
HOUSE BILL 2382

State of Washington

65th Legislature

2018 Regular Session

By Representatives Ryu, Kagi, and Valdez

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1 AN ACT Relating to promoting the use of surplus public property
2 for public benefit; amending RCW 43.63A.510, 43.17.400, 35.94.040,
3 43.09.210, 43.43.115, 43.82.010, and 47.12.063; and adding a new
4 section to chapter 39.33 RCW.

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

6 **PART 1 - INVENTORY OF STATE PROPERTY**

7 **Sec. 1.** RCW 43.63A.510 and 1993 c 461 s 2 are each amended to
8 read as follows:

9 (1) The department shall work with the (~~departments of natural~~
10 ~~resources, transportation, social and health services, corrections,~~
11 ~~and general administration~~) designated agencies to identify (~~and~~),
12 catalog, and recommend best use of under-utilized, state-owned land
13 and property suitable for the development of affordable housing for
14 very low-income, low-income or moderate-income households. The
15 (~~departments of natural resources, transportation, social and health~~
16 ~~services, corrections, and general administration~~) designated
17 agencies shall provide an inventory of real property that is owned or
18 administered by each agency and is vacant or available for lease or
19 sale. The inventories with revisions shall be provided to the

1 department by November 1(~~(, 1993, with inventory revisions provided~~
2 ~~each November 1 thereafter))st of each year.~~

3 (2) The department must consolidate inventories into two groups:
4 Properties suitable for consideration in affordable housing
5 development; and properties not suitable for consideration in
6 affordable housing development. In making this determination, the
7 department must use industry accepted standards such as: Location,
8 approximate lot size, current land use designation, and current
9 zoning classification of the property. The department shall provide a
10 recommendation, based on this grouping, to the office of financial
11 management and appropriate policy and fiscal committees of the
12 legislature by November 1st of each year.

13 (3) Through June 30, 2029, each designated agency that sells real
14 property at fair market value must remit an amount equal to ten
15 percent of the net proceeds to the state treasurer to be deposited in
16 the Washington housing trust fund, pursuant to RCW 43.185.030.
17 Permissible uses of the account shall be determined by the department
18 and shall include, but is not limited to: Brownfield remediation of
19 sites for affordable housing development; reduction of impact fees
20 for affordable housing development; preservation of existing
21 affordable housing units; and the implementation of innovative
22 housing options in bringing additional affordable housing to market.

23 (4) Upon written request, the department shall provide a copy of
24 the inventory of state-owned and publicly owned lands and buildings
25 to parties interested in developing the sites for affordable housing.

26 (~~(+3)~~) (5) As used in this section:

27 (a) "Affordable housing" means residential housing that is rented
28 or owned by a person who qualifies as a very low-income, low-income,
29 or moderate-income household or who is from a special needs
30 population, and whose monthly housing costs, including utilities
31 other than telephone, do not exceed thirty percent of the household's
32 monthly income.

33 (b) "Very low-income household" means a single person, family, or
34 unrelated persons living together whose income is at or below fifty
35 percent of the median income, adjusted for household size, for the
36 county where the affordable housing is located.

37 (c) "Low-income household" means a single person, family, or
38 unrelated persons living together whose income is more than fifty
39 percent but is at or below eighty percent of the median income where
40 the affordable housing is located.

1 (d) "Moderate-income household" means a single person, family, or
2 unrelated persons living together whose income is more than eighty
3 percent but is at or below one hundred fifteen percent of the median
4 income where the affordable housing is located.

5 (e) "Affordable housing development" means state-owned real
6 property appropriate for sale, transfer, or lease to an affordable
7 housing developer capable of:

8 (i) Receiving the property within one hundred eighty days; and
9 (ii) Creating affordable housing units for occupancy within
10 thirty-six months from the time of transfer.

11 (f) "Designated agencies" means the Washington state patrol, the
12 state parks and recreation commission, and the departments of natural
13 resources, transportation, social and health services, corrections,
14 and enterprise services.

15 (g) "Innovative housing options" means those construction and
16 building practices that create an alternative affordable housing
17 product including, but not limited to, microhousing, modular housing,
18 or other nontraditional housing models.

19 **PART 2 - RIGHT OF FIRST REFUSAL FOR GOVERNMENT AGENCIES**

20 **Sec. 2.** RCW 43.17.400 and 2015 c 225 s 64 are each amended to
21 read as follows:

22 ~~(1) ((The definitions in this subsection apply throughout this~~
23 ~~section unless the context clearly requires otherwise.~~

24 ~~(a) "Disposition" means sales, exchanges, or other actions~~
25 ~~resulting in a transfer of land ownership.~~

26 ~~(b) "State agencies" includes:~~

27 ~~(i) The department of natural resources established in chapter~~
28 ~~43.30 RCW;~~

29 ~~(ii) The department of fish and wildlife established in chapter~~
30 ~~43.300 RCW;~~

31 ~~(iii) The department of transportation established in chapter~~
32 ~~47.01 RCW;~~

33 ~~(iv) The parks and recreation commission established in chapter~~
34 ~~79A.05 RCW; and~~

35 ~~(v) The department of enterprise services established in this~~
36 ~~chapter.~~

37 ~~(2) State agencies proposing disposition of state-owned land must~~
38 ~~provide written notice of the proposed disposition to the legislative~~

1 ~~authorities of the counties, cities, and towns in which the land is~~
2 ~~located at least sixty days before entering into the disposition~~
3 ~~agreement.)) Before any state agency may dispose of surplus state-~~
4 ~~owned real property to a private or any nongovernmental party, the~~
5 ~~agency must provide written notice to the following governmental~~
6 ~~entities at least sixty days before entering into any proposed~~
7 ~~disposition agreement:~~

8 (a) All other state agencies;

9 (b) Each federal agency operating within the state; and

10 (c) The governing authority of each county, city, town, special
11 purpose district, and federally recognized Indian tribe in which the
12 land is located.

13 (2) The state agency must dispose of the property to any
14 governmental entity responding within the notification period, with
15 priority given to state agencies. The disposition may be for any
16 terms and conditions agreed upon by the proper authorities of each
17 party, in accordance with RCW 39.33.010, except where the disposition
18 at fair market value is required by law.

19 (3) The requirements of this section are in addition and
20 supplemental to other requirements of the laws of this state.

21 (4) For purposes of this section, "disposition" means the sale,
22 exchange, or other action resulting in a transfer of ownership.

23 **PART 3 - DISPOSAL OF PUBLIC PROPERTY FOR PUBLIC BENEFIT**

24 NEW SECTION. Sec. 3. A new section is added to chapter 39.33
25 RCW to read as follows:

26 (1) Any state agency, municipality, or political subdivision,
27 with authority to dispose of surplus public property, may transfer,
28 lease, or other disposal of such property for a public benefit
29 purpose, consistent with and subject to this section. Any such
30 transfer, lease, or other disposal may be made to a public, private,
31 or nongovernmental body on any mutually agreeable terms and
32 conditions, including a no cost transfer, subject to and consistent
33 with this section. However, the property may not be so transferred,
34 leased, or disposed of if such transfer, lease, or disposal would
35 violate any bond covenant or encumber or impair any contract.

36 (2) A deed, lease, or other instrument transferring or conveying
37 property pursuant to subsection (1) of this section must include:

1 (a) A covenant or other requirement that the property shall be
2 used for the designated public benefit purpose; and

3 (b) Remedies that apply if the recipient of the property fails to
4 use it for the designated public purpose or ceases to use it for such
5 purpose.

6 (3) To implement the authority granted by this section, the
7 governing body or legislative authority of a municipality or
8 political subdivision must enact rules to regulate the disposition of
9 property for public benefit purposes.

10 (4) This section is deemed to provide a discretionary alternative
11 method for the doing of the things authorized herein, and shall not
12 be construed as imposing any additional condition upon the exercise
13 of any other powers vested in any state agency, municipality, or
14 political subdivision.

15 (5) No transfer, lease, or other disposition of property for
16 public benefit purposes made pursuant to any other provision of law
17 prior to the effective date of this section may be construed to be
18 invalid solely because the parties thereto did not comply with the
19 procedures of this section.

20 (6) For purposes of this section, "public benefit" means any
21 purpose including, but not limited to, affordable housing as defined
22 in RCW 43.63A.510, that has a substantial and legitimate nexus to a
23 public service or a public interest.

24 **Sec. 4.** RCW 35.94.040 and 1973 1st ex.s. c 95 s 1 are each
25 amended to read as follows:

26 (1) Whenever a city shall determine, by resolution of its
27 legislative authority, that any lands, property, or equipment
28 originally acquired for public utility purposes is surplus to the
29 city's needs and is not required for providing continued public
30 utility service, then such legislative authority by resolution and
31 after a public hearing may cause such lands, property, or equipment
32 to be leased, sold, or conveyed. Such resolution shall state the fair
33 market value or the rent or consideration to be paid and such other
34 terms and conditions for such disposition as the legislative
35 authority deems to be in the best public interest.

36 (2) The provisions of RCW 35.94.020 and 35.94.030 shall not apply
37 to dispositions authorized by this section.

38 (3) This section does not apply to property transferred, leased,
39 or otherwise disposed in accordance with section 3 of this act.

1 **Sec. 5.** RCW 43.09.210 and 2000 c 183 s 2 are each amended to
2 read as follows:

3 (1) Separate accounts shall be kept for every appropriation or
4 fund of a taxing or legislative body showing date and manner of each
5 payment made therefrom, the name, address, and vocation of each
6 person, organization, corporation, or association to whom paid, and
7 for what purpose paid.

8 (2) Separate accounts shall be kept for each department, public
9 improvement, undertaking, institution, and public service industry
10 under the jurisdiction of every taxing body.

11 (3) All service rendered by, or property transferred from, one
12 department, public improvement, undertaking, institution, or public
13 service industry to another, shall be paid for at its true and full
14 value by the department, public improvement, undertaking,
15 institution, or public service industry receiving the same, and no
16 department, public improvement, undertaking, institution, or public
17 service industry shall benefit in any financial manner whatever by an
18 appropriation or fund made for the support of another.

19 (4) All unexpended balances of appropriations shall be
20 transferred to the fund from which appropriated, whenever the account
21 with an appropriation is closed.

22 (5) This section does not apply to:

23 (a) Agency surplus personal property handled under RCW
24 43.19.1919((+5)) (1)(e); or

25 (b) The transfer, lease, or other disposal of surplus property
26 for public benefit purposes, as provided under section 3 of this act.

27 **Sec. 6.** RCW 43.43.115 and 1993 c 438 s 1 are each amended to
28 read as follows:

29 (1) Whenever real property owned by the state of Washington and
30 under the jurisdiction of the Washington state patrol is no longer
31 required, it may be sold at fair market value, or otherwise disposed
32 as permitted under section 3 of this act. Any such sale or disposal
33 must be in accordance with RCW 43.17.400. All proceeds received from
34 the sale of real property, less any real estate broker commissions up
35 to four percent of the sale price, shall be deposited into the state
36 patrol highway account: PROVIDED, That if accounts or funds other
37 than the state patrol highway account have contributed to the
38 purchase or improvement of the real property, the office of financial
39 management shall determine the proportional equity of each account or

1 fund in the property and improvements, and shall direct the proceeds
2 to be deposited proportionally therein.

3 (2) Through June 30, 2029, any real property sold at fair market
4 value must include a remittance of an amount equal to ten percent of
5 the net proceeds to the state treasurer to be deposited in the
6 Washington housing trust fund, pursuant to RCW 43.185.030.

7 **Sec. 7.** RCW 43.82.010 and 2015 c 99 s 1 are each amended to read
8 as follows:

9 (1) The director of enterprise services, on behalf of the agency
10 involved and after consultation with the office of financial
11 management, shall purchase, lease, lease purchase, rent, or otherwise
12 acquire all real estate, improved or unimproved, as may be required
13 by elected state officials, institutions, departments, commissions,
14 boards, and other state agencies, or federal agencies where joint
15 state and federal activities are undertaken and may grant easements
16 and transfer, exchange, sell, lease, or sublease all or part of any
17 surplus real estate for those state agencies which do not otherwise
18 have the specific authority to dispose of real estate. Any such
19 transfer, exchange, or sale must comply with RCW 43.17.400, and may
20 be made in accordance with section 3 of this act. This section does
21 not transfer financial liability for the acquired property to the
22 department of enterprise services.

23 (2) Except for real estate occupied by federal agencies, the
24 director shall determine the location, size, and design of any real
25 estate or improvements thereon acquired or held pursuant to
26 subsection (1) of this section. Facilities acquired or held pursuant
27 to this chapter, and any improvements thereon, shall conform to
28 standards adopted by the director and approved by the office of
29 financial management governing facility efficiency unless a specific
30 exemption from such standards is provided by the director of
31 enterprise services. The director of enterprise services shall report
32 to the office of financial management and the appropriate committees
33 of the legislature annually on any exemptions granted pursuant to
34 this subsection.

35 (3) Except for leases permitted under subsection (4) of this
36 section, the director of enterprise services may fix the terms and
37 conditions of each lease entered into under this chapter, except that
38 no lease shall extend greater than twenty years in duration. The
39 director of enterprise services may enter into a long-term lease

1 greater than ten years in duration upon a determination by the
2 director of the office of financial management that the long-term
3 lease provides a more favorable rate than would otherwise be
4 available, it appears to a substantial certainty that the facility is
5 necessary for use by the state for the full length of the lease term,
6 and the facility meets the standards adopted pursuant to subsection
7 (2) of this section. The director of enterprise services may enter
8 into a long-term lease greater than ten years in duration if an
9 analysis shows that the life-cycle cost of leasing the facility is
10 less than the life-cycle cost of purchasing or constructing a
11 facility in lieu of leasing the facility.

12 (4) The director of enterprise services may fix the terms of
13 leases for property under the department of enterprise services'
14 control at the former Northern State Hospital site for up to sixty
15 years.

16 (5) Except as permitted under chapter 39.94 RCW, no lease for or
17 on behalf of any state agency may be used or referred to as
18 collateral or security for the payment of securities offered for sale
19 through a public offering. Except as permitted under chapter 39.94
20 RCW, no lease for or on behalf of any state agency may be used or
21 referred to as collateral or security for the payment of securities
22 offered for sale through a private placement without the prior
23 written approval of the state treasurer. However, this limitation
24 shall not prevent a lessor from assigning or encumbering its interest
25 in a lease as security for the repayment of a promissory note
26 provided that the transaction would otherwise be an exempt
27 transaction under RCW 21.20.320. The state treasurer shall adopt
28 rules that establish the criteria under which any such approval may
29 be granted. In establishing such criteria the state treasurer shall
30 give primary consideration to the protection of the state's credit
31 rating and the integrity of the state's debt management program. If
32 it appears to the state treasurer that any lease has been used or
33 referred to in violation of this subsection or rules adopted under
34 this subsection, then he or she may recommend that the governor cause
35 such lease to be terminated. The department of enterprise services
36 shall promptly notify the state treasurer whenever it may appear to
37 the department that any lease has been used or referred to in
38 violation of this subsection or rules adopted under this subsection.

39 (6) It is the policy of the state to encourage the colocation and
40 consolidation of state services into single or adjacent facilities,

1 whenever appropriate, to improve public service delivery, minimize
2 duplication of facilities, increase efficiency of operations, and
3 promote sound growth management planning.

4 (7) The director of enterprise services shall provide coordinated
5 long-range planning services to identify and evaluate opportunities
6 for collocating and consolidating state facilities. Upon the renewal
7 of any lease, the inception of a new lease, or the purchase of a
8 facility, the director of enterprise services shall determine whether
9 an opportunity exists for collocating the agency or agencies in a
10 single facility with other agencies located in the same geographic
11 area. If a collocation opportunity exists, the director of enterprise
12 services shall consult with the affected state agencies and the
13 office of financial management to evaluate the impact collocation
14 would have on the cost and delivery of agency programs, including
15 whether program delivery would be enhanced due to the centralization
16 of services. The director of enterprise services, in consultation
17 with the office of financial management, shall develop procedures for
18 implementing collocation and consolidation of state facilities.

19 (8) The director of enterprise services is authorized to
20 purchase, lease, rent, or otherwise acquire improved or unimproved
21 real estate as owner or lessee and to lease or sublet all or a part
22 of such real estate to state or federal agencies. The director of
23 enterprise services shall charge each using agency its proportionate
24 rental which shall include an amount sufficient to pay all costs,
25 including, but not limited to, those for utilities, janitorial and
26 accounting services, and sufficient to provide for contingencies;
27 which shall not exceed five percent of the average annual rental, to
28 meet unforeseen expenses incident to management of the real estate.

29 (9) If the director of enterprise services determines that it is
30 necessary or advisable to undertake any work, construction,
31 alteration, repair, or improvement on any real estate acquired
32 pursuant to subsection (1) or (8) of this section, the director shall
33 cause plans and specifications thereof and an estimate of the cost of
34 such work to be made and filed in his or her office and the state
35 agency benefiting thereby is hereby authorized to pay for such work
36 out of any available funds: PROVIDED, That the cost of executing such
37 work shall not exceed the sum of twenty-five thousand dollars. Work,
38 construction, alteration, repair, or improvement in excess of twenty-
39 five thousand dollars, other than that done by the owner of the

1 property if other than the state, shall be performed in accordance
2 with the public works law of this state.

3 (10) In order to obtain maximum utilization of space, the
4 director of enterprise services shall make space utilization studies,
5 and shall establish standards for use of space by state agencies.
6 Such studies shall include the identification of opportunities for
7 colocation and consolidation of state agency office and support
8 facilities.

9 (11) The director of enterprise services may construct new
10 buildings on, or improve existing facilities, and furnish and equip,
11 all real estate under his or her management. Prior to the
12 construction of new buildings or major improvements to existing
13 facilities or acquisition of facilities using a lease purchase
14 contract, the director of enterprise services shall conduct an
15 evaluation of the facility design and budget using life-cycle cost
16 analysis, value-engineering, and other techniques to maximize the
17 long-term effectiveness and efficiency of the facility or
18 improvement.

19 (12) All conveyances and contracts to purchase, lease, rent,
20 transfer, exchange, or sell real estate and to grant and accept
21 easements shall be approved as to form by the attorney general,
22 signed by the director of enterprise services or the director's
23 designee, and recorded with the county auditor of the county in which
24 the property is located.

25 (13) The director of enterprise services may delegate any or all
26 of the functions specified in this section to any agency upon such
27 terms and conditions as the director deems advisable. By January 1st
28 of each year, beginning January 1, 2008, the department shall submit
29 an annual report to the office of financial management and the
30 appropriate committees of the legislature on all delegated leases.

31 (14) This section does not apply to the acquisition of real
32 estate by:

33 (a) The state college and universities for research or
34 experimental purposes;

35 (b) The state liquor (~~control~~) and cannabis board for liquor
36 stores and warehouses;

37 (c) The department of natural resources, the department of fish
38 and wildlife, the department of transportation, and the state parks
39 and recreation commission for purposes other than the leasing of
40 offices, warehouses, and real estate for similar purposes; and

1 (d) The department of commerce for community college health
2 career training programs, offices for the department of commerce or
3 other appropriate state agencies, and other nonprofit community uses,
4 including community meeting and training facilities, where the real
5 estate is acquired during the 2013-2015 fiscal biennium.

6 (15) Notwithstanding any provision in this chapter to the
7 contrary, the department of enterprise services may negotiate ground
8 leases for public lands on which property is to be acquired under a
9 financing contract pursuant to chapter 39.94 RCW under terms approved
10 by the state finance committee.

11 (16) The department of enterprise services shall report annually
12 to the office of financial management and the appropriate fiscal
13 committees of the legislature on facility leases executed for all
14 state agencies for the preceding year, lease terms, and annual lease
15 costs. The report must include leases executed under RCW 43.82.045
16 and subsection (13) of this section.

17 **Sec. 8.** RCW 47.12.063 and 2015 3rd sp.s. c 13 s 2 are each
18 amended to read as follows:

19 (1) It is the intent of the legislature to continue the
20 department's policy giving priority consideration to abutting
21 property owners in agricultural areas when disposing of property
22 through its surplus property program under this section.

23 (2) Whenever the department determines that any real property
24 owned by the state of Washington and under the jurisdiction of the
25 department is no longer required for transportation purposes and that
26 it is in the public interest to do so, the department may sell the
27 property or exchange it in full or part consideration for land or
28 building improvements or for construction of highway improvements at
29 fair market value to any person through the solicitation of written
30 bids through public advertising in the manner prescribed under RCW
31 47.28.050 or in the manner prescribed under RCW 47.12.283. Any such
32 real property subject to sale or exchange under this section must
33 comply with RCW 43.17.400.

34 (3) The department may forego the processes prescribed by RCW
35 47.28.050 and 47.12.283 and (~~sell~~) dispose the real property in
36 accordance with section 3 of this act, or sell to any of the
37 following entities or persons at fair market value:

38 (a) Any other state agency;

39 (b) The city or county in which the property is situated;

1 (c) Any other municipal corporation;

2 (d) Regional transit authorities created under chapter 81.112
3 RCW;

4 (e) The former owner of the property from whom the state acquired
5 title;

6 (f) In the case of residentially improved property, a tenant of
7 the department who has resided thereon for not less than six months
8 and who is not delinquent in paying rent to the state;

9 (g) Any abutting private owner but only after each other abutting
10 private owner (if any), as shown in the records of the county
11 assessor, is notified in writing of the proposed sale. If more than
12 one abutting private owner requests in writing the right to purchase
13 the property within fifteen days after receiving notice of the
14 proposed sale, the property shall be sold at public auction in the
15 manner provided in RCW 47.12.283;

16 (h) To any other owner of real property required for
17 transportation purposes;

18 (i) In the case of property suitable for residential use, any
19 nonprofit organization dedicated to providing affordable housing to
20 very low-income, low-income, and moderate-income households as
21 defined in RCW 43.63A.510 and is eligible to receive assistance
22 through the Washington housing trust fund created in chapter 43.185
23 RCW; or

24 (j) A federally recognized Indian tribe within whose reservation
25 boundary the property is located.

26 (4) When selling real property pursuant to RCW 47.12.283, the
27 department may withhold or withdraw the property from an auction when
28 requested by one of the entities or persons listed in subsection (3)
29 of this section and only after the receipt of a nonrefundable deposit
30 equal to ten percent of the fair market value of the real property or
31 five thousand dollars, whichever is less. This subsection does not
32 prohibit the department from exercising its discretion to withhold or
33 withdraw the real property from an auction if the department
34 determines that the property is no longer surplus or chooses to sell
35 the property through one of the other means listed in subsection (2)
36 of this section. If a transaction under this subsection is not
37 completed within sixty days, the real property must be put back up
38 for sale.

39 (5) Sales to purchasers may, at the department's option, be for
40 cash, by real estate contract, or exchange of land or highway

1 improvements. Transactions involving the construction of improvements
2 must be conducted pursuant to chapter 47.28 RCW and Title 39 RCW, as
3 applicable, and must comply with all other applicable laws and rules.

4 (6) Conveyances made pursuant to this section shall be by deed
5 executed by the secretary of transportation and shall be duly
6 acknowledged.

7 (7) Unless otherwise provided, all moneys received pursuant to
8 the provisions of this section less any real estate broker
9 commissions paid pursuant to RCW 47.12.320 shall be deposited in the
10 motor vehicle fund. Through June 30, 2029, any real property sold at
11 fair market value must include a remittance of an amount equal to ten
12 percent of the net proceeds to the state treasurer to be deposited in
13 the Washington housing trust fund, pursuant to RCW 43.185.030.

14 (8) The department may not enter into equal value exchanges or
15 property acquisitions for building improvements without first
16 consulting with the office of financial management and the joint
17 transportation committee.

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