

Chapter 36.160 RCW
CULTURAL ORGANIZATIONS

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RCW 36.160.010 Findings—Intent. (1) The legislature finds that:

(a) Many Washington cities and counties and their residents are experiencing the lingering effects of the recession. While there are many residents who have been able to successfully weather the economic downturn, unfortunately there are still individuals, families, and valued community organizations who have not. Local governments also have not been immune to this situation. Local government revenues have continued to lag behind economic growth, leaving local communities unable to make adequate and necessary investments in infrastructure and services their residents rely on and benefit from. Additional fiscal tools that provide funding for facilities, services, housing, and programs benefiting vulnerable populations as well as cultural organizations will enable local communities and their residents to choose to invest in their local institutional and human infrastructure to the benefit of the public.

(b) There is a demonstrated need for facilities and services in the community to help people with mental illness, individuals with developmental disabilities, and other vulnerable populations, including foster children, homeless families, veterans, and others in critical need. The need includes, but is not limited to, funding for mental health services, evaluation and treatment facilities, housing, and other projects and services for those in need.

(c) There is also a need to provide public and educational benefits and economic support for cultural organizations. Providing local support for the state's cultural organizations is in the public interest and will serve multiple public purposes including, among others, enhancing and extending the education reach and offerings of cultural organizations; ensuring continued and expanded access to the facilities and programs of cultural organizations by economically and geographically underserved populations; and providing financial stability to the organizations to continue and extend the numerous public benefits they provide.

(2) It is the intent of the legislature to provide local governments and the communities they serve the fiscal tools needed to provide these important services. [2015 3rd sp.s. c 24 § 101.]

Construction—2015 3rd sp.s. c 24: See note following RCW 36.160.030.

RCW 36.160.020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Administrative costs" means all operating, administrative, and maintenance expenses for a program or a designated entity.

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

(3) "Cultural organization" means a nonprofit corporation incorporated under the laws of the state of Washington and recognized by the internal revenue service as described in section 501(c)(3) of the internal revenue code of 1986, as amended, with its principal location or locations and conducting a majority of its activities within the state, not including: Any agency of the state or any of its political subdivisions; any municipal corporation; any organization that raises funds for redistribution to multiple cultural organizations; or any radio or television broadcasting network or station, cable communications system, internet-based communications venture or service, newspaper, or magazine. The primary purpose of the organization must be the advancement and preservation of science or technology, the visual or performing arts, zoology, botany, anthropology, heritage, or natural history and any organization must directly provide programming or experiences available to the general public. Any organization with the primary purpose of advancing and preserving zoology such as zoos and aquariums must be or support a facility that is accredited by the association of zoos and aquariums or its functional successor. A state-related cultural organization may be a cultural organization.

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

(5) "Program" means a cultural access program established by a county by ordinance.

(6) "Revenues" means revenues from all sources generated by a cultural organization, consistent with generally accepted accounting practices and any program guidelines, excluding: (a) Revenues associated with capital projects other than major maintenance projects including, but not limited to, capital campaign expenses; (b) funds provided under this chapter; (c) revenue that would be considered unrelated business taxable income under the internal revenue code of 1986, as amended; and (d) with respect to a state-related cultural organization, state funding received by it or for the institution it

supports. Revenues include transfers from an organization's endowment or reserves and may include the value of in-kind goods and services to the extent permitted under any program guidelines.

(7) "State-related cultural organization" means an organization incorporated as a nonprofit corporation under the laws of the state of Washington and recognized by the internal revenue service as described in section 501(c)(3) of the internal revenue code of 1986, as amended, with a primary purpose and directly providing programming or experiences available to the general public consistent with the requirements for recognition as a cultural organization under this chapter operating in a facility owned and supported by the state, a state agency, or state educational institution. [2020 c 192 § 1; 2015 3rd sp.s. c 24 § 201.]

Construction—2015 3rd sp.s. c 24: See note following RCW 36.160.030.

RCW 36.160.030 Cultural access program—Creation. (1) Any county legislative authority may create a cultural access program by ordinance.

(2) Any contiguous group of counties may create a program by entering into an interlocal agreement under chapter 39.34 RCW, approved by resolution of the county legislative authorities.

(3) A city may create a cultural access program if the county legislative authority in which the city is located adopts a resolution stating that the county forfeits its option to create a program or does not place a proposition before the people to create such a program by June 30, 2017. In the event the exception in this subsection occurs, all references in this chapter to a county must include a city that has exercised its authority under this subsection, unless the context clearly requires otherwise. [2015 3rd sp.s. c 24 § 301.]

Construction—2015 3rd sp.s. c 24: "The provisions of this act must be liberally construed to effectuate the policies and purposes of this act." [2015 3rd sp.s. c 24 § 804.]

RCW 36.160.040 Cultural access program—Start-up funding and conditional formation. (1) The county creating a program may advance to the program funding for its administrative costs, including the cost of informing the public about the formation of the program, how it is proposed to be funded, and the public benefits to be realized if it is successful. However, this subsection does not authorize the preparation and distribution of information to the general public for the purpose of influencing the outcome of any election called for voter authorization of a proposed tax to support a program.

(2) The county creating a program may provide for repayment of any start-up funding advanced to a program from the proceeds of taxes authorized under RCW 36.160.080, 82.14.525, and 84.52.821 and approved by voters after the taxes are first collected. The funds may be repaid to such county with interest at the internal rate of return on the invested funds of such county. [2015 3rd sp.s. c 24 § 302.]

Construction—2015 3rd sp.s. c 24: See note following RCW 36.160.030.

RCW 36.160.050 Cultural access program—Nonsupplantation. In creating a program under this chapter, any county creating the program must affirm that any funding such county usually and customarily provides to cultural organizations similar to funding that would be available to those organizations under this chapter may not be replaced or materially diminished as a result of funding becoming available under this chapter. If an organization designated to receive funds under this chapter is a state-related cultural organization, the funds received under this chapter may not replace or materially diminish any funding usually or customarily provided by the state. [2015 3rd sp.s. c 24 § 303.]

Construction—2015 3rd sp.s. c 24: See note following RCW 36.160.030.

RCW 36.160.060 Cultural access program—Advisory councils. Each county creating a program under this chapter may establish an advisory council, the membership of which must include citizen representatives of constituencies and organizations with interests relevant to the work of the program including, but not limited to, leaders in the business, educational, and cultural communities. Advisory council members should be residents of the county creating the program. Policies concerning the size and operation of any advisory council must be established by the county that creates the program. [2015 3rd sp.s. c 24 § 304.]

Construction—2015 3rd sp.s. c 24: See note following RCW 36.160.030.

RCW 36.160.070 Cultural access program—Alternative administrative arrangements. A county with a population of less than one million five hundred thousand may contract with the state arts commission formed under chapter 43.46 RCW for the provision of consulting, management, or other administrative services to be provided to its program created under this chapter. Any county creating a program may elect to consolidate administration of such a program with that of the entity or public agency designated by the county creating such a program to perform the functions required under RCW 36.160.110. [2015 3rd sp.s. c 24 § 305.]

Construction—2015 3rd sp.s. c 24: See note following RCW 36.160.030.

RCW 36.160.080 Funding—Local tax authority. (1)(a) Except as provided in (b) of this section, a county creating a program under this chapter may impose sales and use taxes under RCW 82.14.525 or additional regular property tax levies under RCW 84.52.821 for the purposes authorized under this chapter.

(b) A county with a population of one million five hundred thousand or more may not impose additional regular property tax levies under RCW 84.52.821.

(2) If a county imposes sales and use taxes under RCW 82.14.525, the county may not impose an additional regular property tax levy under RCW 84.52.821 so long as such sales and use taxes are in effect.

(3) If a county imposes an additional regular property tax levy under RCW 84.52.821, the county may not impose sales and use taxes under RCW 82.14.525 so long as such property tax levy is in effect.

(4) All revenue from taxes imposed under this chapter must be credited to a special fund in the treasury of the county imposing such tax and used solely for the purpose of paying all or any part of the cost of cultural access programs as provided in this chapter. [2015 3rd sp.s. c 24 § 401.]

Construction—2015 3rd sp.s. c 24: See note following RCW 36.160.030.

RCW 36.160.090 Public benefits. (1) A program created under this chapter must provide or continue to provide funding authorized under this chapter only to cultural organizations that provide discernible public benefits. Each program created under this chapter must identify a range of public benefits that cultural organizations may provide or continue to provide in satisfaction of this requirement for eligibility to receive funding authorized under this chapter. The public benefits include, without limitation: Reasonable opportunities for access to facilities, programs, and services on a reduced or no admission fee basis, particularly for diverse and underserved populations and communities; providing, through technological and other means, services or programs in locations other than an organization's own facilities; providing educational programs and experiences both at an organization's own facilities and in schools and other venues; broadening cultural programs, performances, and exhibitions for the enlightenment and entertainment of the public; supporting collaborative relationships with other cultural organizations in order to extend the reach and impact of the collaborating organizations for the benefit of the public; and, in the case of community-based cultural organizations, organizational capacity-building projects or activities that an organization can demonstrate, to the reasonable satisfaction of the designated entity, will enhance the ability of the organization to provide or continue to provide meaningful public benefits not otherwise achievable.

(2) Each program created under this chapter must adopt guidelines establishing a baseline standard of continuous performance with respect to the provision of public benefits required under this chapter and for evaluating the eligibility of any cultural organization to receive funds under this chapter based on the continuous performance of the organization in the provision of the public benefits. The guidelines must include: (a) Procedures for notifying any organization at risk of losing its eligibility to receive funds under this chapter for failure to achieve the program's baseline standard of performance with respect to the continuous provision of public benefits; and (b) measures or procedures available to the organization for either retaining or recovering eligibility, as appropriate. [2015 3rd sp.s. c 24 § 501.]

Construction—2015 3rd sp.s. c 24: See note following RCW 36.160.030.

RCW 36.160.100 Public school cultural access program. A program created under this chapter must develop and provide a public school cultural access program, as provided in RCW 36.160.110. [2020 c 192 § 2; 2015 3rd sp.s. c 24 § 502.]

Construction—2015 3rd sp.s. c 24: See note following RCW 36.160.030.

RCW 36.160.110 Use of funds—Allocation. A program in a county must allocate the proceeds of taxes authorized under RCW 82.14.525 and 84.52.821 as follows:

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

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

(3) The county must determine the percentage of total funds available annually to be reserved for a public school cultural access program established and managed by the county to increase access to cultural activities and programming for public school students resident in the county. A public school cultural access program must provide every school in the county a list of appropriate off-site cultural experiences and a list of appropriate on-site cultural experiences for each grade level, every year. Information notifying schools of available transportation funding must be included in the list of off-site cultural experiences. The activities and programming need not be located or provided within the county. In developing its program, the county may consider providing funding for music and arts education in public schools that is in addition to that provided for in the program of basic education funding. A public school cultural access program must provide transportation to off-site cultural experiences for all students at all schools in the county that are located within a school district in which at least forty percent of the district's students are eligible for the federal free and reduced-price school meals program. The county may limit its spending on the transportation benefit to no more than five percent of funds collected each year under RCW 36.160.080;

(4) Remaining funds available annually, including all funds not initially reserved under subsections (1), (2), and (3) of this section as well as funds not distributed by the county from the reserved funds, must be distributed by the county to the entity designated by the legislative authority of the county creating the program. The county must determine:

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

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

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

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

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

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

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

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

(7) If the county or designated entity determine the eligibility of a cultural organization to receive funding or the relative magnitude of the funding it receives on the basis of its budget, revenues, or expenses, any determination with respect to a qualifying state-related cultural organization must exclude any state funding received by the organization or for the institution it supports. [2020 c 192 § 3; 2015 3rd sp.s. c 24 § 601.]

Construction—2015 3rd sp.s. c 24: See note following RCW 36.160.030.

RCW 36.160.800 Attacks prohibited. No direct or collateral attack on any program purported to be authorized or created in conformance with this chapter may be commenced more than thirty days after creation. [2015 3rd sp.s. c 24 § 801.]

Construction—2015 3rd sp.s. c 24: See note following RCW 36.160.030.