

WSR 23-17-152

PROPOSED RULES

DEPARTMENT OF TRANSPORTATION

[Filed August 22, 2023, 1:24 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-11-030.

Title of Rule and Other Identifying Information: WAC 468-30-110
Nonhighway use of airspace on state highways.

Hearing Location(s): On September 29, 2023, at 1:00 p.m., at Nisqually Conference Room, 310 Maple Park Avenue S.E., 1st Floor Room 1D02, Olympia, WA 98501.

Date of Intended Adoption: October 15, 2023.

Submit Written Comments to: Kevin Workman, 7345 Linderson Way S.W., Tumwater, WA 98501, email workmaj@wsdot.wa.gov, phone 360-705-7324, by September 19, 2023.

Assistance for Persons with Disabilities: Contact Danielle Oliver, phone 360-918-4196, email WAC@wsdot.wa.gov, by September 19, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal will give the Washington department of transportation (WSDOT) the ability to exclude the federal share of economic rent when regional transit authorities lease highway right-of-way for the construction and operation of high capacity transportation, subject to the approval of the Federal Highway Administration. The anticipated effect will be improved financial feasibility for the system expansion programs.

Reasons Supporting Proposal: WSDOT supports Sound Transit's efforts to build and operate high capacity transportation, as this creates a resilient and multimodal transportation system for Washington state residents.

Statutory Authority for Adoption: RCW 47.01.101(5) and 47.12.120 are statutes that allow WSDOT to adjust WAC 468-30-110.

Statute Being Implemented: WAC 468-30-110.

Rule is not necessitated by federal law, federal or state court decision.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: WSDOT Right of Way Manual is also being adjusted so that there is consistency with the modifications to this WAC.

Name of Proponent: WSDOT, public.

Name of Agency Personnel Responsible for Drafting and Implementation: Cordelia Crockett, 401 South Jackson Street, Seattle, WA 98104, 206-306-4937; Enforcement: Kevin Workman, 7345 Linderson Way S.W., Tumwater, WA 98501, 360-705-7324.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

Scope of exemption for rule proposal:

Is fully exempt.

August 21, 2023
Sam Wilson, Director
Business Support Services

OTS-4885.1

AMENDATORY SECTION (Amending WSR 81-19-052, filed 9/11/81)**WAC 468-30-110 Nonhighway use of airspace on state highways.**

(1) Definitions:

(a) "Airspace" is that space located above, at or below the highway's established gradeline lying within the approved right of way limits.

(b) "Department" is the Washington state department of transportation.

(2) Any use of such space shall be subject to approval of the Federal Highway Administration.

(3) Any use of such space shall be subject to compliance with all applicable city, town or county zoning requirements.

(4) Any application to the department for the lease of such space shall describe in detail the use to be made of such space and the physical facilities to be installed and maintained on state right of way.

(5) The lessee shall be solely responsible and shall hold the state harmless for liability for any and all damage to persons or to public or private property that may result from or be caused by the use of such space or from the erection or maintenance of any structure or facility upon the highway right of way. The lessee shall be liable to the department for any moneys expended by it for the protection or repair of any state facility required as a result of any such use.

(6) The lessee shall be required to carry liability and property damage insurance in amounts required by the department.

(7) No use of such space shall be allowed which subjects the highway facility or the public to undue risk or impairs the use of the facility for highway purposes.

(8) Use of such space shall be covered by a properly executed airspace lease.

(9) Consideration for occupancy:

(a) Where the airspace can be developed and used as an entity the consideration shall be economic rent.

(b) Where the proposed use of the airspace is in conjunction with an abutting tract, rent shall be based on its contribution value to the abutting property but not less than economic rent.

(c) When the use of the property constitutes a highway purpose the rent may be offset in part or in whole with other valuable considerations as determined by the department.

(d) Where the airspace shall be used by a regional transit authority under chapter 81.112 RCW, the consideration shall be economic rent, or if so agreed to by the department, the economic rent shall be adjusted to reflect only that portion of the value equal to the percentage of the state share of motor vehicle funds originally expended to acquire the property.

(10) The granting of any use of such space shall be subject to the discretion of the department and upon such terms and conditions in addition to those stated herein as it shall deem proper.

(11) No assignment of any lease by the lessee shall be of any force and effect unless prior written approval of such assignment has been given by the department.