
**State Government Operations &
Accountability Committee**

HB 2724

Brief Description: Regulating the sale of public lands.

Sponsors: Representatives Hasegawa, Eickmeyer, B. Sullivan, Ericks, Ormsby, Green and McCoy.

Brief Summary of Bill

- Prohibits public agencies from selling or otherwise permanently transferring title of real property to private persons or private entities unless the agency can show a compelling economic development necessity and unless the agency complies with certain public notice and comment requirements.
- Creates a right to file suit to enjoin the transfer of such public property for any interested party who comments on the sale or transfer of the property.
- Requires public agencies to sell to another agency before it sells to a private party if the purchasing agency provides notice to the selling agency within the 60-day notice period that it will meet the terms agreed to by the private purchaser.

Hearing Date: 1/30/06

Staff: Kathryn Leathers (786-7114).

Background:

Provisions relating to sale of public property are found both in the State Constitution and in statute. Article XVI, Section 1 of the Constitution provides that all public lands granted to the state are held in trust for the people of the state, and that public lands may not be disposed of unless full market value is received in exchange for the property. The Constitution further provides that lands granted to the state for educational purposes must be sold at public auction and to the highest bidder, and that any sale of such land is valid only if the amount bid is equal to the appraised value of the land. Article XV, Section 2. Finally, Article VIII, Section 7 provides that no county, city, town, or other municipal corporation may give property to any individual or business except when necessary to support the poor and infirm.

Some state agencies are subject to additional statutory requirements for any sale or transfer of real property under the agency's jurisdiction. For example:

- The Department of Fish and Wildlife may exchange the tidelands and shorelands it manages with private or public landowners if the exchange is in the public interest;
- The Secretary of Transportation (Secretary) may transfer and convey to the United States, to any other Washington state agency, county, city, port district, or public utility company, any unused state-owned real property under the jurisdiction of the Department of Transportation when, in the opinion of the Secretary and Attorney General, the transfer and conveyance is in the public's best interest; and
- The Department of Natural Resources is authorized to sell any real property not designated or acquired as state forest lands, but acquired by the state for administrative sites, lien foreclosures, or other purposes, whenever it is determined that the lands are no longer or are not necessary for public use. All state lands must be sold on terms and conditions established by the Board of Natural Resources in light of market conditions.

Summary of Bill:

All public agencies are prohibited from selling or otherwise permanently transferring title of real property to a private person or private entity unless the agency can show a compelling economic development necessity (CEDN) justifying the sale or transfer and the agency complies with certain public comment and notice requirements.

The CEDN requirement is satisfied if the agency demonstrates that the present act of selling the property is of greater public benefit than retaining the land as a tangible asset or intangible future asset. Once the CEDN requirement is satisfied, the public agency must provide a process that allows for public comment by interested parties and must also provide notice of the following: (a) for 30 days, the sale and an explanation of the CEDN; and (b) for 60 days, the final sale price, all terms of the sale, and any changes to the justification for the CEDN. The final notice must be published at least once in a newspaper of general circulation published in the county where the real property to be sold is located and also on the agency's internet website.

Any interested party that comments on the proposed transfer of real property may file suit in the superior court of the county in which the property to be sold is located for the purpose of enjoining the transfer. The lawsuit must be filed prior to the end of the 60-day notice period. If a lawsuit is filed, any transfer is stayed pending a final judgment. The court may issue an injunction if the interested party can show by a preponderance of the evidence that there is no CEDN justifying the sale or transfer or that the final sale price and terms are not in the best interest of the public.

If a public agency wants to purchase the subject property and provides notice to the selling agency within the 60-day notice period that it will meet the terms agreed to by the private purchaser, the selling agency must sell the property to the interested agency.

"Public agency" has the same meaning as provided in RCW 42.30.020, and means:

- any state board, commission, committee, department, educational institution, or other state agency which is created by or pursuant to statute, other than courts and the Legislature;
- any county, city school district, special purpose district, or other municipal corporation or political subdivision of the state;
- any subagency of a public agency which is created by or pursuant to statute, ordinance, or other legislative act;

- any policy group whose membership includes representatives of publicly owned utilities formed by the laws of this state when meeting together as or on behalf of participants who have contracted for the output of generating plants being planned or built by an operating agency.

A new chapter is created within Title 42, the public officers and agencies title of the Revised Code of Washington.

Appropriation: None.

Fiscal Note: Requested on January 26, 2006.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.