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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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) The use of public employees by the entity to perform services;

(ii) The obligation to report on a regular basis to an agency for purposes of maintaining public accountability;

(iii) The inclusion of specific regulations regarding the means and manner of performance; or

(iv) The participation of elected or appointed agency officials in management or operations of the entity.

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

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

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

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

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

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

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

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

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

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

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