

WSR 23-21-099

PERMANENT RULES

DEPARTMENT OF TRANSPORTATION

[Filed October 18, 2023, 8:43 a.m., effective November 18, 2023]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This new rule will give the Washington state 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 systems, subject to the approval of the Federal Highway Administration. The anticipated effect will be improved financial feasibility of transit system expansion programs.

Citation of Rules Affected by this Order: Amending [WAC 468-30-110].

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

Adopted under notice filed as WSR 23-17-152 on August 22, 2023.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 18, 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.

[Statutory Authority: RCW 47.01.101(5) and 47.12.120. WSR 81-19-052 (Order 65), § 468-30-110, filed 9/11/81.]