

CERTIFICATION OF ENROLLMENT

SENATE BILL 5792

66th Legislature
2020 Regular Session

Passed by the Senate March 9, 2020
Yeas 46 Nays 2

President of the Senate

Passed by the House March 6, 2020
Yeas 80 Nays 17

**Speaker of the House of
Representatives**

Approved

Governor of the State of Washington

CERTIFICATE

I, Brad Hendrickson, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SENATE BILL 5792** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SENATE BILL 5792

AS AMENDED BY THE HOUSE

Passed Legislature - 2020 Regular Session

State of Washington 66th Legislature 2019 Regular Session

By Senators Salomon, Wellman, Walsh, and Honeyford

1 AN ACT Relating to making statutory requirements and policies for
2 cultural access programs the same in all counties of the state; and
3 amending RCW 36.160.020, 36.160.100, and 36.160.110.

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

5 **Sec. 1.** RCW 36.160.020 and 2015 3rd sp.s. c 24 s 201 are each
6 amended to read as follows:

7 The definitions in this section apply throughout this chapter
8 unless the context clearly requires otherwise.

9 (1) "Administrative costs" means all operating, administrative,
10 and maintenance expenses for a program(~~(, a designated public~~
11 ~~agency,)) or a designated entity.~~

12 (2) "Attendance" means the total number of visits by persons in
13 physical attendance during a year at cultural organization facilities
14 located or cultural organization programs provided within the county
15 creating a program, including attendance for which admission was
16 paid, discounted, or free, consistent with and verifiable under
17 guidelines adopted by the appropriate program.

18 (3) "Cultural organization" means a nonprofit corporation
19 incorporated under the laws of the state of Washington and recognized
20 by the internal revenue service as described in section 501(c)(3) of
21 the internal revenue code of 1986, as amended, with its principal

1 location or locations and conducting a majority of its activities
2 within the state, not including: Any agency of the state or any of
3 its political subdivisions; any municipal corporation; any
4 organization that raises funds for redistribution to multiple
5 cultural organizations; or any radio or television broadcasting
6 network or station, cable communications system, internet-based
7 communications venture or service, newspaper, or magazine. The
8 primary purpose of the organization must be the advancement and
9 preservation of science or technology, the visual or performing arts,
10 zoology, botany, anthropology, heritage, or natural history and any
11 organization must directly provide programming or experiences
12 available to the general public. Any organization with the primary
13 purpose of advancing and preserving zoology such as zoos and
14 aquariums must be or support a facility that is accredited by the
15 association of zoos and aquariums or its functional successor. A
16 state-related cultural organization may be a cultural organization.

17 (4) "Designated entity" means the entity designated by the
18 legislative authority of a county creating the program, as required
19 under RCW 36.160.110(~~((1)-(d))~~) (4). The entity may be a public
20 agency, including the state arts commission established under chapter
21 43.46 RCW, or a Washington nonprofit corporation that is not a
22 cultural organization eligible for funding under this chapter.

23 (~~(5) ("Designated public agency" means the public agency~~
24 ~~designated by the legislative authority of a county creating the~~
25 ~~program, as required under RCW 36.160.110(2)(h).~~

26 ~~(6))~~ "Program" means a cultural access program established by a
27 county by ordinance.

28 (~~((7))~~) (6) "Revenues" means revenues from all sources generated
29 by a cultural organization, consistent with generally accepted
30 accounting practices and any program guidelines, excluding: (a)
31 Revenues associated with capital projects other than major
32 maintenance projects including, but not limited to, capital campaign
33 expenses; (b) funds provided under this chapter; (c) revenue that
34 would be considered unrelated business taxable income under the
35 internal revenue code of 1986, as amended; and (d) with respect to a
36 state-related cultural organization, state funding received by it or
37 for the institution it supports. Revenues include transfers from an
38 organization's endowment or reserves and may include the value of in-
39 kind goods and services to the extent permitted under any program
40 guidelines.

1 ~~((8))~~ (7) "State-related cultural organization" means an
2 organization incorporated as a nonprofit corporation under the laws
3 of the state of Washington and recognized by the internal revenue
4 service as described in section 501(c)(3) of the internal revenue
5 code of 1986, as amended, with a primary purpose and directly
6 providing programming or experiences available to the general public
7 consistent with the requirements for recognition as a cultural
8 organization under this chapter operating in a facility owned and
9 supported by the state, a state agency, or state educational
10 institution.

11 **Sec. 2.** RCW 36.160.100 and 2015 3rd sp.s. c 24 s 502 are each
12 amended to read as follows:

13 ~~((1))~~ A program created under this chapter must develop and
14 provide a public school cultural access program, as provided in RCW
15 36.160.110.

16 ~~((2) To the extent practicable consistent with available
17 resources, the public school cultural access element of a program of
18 a county described in RCW 36.160.110(2) must include the following
19 attributes:~~

20 ~~(a) Provide benefits designed to increase public school student
21 access to the programming offered and facilities operated by regional
22 and community-based cultural organizations receiving funding under
23 this chapter, giving priority to the activities in the order
24 described in (c) of this subsection;~~

25 ~~(b) Offer benefits to every public school in the county while
26 sealing the range of benefits available to and the frequency of
27 opportunities to participate by any particular school to coincide
28 with the relative percentage of students attending the school who
29 participate in the national free or reduced-price school meals
30 program;~~

31 ~~(c) Benefits provided under the public school cultural access
32 program must include, without limitation:~~

33 ~~(i) Providing directly or otherwise funding and arranging for
34 transportation for all public school students at participating
35 schools to attend and participate annually in the age-appropriate
36 programs and activities offered by such organizations;~~

37 ~~(ii) Should funding available under this program for student
38 transportation be inadequate in any one year due to more demand for
39 student transportation than can be funded, increasing the subsequent~~

1 ~~annual percentage allocation to the public school cultural access~~
2 ~~program up to two percent so as to provide sufficient funds to ensure~~
3 ~~adequate funding of student transportation;~~

4 ~~(iii) Establishing and operating, within funding provided to~~
5 ~~support the public school cultural access program under this~~
6 ~~subsection, of a centralized service available to regional and~~
7 ~~community-based cultural organizations receiving funding under this~~
8 ~~chapter and public schools in the county to coordinate opportunities~~
9 ~~for public school student access to the programs and activities~~
10 ~~offered by the organizations both at the facilities and venues~~
11 ~~operated by the organizations and through programs and experiences~~
12 ~~provided by the organizations at schools and elsewhere;~~

13 ~~(iv) In consultation with cultural organizations located within~~
14 ~~the county, preparing and maintaining a readily accessible and~~
15 ~~current guide cataloging access opportunities and facilitating~~
16 ~~scheduling;~~

17 ~~(v) Coordinating closely with cultural organizations to maximize~~
18 ~~student utilization of available opportunities in a cost-efficient~~
19 ~~manner including possible scheduling on a single day opportunities~~
20 ~~for different grade levels at any one school and participation in~~
21 ~~multiple programs or activities in the same general area for which~~
22 ~~program-funded transportation is provided;~~

23 ~~(vi) Supporting the development of tools, materials, and media by~~
24 ~~cultural organizations to ensure that school access programs and~~
25 ~~activities correlate with school curricula and extend the reach of~~
26 ~~access programs and activities for classroom use with or without~~
27 ~~direct on-site participation, to the extent practicable;~~

28 ~~(vii) Building meaningful partnerships with public schools and~~
29 ~~cultural organizations in order to maximize participation in school~~
30 ~~access programs and activities and ensure their relevance and~~
31 ~~effectiveness;~~

32 ~~(d) When a program determines that its program element required~~
33 ~~under (c) (i) through (vii) of this subsection has achieved sufficient~~
34 ~~scale and participation among public schools located within its~~
35 ~~boundaries and that it has resources remaining to devote to~~
36 ~~additional public school cultural access programs without diminishing~~
37 ~~such participation, the county may develop and financially support~~
38 ~~other public school cultural access activities in conjunction with~~
39 ~~cultural organizations receiving funds under this chapter; public~~
40 ~~school districts; and other public or nonprofit organizations that~~

1 support cultural access. Any funding for development and support of
2 such activities provided to cultural organizations receiving funds
3 under this subsection must only be used to supplement the public
4 benefits provided by such organizations as required under this
5 chapter and may not be used by such organizations to replace or
6 diminish funding for such required public benefits;

7 ~~(e) Preparation of an annual public school cultural access plan
8 for review and adoption prior to implementation; and~~

9 ~~(f) Compilation of an annual report documenting the reach and
10 evaluating the effectiveness of program-funded public school cultural
11 access efforts, including information about the numbers and types of
12 students who participated in the program and recommendations to the
13 county for improvements.)~~

14 **Sec. 3.** RCW 36.160.110 and 2015 3rd sp.s. c 24 s 601 are each
15 amended to read as follows:

16 ~~((1))~~ A program in a county ~~((with a population of less than
17 one million five hundred thousand))~~ must allocate the proceeds of
18 taxes authorized under RCW 82.14.525 and 84.52.821 as follows:

19 ~~((a))~~ (1) If any start-up funding has been provided to the
20 program under RCW 36.160.040 with the expectation that the funding
21 will be repaid, the program must annually reserve from total funds
22 available funding sufficient to provide for repayment of such start-
23 up funding until any such start-up funding has been fully repaid;

24 ~~((b))~~ (2) The funding determined by the county forming such a
25 program to be reserved for program costs, including direct
26 administrative costs, and repaying any start-up funding provided
27 under RCW 36.160.040. Information disclosing the amount of funding to
28 be reserved for program administrative costs must be included in any
29 proposition submitted to voters under RCW 82.14.525 or 84.52.821;

30 ~~((c))~~ (3) The county must determine the percentage of total
31 funds available annually to be reserved for a public school cultural
32 access program established and managed by the county to increase
33 access to cultural activities and programming for public school
34 students resident in the county. A public school cultural access
35 program must provide every school in the county a list of appropriate
36 off-site cultural experiences and a list of appropriate on-site
37 cultural experiences for each grade level, every year. Information
38 notifying schools of available transportation funding must be
39 included in the list of off-site cultural experiences. The activities

1 and programming need not be located or provided within the county. In
2 developing its program, the county may consider (~~the attributes~~
3 ~~prescribed for a public school cultural access program required to be~~
4 ~~undertaken under RCW 36.160.100(2) and may also consider~~) providing
5 funding for music and arts education in public schools that is in
6 addition to that provided for in the program of basic education
7 funding. A public school cultural access program must provide
8 transportation to off-site cultural experiences for all students at
9 all schools in the county that are located within a school district
10 in which at least forty percent of the district's students are
11 eligible for the federal free and reduced-price school meals program.
12 The county may limit its spending on the transportation benefit to no
13 more than five percent of funds collected each year under RCW
14 36.160.080;

15 (~~(d)~~) (4) Remaining funds available annually, including all
16 funds not initially reserved under (~~(a), (b), and (c)~~ of this
17 subsection) subsections (1), (2), and (3) of this section as well as
18 funds not distributed by the county from the reserved funds, must be
19 distributed by the county to the entity designated by the legislative
20 authority of the county creating the program. The county must
21 determine:

22 (~~(i)~~) (a) Guidelines, consistent with the requirements of this
23 chapter, it deems necessary or appropriate for determining the
24 eligibility of cultural organizations to receive funding under this
25 chapter;

26 (~~(ii)~~) (b) Criteria for the award of funds to eligible cultural
27 organizations, including the public benefits to be derived from
28 projects submitted for funding;

29 (~~(iii)~~) (c) The amount of funding to be allocated to support
30 designated entity administrative costs;

31 (~~(iv)~~) (d) Criteria for the identification by the county or, if
32 so directed by the county, by the designated entity of any cultural
33 organization or organizations that would receive annual distributions
34 of funds in such amounts determined by the county or, if so directed
35 by the county, the designated entity; (~~and~~)

36 (~~(v)~~) (e) Procedures to be used by the designated entity in
37 awarding funding to other cultural organizations that may, but are
38 not required to include a periodic competitive process for awarding
39 funds for particular purposes or projects proposed by eligible
40 cultural organizations; and

1 (f) Procedures to be used by the designated entity in considering
2 the award of funding to community preservation and development
3 authorities formed under chapter 43.167 RCW, if any exist within the
4 county. The procedures must ensure the eligibility of and consider
5 support for the projects and programs identified in the strategic
6 preservation and development plans, adopted pursuant to RCW
7 43.167.030, of each community preservation and development authority
8 within the county;

9 ~~((e))~~ (5) In evaluating requests for funding authorized under
10 this chapter, the designated entity responsible for the distribution
11 of the funds must consider the public benefits that any cultural
12 organizations represented will be derived from proposed projects. At
13 the conclusion of a project approved for funding, such organization
14 is required to report to the designated entity on the public benefits
15 realized;

16 ~~((f))~~ (6) Funds distributed to cultural organizations may be
17 used to support cultural and educational activities, programs, and
18 initiatives; public benefits and communications; and basic
19 operations. Funds may also be used for: ~~((i))~~ (a) Capital
20 expenditures or acquisitions including, but not limited to, the
21 acquisition of or construction of improvements to real property; and
22 ~~((ii))~~ (b) technology, equipment, and supplies reasonably related
23 to or necessary for a project otherwise eligible for funding under
24 this chapter. Program guidelines may also determine the circumstances
25 under which funds may be used to fund start-up expenses of new
26 community-based cultural organizations;

27 ~~((g))~~ (7) If the county or designated entity determine the
28 eligibility of a cultural organization to receive funding or the
29 relative magnitude of the funding it receives on the basis of its
30 budget, revenues, or expenses, any determination with respect to a
31 qualifying state-related cultural organization must exclude any state
32 funding received by the organization or for the institution it
33 supports.

34 ~~((2) A county with a population of more than one million five~~
35 ~~hundred thousand must allocate the proceeds of the taxes authorized~~
36 ~~under RCW 82.14.525 as follows:~~

37 ~~(a) If any start-up funding has been provided to the program~~
38 ~~under RCW 36.160.040 with the expectation that the funding will be~~
39 ~~repaid, the program must annually reserve from total funds available~~

1 ~~annually funding sufficient to provide for repayment of such start-up~~
2 ~~funding until any such start-up funding has been fully repaid;~~

3 ~~(b) After allocating any funds as required in (a) of this~~
4 ~~subsection, up to one and one-fourth percent of total funds available~~
5 ~~annually may be used for program administrative costs;~~

6 ~~(c) After allocating funds as required in (a) and (b) of this~~
7 ~~subsection, ten percent of remaining funds available annually must be~~
8 ~~used to fund a public school cultural access program to be~~
9 ~~administered by the program, subject to RCW 36.160.100(2);~~

10 ~~(d) Seventy percent of total remaining funds available annually~~
11 ~~excluding funds initially reserved under (a), (b), and (c) of this~~
12 ~~subsection must be reserved for distribution by the program to~~
13 ~~regional cultural organizations that are cultural organizations that~~
14 ~~own, operate, or support cultural facilities or provide performances,~~
15 ~~exhibits, educational programs, experiences, or entertainment that~~
16 ~~widely benefit and are broadly attended by the public, subject to~~
17 ~~further definition under guidelines adopted by the program. A~~
18 ~~regional cultural organization may also generally be characterized~~
19 ~~under program guidelines as a financially stable, substantial~~
20 ~~organization with full-time support and program staff, maintaining a~~
21 ~~broad-based membership, having year-round or enduring seasonal~~
22 ~~operations, being a substantial financial contributor to the~~
23 ~~development, operation, and maintenance of the organization's~~
24 ~~principal venue or venues, and providing substantial public benefits.~~
25 ~~The funding must be provided only to those regional cultural~~
26 ~~organizations that the program determines, on an annual basis, to~~
27 ~~have met the following guidelines:~~

28 ~~(i) For at least the preceding three years, the organization has~~
29 ~~been continuously in good standing as a nonprofit corporation under~~
30 ~~the laws of the state of Washington;~~

31 ~~(ii) The organization has its principal location or locations and~~
32 ~~conducts the majority of its activities within the county area~~
33 ~~primarily for the benefit of county residents;~~

34 ~~(iii) The organization has not declared bankruptcy or suspended~~
35 ~~or substantially curtailed operations for a period longer than six~~
36 ~~months during the preceding two years;~~

37 ~~(iv) The organization provided to the program audited annual~~
38 ~~financial statements for at least its two most recent fiscal years;~~

39 ~~(v) Over the three preceding years, the organization has minimum~~
40 ~~average annual revenues of at least one million two hundred fifty~~

1 thousand dollars. The program must annually and cumulatively adjust
2 the minimum revenues by the annual percentage change in the consumer
3 price index for the prior year for the Seattle-Tacoma-Bellevue,
4 Washington metropolitan statistical area for all urban consumer, all
5 goods, as published by the United States department of labor, bureau
6 of labor statistics. The minimum revenues requirement, adjusted for
7 inflation as provided in this section, remains effective through the
8 date on which the initial tax authorized by the voters under RCW
9 82.14.525 or 84.52.821 expires. Thereafter, the program must, at the
10 beginning of each subsequent period of funding as approved by the
11 voters, establish initial minimum average annual revenues of not less
12 than the amount of the minimum revenues required during the final
13 year of the immediately preceding period of funding;

14 (vi) For purposes of determining the eligibility of a regional
15 organization to receive funding or the relative magnitude of the
16 funding it receives on the basis of its revenues, any determination
17 with respect to a qualifying state-related cultural organization must
18 exclude any state funding received by the organization or for the
19 institution it supports; and

20 (vii) Any additional guidelines, consistent with RCW 36.160.020
21 and this section, as the program deems necessary or appropriate for
22 determining the eligibility of prospective regional cultural
23 organizations to receive funding under this section and for
24 establishing the amount of funding any organization may receive;

25 (e) Funds available under (d) of this subsection must be
26 distributed among eligible regional cultural organizations based on
27 an annual ranking of eligible organizations by the combined size of
28 their average annual revenues and their average annual attendance,
29 both over the three preceding years. However, an organization's
30 attendance must have twice the weight of the organization's revenues
31 in determining its relative ranking. Available funds must be
32 distributed proportionally among eligible organizations, consistent
33 with the ranking, such that the organization with the largest
34 combined revenues and weighted attendance would receive the most
35 funding and the organization with the smallest combined revenues and
36 weighted attendance would receive the least funding. However, no
37 organization may receive funds in excess of fifteen percent of its
38 average annual revenues over the three preceding years;

39 (f) Funds distributed to regional cultural organizations under
40 (d) of this subsection must be used to support cultural and

1 educational activities, programs and initiatives, public benefits and
2 communications, and basic operations.

3 (i) At least twenty percent of funds distributed to any regional
4 cultural organizations under (d) of this subsection must be used to
5 participate in the program's public school cultural access program
6 required under RCW 36.160.100. The regional cultural organizations
7 must provide or continue to provide public benefits under this
8 section in addition to participating in the public school cultural
9 access program.

10 (ii) No funds distributed to regional cultural organizations
11 under (d) of this subsection may be used for capital expenditures or
12 acquisitions including, but not limited to, the acquisition of or the
13 construction of improvements to real property;

14 (g) Prior to December 31st of each year, each regional cultural
15 organization receiving funds authorized under this chapter pursuant
16 to a program allocation formula must provide a report to the program,
17 including:

18 (i) A preview of the public benefits the organization plans to
19 provide or continue to provide in the following year;

20 (ii) A preview of the organization's public school cultural
21 access program participation in the following year; and

22 (iii) A report on public benefits it provided, and its
23 participation in the public school cultural access program, during
24 the current year;

25 (h) Remaining funds available annually, including funds not
26 initially reserved under (a) through (d) of this subsection as well
27 as funds not distributed by the program from the reserved funds must
28 be distributed by the program to the public agency designated by the
29 legislative authority of the county creating such a program;

30 (i) Funds distributed by the designated public agencies under (h)
31 of this subsection must be applied as follows:

32 (i) Not more than eight percent of such funds must be used for
33 administrative costs of the public agency designated by a county
34 creating the program; and

35 (ii) The balance must be used to fund community-based cultural
36 organizations that are cultural organizations or a community
37 preservation and development authority formed under chapter 43.167
38 RCW prior to January 1, 2011, that primarily function, focus their
39 activities, and are supported or patronized within a local community
40 and are not a regional cultural organization, subject to further

1 ~~definition under guidelines adopted by the designated public agency.~~
2 ~~Designated public agencies must adopt:~~
3 ~~(A) Guidelines, consistent with the requirements of this chapter,~~
4 ~~it deems necessary or appropriate for determining the eligibility of~~
5 ~~community-based cultural organizations to receive funding under this~~
6 ~~chapter and for establishing the amount of funding any organization~~
7 ~~may receive;~~
8 ~~(B) Criteria for the award of funds to eligible community-based~~
9 ~~cultural organizations, including the public benefits to be derived~~
10 ~~from projects submitted for funding; and~~
11 ~~(C) Procedures for conducting, at least annually, a competitive~~
12 ~~process for the award of available funding;~~
13 ~~(j) Funds distributed to community-based cultural organizations~~
14 ~~may be used to support cultural and educational activities, programs,~~
15 ~~and initiatives; public benefits and communications; and basic~~
16 ~~operations. Funds may also be used for: (i) Capital expenditures or~~
17 ~~acquisitions including, but not limited to, the acquisition of or~~
18 ~~construction of improvements to real property; and (ii) technology,~~
19 ~~equipment, and supplies reasonably related to or necessary for a~~
20 ~~project otherwise eligible for funding under this chapter. Program~~
21 ~~guidelines may also determine the circumstances under which funds may~~
22 ~~be used to fund start-up expenses of new community-based cultural~~
23 ~~organizations.))~~

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