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**THIRD SUBSTITUTE HOUSE BILL 2382**

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**State of Washington 65th Legislature 2018 Regular Session**

**By** House Transportation (originally sponsored by Representatives Ryu, Kagi, and Valdez)

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

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

**PART 1 - INVENTORY OF STATE PROPERTY**

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

(1) The department ((~~shall~~)) must work with the ((~~departments of natural resources, transportation, social and health services, corrections, and general administration~~)) designated agencies to identify ((~~and~~)), catalog, and recommend best use of under-utilized, state-owned land and property suitable for the development of affordable housing for very low-income, low-income or moderate-income households. The ((~~departments of natural resources, transportation, social and health services, corrections, and general administration shall~~)) designated agencies must provide an inventory of real property that is owned or administered by each agency and is vacant or available for lease or sale. The department must work with the designated agencies to include in the inventories a consolidated list of any property transactions executed by the agencies under the authority of section 3 of this act, including the property appraisal, the terms and conditions of sale, lease, or transfer, the value of the public benefit, and the impact of transaction to the agency. The inventories ((~~shall~~)) with revisions must be provided to the department by November 1((~~, 1993, with inventory revisions provided each November 1 thereafter~~))st of each year.

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

(3)(a) Through June 30, 2029, unless specifically prohibited by law, each designated agency that sells real property at fair market value must remit an amount equal to ten percent of the net proceeds to the state treasurer to be deposited in the Washington housing trust fund, pursuant to RCW 43.185.030. The remittance requirement does not apply to land bank lands, as defined in RCW 79.02.010, real property donated to state institutions of higher education, or real property acquired with cash donations or nonappropriated funds by state institutions of higher education.

(b) Permissible uses of the account shall be determined by the department and shall include, but is not limited to: Brownfield remediation of sites for affordable housing development for low-income and very low-income households; reduction of impact fees for affordable housing development for low-income and very low-income households; preservation of existing affordable housing units for low-income and very low-income households; and the implementation of innovative housing options in bringing to market additional affordable housing for low-income and very low-income households.

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

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

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

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

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

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

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

(i) Receiving the property within one hundred eighty days; and

(ii) Creating affordable housing units for occupancy within thirty-six months from the time of transfer.

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

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

(h) "Net proceeds" means the sale price less:

(i) The original purchase price or, if the original purchase price is unknown, a reasonable estimate of the value of the property at that time;

(ii) Real estate broker commission and fees;

(iii) Transaction costs; and

(iv) Any debt or lien to the property.

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

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

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

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

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

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

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

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

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

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

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

(a) All other state agencies;

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

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

(2) The state agency must dispose of the property, for continued public benefit as defined in section 3 of this act, to any governmental entity responding within the notification period, upon mutual agreement reached within a reasonable time period after the response is received. Priority must be given to state agencies. The disposition may be for any terms and conditions agreed upon by the proper authorities of each party, in accordance with RCW 39.33.010, except where the disposition at fair market value is required by law.

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

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

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

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

(1) Any state agency, municipality, or political subdivision, with authority to dispose of surplus public property, may transfer, lease, or other disposal of such property for a public benefit purpose, consistent with and subject to this section. Any such transfer, lease, or other disposal may be made to a public, private, or nongovernmental body on any mutually agreeable terms and conditions, including a no cost transfer, subject to and consistent with this section. Consideration must include appraisal costs, debt service, all closing costs, and any other liabilities to the agency, municipality, or political subdivision. However, the property may not be so transferred, leased, or disposed of if such transfer, lease, or disposal would violate any bond covenant or encumber or impair any contract.

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

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

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

(3) To implement the authority granted by this section, the governing body or legislative authority of a municipality or political subdivision must enact rules to regulate the disposition of property for public benefit purposes. Any transfer, lease, or other disposition of property authorized under this section must be consistent with existing locally adopted comprehensive plans as described in RCW 36.70A.070.

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

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

(6) The transfer at no cost, lease, or other disposal of surplus real property for public benefit purposes is deemed a lawful purpose of any state agency, municipality, or political subdivision, for which accounts are kept on an enterprise fund or equivalent basis, regardless of the primary purpose or function of such agency.

(7) This section does not apply to the sale or transfer of any state forestlands, any state lands or property granted to the state by the federal government for the purposes of common schools or education, or subject to a legal restriction that would be violated by compliance with this section.

(8) For purposes of this section:

(a) "Public benefit" means affordable housing for low-income and very low-income households as defined in RCW 43.63A.510, and related facilities that support the goals of affordable housing development in providing economic and social stability for low-income persons; and

(b) "Surplus public property" means excess real property that is not required for the needs of or the discharge of the responsibilities of the state agency, municipality, or political subdivision.

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

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

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

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

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

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

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

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

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

(5) This section does not apply to:

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

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

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

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

(2) Through June 30, 2029, unless specifically prohibited by law, any real property sold at fair market value must include a remittance of an amount equal to ten percent of the net proceeds to the state treasurer to be deposited in the Washington housing trust fund, pursuant to RCW 43.185.030. For purposes of this subsection, "net proceeds" means the sale price less the original purchase price, real estate broker commission and fees, transaction costs, and any debt or lien to the property.

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

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

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

(3) Except for leases permitted under subsection (4) of this section, the director of enterprise services may fix the terms and conditions of each lease entered into under this chapter, except that no lease shall extend greater than twenty years in duration. The director of enterprise services may enter into a long-term lease greater than ten years in duration upon a determination by the director of the office of financial management that the long-term lease provides a more favorable rate than would otherwise be available, it appears to a substantial certainty that the facility is necessary for use by the state for the full length of the lease term, and the facility meets the standards adopted pursuant to subsection (2) of this section. The director of enterprise services may enter into a long-term lease greater than ten years in duration if an analysis shows that the life-cycle cost of leasing the facility is less than the life-cycle cost of purchasing or constructing a facility in lieu of leasing the facility.

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

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

(6) It is the policy of the state to encourage the colocation and consolidation of state services into single or adjacent facilities, whenever appropriate, to improve public service delivery, minimize duplication of facilities, increase efficiency of operations, and promote sound growth management planning.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Whenever the department determines that any real property owned by the state of Washington and under the jurisdiction of the department is no longer required for transportation purposes and that it is in the public interest to do so, the department may sell the property or exchange it 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 in the manner prescribed under RCW 47.28.050 or in the manner prescribed under RCW 47.12.283. Any such real property subject to sale or exchange under this section must comply with RCW 43.17.400.

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

(a) Any other state agency;

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

(c) Any other municipal corporation;

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

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

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

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

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

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

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

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

(5) Sales to purchasers may, at the department's option, be for cash, by real estate contract, or exchange of land or highway improvements. Transactions involving the construction of improvements must be conducted pursuant to chapter 47.28 RCW and Title 39 RCW, as applicable, and must comply with all other applicable laws and rules.

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

(7)(a) Unless otherwise provided, all moneys received pursuant to the provisions of this section less any real estate broker commissions paid pursuant to RCW 47.12.320 shall be deposited in the motor vehicle fund. Through June 30, 2029, unless specifically prohibited by law, any real property sold at fair market value must include a remittance of an amount equal to ten percent of the net proceeds to the state treasurer to be deposited in the Washington housing trust fund, pursuant to RCW 43.185.030. For purposes of this subsection, "net proceeds" means the sale price less the original purchase price, real estate broker commission and fees, transaction costs, and any debt or lien to the property.

(b) The remittance required by this subsection does not apply to the sale of any surplus real property acquired for use related to, included in any planned design of, or that is in the vicinity of, the following planned or implemented programs: State route 520 bridge replacement and HOV program; Alaskan Way viaduct replacement project; southbound Tacoma Narrows bridge; Interstate 405 corridor program; Puget Sound gateway program; and the U.S. 395 North Spokane corridor program.

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

**--- END ---**