

- ☐ Expedite
☒ No hearing set
☐ Hearing is set

Date:

Time:

Judge/Calendar:

**SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THURSTON COUNTY**

STATE SENATOR CURTIS KING, in His
Personal Capacity,

Plaintiff,

v.

WASHINGTON DEPARTMENT OF
TRANSPORTATION, an agency of the State of
Washington,

Defendant.

No.

**VERIFIED PETITION FOR
DECLARATORY JUDGMENT AND
INJUNCTIVE RELIEF**

I. INTRODUCTION

1. On April 22, 2025, the Washington State Legislature enacted Substitute House Bill 1774 (“S.H.B. 1774” or “Act”) (Ex. A) — “[a]n Act relating to modifying allowable terms for the lease of unused highway land,” etc.—which, among other things, authorizes the Washington Department of Transportation (“WSDOT”) to lease land exclusively purchased for highway purposes to certain private entities to be used for non-highway-related “community purposes”. RCW 47.12.120 (revised); *id.* at (6)(a)(i).

2. The Act was effective as of July 27, 2025.

3. On August 27, 2025, Plaintiff Senator Curtis King (“Plaintiff”), via letter from counsel, alerted Washington Attorney General Nick Brown that *any* Defendant WSDOT action taken

PETITION FOR DECLARATORY JUDGMENT
AND INJUNCTIVE RELIEF



1 pursuant to authority granted by the Act would violate one or more provisions of the Washington
2 Constitution, and thus requesting that his office file suit to “invalidate S.H.B. 1774 immediately.”

3 Ex. B.

4 4. On September 3, 2025, Attorney General Brown’s office delivered a response letter in
5 which it “decline[d] to take the actions you request” due, at least in part, to its purported “normal
6 role with regard to enacted legislation . . . to defend it against lawsuits, not to attempt to invalidate.”

7 Ex. C. This litigation follows.

8 **II. PARTIES**

9 5. Plaintiff Senator Curtis King is a member of the Washington State Senate, representing
10 parts of Yakima and Kennewick and surrounding communities, and is a Washington state taxpayer
11 suing in his personal capacity.

12 6. Defendant Washington Department of Transportation is an agency of the State of
13 Washington, which is charged with constructing roads, highways, and other transportation
14 facilities in the State of Washington. WSDOT is the agency primarily responsible for
15 implementing S.H.B. 1774.

16 **III. JURISDICTION, VENUE, AND STANDING**

17 7. The Superior Court of Thurston County has jurisdiction under RCW 2.08.020, RCW
18 7.24.010, RCW 7.24.020, RCW 34.05.413, and RCW 34.05.514.

19 8. Venue in Thurston County is proper under RCW 4.92.010.

20 9. Plaintiff has standing based upon his status as a Washington taxpayer, having first
21 requested the Attorney General take the proper action to preempt any unconstitutional WSDOT
22 action pursuant to the Act, which the former then refused. *Reiter v. Wallgren*, 28 Wash.2d 872,
23 876–77 (1947) (“In the absence of a statute governing suits by taxpayers, a demand upon the proper
24

1 public officer to take appropriate action is a condition precedent to the maintenance of a taxpayer's
2 action challenging the validity and legality of what public officers are intending to do or have done
3 . . .”). Plaintiff (and the public) has a clear and equitable right to see that the Constitution and laws
4 of Washington are faithfully enacted and executed; a “well-grounded fear of immediate invasion
5 of constitutional rights,” should the Court decline to act as requested; and, if not restrained, said
6 “invasion(s) will result in actual or substantial injury.” *State v. City of Sunnyside*, 3 Wash.3d 279,
7 313, 550 P.3d 31 (2024). *Tyler Pipe Indus., Inc. v. Dep’t of Rev.*, 96 Wash.2d 785, 792, 638 P.2d
8 1213 (1982).

9 **IV. STATEMENT OF FACTS**

10 10. The Act provides that WSDOT “may rent or lease any lands, improvements, or air space
11 above or below any lands that are held for highway purposes but are not presently needed,” for
12 “one or more of the following for public benefit purposes:”

- 13 (A) *Housing, housing assistance, and related services;*
14 (B) *Shelter programs including, but not limited to, indoor emergency shelters; transitional*
15 *housing; emergency housing; supportive housing; and safe spaces, such as tiny home*
16 *villages, pallet home villages, and recreational vehicle lots;*
17 (C) *Parks;*
18 (D) *Enhanced public spaces including, but not limited to, public plazas;*
19 (E) *Public recreation; or*
20 (F) *Public transportation issues.*

21 RCW 47.12.120(6)(a)(i)(A)–(F).

22 11. The Act also adds the following **Intent**:

23 *The legislature recognizes that certain **property owned by the state of Washington under the***
24 ***jurisdiction of the department of transportation that is not presently needed for highway***
***purposes could be used to serve pressing community purposes.** The legislature believes that*
the department should be enabled to execute lease agreements with governmental entities and
nonprofit organizations that can help serve these community purposes using lease terms that
take into account the community benefit these leases will provide. Therefore, the legislature is
establishing a framework for the department to use in developing lease agreements in this
context. The legislature intends for the department to consider the authorization of these lease
agreements urgent in light of the compelling needs that can be served by the leasing of certain
properties under the jurisdiction of the department, and encourages the department to move

forward developing the lease agreements it determines are appropriate, based on the factors provided below, as expeditiously as possible.

2025 Wash. Sess. Laws, Ch. 298, §1.

12. As stated in its express intent and provisions related to the repurposing of lands designated for “highway purposes,” the Act violates the following clauses of the Washington Constitution:

- Article II, §40: *Highway Purposes Clause* (“All fees collected by the State of Washington as license fees for motor vehicles and all excise taxes collected by the State of Washington on the sale, distribution or use of motor vehicle fuel and all other state revenue intended to be used for highway purposes, shall be paid into the state treasury and placed in a special fund to be used exclusively for highway purposes. . . .”).
- Article VIII, §5: *State Gift of Public Funds Clause* (“The credit of the state shall not, in any manner be given or loaned to, or in aid of, any individual, association, company or corporation.”)

13. Without a proper remedy at law, Plaintiff seeks equitable relief in the form of a declaratory judgment and injunction ordering that Defendant WSDOT cannot act, and is enjoined from acting, in accordance with the Act in any manner inconsistent with statutory and/or constitutional law.

14. Specifically, the Court should enter an order enjoining Defendant WSDOT from entering into *any* contract with *any* private entity for the purpose or with the result of converting land reserved for “highway purposes” into one or more of the “community purposes” set forth in the Act.

V. CLAIMS

A. VIOLATION OF WASH. CONST., ART. II, §40

15. Plaintiff realleges the allegations set forth above and incorporates the same herein by reference.

1 16. The *Highway Purposes Clause* of the Washington Constitution limits “all fees collected
2 by the State of Washington as license fees for motor vehicles and all excise taxes collected by the
3 State of Washington on the sale, distribution, or use of motor vehicle fuel and *all other state*
4 *revenue intended to be used for highway purposes*, shall be paid into the state treasury and placed
5 in a special fund to be used exclusively for highway purposes.” Wash. Const., Art. II, §40.

6 17. RCW 47.12.120 already provides that WSDOT “may rent or lease any lands,
7 improvements, or air space above or below any lands that are held for highway purposes but are
8 not presently needed.” *Id.*

9 18. Defendant WSDOT’s permission to discount fair-market “consideration” if a lessee intends
10 to use such lands for “community purposes” will commit property dedicated *exclusively* to
11 highway purposes, to be used for non-highway purposes, reducing the amount in revenues flowing
12 to the Advance Right-of-Way Revolving Fund (“AROW Fund”). RCW 47.12.125 (“All moneys
13 paid to the state of Washington under any of the provisions of RCW 47.12.120 shall be deposited
14 in the department's advance right-of-way revolving fund, except moneys that are subject to federal
15 aid reimbursement and moneys received from rental of capital facilities properties, which shall be
16 deposited in the motor vehicle fund.”).

17 19. The resultant value-loss incurred through such transactions would constitute an effective
18 expenditure of highway-purpose funds on non-highway uses and activities, irrespective of whether
19 some or all of the latter might conceivably benefit the public. It must benefit the state highway
20 system *in particular*. *State ex rel. O’Connell v. Slavin*, 562–63, 452 P.2d 943 (1969) (ruling that
21 “taking money from the motor vehicle fund and spending it on public transportation”—a non-
22 highway purpose—“does not benefit the highway system, however much it may benefit the public
23 as a whole or alleviate transportation problems”).

1 20. Further, the Act authorizes or otherwise contemplates several actions which would involve
2 the *direct* expenditure of exclusive highway-purpose funds on the furtherance of non-highway
3 purposes. For example, the Act permits Defendant WSDOT to directly subsidize “community-
4 purpose” project costs that “cannot reasonably be assumed by the lessee.” RCW
5 47.12.120(6)(a)(ii)(A). WSDOT may request from the Legislature and use funds specifically
6 appropriated for this purpose for these costs,” but *only* if it so determines that it “cannot reasonably
7 assumed by the lessee.” *Id.* WSDOT can, therefore, simply determine otherwise and expend
8 exclusively highway-purpose monies thereon.

9 **B. VIOLATION OF WASH. CONST., ART. VIII, §5**

10 21. Plaintiff realleges the allegations set forth above and incorporates them herein by reference.

11 22. The *State Gift of Public Funds Clause* of the Washington Constitution provides that “[t]he
12 credit of the state shall not, in any manner be given or loaned to, or in aid of, any individual,
13 association, company or corporation.” Wash. Const., Art. VIII, §5.

14 23. The Washington Supreme Court uses a two-pronged analysis to determine if the Clause
15 has been violated.

16 24. First, if the funds “were expended to carry out a fundamental purpose of the government,”
17 it is “not a gift at all.” *City of Tacoma v. Taxpayers of City of Tacoma*, 108 Wash.2d 679, 701, 743
18 P.2d 679 (1987).

19 25. Second, if the funds were *not* “expended to carry out a fundamental purpose of the
20 government,” then it *is* a gift if it is also made with a “donative intent,” rather than in exchange for
21 proper consideration. *CLEAN v. State*, 130 Wash.2d 782, 798–99, 928 P.2d 1054 (1996).

22 26. WSDOT’s discretion under the Act suspects one or more of the “community purposes” set
23 forth therein to uses and activities that do not serve a “fundamental purpose of the government.”
24

1 *Wash. St. Major Leag. Baseball Stadium Pub. Facs. Dist. v. Huber, Hunt & Nichols-Kiewit*
2 *Construct. Co.*, 165 Wash.2d 679, 688, 202 P.3d 924 (2009) (“The mere fact that a government
3 project serves a public purpose or grants an economic benefit does not elevate it to the level of a
4 sovereign act.”); *Citizens Protecting Resources v. Yakima Cnty.*, 152 Wash.App 914, 921, 219
5 P.3d 730 (2009) (fighting floods, for example, *is* a fundamental governmental purpose).

6 27. The provision of housing for the benefit of a discrete portion of the public is not a
7 recognized fundamental government purpose under Washington law. AGO 2006 No. 12 (2006)
8 (finding that no “Washington case discuss[es] whether provision of affordable housing is
9 governmental or proprietary” and that it is only “perhaps” a “fundamental” governmental purpose).

10 28. The provision for “public recreation” and “parks”, without any limiting language, permits
11 Defendant WSDOT to lease property for non-fundamental government purposes, including, *e.g.*,
12 the construction of sports facilities for a primarily private benefit. *CLEAN v. State*, 130 Wash.2d
13 at 798 (“Although we have concluded above that a public purpose is served by construction of a
14 baseball stadium, it cannot be seriously contended that the development of a baseball stadium for
15 a major league team is a “fundamental purpose” of state government.”). *See also In re Recall of*
16 *Burnham*, 194 Wash.2d 68, 78, 448 P.3d 747 (2019) (finding that municipal corporation’s
17 purchase of property for a park to be “owned *and managed* by the town” is a fundamental
18 government purpose).

19 29. Nor are “community purposes” a legitimate form of “consideration.” Therefore, any
20 WSDOT action taken pursuant to the Act manifests the Legislature’s “donative intent,” upon
21 which the Act places no limits. Ex. D, S.H.B. Rept. at 3 (“Use of this methodology is at the
22 WSDOT's discretion.”). *CLEAN v. City of Spokane*, 133 Wash.2d 455, 469, 947 P.2d 1169 (1997)
23 (holding the State Gifts Clause violated if there is “donative intent *or* a grossly inadequate return”).

1 30. The Act permits Defendant WSDOT to declare most if not all consideration for a particular
2 transfer to be met via the lessee's stated "community purpose." Adequate consideration under the
3 State Gifts Clause is limited to something of measurable economic value to the government-
4 transferor or the public writ-large. Otherwise, WSDOT is "unconstitutionally acting as a 'middle
5 person for a private enterprise.'" *CLEAN v. State*, 130 Wash.2d at 799.

6 31. The Act authorizes WSDOT to take various actions that would violate the State Gifts
7 Clause. *In re River Park Sq. Project Bond Litigation*, 2002 WL 35651382, at *4 (E.D. Wash. 2002)
8 (noting that the Washington Supreme Court "does not appear to have employed a distinction in
9 analyzing whether a legislative act violates the constitutional prohibition against gifts").

10 32. In addition, the Legislature's expressed intent is to prioritize "the extent to which the
11 community purpose will benefit overburdened communities and vulnerable populations"—neither
12 of which are defined in the Act—above their "benefit . . . to a broad number of members of the
13 public." Ex. D, S.H.B. Rept. at 3. *Hudson v. City of Wenatchee*, 94 Wash.App. 990, 995, 974 P.2d
14 342 (1999) ("If the expenditures are not serving a governmental purpose, the court must then
15 determine if a gift has occurred by focusing on the *consideration received by the public* and the
16 donative intent of the governmental entity.") (emphasis added).

17 33. Accordingly, any WSDOT action taken pursuant to the Act would inevitably violate the
18 State Gifts Clause.

19 **VI. REDRESS**

20 **A. DECLARATORY JUDGMENT**

21 34. Plaintiff realleges the preceding paragraphs and incorporates them by reference in this
22 request for Declaratory Judgment.
23
24

1 35. This is a Petition for Declaratory Judgment action pursuant to Ch. 7.24 of the Uniform
2 Declaratory Judgment Act. Plaintiff has rights, status, and other legal relations that are affected by
3 the authority of the Act and seeks to have determined a question of construction or validity arising
4 under the statute and to obtain a declaration of rights, status, or other legal relations thereunder.

5 36. Specifically, Plaintiff seeks a declaration that WSDOT cannot take any actions under the
6 Act that would fail to conform with all provisions of the Washington Constitution and any other
7 state statutory law.

8 **B. INJUNCTION**

9 37. Plaintiff realleges the preceding paragraphs and incorporates them by reference in this
10 request for injunctive relief.

11 38. This is a Petition for Injunctive Relief ordering Defendant WSDOT to abstain from
12 undertaking any act which the law especially enjoins as a duty resulting from an office, trust or
13 station. There is not a plain, speedy, and adequate remedy in the ordinary course of law.

14 39. Plaintiff seeks an injunction ordering Defendant WSDOT to refrain from leasing or
15 otherwise disposing of highway-purpose property for non-highway “community purposes” as the
16 Act defines them.

17 40. Plaintiff meets the standard for obtaining redress in the form of injunctive relief. Plaintiff
18 (and the public) has a clear legal or equitable right to ensure the state government is operating
19 exclusively within constitutional limits. The Act now permits Defendant WSDOT, at any time, at
20 its discretion, to take the unconstitutional actions herein detailed. Finally, such acts “are either
21 resulting in or will result in actual and substantial injury” to said “clear legal or equitable rights.”
22 *Tyler Pipe Indus., Inc. v. Dep’t of Rev.*, 96 Wash.2d at 792 (quoting *Port of Seattle v. Int’l*
23 *Longshoremen’s & Warehousemen’s Union*, 52 Wash.2d 317, 319, 324 P.2d 1099 (1958)).

41. Specifically, if Defendant WSDOT proceeds as the Act unconstitutionally authorizes, there is a well-grounded fear of immediate invasion of several of the public’s constitutional rights—which Senator King as a taxpayer is entitled to pursue. Further, such actual and substantial injury would inevitably result if Defendant WSDOT undertakes any such conduct that the Act authorizes it. *State v. City of Sunnyside*, 3 Wash.3d 279, 313, 550 P.3d 31 (2024) (reiterating the standard for permanent injunctive relief enjoining a governmental actor for undertaking an unconstitutional act).

VII. RELIEF REQUESTED

Plaintiff respectfully requests that the Court provide the following relief:

42. Declaratory judgment declaring that Defendant WSDOT cannot take any action pursuant to its contracting authority under the Act that violates one or more provisions of the Washington Constitution and any other state statutory law.

43. Injunction enjoining Defendant from taking such action;

44. Award Plaintiff all costs incurred in connection with this action, including reasonable attorney's fees;

45. Award any other relief as it deems fair, just, or equitable.

DATED this 24th day of September, 2025.

/s/ Jackson Maynard
JACKSON WILDER MAYNARD, JR.
WSBA No. 43481
CITIZEN ACTION DEFENSE FUND
111 21st Ave SW
Olympia, WA 98501
(850) 519-3495

/s/ Sam Spiegelman
SAM SPIEGELMAN
WSBA No. 58212
CITIZEN ACTION DEFENSE FUND
111 21st Ave SW
Olympia, WA 98501
(201) 314-9505

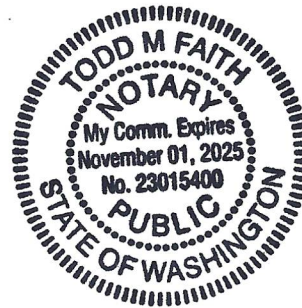
Attorneys for Plaintiff

1 **DECLARATION OF PLAINTIFFS IN SUPPORT OF VERIFIED PETITION**

2 I hereby swear or affirm that the facts alleged in the Verified Petition for Declaratory and
3 Injunctive Relief are true and correct to the best of my knowledge and belief.

4
5 
6 _____
7 Curtis King

8
9 Sworn to me this 25th day of September, 2025
10 _____
11 Notary Public



1
2 **CERTIFICATE OF SERVICE**

3 I, Jackson Maynard, hereby declare under penalty of perjury under the laws of the State
4 of Washington that I am causing a true and correct copy of the foregoing **Verified Petition for**
5 **Declaratory Judgment and Injunctive Relief** to be served via legal messenger on this date to
6 Defendant at:

7 Julie Meredith
8 Secretary
9 Washington State Department of Transportation
310 Maple Park Ave SE
Olympia, Washington 98501

10 Nick Brown
11 Office of the Attorney General
1125 Washington St SE
Olympia, WA 98504
12 *Defendant; Legal Designee and Counsel for State Defendant*

13 DATED this 24th day of September, 2025.

14 */s/ Jackson Maynard*
15 JACKSON WILDER MAYNARD, JR.
16 WSBA No. 43481
CITIZEN ACTION DEFENSE FUND
111 21st Ave SW
Olympia, WA 98501
17 (850) 519-3495

18 *Attorney for Plaintiff*
19
20
21
22
23
24

EXHIBIT A

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1774

Chapter 298, Laws of 2025

69th Legislature
2025 Regular Session

UNUSED HIGHWAY LAND—LEASE AGREEMENTS—COMMUNITY PURPOSES

EFFECTIVE DATE: July 27, 2025

Passed by the House April 22, 2025
Yeas 67 Nays 30

LAURIE JINKINS

**Speaker of the House of
Representatives**

Passed by the Senate April 15, 2025
Yeas 29 Nays 19

DENNY HECK

President of the Senate

Approved May 17, 2025 11:15 AM

BOB FERGUSON

Governor of the State of Washington

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1774** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BERNARD DEAN

Chief Clerk

FILED

May 19, 2025

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1774

AS AMENDED BY THE SENATE

Passed Legislature - 2025 Regular Session

State of Washington

69th Legislature

2025 Regular Session

By House Transportation (originally sponsored by Representatives Fey, Parshley, Ramel, Wylie, Paul, Peterson, Bronoske, Reed, Doglio, Taylor, Ryu, Gregerson, Fosse, Ormsby, Nance, Springer, Zahn, Morgan, Macri, Hill, Obras, Leavitt, and Thomas)

READ FIRST TIME 02/21/25.

1 AN ACT Relating to modifying allowable terms for the lease of
2 unused highway land; amending RCW 47.12.120; and creating a new
3 section.

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

5 NEW SECTION. **Sec. 1.** The legislature recognizes that certain
6 property owned by the state of Washington under the jurisdiction of
7 the department of transportation that is not presently needed for
8 highway purposes could be used to serve pressing community purposes.
9 The legislature believes that the department should be enabled to
10 execute lease agreements with governmental entities and nonprofit
11 organizations that can help serve these community purposes using
12 lease terms that take into account the community benefit these leases
13 will provide. Therefore, the legislature is establishing a framework
14 for the department to use in developing lease agreements in this
15 context. The legislature intends for the department to consider the
16 authorization of these lease agreements urgent in light of the
17 compelling needs that can be served by the leasing of certain
18 properties under the jurisdiction of the department, and encourages
19 the department to move forward developing the lease agreements it
20 determines are appropriate, based on the factors provided below, as
21 expeditiously as possible.

1 **Sec. 2.** RCW 47.12.120 and 2022 c 59 s 1 are each amended to read
2 as follows:

3 The department may rent or lease any lands, improvements, or air
4 space above or below any lands that are held for highway purposes but
5 are not presently needed. The rental or lease:

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

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

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

13 (4) In the case of bus shelters provided by a local transit
14 authority that include commercial advertising, may charge the transit
15 authority only for commercial space; ~~((and))~~

16 (5) In the case of the project for community purposes established
17 in RCW 47.12.380, must be consistent with the provisions of that
18 section; and

19 (6) (a) (i) In the case of a lease agreement with a public agency,
20 special purpose district, federally recognized tribe, state
21 historical society under chapter 27.34 RCW, or community-based
22 nonprofit organization, the department's process for determining
23 adequate consideration for renting or leasing lands, improvements, or
24 air space, may incorporate identified social, environmental, or
25 economic benefits to be provided by the lessee for community purposes
26 as a component of the consideration to be provided by the lessee when
27 the use of the property by the lessee is for a community purpose. Use
28 of this methodology is at the department's discretion. The following
29 factors shall be considered by the department in its evaluation of a
30 potential lease agreement under this methodology:

31 (A) The extent to which the community purpose will benefit
32 overburdened communities and vulnerable populations, as these terms
33 are defined in RCW 70A.02.010;

34 (B) The benefit of the community purpose to a broad number of
35 members of the public;

36 (C) The likelihood that, during the term of the potential lease
37 agreement being considered, the property has practical and
38 economically feasible uses for which the department could obtain
39 economic rent during this period; and

1 (D) The lessee's qualifications to perform the community purpose
2 and to fulfill its terms of the lease agreement, through
3 consideration of factors that include, but are not limited to, the
4 lessee's prior performance related to the community purpose and the
5 financial feasibility of the lessee performing the obligations
6 required under the lease agreement.

7 (ii)(A) To the extent the department finds all or a portion of
8 costs associated with the leasing process to be undertaken for
9 community purpose projects identified under this subsection (6)
10 cannot reasonably be assumed by the lessee, the department may use
11 funds specifically appropriated for this purpose for these costs.

12 (B) To the extent specifically appropriated funds are
13 unavailable, the department shall include a budget request to the
14 legislature during the next legislative session for sufficient funds
15 the department determines are necessary to complete a leasing process
16 under (a)(ii)(A) of this subsection.

17 (b) As part of the consideration to the department, a lease
18 agreement under (a) of this subsection must require the lessee to
19 maintain and secure the premises.

20 (c) A lease agreement under (a) of this subsection must include:

21 (i) A requirement that the use of the premises shall be limited
22 to the designated community purposes;

23 (ii) Remedies that apply if the lessee of the property fails to
24 use it for the designated community purposes or ceases to use it for
25 these purposes;

26 (iii) To the extent applicable, a requirement that the lessee
27 assumes liability for the lessee's uses of the property to which the
28 requirements of 23 U.S.C. Sec. 138 and 49 U.S.C. Sec. 303, commonly
29 known as section 4(f) of the department of transportation act of
30 1966, or 54 U.S.C. Sec. 200305, commonly known as section 6(f) of the
31 land and water conservation fund act of 1965, apply; and

32 (iv) Evidence of commercial or self-insurance at levels deemed
33 sufficient by the department, as well as appropriate indemnification.

34 (d) Leases under this subsection (6) may not be undertaken by the
35 department for the community purposes described in (g)(i)(A) or (B)
36 of this subsection (6) on the right-of-way of a state highway or in
37 places that would place infrastructure or the traveling public in
38 jeopardy.

39 (e) The department must provide an annual report to the
40 transportation committees of the legislature by December 1st of each

1 year with information on the active lease agreements authorized under
2 this subsection, including the community purposes being served and a
3 summary of relevant lease terms.

4 (f) In the case of a lease agreement with a community-based
5 nonprofit organization, the proposed lease must first be presented to
6 the transportation committees of the legislature as part of the
7 department's budget submittal and then approved in an omnibus
8 transportation appropriations act. However, this subsection (6)(f)
9 does not apply to lease agreements regarding the temporary use of
10 department property. For purposes of this subsection (6)(f),
11 "temporary use" means lease agreements lasting no longer than five
12 years in duration, inclusive of lease renewals.

13 (g) For the purposes of this subsection (6):

14 (i) "Community purposes" means providing one or more of the
15 following for public benefit purposes:

16 (A) Housing, housing assistance, and related services;

17 (B) Shelter programs including, but not limited to, indoor
18 emergency shelters; transitional housing; emergency housing;
19 supportive housing; and safe spaces, such as tiny home villages,
20 pallet home villages, and recreational vehicle lots;

21 (C) Parks;

22 (D) Enhanced public spaces including, but not limited to, public
23 plazas;

24 (E) Public recreation;

25 (F) Salmon habitat restoration, defined as the process of
26 repairing, enhancing, or recreating natural environments that support
27 salmon populations; or

28 (G) Public transportation uses.

29 (ii)(A) "Adequate consideration" means consideration that is
30 comprised of:

31 (I) The performance of activities that fulfill the community
32 purpose designated in the lease agreement;

33 (II) Maintenance and security of the premises to be provided
34 under the lease agreement; and

35 (III) May include additional monetary or nonmonetary
36 consideration as provided in (g)(ii)(B) of this subsection.

37 (B) The department may require additional monetary or nonmonetary
38 consideration be provided to the extent it determines that
39 consideration to be provided under (g)(ii)(A)(I) and (II) of this

1 subsection are insufficient consideration for use of the property and
2 that additional consideration is necessary.

Passed by the House April 22, 2025.

Passed by the Senate April 15, 2025.

Approved by the Governor May 17, 2025.

Filed in Office of Secretary of State May 19, 2025.

--- END ---

EXHIBIT B



August 27, 2025

via electronic mail to: Angie.Adams@atg.wa.gov

Honorable Nicholas W. Brown
Office of the Attorney General
State of Washington
1125 Washington St. SE
PO Box 40100
Olympia, WA 98504

Re: Constitutional Deficiencies in Language and Potential Operation of S.H.B. 1774

Dear Attorney General Brown,

We represent individual taxpayer Washington State Senator Curtis King. On behalf of Senator King, we request that your office investigate and institute legal proceedings to invalidate Substitute House Bill 1774 Ch. 298 Laws of 2025 ("Act"), entitled "an act relating to modifying allowable terms for the lease of unused highway land; amending RCW 47.12.20; and creating a new section." The Act is void because it violates several provisions of the Washington and U.S. Constitutions, including, in relevant part:

- Wash. Const., Art. I, §16: *State Takings Clause* ("Private property shall not be taken for private use, except for private ways of necessity, and for drains, flumes, or ditches on or across the lands of others for agricultural, domestic, or sanitary purposes. No private property shall be taken or damaged for public or private use without just compensation having been first made . . .").
- Wash. Const., Art. VIII, §5: *State Gift of Public Funds Clause* ("The credit of the state shall not, in any manner be given or loaned to, or in aid of, any individual, association, company or corporation.") and §7: *Local Gift of Public Funds Clause* ("No county, city, town or other municipal corporation shall hereafter give any money, or property, or loan its money, or credit to or in aid of any individual, association, company or corporation, except for the necessary support of the poor and infirm . . .").
- Wash. Const., Art. II, §40: *Highway Purposes Clause* ("All fees collected by the State of Washington as license fees for motor vehicles and all excise taxes collected by the State of Washington on the sale, distribution or use of motor vehicle fuel and all other state revenue

intended to be used for highway purposes, shall be paid into the state treasury and placed in a special fund to be used exclusively for highway purposes. . . .”).

- U.S. Const., Art. IV, §3: *Federal Property Clause* (“The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States . . .”).

State Takings Clause. The Act allows the Washington Department of Transportation (“WSDOT”) to repurpose highway-designated lands to effectuate one or more specified “community purposes” which bear little to no resemblance to the sorts of “public uses” that Washington courts *have* recognized as legitimate exercises of the state’s police powers. Specifically, the Act’s “community purpose” of “public housing” which, although arguably useful to the public, is not a “public use” in the recognized state-constitutional sense. *See HTK Mgmt., L.L.C. v. Seattle Popular Monorail Auth.*, 155 Wash.2d 612, 630, 121 P.3d 1166 (2005).

Washington courts caution against equating public welfare benefits to “public use,” particularly when the benefit is conferred on a specific private group. In *Manufactured Housing Communities of Washington v. State*, 142 Wash.2d 347, 13 P.3d 183 (2000), for example, the Washington Supreme Court struck a statute that had granted mobile-home-park tenants a right-of-first-refusal to purchase the parkland and protect their homes. In so doing, the Court reasoned that a “beneficial use is not necessarily a public use” and that preserving housing, while beneficial, did not transform a tenants’ private right into a public use. *Id.* at 360 (quoting *In re Petition of Seattle*, 96 Wash.2d 616, 627, 638 P.2d 549 (1981)).

While “a private enterprise may be selected to effectuate” a public use, *in re Port of Seattle (Seattle-Tacoma)*, 80 Wash.2d 392, 495 P.2d 327 (1972), public-private ventures elicit heightened judicial scrutiny. *Manufac. Hous.*, 142 Wash.2d at 358 (“Whenever an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be really public shall be a judicial question, and determined as such, without regard to any legislative assertion that the use is public.”). Thus in choosing private tenants, WSDOT will encounter a minefield of both *ex ante* and *ex post* inquiries into whether Act-authorized transfers of interests in public lands are indeed for “public use” with “private enterprise” only “incidental to the main public purpose,” *Port of Seattle (Seattle-Tacoma)*, 80 Wash.2d at 396, or are, in reality, grants to private parties for nonpublic uses. *See Hogue v. Port of Seattle*, 54 Wash.2d 799, 341 P.2d 171 (1959) (“Unless the state or its subdivision can prove to the satisfaction of a court that it seeks to acquire the property for a ‘really public’ use (and also pays just compensation for it), the owner may not be deprived of it without his consent.”).

State and Local Gift of Public Funds Clauses. In *Japan Line, Ltd. v. McCaffree*, 88 Wash.2d 93, 558 P.2d 211 (1977), the Washington Supreme Court noted that “[t]he manifest purpose of these provisions is to prevent state funds from being used to benefit private interests where the public interest is not primarily served.” *Id.* at 98. To distinguish between private and public interests, Washington courts first ask whether the transfer is in furtherance of a “fundamental purpose” of government (*i.e.*, the private recipient is performing a core state function), in which case the transfer is “not a gift at all.” *City of Tacoma v. Taxpayers of City of Tacoma*, 108 Wash.2d 679,

701, 743 P.2d 679 (1987). If a Court finds there is no fundamental governmental purpose, it next asks if the government executed the transfer with a “donative intent.” *See, e.g., CLEAN v. State*, 139 Wash.2d 782, 798–99, 928 P.2d 1054 (1996), *non*-dispositive evidence against which includes consideration (e.g., payment of rent).

Here, again, the Act presents WSDOT with a minefield of constitutional traps. As explained, while “public housing” might *benefit* the public, it is not a core governmental function. It has never been within the ambit of the traditional means of ensuring public health, safety, morals, or general welfare, and does not resemble those that are. The distribution of “entitlements” for example, are a core governmental function because the act “provide[s] to the public, or a segment of the public, as cash or services, in carrying out a program to further an overriding public purpose or satisfy a moral obligation.” *City of Tacoma*, 108 Wn.2d at 702 (citing *Seattle v. State*, 100 Wn.2d 232, 241, 668 P.2d 1266 (1983)).

Therefore, the extent—if any—to which such a transfer serves a public interest or benefit is irrelevant to the question of whether the government has gifted public property to private entities. The Act includes no language limiting authorized transfers to uses in furtherance of core governmental functions. With respect to “donative intent,” the Act also fails to formulate what qualifies as a fair-market rent, referring only to soft factors “comprised of . . . [t]he performance of activities that fulfill the community purposes” or “[m]aintenance and security of the premises.” RCW 47.12.120(6)(g)(ii)(A), (B).

Notably absent is any reference to fair-market rent, though the Act hedges that WSDOT “may require additional monetary or nonmonetary consideration . . . to the extent it determines that” performance, maintenance, and security “are insufficient consideration for use of the property and that additional consideration is necessary.” *Id.* WSDOT appears doomed either to overcharge for fear of upsetting this nebulous “formula” or, more likely, fail to explain to the satisfaction of any injured parties how the rents “charged”—even that comprised solely of in-kind payment—indeed meet the Clauses’ straightforward “consideration” requirement. The Act thus exposes WSDOT to serious and substantial litigation claiming that specific Act-authorized transfers to private entities are for non-fundamental (or any) governmental purposes and/or involve consideration that betrays a donative intent.

Highway Purposes Clause. In *State ex rel. O’Connell v. Slavin*, 75 Wn.2d 554, 452 P.2d 943 (1969), the Washington Supreme Court noted that Article II, § 40’s listed purposes “pertain to highways, roads and streets . . . adapted and *dedicated to use by operators of motor vehicles*,” and none pertain to other modes of transportation like rail or transit. *Id.* at 558–59. If even “public transportation system[s]” do not count as “highway purposes,” neither, of course, does it extend to Act-defined “community purposes.” *See id.* (“The mere fact that these vehicles may . . . relieve the highways of vehicular traffic does not make their construction, ownership, operation, or planning a highway purpose, within the meaning of the constitutional provision.”).

Washington caselaw on this is well-established and counsels strongly against misappropriating for non-highway uses lands designated exclusively for “highway purposes,” which are read extremely

narrowly. *Id.* at 557. Unless a use falls within the specific categories enumerated in the constitutional text, that project cannot be financed by the special fund reserved for same. *See, e.g., Wash. St. Highway Comm'n v. Pac. Nw. Bell Tele. Co.*, 59 Wn.2d 216, 367 P.2d 605 (1961) (ruling that a statute directing the state to reimburse utilities companies' for the cost of relocating their highway projects was not an "exclusively highway" purpose); *Automobile Club of Wash. v. City of Seattle*, 55 Wn.2d 161, 346 P.2d 695 (1959) (prohibiting the state's payment of a personal-injury judgment resulting from negligent operation of a bridge within the state's highway system).

None of the Act's "community purposes" are exclusively "highway purposes," nor are they proximately or even remotely ancillary thereto. Neither "public housing," "parks," "public plaza," nor "salmon habitat restoration"—to name but a few—fit the bill. RCW 47.12.120(6)(g)(i)(A)–(G). WSDOT's transfer of highway-designated lands for any such uses therefore violates the Highway Purposes Clause and are likely to be invalidated if and when challenged.

Federal Property Clause. This Clause gives Congress plenary power over federal property, and federal statutes comprehensively govern the disposition of same. *See, e.g.*, 40 U.S.C. §541 *et seq.*; *Kleppe v. New Mexico*, 426 U.S. 529, 540–43 (1976) (Congress's power over federal lands is "complete" and when Congress legislates under the Property Clause, federal law overrides conflicting state laws under the Supremacy Clause). The Act purports to override conditions that have been placed on state land purchased with federal assistance. *See, e.g., Lankford v. Sherman*, 451 F.3d 496, 510 (8th Cir.2006) (noting that in "a system of cooperative federalism ... once the state voluntarily accepts the conditions imposed by Congress, the Supremacy Clause obliges it to comply with federal requirements").

Federal highway law imposes specific requirements on state disposition of land acquired or improved with federal-aid highway funds. Under 23 U.S.C. § 156, a state "shall charge, at a minimum, fair market value" for the sale or lease of any real property acquired with federal highway assistance, except in certain circumstances. *Id.* The statute authorizes the U.S. Secretary of Transportation to grant exceptions to the fair-market requirement "for a social, environmental, or economic purpose." 23 U.S.C. § 156(b).

In the event WSDOT seeks to charge below-market lease of lands subject to the federal rules, it would have to undergo a comprehensive Federal Highway Administration ("FHWA") approval process, to which the Act makes absolutely no reference. Failure on this front might be two-fold: Either WSDOT submits all relevant transfers for *ex ante* FHWA approval—a process with mixed results at best—or otherwise ignores the federal mandate (as the Act itself does) and risks invalidating many if not most of Act-authorized transfers.

Taxpayers throughout Washington, including Sen. King, will be harmed by this unconstitutional piece of legislation. On his behalf, we ask that your office commence proceedings to invalidate S.H.B. 1774 immediately.

Honorable Nicholas W. Brown
August 27, 2025

Sincerely,

A handwritten signature in blue ink, reading "Jackson Maynard, Jr.", with a stylized, cursive script.

Jackson Maynard

Executive Director and Counsel

Citizen Action Defense Fund

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111 21st Ave SW

Olympia, WA 98501

(850) 519-3495

/s/ Sam Spiegelman

Sam Spiegelman

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EXHIBIT C



Nick Brown

ATTORNEY GENERAL OF WASHINGTON

Administration Division

PO Box 40100 • Olympia, WA 98504-0100 • (360) 753-6200

September 3, 2025

Sent via electronic mail

Jackson Maynard, Executive Director and Counsel
Sam Spiegelman, Associate Counsel
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jackson@citizenactiondefense.org
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RE: Response to Taxpayer Request for Action

Dear Mr. Maynard and Mr. Spiegelman:

I am responding to your letter of August 27, 2025, that you sent on behalf of Senator Curtis King regarding Substitute House Bill 1774, Laws of 2025, ch. 298. You ask that our office bring suit on behalf of Washington State taxpayers to “invalidate S.H.B. 1774 immediately.”

We consider litigation at the request of taxpayers in appropriate situations. But our normal role with regard to enacted legislation is to defend it against lawsuits, not to attempt to invalidate it, and we see no basis to deviate from that normal process here. We therefore decline to take the actions you request, but do so without expressing any view as to whether your claims may have potential merit. To the extent your request is made as a prerequisite to asserting taxpayer standing, please understand that this letter expresses no view as to whether the requirements for taxpayer standing would be met.

I trust that this information will be helpful.

Sincerely,

s/Alicia O. Young
ALICIA O. YOUNG
Deputy Solicitor General

EXHIBIT D

FINAL BILL REPORT

SHB 1774

C 298 L 25
Synopsis as Enacted

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

Sponsors: House Committee on Transportation (originally sponsored by Representatives Fey, Parshley, Ramel, Wylie, Paul, Peterson, Bronoske, Reed, Doglio, Taylor, Ryu, Gregerson, Fosse, Ormsby, Nance, Springer, Zahn, Morgan, Macri, Hill, Obras, Leavitt and Thomas).

House Committee on Transportation
Senate Committee on Transportation

Background:

Lease of Unused Highway Land or Air Space.

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

The rental or lease:

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

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

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

The WSDOT's Right of Way Manual, which describes agency policy for real estate transactions, requires that economic rent be paid for all leases, except in the case where:

- A tenant of an acquired improvement receives the same rental rate in effect at the time of acquisition for 90 days.
- Property is leased for a highway purpose or when economic rent can be justifiably offset by benefits to the motoring public that equal rent value.
- A minimum rate is established when economic rent is less than WSDOT's costs to perform management activities through the term of the lease.

Limited Property Lease Authorization.

In 2022 the WSDOT was authorized to establish a limited project for community purposes to address past impacts to historically marginalized populations within impacted local communities resulting from the construction of Interstate 90 (I-90) and the United States Route 395 (US 395) North Spokane Corridor project.

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

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

The lease for this limited project was authorized to be for less than economic rent, and to require the lessee to maintain the premises as part of the consideration provided by the lessee to the WSDOT.

Federal Aid Highways and Federal Restrictions.

Under federal regulation, current fair market value must be charged for the use or disposal of property a state acquires with federal aid highway funding, subject to certain exceptions. When a grantee shows that an exception to the fair market value requirement is in the overall public interest based on social, environmental, or economic benefits, and a method is provided for ensuring that the public will receive the benefit used to justify the less than fair market value disposal, an exception may be granted.

Exceptions to the requirement for charging fair market value must be submitted in writing to the Federal Highway Administration.

Transfer or Lease of State or Local Agency Property.

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

Summary:

Community Purpose Lease Agreement.

For the purpose of determining adequate consideration for a lease of lands, improvements, or air space not needed at the time of rental or lease, the WSDOT may incorporate identified social, environmental, or economic benefits to be provided by a lessee that is a public agency, special purpose district, community-based non-profit organization, federally recognized Indian tribe, or state historical society as a component of the consideration to be provided by the lessee when use of the property is for a community purpose. Use of this methodology is at the WSDOT's discretion.

"Community purposes" is defined as providing one or more of the following public benefit purposes: (1) housing, housing assistance, and related services; (2) shelter programs; (3) parks; (4) enhanced public spaces; (5) public recreation; (6) salmon habitat restoration; or (7) public transportation uses.

Where the purpose of the lease is related to housing or shelter programs, the WSDOT may not undertake a lease of property that incorporates community purpose benefits in the determination of adequate consideration if the lease is of property on the right of way of a state highway or would place infrastructure or the traveling public in jeopardy,

The WSDOT must consider the following factors in its evaluation of a potential lease agreement under this methodology:

- the extent to which the community purpose will benefit overburdened communities and vulnerable populations;
- the benefit of the community purpose to a broad number of members of the public;
- the likelihood that the property has practical and economically feasible uses for which the WSDOT could otherwise obtain economic rent during the lease period; and
- the lessee's qualifications to perform the community purpose and to fulfill the terms of the lease agreement.

Lease Terms.

Adequate consideration is defined as consideration that is comprised of:

1. the performance of activities that fulfill the community purposes designated in the lease agreement;
2. maintenance and securing of the premises to be provided under the lease agreement; and
3. if the WSDOT determines that the consideration provided by the above elements is insufficient consideration for use of the property, the WSDOT may require additional monetary or non-monetary consideration.

A lease agreement must include:

- a requirement that the use of the premises must be limited to the designated community purposes;
- remedies that apply if the lessee of the property fails to use it for the designated community purposes or ceases to use it for these purposes;
- evidence of commercial or self-insurance at levels deemed appropriate by the WSDOT; and
- evidence of appropriate indemnification.

In the case of lease agreements with community-based non-profit organizations that are greater than five years in duration, inclusive of lease renewals, the WSDOT must present the proposed lease to the transportation committees of the Legislature as part of its budget submittal. The proposed lease must be approved in an omnibus transportation appropriations act for the WSDOT to move forward with a lease agreement.

Administrative Costs.

If the WSDOT finds all or a portion of costs associated with the leasing process to be undertaken for a community purpose project cannot reasonably be assumed by the lessee, the WSDOT may use funds specifically appropriated for this purpose for these costs. If these funds are unavailable, the WSDOT must include a budget request to the Legislature during the next legislative session for the funds to be appropriated for this use.

Legislative Reporting Requirement.

The WSDOT is required to provide an annual report to the Transportation Committees of the Legislature by December 1 of each year detailing the active community purpose lease agreements authorized, including the community purposes being served and a summary of relevant lease terms.

Votes on Final Passage:

House	70	27	
Senate	29	19	(Senate amended)
House	67	30	(House concurred)

Effective: July 27, 2025