it is important to see if your senator and representative are returning for next year's legislative session which starts January 2011 (see MALC's list). If they are not returning - thank them and their staff for their support for the arts and save this hand out for "calling on" the new legislator and their staff in January 2011.
- 2) If they are returning, use this flyer for some talking points on important issues to bring up with them and their staff. Remember, if you don't get to meet with your representative or senator, meeting with a member of their staff is key. State House staffers are some of the kindest people MALC has worked with! Remember to get the card(s) of who you meet with and send them a thank you note.
- 3) Make sure you tell them what kind of art you make and put them on your art mailing list!

### "ASKS"

Ask if your senator and representative is a member of the *Cultural Caucus* and if they are not, ask them to join! The staff contact for the Cultural Caucus is Jodi Lanza in the Office of Chairman Representative John D. Keenan: 617-722-2015.

### KEY ISSUES

- 1) Ask them to support legislation and regulations that support and protect individual artists of all disciplines' rights -especially their intellectual property on a state and national level.
- 2) Stress that it is important for all artists to retain the right to be self employed/independent contractors. (See #1 in "legislation for next session" as to why this is important)

### STATE BUDGET/FUNDING

1. Ask them to preserve funding for the MCC so it can continue to support Massachusetts working artists through fellowship grants, grants to nonprofit arts organizations, and local cultural councils.
2. Ask them to preserve funding for other state agencies and programs that support and provide work for artists, including the MA Film Office, MA Department of Conservation & Recreation, and state aid for public libraries.
3. Ask them to maintain current tax credits for the film industry.

### LEGISLATION FOR NEXT 2011 SESSION TO ASK THEM TO SUPPORT

(\*please note that the titles of listed legislation are subject to change)

1) *Please ask them to support the needed changes to the state's 2004 Independent Contractor Law that will be recommended by the artists community.*

Many artists earn their income or a key part of their income from being an independent contractor. Many cultural organizations and arts related businesses hire independent contractors (i.e. their earnings are reported via a 1099 IRS form if they are paid over \$600 for the entire year. No taxes are taken out of the payment).

In 2004 there was a change to the Massachusetts State law governing Independent Contractors. The change to the law was enacted as part of the Public Construction Reform Act.

This law now makes it next to impossible to be an independent contractor or a freelancer in this state. *It is key to understand if you are "employee" you do not control the use of the intellectual property you create as an employee- your employer does. The employer owns the right to sell and use the intellectual property as they see fit (not the employee). So it is critical that artists of all disciplines can be independent contractors to be able to control the intellectual property of what they create.*

Many of the non Massachusetts based companies in the publishing industry are no longer hiring Massachusetts-based freelance writers, copy editors, editors, etc. due to this 2004 Massachusetts law change. Massachusetts freelancers are losing needed clients and income due to this law change. Freelancers do not receive unemployment benefits.

*As of this date, it is our understanding that it will be the "employer" who will be fined for the violation by the Massachusetts Department of Revenue (DOR), the Attorney General's Office, and/or the Division of Unemployment Assistance (DUA), not the person who is 1099ed. The burden is falling on the "employers" at the moment and the three governmental agencies to the best of our knowledge have not implemented a state-wide campaign to check individuals for violation of this law. DOR, however, in 2007 investigated two nonprofit arts organizations for violation of this law as part of "random" audits of those organizations.*

2) **An Act Establishing a Disaster and Emergency Aid Fund for Massachusetts Artists\*** (it will be filed as a Senate Bill for next session)

It would allow for the State Treasurer's Office to establish a specific state fund for Disaster/Emergency Aid for Massachusetts Artists working in all disciplines. This fund will be used to help artists who have had a health care emergency (i.e. could not pay their medical bills or medical insurance) as well as to help those artists who suffered other types of emergencies (fires, floods, theft). The funds would be generated from the Treasurer's sale of artwork collected by the abandoned property division and funds generated from the private sector. No funds would be taken out of existing state funds or the state budget.

This bill will be filed by Senator Jack Hart.

3) **An Act to Clarify Seasonal Employment\*** (it will be filed as a House Bill for next session)

This bill would expand out the weeks allowed for seasonal employment in the Commonwealth to 24 weeks instead of the current 16 weeks. The current "season" on Cape Cod is well over 16 weeks and many artists and others working "the season" were not being treated as seasonal workers and were being denied eligibility for needed public programs. The same is holding true for farmers and artists in the Berkshires.

This bill will be filed by Representative John D. Keenan.

4) **An Act Relative to the Right to Publicity\*** (it will be filed as a Senate Bill for next session)

The bill would allow a person and their family to protect the use of a person's images or personality in advertising, etc. Thirteen states have enacted statues that specify a transferable right to publicity that survives death.

The bill will be filed by Senator Rosenberg.

5) **An Act Relative to Massachusetts Artists\*** (it will be filed as a House Bill for next session)

This bill would improve access to affordable health care for self-employed artists and others who are self-employed. This bill also increases access for affordable health care for artists and others who have combination income (they have some freelance/self-employed income). It will also protect small businesses and small nonprofits.

The bill will be filed by Representative John D. Keenan.