

Chapter 47.12 RCW
ACQUISITION AND DISPOSITION OF STATE HIGHWAY PROPERTY

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RCW 47.12.010 Acquisition of property authorized—Condemnation actions—Cost. Whenever it is necessary to secure any lands or interests in land for a right-of-way for any state highway, or for the drainage thereof or construction of a protection therefor or so as to afford unobstructed vision therefor toward any railroad crossing or another public highway crossing or any point of danger to public travel or to provide a visual or sound buffer between highways and adjacent properties or for the purpose of acquiring sand pits, gravel pits, borrow pits, stone quarries, or any other land for the extraction of materials for construction or maintenance or both, or for any site for the erection upon and use as a maintenance camp, of any state highway, or any site for other necessary structures or for structures for the health and accommodation of persons traveling or stopping upon the state highways of this state, or any site for the construction and maintenance of structures and facilities adjacent to, under, upon, within, or above the right-of-way of any state highway for exclusive or nonexclusive use by an urban public transportation system, or for any other highway purpose, together with right-of-way to reach such property and gain access thereto, the department of transportation is authorized to acquire such lands or interests in land in behalf of the state by gift, purchase, or condemnation. In case of condemnation to secure such lands or interests in land, the action shall be brought in the name of the state of Washington in the manner provided for the acquiring of property for the public uses of the state, and in such action the selection of the lands or interests in land by the secretary of transportation shall, in the absence of bad faith, arbitrary, capricious, or fraudulent action, be conclusive upon the court and judge before which the action is brought that said lands or interests in land are necessary for public use for the purposes sought. The cost and expense of such lands or interests in land may be paid as a part of the cost of the state highway for which such right-of-way, drainage, unobstructed vision, sand pits, gravel pits, borrow pits, stone quarries, maintenance camp sites, and

structure sites or other lands are acquired. [1977 ex.s. c 151 s 46; 1967 c 108 s 4; 1961 c 13 s 47.12.010. Prior: 1937 c 53 s 25, part; RRS s 6400-25, part.]

Urban public transportation system defined: RCW 47.04.082.

Right-of-way donations: Chapter 47.14 RCW.

RCW 47.12.011 Purchase options authorized. Whenever it becomes necessary or feasible to purchase rights-of-way for state highways, and the department deems it to be in the best interest of the general public, the department may secure options for purchase of property needed or proposed for any entire project or section thereof or proposed alignment for the location or relocation of any highway. [1984 c 7 s 114; 1961 c 13 s 47.12.011. Prior: 1955 c 49 s 1.]

RCW 47.12.015 "Reservation boundary" defined. For the purposes of this chapter "reservation boundary" means the boundary of the reservation as established by federal law or under the authority of the United States Secretary of the Interior. [2002 c 255 s 2.]

RCW 47.12.023 Acquisition of state lands or interests or rights therein—Procedures—Compensation—Reacquisition by department of natural resources. (1) Except as provided in RCW 47.12.026 and 47.12.029, whenever it is necessary to secure any lands or interests in lands for any highway purpose mentioned in RCW 47.12.010, or for the construction of any toll facility or ferry terminal or docking facility, the title to which is in the state of Washington and under the jurisdiction of the department of natural resources, the department of transportation may acquire jurisdiction over the lands or interests in lands, or acquire rights to remove materials from the lands in the manner set forth in this section.

(2) At any time after the final adoption of a right-of-way plan or other plan requiring the acquisition of lands or interests in lands for any purpose as authorized in subsection (1) of this section, the department of transportation may file with the department of natural resources a notice setting forth its intent to acquire jurisdiction of the lands or interests in lands under the jurisdiction of the department of natural resources required for right-of-way or other highway purposes related to the construction or improvement of such state highway, toll facility, or ferry terminal or docking facility.

(3) The department of transportation at the time of filing its notice of intent as provided in subsection (2) of this section shall file therewith a written statement showing the total amount of just compensation to be paid for the property in the event of settlement. The offer shall be based upon the department of transportation approved appraisal of the fair market value of the property to be acquired. In no event may the offer of settlement be referred to or used during any arbitration proceeding or trial conducted for the purpose of determining the amount of just compensation.

(4) Just compensation and/or fair market value for the purposes of this section shall be determined in accordance with applicable

federal and state constitutional, statutory, and case law relating to the condemnation of private and public property for public purposes.

(5) If the department of natural resources does not accept the offer of the department of transportation, the department of transportation may nonetheless pay to the department of natural resources the amount of its offer and obtain immediate possession and use of the property pending the determination of just compensation in the manner hereinafter provided.

(6) If the amount of just compensation is not agreed to, either the department of natural resources or the department of transportation may request in writing the appointment of an arbitrator for the purpose of determining the amount of compensation to be paid by the department of transportation for the acquisition of jurisdiction over the lands or interests in lands or rights therein. In that event the department of natural resources and the department of transportation may jointly agree on an arbitrator to determine the compensation, and his or her determination shall be final and conclusive upon both departments. The costs of the arbitrator shall be borne equally by the parties. If the department of natural resources and the department of transportation are unable to agree on the selection of an arbitrator within thirty days after a request therefor is made, either the department of transportation or the department of natural resources may file a petition with the superior court for Thurston county for the purpose of determining the amount of just compensation to be paid. The matter shall be tried by the court pursuant to the procedures set forth in RCW 8.04.080.

(7) Whenever the department of transportation has acquired immediate possession and use of property by payment of the amount of its offer to the department of natural resources, and the arbitration award or judgment of the court for the acquisition exceeds the payment for immediate possession and use, the department of transportation shall forthwith pay the amount of such excess to the department of natural resources with interest thereon from the date it obtained immediate possession. If the arbitration or court award is less than the amount previously paid by the department of transportation for immediate possession and use, the department of natural resources shall forthwith pay the amount of the difference to the department of transportation.

(8) Upon the payment of just compensation, as agreed to by the department of transportation and the department of natural resources, or as determined by arbitration or by judgment of the court, and other costs or fees as provided by statute, the department of natural resources shall cause to be executed and delivered to the department of transportation an instrument transferring jurisdiction over the lands or interests in lands, or rights to remove material from the lands, to the department of transportation.

(9) Except as provided in RCW 47.12.026, whenever the department of transportation ceases to use any lands or interests in lands acquired in the manner set forth in this section for the purposes mentioned herein, the department of natural resources may reacquire jurisdiction over the lands or interests in land by paying the fair market value thereof to the department of transportation. If the two departments are unable to agree on the fair market value of the lands or interests in lands, the market value shall be determined and the interests therein shall be transferred in accordance with the provisions and procedures set forth in subsections (4) through (8) of

this section. [2010 c 8 s 10003; 1984 c 7 s 115; 1977 ex.s. c 103 s 1.]

RCW 47.12.026 Acquisition of state lands or interests or rights therein—Easements—Removal of materials—Relocation of railroad tracks.

(1) The department of transportation may acquire an easement for highway or toll facilities right-of-way or for ferry terminal or docking facilities, including the right to make necessary fills, on, over, or across the beds of navigable waters which are under the jurisdiction of the department of natural resources, in accordance with the provisions of RCW 47.12.023, except that no charge may be made to the department of transportation for such an easement.

(2) The department of transportation may obtain an easement for highway or toll facilities purposes or for ferry terminal or docking facilities on, over, or across harbor areas in accordance with RCW 47.12.023 but only when the areas are approved by the harbor line commission as a public place for public landings, wharves, or other public conveniences of commerce or navigation. No charge may be made to the department of transportation for such an easement.

(3) Upon the selection by the department of transportation of an easement for highway or toll facilities right-of-way or for ferry terminal or docking facilities, as authorized in subsections (1) and (2) of this section, the department of natural resources shall cause to be executed and delivered to the department of transportation an instrument transferring the easement. Whenever the state no longer requires the easement for highway or toll facilities right-of-way or for ferry terminal or docking facilities, the easement shall automatically terminate and the department of transportation shall, upon request, cause to be executed an instrument relinquishing to the department of natural resources all of its interest in the lands.

(4) The department of transportation, pursuant to the procedures set forth in RCW 47.12.023, may remove sand and gravel and borrow materials and stone from the beds of navigable waters under the jurisdiction of the department of natural resources which lie below the line of ordinary high water upon the payment of fair market value per cubic yard for such materials to be determined in the manner set forth in RCW 47.12.023.

(5) The department of transportation may acquire full jurisdiction over lands under the jurisdiction of the department of natural resources including the beds of navigable waters that are required for the relocation of the operating tracks of any railroad that will be displaced by the acquisition of such railroad property for state highway purposes. The department of transportation may exchange lands so acquired in consideration or partial consideration for the land or property rights needed for highway purposes and may cause to be executed a conveyance of the lands in the manner prescribed in RCW 47.12.150. In that event the department of transportation shall pay to the department of natural resources, as just compensation for the acquisition, the fair market value of the property, including the beds of any navigable waters, to be determined in accordance with procedures set forth in RCW 47.12.023. [1984 c 7 s 116; 1977 ex.s. c 103 s 2.]

RCW 47.12.029 Acquisition of state lands or interests or rights therein—Certain purposes prohibited. The department of transportation shall not acquire jurisdiction of any lands or interest in lands under the jurisdiction of the department of natural resources for any of the purposes set forth in RCW 47.12.150, 47.12.160, 47.12.180, 47.12.250, and 47.12.270. [1984 c 7 s 117; 1977 ex.s. c 103 s 3.]

RCW 47.12.040 Acquisition of property from a political subdivision. Whenever it is necessary to secure any lands for primary or secondary state highway right-of-way or other state highway purposes, the title to which is in any county of the state or in any political or municipal subdivision of the state, which land is not at the time being used as a public highway, the county legislative authority or the board of directors or governing body of any such political or municipal subdivision are authorized to directly lease, sell, or convey by gift the land or any interest therein to the state of Washington, without requiring competitive bids or notice to the public, and at such price as the legislative authority, directors, or governing body may deem for the best interests of the county or for the best interests of the political or municipal subdivision of the state. The county legislative authority or the directors or governing body of any political or municipal subdivision are empowered to execute a deed or other proper instrument to the land, passing title to the state of Washington, and the instrument need not require consideration other than the benefit which may be derived by the grantor on account of the use thereof. Whenever any state highway is established by legislative enactment and the state highway is upon the former route of a county road, the county legislative authority shall cause the title to the existing right-of-way or so much thereof as the department requires to be transferred to the state of Washington by proper instrument. [1984 c 7 s 118; 1961 c 13 s 47.12.040. Prior: 1943 c 266 s 1; 1937 c 53 s 26; Rem. Supp. 1943 s 6400-26.]

RCW 47.12.044 Proceedings to acquire property or rights for highway purposes—Precedence. Court proceedings necessary to acquire property or property rights for highway purposes pursuant to RCW 47.12.010 take precedence over all other causes not involving the public interest in all courts in cases where the state is unable to secure an order granting it immediate possession and use of the property or property rights pursuant to RCW 8.04.090 through 8.04.094. [1983 c 140 s 2.]

RCW 47.12.050 Work on remaining land as payment. Whenever it is considered in the securing of any lands for state highway purpose, whether by condemnation or otherwise, that it is for the best interest of the state, for specific constructural items of damage claimed, the court or judge may order or the person whose lands are sought may agree that a portion or all work or labor necessary to the land or remaining land by reason of the taking by way of damage, be performed by the state through the department as all or a part of the consideration or satisfaction of the judgment therefor, in which event the department may perform the work as a portion of the right-of-way

cost of the state highway. [1984 c 7 s 119; 1961 c 13 s 47.12.050. Prior: 1937 c 53 s 27; RRS s 6400-27.]

RCW 47.12.055 Notification requirements. Actions under this chapter are subject to the notification requirements of RCW 43.17.400. [2007 c 62 s 9.]

Finding—Intent—Severability—2007 c 62: See notes following RCW 43.17.400.

RCW 47.12.063 Surplus real property program. (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.

(3) The department may forego the processes prescribed by RCW 47.28.050 and 47.12.283 and sell the real property 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 15 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 43.185A RCW;

(j) During the 2021-2023 fiscal biennium, any nonprofit organization that identifies real property to be sold or conveyed as a

substitute for real property owned by the nonprofit within the city of Seattle to be redeveloped for the purpose of affordable housing; or

(k) 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 10 percent of the fair market value of the real property or \$5,000, 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 60 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) 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.

(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. [2023 c 275 s 21; 2022 c 186 s 710; 2015 3rd sp.s. c 13 s 2; 2011 c 376 s 2; (2011 c 376 s 1 expired June 30, 2012); (2010 c 157 s 1 expired June 30, 2012); 2006 c 17 s 2; 2002 c 255 s 1; 1999 c 210 s 1; 1993 c 461 s 11; 1988 c 135 s 1; 1983 c 3 s 125; 1977 ex.s. c 78 s 1.]

Effective date—2022 c 186: See note following RCW 47.01.071.

Effective date—2015 3rd sp.s. c 13: See note following RCW 47.12.283.

Effective date—2011 c 376 s 2: "Section 2 of this act takes effect June 30, 2012." [2011 c 376 s 4.]

Expiration date—2011 c 376 s 1: "Section 1 of this act expires June 30, 2012." [2011 c 376 s 3.]

Expiration date—2010 c 157 s 1: "Section 1 of this act expires June 30, 2012." [2010 c 157 s 2.]

Finding—1993 c 461: See note following RCW 43.63A.510.

Proceeds from the sale of surplus real property for construction of second Tacoma Narrows bridge deposited in Tacoma Narrows toll bridge account: RCW 47.56.165.

RCW 47.12.064 Affordable housing—Inventory of suitable property. (1) The department shall identify and catalog real property that is no longer required for department purposes and is suitable for the development of affordable housing for very low-income, low-income, and moderate-income households as defined in RCW 43.63A.510. The inventory shall include the location, approximate size, and current zoning classification of the property. The department shall provide a copy of the inventory to the department of commerce by November 1, 1993, and every November 1 thereafter.

(2) By November 1 of each year, beginning in 1994, the department shall purge the inventory of real property of sites that are no longer available for the development of affordable housing. The department shall include an updated listing of real property that has become available since the last update. As used in this section, "real property" means buildings, land, or buildings and land. [2023 c 470 s 2085; 1995 c 399 s 121; 1993 c 461 s 10.]

Explanatory statement—2023 c 470: See note following RCW 10.99.030.

Finding—1993 c 461: See note following RCW 43.63A.510.

RCW 47.12.066 Sale or lease of personal property—Provision of services—Proceeds. (1) The department may sell at fair market value, or lease at rental value (economic rent), materials or other personal property to any United States agency or to any municipal corporation, political subdivision, or another agency of the state and may provide services to any United States agency or to any municipal corporation, political subdivision, or another agency of the state at actual cost, including a reasonable amount for indirect costs.

(2) The department may sell at fair market value materials or other personal property to any private utility company regulated by the utilities and transportation commission for the purpose of making emergency repairs to utility facilities or to protect such facilities from imminent damage upon a finding in writing by the secretary that an emergency exists.

(3) The proceeds of all sales and leases under this section shall be placed in the motor vehicle fund. [1984 c 7 s 120; 1977 ex.s. c 78 s 2.]

RCW 47.12.080 Sale or exchange of unused land. The secretary of transportation may transfer and convey to the United States, its agencies or instrumentalities, to any other state agency, to any county or city or port district of this state, or to any public utility company, any unused state-owned real property under the jurisdiction of the department of transportation when, in the judgment of the secretary of transportation and the attorney general, the transfer and conveyance is consistent with public interest. Whenever the secretary makes an agreement for any such transfer or conveyance, and the attorney general concurs therein, the secretary shall execute and deliver unto the grantee a deed of conveyance, easement, or other instrument, duly acknowledged, as shall be necessary to fulfill the terms of the aforesaid agreement. All moneys paid to the state of Washington under any of the provisions hereof shall be deposited in

the motor vehicle fund. [1984 c 7 s 121. Prior: 1977 ex.s. c 151 s 49; 1977 ex.s. c 78 s 5; 1975 1st ex.s. c 96 s 3; 1961 c 13 s 47.12.080; prior: 1945 c 127 s 1; Rem. Supp. 1945 s 6400-120.]

RCW 47.12.120 Lease of unused highway land or air space. The department may rent or lease any lands, improvements, or air space above or below any lands that are held for highway purposes but are not presently needed. The rental or lease:

(1) Must be upon such terms and conditions as the department may determine;

(2) Is subject to the provisions and requirements of zoning ordinances of political subdivisions of government;

(3) Includes lands used or to be used for both limited access and conventional highways that otherwise meet the requirements of this section;

(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; and

(5) In the case of the project for community purposes established in RCW 47.12.380, must be consistent with the provisions of that section. [2022 c 59 s 1; 2003 c 198 s 2; 1977 ex.s. c 151 s 50; 1969 c 91 s 1; 1961 c 13 s 47.12.120. Prior: 1949 c 162 s 1; Rem. Supp. 1949 s 6400-122.]

RCW 47.12.125 Lease of unused highway land or air space—Disposition of proceeds. All moneys paid to the state of Washington under any of the provisions of RCW 47.12.120 shall be deposited in the department's advance right-of-way revolving fund, except moneys that are subject to federal aid reimbursement and moneys received from rental of capital facilities properties, which shall be deposited in the motor vehicle fund. However, moneys paid under RCW 47.12.120(5) shall be deposited into the motor vehicle fund to be used solely within the corridors described in RCW 47.12.380(2)(b). [2022 c 59 s 3; 1999 c 94 s 15; 1991 c 291 s 3; 1961 c 13 s 47.12.125. Prior: 1949 c 162 s 2; Rem. Supp. 1949 s 6400-123.]

Legislative finding—Effective dates—1999 c 94: See notes following RCW 43.84.092.

RCW 47.12.140 Severance and sale of timber and other personalty—Removal of nonmarketable materials. Whenever the department has acquired any lands for transportation purposes, except state granted lands, upon which are located any structures, timber, or other thing of value attached to the land that the department deems it best to sever from the land and sell as personal property, the same may be disposed of by one of the following means:

(1) The department may sell the personal property at public auction after due notice has been given in accordance with general rules adopted by the secretary. The department may set minimum prices that will be accepted for any item offered for sale at public auction as provided in this section and may prescribe terms or conditions of sale. If an item is offered for sale at the auction and no satisfactory bids are received or the amount bid is less than the

minimum set by the department, the department may sell the item at private sale for the best price that it deems obtainable, but not less than the highest price bid at the public auction. The proceeds of all sales under this section must be placed in the motor vehicle fund.

(2) The department may issue permits to residents of this state to remove specified quantities of standing or downed trees and shrubs, rock, sand, gravel, or soils that have no market value in place and that the department desires to be removed from state-owned lands that are under the jurisdiction of the department. An applicant for a permit must certify that the materials so removed are to be used by the applicant and that they will not be disposed of to any other person. Removal of materials under the permit must be in accordance with rules adopted by the department. The fee for a permit is two dollars and fifty cents, which fee must be deposited in the motor vehicle fund. The department may adopt rules providing for special access to limited access facilities for the purpose of removal of materials under permits authorized in this section.

(3) The department may sell timber or logs to an abutting landowner for cash at full appraised value, but only after each other abutting 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 owner requests in writing the right to purchase the timber within fifteen days after receiving notice of the proposed sale, the timber must be sold in accordance with subsection (1) of this section.

(4) The department may sell timber or logs having an appraised value of one thousand dollars or less directly to interested parties for cash at the full appraised value without notice or advertising. If the timber is attached to state-owned land, the department shall issue a permit to the purchaser of the timber to allow for the removal of the materials from state land. The permit fee is two dollars and fifty cents. [1997 c 240 s 1; 1981 c 260 s 12. Prior: 1977 ex.s. c 151 s 52; 1977 ex.s. c 78 s 6; 1961 c 13 s 47.12.140; prior: 1953 c 42 s 1.]

RCW 47.12.150 Acquisition, exchange of property to relocate displaced facility. Whenever the department shall need for highway purposes land or property rights belonging to the United States government or any municipality or political subdivision of the state, or which shall be a part of the right-of-way of any public utility having authority to exercise powers of eminent domain, when the acquisition of such property by the state will result in the displacement of any existing right-of-way or facility, the department is authorized to acquire by condemnation or otherwise such lands and property rights as shall be needed to relocate such right-of-way or facilities so displaced and to exchange lands or property rights so acquired in consideration or partial consideration for the land or property rights needed for highway purposes. The secretary of transportation shall execute each conveyance, which shall be duly acknowledged, necessary to accomplish such exchange. [1977 ex.s. c 151 s 53; 1975 1st ex.s. c 96 s 5; 1961 c 13 s 47.12.150. Prior: 1953 c 55 s 1.]

RCW 47.12.160 Acquisition of land outside highway right-of-way to minimize damage. Whenever a part of a parcel of land is to be acquired for state highway purposes and the remainder lying outside of

the right-of-way is to be left in such shape or condition as to be of little value to its owner or to give rise to claims or litigation concerning severance or other damage, and its value does not exceed the probable amount of the severance claims or damages, the department may acquire by gift, purchase, or condemnation the whole parcel and may sell that portion lying outside of the highway right-of-way or may exchange the same for other property needed for highway purposes. The provisions of this section do not apply if the taking of that portion of the land lying outside of the highway right-of-way would deprive any adjacent owner of an existing right of ingress and egress to his or her property. [2010 c 8 s 10004; 1984 c 7 s 122; 1961 c 13 s 47.12.160. Prior: 1953 c 131 s 1.]

RCW 47.12.180 Additional financing methods for property and engineering costs—Formal declarations. It is declared to be the public policy of the state of Washington to provide for the acquisition of real property and engineering costs necessary for the improvement of the state highway system, in advance of actual construction, for the purposes of eliminating costly delays in construction, reducing hardship to owners of the property, and eliminating economic waste occasioned by the improvement of such property immediately prior to its acquisition for highway uses.

The legislature therefore finds and declares that purchase and condemnation of real property necessary for the state highway system and engineering costs, reasonably in advance of programmed construction, is a public use and purpose and a highway purpose.

The department is hereby authorized to purchase or condemn any real property or property rights therein which it deems will be necessary for the improvement of routes on the state highway system by the method provided in RCW 47.12.180 through 47.12.240 or alternatively by the method provided in RCW 47.12.242 through 47.12.246. Neither method may be used to condemn property or property rights in advance of programmed construction until the department has complied with hearing procedures required for the location or relocation of the type of highway for which the property is to be condemned. [1984 c 7 s 123; 1969 ex.s. c 197 s 1; 1961 c 281 s 1.]

Severability—1961 c 281: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1961 c 281 s 12.]

RCW 47.12.190 Additional financing methods for property and engineering costs—Purchase or condemnation. The department, in addition to its other powers and duties as provided by law, is authorized to purchase or condemn any real property or property rights therein which it deems will be necessary for the improvements of routes on the state highway system by the method provided in RCW 47.12.180 through 47.12.240. Condemnation actions brought hereunder shall be brought in the name of the state as provided for acquiring property for the public uses of the state, and in such actions selection of the property and property rights by the secretary of transportation is conclusive that they are necessary for the purposes

sought, in the absence of bad faith, or arbitrary, capricious, or fraudulent action. [1977 ex.s. c 151 s 54; 1961 c 281 s 2.]

Severability—1961 c 281: See note following RCW 47.12.180.

RCW 47.12.200 Additional financing methods for property and engineering costs—Agreements with state finance committee. The transportation commission may enter into agreements with the state finance committee for financing the acquisition, by purchase or condemnation, of real property together with engineering costs that the transportation commission deems will be necessary for the improvement of the state highway system. Such agreements may provide for the acquisition of an individual parcel or for the acquisition of any number of parcels within the limits of a contemplated highway project. [1977 ex.s. c 151 s 55; 1969 ex.s. c 197 s 2; 1961 c 281 s 3.]

Severability—1961 c 281: See note following RCW 47.12.180.

RCW 47.12.210 Additional financing methods for property and engineering costs—Warrants on motor vehicle fund. Such an agreement shall provide that the state finance committee shall purchase, at par, warrants drawn upon the motor vehicle fund in payment for the property covered by the agreement and the engineering costs necessary for such advance purchase or condemnation. Such warrants shall be purchased by the state finance committee, upon the presentation by the holders thereof to the state treasurer, from any moneys available for investment in the state treasury as provided in RCW 43.84.080: PROVIDED, That in no event shall more than ten percent of the assets of any fund be used for the purpose of acquiring property as authorized herein, except in the case of current state funds in the state treasury, twenty percent of the balance therein available for investment may be invested as provided in RCW 47.12.180 through 47.12.240. [1981 c 3 s 38; 1969 ex.s. c 197 s 3; 1961 c 281 s 4.]

Effective dates—Severability—1981 c 3: See notes following RCW 43.33A.010.

Severability—1961 c 281: See note following RCW 47.12.180.

Authorization that certain funds may be invested in motor vehicle fund warrants: RCW 43.84.080.

RCW 47.12.220 Additional financing methods for property and engineering costs—Provisions in agreement. Each such agreement shall include, but shall not be limited to the following:

- (1) A provision stating the term of the agreement which shall not extend more than seven years from the effective date of the agreement;
- (2) A designation of the specific fund or funds to be used to carry out such agreement;
- (3) A provision that the department of transportation may redeem warrants purchased by the state finance committee at any time prior to the letting of a highway improvement contract utilizing the property;

and further, during the effective period of each such agreement the department of transportation shall redeem such warrants whenever such a highway improvement contract is let, or upon the expiration of such agreement, whichever date is earlier;

(4) A provision stating the rate of interest such warrants shall bear commencing at the time of purchase by the state finance committee;

(5) Any additional provisions agreed upon by the transportation commission and the state finance committee which are necessary to carry out the purposes of such agreement as indicated by RCW 47.12.180 through 47.12.240, as now or hereafter amended. [1977 ex.s. c 151 s 56; 1969 ex.s. c 197 s 4; 1961 c 281 s 5.]

Severability—1961 c 281: See note following RCW 47.12.180.

RCW 47.12.230 Additional financing methods for property and engineering costs—Warrant form and procedure. Warrants issued for payment of property and engineering costs as provided herein shall be of a distinctive design and shall contain the words "for purchase by the state finance committee from . . . fund" (indicating the proper investing fund as provided by the agreement). Such warrants shall be approved by the secretary of the state finance committee prior to their issuance by the state treasurer. Upon presentation of such warrants to the state treasurer for payment, he or she shall pay the par value thereof from the fund for which the state finance committee agreed to purchase such warrants whether or not there are then funds in the motor vehicle fund. The state treasurer shall deposit such warrants in the treasury for the investing fund. [2010 c 8 s 10005; 1969 ex.s. c 197 s 5; 1961 c 281 s 6.]

Severability—1961 c 281: See note following RCW 47.12.180.

RCW 47.12.240 Additional financing methods for property and engineering costs—Payment procedure—Prior charge. The state treasurer shall transfer from the motor vehicle fund to the credit of the fund purchasing such warrants interest at the rate and at the times provided for in the agreement. The state treasurer shall pay the warrants at the time provided for in the agreement. The obligations coming due are a prior charge against any funds in the motor vehicle fund available to the department for construction of state highways. [1984 c 7 s 124; 1961 c 281 s 7.]

Severability—1961 c 281: See note following RCW 47.12.180.

RCW 47.12.242 "Advance right-of-way acquisition" defined. The term "advance right-of-way acquisition" means the acquisition of property and property rights, generally not more than ten years in advance of programmed highway construction projects, together with the engineering costs necessary for such advance right-of-way acquisition. Any property or property rights purchased must be in designated highway transportation corridors and be for projects approved by the commission as part of the state's six-year plan or included in the

state's route development planning effort. [1991 c 291 s 1; 1969 ex.s. c 197 s 6.]

RCW 47.12.244 Advance right-of-way revolving fund. There is created the "advance right-of-way revolving fund" in the custody of the treasurer, into which the department is authorized to deposit directly and expend without appropriation:

(1) An initial deposit of \$10,000,000 from the motor vehicle fund included in the department of transportation's 1991-93 budget;

(2) All moneys received by the department as rental income from real properties that are not subject to federal aid reimbursement, except moneys received from rental of capital facilities properties as defined in *chapter 47.13 RCW; and

(3) Any federal moneys available for acquisition of right-of-way for future construction under the provisions of section 108 of Title 23, United States Code.

During the 2023-2025 fiscal biennium, the legislature may direct the state treasurer to make transfers of moneys from the advance right-of-way revolving fund to the JUDY transportation future funding program account. [2024 c 310 s 606; 2013 c 306 s 714; 2011 c 367 s 717; 2009 c 470 s 709; 2007 c 518 s 707; 1991 c 291 s 2; 1984 c 7 s 125; 1969 ex.s. c 197 s 7.]

***Reviser's note:** Chapter 47.13 RCW was repealed by 1999 c 94 s 33, effective July 1, 1999.

Effective date—2024 c 310: See note following RCW 14.40.020.

Effective date—2013 c 306: See note following RCW 47.64.170.

Effective date—2011 c 367: See note following RCW 47.29.170.

Effective date—2009 c 470: See note following RCW 46.68.170.

Severability—Effective date—2007 c 518: See notes following RCW 46.68.170.

RCW 47.12.246 Reimbursement to advance right-of-way revolving fund. (1) After any properties or property rights are acquired from funds in the advance right-of-way revolving fund, the department shall manage the properties in accordance with sound business practices. Funds received from interim management of the properties shall be deposited in the advance right-of-way revolving fund.

(2) When the department proceeds with the construction of a highway which will require the use of any of the property so acquired, the department shall reimburse the advance right-of-way revolving fund, from other funds available to it, the current appraised value of the property or property rights required for the project together with damages caused to the remainder by the acquisition after offsetting against all such compensation and damages the special benefits, if any, accruing to the remainder by reason of the state highway being constructed.

(3) When the department determines that any properties or property rights acquired from funds in the advance right-of-way revolving fund will not be required for a highway construction project

the department may sell the property at fair market value in accordance with requirements of RCW 47.12.063. All proceeds of such sales shall be deposited in the advance right-of-way revolving fund.

(4) Deposits in the fund may be reexpended as provided in RCW 47.12.180, 47.12.200 through 47.12.230, and 47.12.242 through 47.12.248 without further or additional appropriations. [1991 c 291 s 4; 1984 c 7 s 126; 1969 ex.s. c 197 s 9.]

RCW 47.12.248 Structures acquired in advance of programmed construction—Maintenance. Whenever the department purchases or condemns any property under RCW 47.12.180 through 47.12.240 or 47.12.242 through 47.12.246, the department shall cause any structures so acquired and not removed within a reasonable time to be maintained in good appearance. [1984 c 7 s 127; 1969 ex.s. c 197 s 10.]

RCW 47.12.250 Acquisition of property for preservation, safety, buffer purposes. The department is authorized to acquire by purchase, lease, condemnation, gift, devise, bequest, grant, or exchange, title to or any interests or rights in real property adjacent to state highways for the preservation of natural beauty, historic sites or viewpoints or for safety rest areas or to provide a visual or sound buffer between highways and adjacent properties. However, the department shall not acquire, by condemnation, less than an owner's entire interest for providing a visual or sound buffer between highways and adjacent properties under RCW 47.12.010 and 47.12.250 if the owner objects to the taking of a lesser interest or right. [1984 c 7 s 128; 1967 c 108 s 5; 1965 ex.s. c 170 s 62.]

Roadside areas—Safety rest areas: Chapter 47.38 RCW.

Scenic and Recreational Highway Act: Chapter 47.39 RCW.

RCW 47.12.270 Acquisition of property for park and ride lots. The department may acquire real property or interests in real property by gift, purchase, lease, or condemnation and may construct and maintain thereon fringe and transportation corridor parking facilities to serve motorists transferring to or from urban public transportation vehicles or private carpool vehicles. The department may obtain and exercise options for the purchase of property to be used for purposes described in this section. The department shall not expend any funds for acquisition or construction costs of any parking facility to be operated as a part of a transit system by a metropolitan municipal corporation unless the facility has been approved by the department in advance of its acquisition or construction. [1984 c 7 s 129; 1973 2nd ex.s. c 18 s 1.]

RCW 47.12.283 Sale of real property authorized—Procedure—Disposition of proceeds. (1) Whenever the department of transportation determines that any real property owned by the state of Washington and under the jurisdiction of the department is no longer required for highway purposes and that it is in the public interest to

do so, the department may, in its discretion, sell the property under RCW 47.12.063 or under subsections (2) through (6) of this section.

(2) Whenever the department determines to sell real property under its jurisdiction at public auction, the department shall first give notice thereof by the most appropriate method as determined by the department. The notice shall contain a description of the property, the time and place of the auction, and the terms of the sale. The sale may be for cash or by real estate contract.

(3) The department shall sell the property at the public auction, in accordance with the terms set forth in the notice, to the highest and best bidder providing the bid is equal to or higher than the appraised fair market value of the property.

(4) If no bids are received at the auction or if all bids are rejected, the department may, in its discretion, enter into negotiations for the sale of the property or may list the property with a licensed real estate broker. No property shall be sold by negotiations or through a broker for less than the property's appraised fair market value. Any offer to purchase real property pursuant to this subsection shall be in writing and may be rejected at any time prior to written acceptance by the department.

(5) All moneys received pursuant to this section, less any real estate broker's commissions paid pursuant to RCW 47.12.320, shall be deposited in the motor vehicle fund. [2015 3rd sp.s. c 13 s 1; 2010 c 8 s 10006; 1979 ex.s. c 189 s 1.]

Effective date—2015 3rd sp.s. c 13: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [July 6, 2015]." [2015 3rd sp.s. c 13 s 3.]

Effective date—1979 ex.s. c 189: "This 1979 act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1979." [1979 ex.s. c 189 s 8.]

RCW 47.12.287 Exchange of real property authorized—Conveyance by deed. The department of transportation is hereby authorized to enter into an exchange agreement with the owner of real property required for highway purposes to convey to such owner real property, owned by the state and under the department's jurisdiction, as full or part consideration for property to be acquired for highway purposes. Such an exchange agreement may relate back and apply to any exchange of property previously agreed to and partially executed (pursuant to an earlier exchange agreement found to be void for want of a governor's deed as required by prior law), and shall be subject to such agreed terms and conditions as are authorized by *RCW 47.12.063(3) as now existing or hereafter amended. Any conveyance from the state of Washington made pursuant to this section shall be by deed executed by the secretary of transportation, which shall be duly acknowledged. [1979 ex.s. c 189 s 2.]

***Reviser's note:** RCW 47.12.063 was amended by 2011 c 376 s 1, changing subsection (3) to subsection (5).

Effective date—1979 ex.s. c 189: See note following RCW 47.12.283.

RCW 47.12.290 Sale of real property—Execution, acknowledgment, and delivery of deed. When full payment for real property agreed to be sold as authorized by RCW 47.12.283 has been received, the secretary of transportation shall execute the deed which shall be duly acknowledged and deliver it to the grantee. [1979 ex.s. c 189 s 3; 1975 1st ex.s. c 96 s 6; 1973 1st ex.s. c 177 s 2.]

Effective date—1979 ex.s. c 189: See note following RCW 47.12.283.

RCW 47.12.320 Sale of property—Listing with broker. The department may list any available properties with any licensed real estate broker at a commission rate otherwise charged in the geographic area for such services. [1984 c 7 s 130; 1973 1st ex.s. c 177 s 7.]

RCW 47.12.330 Advanced environmental mitigation—Authorized. For the purpose of environmental mitigation of transportation projects, the department may acquire or develop, or both acquire and develop, environmental mitigation sites in advance of the construction of programmed projects. The term "advanced environmental mitigation" means mitigation of adverse impacts upon the environment from transportation projects before their design and construction. Advanced environmental mitigation consists of the acquisition of property; the acquisition of property, water, or air rights; the development of property for the purposes of improved environmental management; engineering costs necessary for such purchase and development; and the use of advanced environmental mitigation sites to fulfill project environmental permit requirements. Advanced environmental mitigation must be conducted in a manner that is consistent with the definition of mitigation found in the council of environmental quality regulations (40 C.F.R. Sec. 1508.20) and the governor's executive order on wetlands (EO 90-04). Advanced environmental mitigation is for projects approved by the transportation commission as part of the state's six-year plan or included in the state highway system plan. Advanced environmental mitigation must give consideration to activities related to fish passage, fish habitat, wetlands, and flood management. Advanced environmental mitigation may also be conducted in partnership with federal, state, or local government agencies, tribal governments, interest groups, or private parties. Partnership arrangements may include joint acquisition and development of mitigation sites, purchasing and selling mitigation bank credits among participants, and transfer of mitigation site title from one party to another. Specific conditions of partnership arrangements will be developed in written agreements for each applicable environmental mitigation site. [1998 c 181 s 2; 1997 c 140 s 2.]

Findings—1998 c 181: "The legislature finds that fish passage, fish habitat, wetlands, and flood management are critical issues in the effective management of watersheds in Washington. The legislature also finds that the state of Washington invests a considerable amount

of resources on environmental mitigation activities related to fish passage, fish habitat, wetlands, and flood management. The department of transportation's advanced environmental mitigation revolving account established under RCW 47.12.340, is a key funding component in bringing environmental mitigation together with comprehensive watershed management." [1998 c 181 s 1.]

Intent—1997 c 140: "It is the intent of chapter 140, Laws of 1997 to provide environmental mitigation in advance of the construction of programmed projects where desirable and feasible, [which] will provide a more efficient and predictable environmental permit process, increased benefits to environmental resources, and a key tool in using the watershed approach for environmental impact mitigation. The legislative transportation committee, through its adoption of the December 1994 report "Environmental Cost Savings and Permit Coordination Study," encourages state agencies to use a watershed approach based on a water resource inventory area in an improved environmental mitigation and permitting process. Establishment of an advanced transportation environmental mitigation revolving account would help the state to improve permit processes and environmental protection when providing transportation services." [1997 c 140 s 1.]

RCW 47.12.340 Advanced environmental mitigation revolving account. (1) The advanced environmental mitigation revolving account is created in the custody of the treasurer, into which the department shall deposit directly and may expend without appropriation:

- (a) An initial appropriation included in the department of transportation's 1997-99 budget, and deposits from other identified sources;
- (b) All moneys received by the department from internal and external sources for the purposes of conducting advanced environmental mitigation; and
- (c) Interest gained from the management of the advanced environmental mitigation revolving account.

(2) During the 2011-2013 and 2013-2015 fiscal biennia, the legislature may transfer from the advanced environmental mitigation revolving account to the motor vehicle account [fund] such amounts as reflect the excess fund balance of the advanced environmental mitigation revolving account.

(3) During the 2019-2021 fiscal biennium, the legislature may direct the state treasurer to make transfers of moneys in the advanced environmental mitigation revolving account to the motor vehicle fund. [2019 c 416 s 715; 2013 c 306 s 715; 2010 c 247 s 703; 1997 c 140 s 3.]

Effective date—2019 c 416: See note following RCW 43.19.642.

Effective date—2013 c 306: See note following RCW 47.64.170.

Effective date—2010 c 247: See note following RCW 43.19.642.

Intent—1997 c 140: See note following RCW 47.12.330.

RCW 47.12.350 Advanced environmental mitigation—Site management

—Reimbursement of account. (1) After advanced environmental mitigation is conducted from funds in the advanced environmental mitigation revolving account, the advanced environmental mitigation sites must be managed in accordance with any permits, agreements, or other legal documents under which the subject advanced environmental mitigation is conducted.

(2) When the department or any of its transportation partners proceeds with the construction of a transportation project that will use advanced environmental mitigation sites to meet the environmental mitigation needs of a project, the advanced environmental mitigation revolving account shall be reimbursed from those transportation project funds appropriated for the use of the advanced environmental mitigation sites. Reimbursements to the advanced environmental mitigation revolving account must be paid at a rate that captures:

(a) Projected land acquisition costs for environmental mitigation for the subject transportation project;

(b) Advanced environmental mitigation site development costs;

(c) Advanced environmental mitigation site operational costs (e.g., site monitoring);

(d) Administrative costs for the management of the advanced environmental revolving account.

These costs must be adjusted based on inflation, as appropriate.

When only a portion of an advanced environmental mitigation site is used, the reimbursement rate charged to the purchasing party will be prorated for the portion used. [1997 c 140 s 4.]

Intent—1997 c 140: See note following RCW 47.12.330.

RCW 47.12.370 Environmental mitigation—Exchange agreements.

(1) The department may enter into exchange agreements with local, state, or federal agencies, tribal governments, or private nonprofit nature conservancy corporations as defined in RCW 64.04.130, to convey properties under the jurisdiction of the department that serve as environmental mitigation sites, as full or part consideration for the grantee assuming all future maintenance and operation obligations and costs required to maintain and operate the environmental mitigation site in perpetuity.

(2) The conveyances must be by quitclaim deed, or other form of conveyance, executed by the secretary of transportation, and must expressly restrict the use of the property to a mitigation site consistent with preservation of the functions and values of the site, and must provide for the automatic reversion to the department if the property is not used as a mitigation site or is not maintained in a manner that complies with applicable permits, laws, and regulations pertaining to the maintenance and operation of the mitigation site. [2022 c 184 s 1; 2021 c 333 s 707; 2003 c 187 s 1; 2002 c 188 s 1.]

Effective date—2021 c 333: See note following RCW 43.19.642.

RCW 47.12.380 Limited project, department may establish—Lease of property. (1) In order to remedy past impacts to historically marginalized populations within impacted local communities resulting from the construction of Interstate 90 and the US 395 North Spokane

Corridor project, the department may establish a limited project for community purposes under the provisions of this section. It is the intent of the legislature that the department establish the project to allow the affected property to be used for community purposes made unavailable due to the placement of the highway, and therefore the department is strongly encouraged to establish the project. However, the very limited project under this section shall not be construed as precedent for future lease agreements concerning department property in other areas of the state, and nothing under this section precludes the department from leasing property in other areas of the state for economic rent. Additionally, the legislature finds that the limited project under this section is in the overall public interest based on social, environmental, or economic benefits, as those terms are construed under 23 C.F.R. Sec. 710.403(e).

(2) (a) Pursuant to RCW 47.12.120, the department may lease the property described in (b) of this subsection to a community-based nonprofit corporation or the department of commerce, to be used for the following community purposes made unavailable due to the placement of the highway projects described in subsection (1) of this section:

- (i) Housing and ancillary improvements;
- (ii) Parks;
- (iii) Community revitalization projects;
- (iv) Enhanced public spaces, such as trails and public plazas;

and

(v) Projects that provide enhanced economic development in the impacted community.

(b) The property eligible for lease under this section includes property that was purchased as part of the Interstate 90 corridor project and the US 395 North Spokane Corridor.

(c) A lease for the purposes described in (a) (i) and (ii) of this subsection may be for less than economic rent. However, the lease agreement must then require the lessee to maintain the premises as part of the consideration to the department.

(d) The parties identified in (a) of this subsection must provide updates, to the extent practicable, to the city of Spokane and the city of Spokane Valley when any significant actions are taken related to the agreements and activities authorized under this section.

(3) Any sublease resulting from this section is not intended to generate exorbitant profits.

(4) As used in this section, "economic rent" is defined as fair market rent, as established by an appraisal or other accepted valuation method. [2022 c 59 s 2.]