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## State Government Committee

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### HB 1425

**Brief Description:** Ensuring that entities performing government functions and advisory committees are subject to the open public meetings act and public records act.

**Sponsors:** Representatives Pollet, Kretz, S. Hunt, Appleton, Bergquist, Holy, Tarleton, Hargrove and Kochmar.

#### Brief Summary of Bill

- Requires nonprofit legal entities performing a delegated government function to comply with the Public Records Act (PRA) and Open Public Meetings Act (OPMA).
- Requires entities managing zoos or aquariums under contract with a city of 150,000 or more people to comply with the PRA or OPMA.
- Requires advisory boards, committees, or entities created by a public agency to comply with the OPMA.

**Hearing Date:** 2/5/15

**Staff:** Sean Flynn (786-7124).

#### **Background:**

##### Public Records Act.

The Public Records Act (PRA) requires state and local agencies to make their written records available to the public for inspection and copying upon request, unless the information fits into one of the various specific exemptions. The stated policy of the PRA favors disclosure and requires narrow application of the listed exemptions.

The provisions of the PRA apply to all state and local agencies. State agencies include every state office, department, division, bureau, board, or commission. Local agencies include every county, city, town, municipal corporation, quasi-municipal corporation, special purpose district, or any office, department, division, bureau, board, commission, or other local agencies.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

### Open Public Meetings Act.

The Open Public Meetings Act (OPMA) requires all meetings of the governing body of a public agency to be open to the public. The OPMA creates personal liability for a public official who knowingly attends a meeting that is not open to the public.

The OPMA applies to all public agencies, including state bodies created by statute, local governments, school districts, special purpose districts, municipal corporations, political subdivisions, other sub-agencies created by statute, and specific policy groups involving public utilities formed under law.

### Agency Functional Equivalency.

For purposes of the state public disclosure laws and the OPMA, courts apply a functional equivalency test, first adopted in *Telford v. Thurston County* (1999), to determine whether an entity is functioning as a public agency. The test requires the court to balance the evidence regarding four factors to determine whether an entity is a public agency. The factors include:

- (1) whether the entity performs a government function;
- (2) the level of government funding;
- (3) the extent of government involvement or regulation; and
- (4) whether the entity was created by government action.

### Contracts for Zoo and Aquarium Management.

A city with a population over 150,000 people that contracts with a nonprofit or public organization to manage and operate a zoo or aquarium must follow certain conditions. Before approving the contract, or any renewal of the contract, the city must hold a public hearing, including notice to the public. The contract may authorize the nonprofit or public organization to manage and supervise city employees working in connection with the zoo or aquarium. The city must provide oversight of the management and operations of the nonprofit or public organization to ensure public accountability.

### **Summary of Bill:**

#### Nonprofit Legal Entities and the PRA and OPMA.

The PRA and OPMA apply to a nonprofit legal entity if it:

- serves a delegated government function;
- receives substantial public funding; and
- either is subject to agency regular involvement or regulation, or was created or designed by statute.

A delegated government function includes a public purpose or duty that is the legal responsibility of a public agency, which is performed by a nonprofit legal entity by contract or agreement with the agency. Regular agency involvement or regulation includes a significant level of government involvement in the general operations of a nonprofit legal entity, such as: the use of public

employees to perform services; the obligation to report on a regular basis to an agency; having specific regulations on the manner of performance; and the participation of agency officials in management or operations.

For purposes of the PRA, an agency may enter into an agreement with a nonprofit legal entity to provide administrative, regulatory, or supervisory responsibilities under the PRA. The agency may indemnify a nonprofit legal entity for any costs or fees associated with compliance under the PRA. However, the agency may not indemnify an entity for any penalties assessed by a court for violations under the PRA.

Any nonprofit corporation or public organization managing or operating a zoo or aquarium under contract with a city with a population over 150,000 people is subject to the PRA and OPMA. The provisions apply to such an entity with regards to any action involving a delegated governmental function.

#### Advisory Boards and the OPMA.

Any meetings of an advisory board, committee, or other entity that is established by a public agency to provide formal advice or recommendations are subject to the OPMA. The requirement applies to any meeting involving the transaction of official business that would be subject to the OPMA if taken by a public agency. Any such advisory board, committee, or entity established jointly by a public agency and a federal agency must comply with the OPMA to the extent federal law does not preempt compliance.

**Appropriation:** None.

**Fiscal Note:** Requested.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.