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HOUSE BILL 1425

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State of Washington

64th Legislature

2015 Regular Session

By Representatives Pollet, Kretz, S. Hunt, Appleton, Bergquist, Holy, Tarleton, Hargrove, and Kochmar

Read first time 01/20/15. Referred to Committee on State Government.

1 AN ACT Relating to ensuring that entities performing government  
2 functions and advisory committees are subject to the open public  
3 meetings act and public records act; adding a new section to chapter  
4 35.64 RCW; adding a new section to chapter 42.30 RCW; adding a new  
5 section to chapter 42.56 RCW; and creating a new section.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** The legislature finds that the public has  
8 a right to remain informed about governmental functions that are  
9 turned over to a nonprofit where significant public funding is  
10 provided for such functions. The intent of Initiative Measure No. 276  
11 enacted by the voters in 1972, which established the state's open  
12 government laws, requires that governmental functions be conducted in  
13 the open, including both meetings and public access to information  
14 relating to those governmental functions. Turning over public funding  
15 and decision-making authority to a nonprofit entity does not diminish  
16 the public interest in maintaining control over the instruments of  
17 government. This public interest includes the right to observe  
18 deliberations and actions, and to review records pertaining to  
19 observe and review deliberations and actions, when such entities  
20 perform government functions.

1       The legislature finds further that the functional equivalency  
2 test, adopted in *Telford v. Thurston County Board of Commissioners*,  
3 95 Wn. App. 149 (1999) provides a useful framework for defining when  
4 an entity performing a governmental function should be regarded as a  
5 public agency for purposes of public disclosure and transparency. The  
6 legislature finds further that entities such as the Woodland Park Zoo  
7 and other nonprofit entities fulfilling a government function while  
8 receiving significant public funding are the functional equivalent of  
9 public agencies and should be covered under the public records act  
10 and open public meetings act for such functions that a governmental  
11 agency has delegated to the nongovernmental entity.

12       The legislature finds that trust in government is damaged, and  
13 fundamental rights to observe governmental actions are impacted, if  
14 advisory committees that are established by a governmental agency to  
15 provide formal advice to that agency do not meet in the open pursuant  
16 to the open meetings act, chapter 42.30 RCW.

17       NEW SECTION.   **Sec. 2.**   A new section is added to chapter 35.64  
18 RCW to read as follows:

19       Any nonprofit corporation or other public organization managing  
20 and operating a zoo or aquarium pursuant to a contract or agreement  
21 authorized by this chapter is subject to the provisions of the open  
22 public meetings act, chapter 42.30 RCW, and the public records act,  
23 chapter 42.56 RCW, with regard to any meeting or record relating to  
24 those governmental functions that the corporation or public  
25 organization undertakes pursuant to such contract or agreement.

26       NEW SECTION.   **Sec. 3.**   A new section is added to chapter 42.30  
27 RCW to read as follows:

28       (1) Meetings of an advisory board, committee, or other entity  
29 established by a public agency to provide formal advice or  
30 recommendations to the agency are subject to the provisions of this  
31 chapter. This requirement applies to any meeting that involves the  
32 transaction of official business that would be an action if taken by  
33 the governing body of a public agency, including, but not limited to,  
34 any vote or decision to make recommendations to a convening agency or  
35 agencies. Any advisory board, committee, or other entity established  
36 jointly by a public agency and a federal agency must comply with the  
37 provisions of this section to the extent that federal law does not  
38 preempt compliance.

1 (2) A nonprofit legal entity is subject to the provisions of this  
2 chapter, if the entity:

3 (a) Performs a government function that has been delegated by a  
4 state or local agency;

5 (b) Receives substantial public funding on a regular basis for  
6 general operations, not including any specific amount itemized or  
7 identified by contract for particular goods or services; and

8 (c) Is either one or both of the following:

9 (i) Subject to regular involvement or regulation by an agency  
10 regarding the performance of a delegated government function; or

11 (ii) Created or designated by statute to carry out a governmental  
12 function.

13 (3) A nonprofit corporation or other public organization managing  
14 and operating a zoo or aquarium pursuant to a contract or agreement  
15 authorized by chapter 35.64 RCW is subject to the provisions of this  
16 chapter with regard to any meeting involving an action relating to a  
17 governmental function delegated by a public agency.

18 (4) An agency may enter into an agreement with a nonprofit legal  
19 entity to provide or assume any administrative, regulatory, or  
20 supervisory responsibilities under this chapter. A state or local  
21 agency may indemnify a nonprofit legal entity for any costs or fees  
22 associated with compliance under this chapter.

23 (5) The definitions in this subsection apply throughout this  
24 section and section 4 of this act unless the context clearly requires  
25 otherwise.

26 (a) "Delegated governmental function" means a public purpose or  
27 duty that is:

28 (i) The responsibility of an agency as designated by statute or  
29 ordinance or assumed under other legal authority; and

30 (ii) Performed by a nonprofit legal entity pursuant to contract  
31 or agreement with an agency as authorized by statute or other legal  
32 authority.

33 (b) "Nonprofit legal entity" means an entity that is exempt from  
34 taxation under Title 26 U.S.C. Sec. 501(c)(3) of the federal internal  
35 revenue code of 1986, as amended as of January 1, 2015, or a  
36 nonprofit corporation organized under the laws of this state or any  
37 other state.

38 (c) "Regular involvement or regulation" means a significant level  
39 of government involvement in the general operations of a nonprofit  
40 legal entity, including, but is not limited to:

- 1 (i) The use of public employees by the entity to perform
- 2 services;
- 3 (ii) The obligation to report on a regular basis to an agency for
- 4 purposes of maintaining public accountability;
- 5 (iii) The inclusion of specific regulations regarding the means
- 6 and manner of performance; or
- 7 (iv) The participation of elected or appointed agency officials
- 8 in management or operations of the entity.

9 NEW SECTION. **Sec. 4.** A new section is added to chapter 42.56  
10 RCW to read as follows:

11 (1) A nonprofit legal entity is subject to the provisions of this  
12 chapter if the entity:

13 (a) Performs a government function that has been delegated by a  
14 state or local agency;

15 (b) Receives substantial public funding on a regular basis for  
16 general operations, not including any specific amount itemized or  
17 identified by contract for particular goods or services; and

18 (c) Is either one or both of the following:

19 (i) Subject to regular involvement or regulation by an agency  
20 regarding the performance of a delegated government function; or

21 (ii) Created or designated by statute to carry out a governmental  
22 function.

23 (2) A nonprofit corporation or other public organization managing  
24 and operating a zoo or aquarium pursuant to a contract or agreement  
25 authorized by chapter 35.64 RCW is subject to the provisions of this  
26 chapter.

27 (3) An agency may enter into an agreement with a nonprofit legal  
28 entity to provide or assume any administrative, regulatory, or  
29 supervisory responsibilities under this chapter. A state or local  
30 agency may indemnify a nonprofit legal entity for any costs or fees  
31 associated with compliance under this chapter, except for any  
32 discretionary penalties assessed by a court, pursuant to RCW  
33 42.56.550. The procedures in RCW 42.56.550 govern denials of an  
34 opportunity to inspect or copy a public record by a nonprofit legal  
35 entity that is subject to the provisions of this chapter.

36 (4) The definitions in section 3 of this act apply throughout  
37 this section unless the context clearly requires otherwise.

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