

# HOUSE BILL REPORT

## HB 2491

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**As Reported by House Committee On:**  
Transportation

**Title:** An act relating to modifying allowable terms for the lease of unused highway land.

**Brief Description:** Modifying allowable terms for the lease of unused highway land.

**Sponsors:** Representative Fey.

**Brief History:**

**Committee Activity:**

Transportation: 2/1/24, 2/5/24 [DPS].

**Brief Summary of Substitute Bill**

- Authorizes the Washington State Department of Transportation (WSDOT) to offset economic rent due, at its discretion, for the lease of surplus property for the benefits provided by the lessee for community purposes when a public agency or community-based non-profit organization uses the property for housing, housing assistance, and related services; parks; enhanced public spaces; or public recreation.
- Requires the WSDOT to provide an annual report to the Transportation Committees of the Legislature by December 1 of each year with information on active lease agreements with economic rent offset for community purposes, including the community purposes being served and a summary of relevant lease terms.

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### HOUSE COMMITTEE ON TRANSPORTATION

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 18 members: Representatives Fey, Chair; Donaghy, Vice Chair; Paul, Vice Chair; Timmons, Vice Chair; Barkis, Ranking Minority Member; Berry, Bronoske, Chapman, Cortes, Doglio, Duerr, Entenman, Hackney, Mena, Nance, Ramel, Ramos and

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Wylie.

**Minority Report:** Do not pass. Signed by 7 members: Representatives Goehner, Griffey, Klicker, Orcutt, Schmidt, Volz and Walsh.

**Minority Report:** Without recommendation. Signed by 4 members: Representatives Hutchins, Assistant Ranking Minority Member; Low, Assistant Ranking Minority Member; Robertson, Assistant Ranking Minority Member; Dent.

**Staff:** Jennifer Harris (786-7143).

### **Background:**

#### Sale or Exchange of Department of Transportation Surplus Property.

When the Washington State Department of Transportation (WSDOT) determines that land it owns is no longer required for transportation purposes, and if it would be in the public interest to do so, the WSDOT may sell or exchange the property in full or part consideration for land or building improvements or for construction of highway improvements at fair market value to any person through the solicitation of written bids through public advertising as prescribed by state law. This sale must be made through a public auction, with appropriate notice given, or through the solicitation of written bids. The WSDOT may also sell the property for fair market value to certain other specified entities.

The WSDOT may also transfer unused state-owned real property property to other government entities when, in the judgment of the Secretary of Transportation and the Attorney General, the transfer is consistent with the public interest. Any revenue received by the WSDOT must be deposited in the Motor Vehicle Fund.

#### Lease of Unused Highway Land or Air Space.

The WSDOT may rent or lease any lands, improvements, or air space above or below lands held for highway purposes that are not needed at the time of rental or lease.

The rental or lease:

1. must be on terms and conditions determined by the WSDOT;
2. is subject to zoning requirements that apply;
3. includes lands used or to be used for limited access and conventional highways if they are not needed for the period of rental or lease; and
4. in the case of bus shelters, provided by a local transit authority that include commercial advertising, may charge the transit authority only for commercial space.

All funds paid to the state for rental or lease of the WSDOT lands, improvements, or air space, must be deposited in the WSDOT's Advance Right-of-Way Revolving Fund, except funds that are subject to federal aid reimbursement and funds received from the rental of

capital facility properties, which must be deposited in the Motor Vehicle Fund.

#### Limited Property Lease Authorization.

The WSDOT may establish a limited project for community purposes to address past impacts to historically marginalized populations within impacted local communities resulting from the construction of Interstate 90 (I-90) and the United States Route 395 (US 395) North Spokane Corridor project. The limited project must be consistent with restrictions that apply to the WSDOT's ability to rent or lease lands, improvements, and air space.

The WSDOT may lease property eligible for lease, which includes the property that was purchased as part of the I-90 corridor project and the US 395 North Spokane Corridor, to a community-based non-profit corporation or to the Department of Commerce, to be used for the following community purposes:

- housing and ancillary improvements;
- parks;
- community revitalization projects;
- enhanced public spaces, such as trails and public plazas; and
- projects that provide enhanced economic development in the impacted community.

The lease for this limited project may be for less than fair market rent. However, the lease agreement must require the lessee to maintain the premises as part of the consideration provided to the WSDOT by the lessee. A sublease of the lease authorized is not intended to generate exorbitant profits.

The limited project may not be construed as precedent for future lease agreements of WSDOT property in other areas of the state, nor does this authorization preclude the WSDOT from leasing property in other areas of the state for economic rent.

#### Transfer or Lease of State or Local Agency Property.

Any state, municipality, or political subdivision with authority to dispose of surplus property may transfer or lease property to any public, private, or non-governmental body on any terms, including a no-cost transfer, if the property is used for a public benefit. Public benefit means affordable housing and related facilities for households at or below 80 percent of the local median income adjusted for household size. Such a transfer must include a requirement that the property will be used for a designated public benefit, as well as remedies if the property is not used for the designated purpose. Government entities using the authority to dispose of public property must enact rules to do so.

#### Federal Aid Highways and Federal Restrictions.

Under federal regulation, current fair market value must be charged for the use or disposal

of property a state acquires with federal aid highway funding, subject to certain exceptions. The term "fair market value" in this context is defined by state statutes and/or court decisions. Exceptions to the requirement for charging fair market value must be submitted in writing to the Federal Highway Administration.

When a grantee shows that an exception to the fair market value requirement is in the overall public interest based on social, environmental, or economic benefits, and a method is provided for ensuring that the public will receive the benefit used to justify the less than fair market value disposal, an exception may be granted.

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### **Summary of Substitute Bill:**

The WSDOT may offset economic rent due for the lease of surplus property when a public agency or community-based non-profit organization leases the property for community purposes. The economic rent due may be offset for the social, environmental, or economic benefits provided by the lessee for community purposes.

A lease agreement with economic rent offset for community purposes must require the lessee to maintain the premises as part of the consideration provided to the WSDOT. The lease agreement must include:

- a requirement that the property be used for the designated community purposes; and
- remedies that apply if the lessee of the property fails to or ceases to use it for the designated community purposes.

"Community purposes" means providing one or more of the following for public benefit purposes: (1) housing, housing assistance, and related services; (2) parks; (3) enhanced public spaces, or (4) public recreation.

The WSDOT must provide an annual report to the Transportation Committees of the Legislature by December 1 of each year with information on the active lease agreements with economic rent offset for community purposes, including the community purposes being served and a summary of relevant lease terms.

### **Substitute Bill Compared to Original Bill:**

The substitute bill requires that social, environmental, or economic benefits that serve as economic rent offsets for WSDOT leases be for community purposes. It mandates that lease agreements require the lessee to maintain the premises as part of the consideration provided to the WSDOT, and requires that lease agreements include: (1) a requirement that the property be used for the designated community purposes; and (2) remedies that apply if the lessee fails to or ceases to use the property for these purposes.

The substitute bill also mandates that the WSDOT provide an annual report to the

Transportation Committees of the Legislature by December 1 of each year with information on active lease agreements, including the community purposes being served and a summary of relevant lease terms. Lastly, it modifies the definition of "community purposes" to: (1) require a public benefit purpose; (2) modify the housing purpose to include housing assistance and related services; and (3) provide the example of public plazas as a type of allowed enhanced public space.

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**Appropriation:** None.

**Fiscal Note:** Requested on February 5, 2024.

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

**Staff Summary of Public Testimony:**

(In support) The ability to lease WSDOT land for less than economic rent has been an issue for some time. An entity developed a great project for low-income housing, but could not pay economic rent for the lease. The property that the entity was unable to lease is not well taken care of, and the entity would have taken care of it. It is an eyesore and the park that sits on it is in poor shape, which is difficult for the family of the person after whom the park was named. The WSDOT owns a great deal of property that could be leased for a period of time.

This bill empowers the WSDOT to work with community groups to use state land for public benefit. It would allow the WSDOT to activate underutilized land. Unused land could be used for safe lots for recreational vehicles to stay and to get people into housing. This use of the land can make highways and streets safer.

While the WSDOT currently allows for certain offsets to rent if site improvements to the land are performed by the lessee, for some types of uses, improvements to the land would be minimal. This bill takes into account the broader public benefit from designated uses of land to allow for a larger offset to rent.

(Opposed) None.

**Persons Testifying:** Representative Jake Fey, prime sponsor; and Jon Grant, Low Income Housing Institute.

**Persons Signed In To Testify But Not Testifying:** None.