No. 57985-5
102713-3

STATE OF WASHINGTON
COURT OF APPEALS, DIVISION II

ALEXANDRIA REAL ESTATE EQUITIES, INC., a Washington State Taxpayer, JOHN JOSEPH COX, a Washington State Taxpayer, and DEAN A. TAKKO, a Washington State Taxpayer,

Petitioners,

v.

UNIVERSITY OF WASHINGTON, a Public Institution of Higher Education and Agency of the State of Washington,

Respondent.

PETITION FOR REVIEW

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I. IDENTITY OF PETITIONERS

Washington taxpayers Alexandria Real Estate Equities, Inc. ("ARE"), John Cox (an alumnus of the University of Washington ("UW")), and Dean Takko (a former longtime-member of Washington's Legislature) ask this Court to accept review of the Court of Appeals decision terminating review designated in Part II.

II. COURT OF APPEALS DECISION

Transparent public bidding is a vital public policy in Washington, enacted by the Legislature, as a safeguard against fraud, corruption, and waste. In the so-called "lease-construction-lease-back" transaction at issue here, which UW admits is a "test case," a private developer agreed to demolish two UW buildings, construct a new building in their place ("Building"), give UW control over the Building's design and tenant selection, and relinquish ownership of the building to UW after 80 years in exchange for UW paying $150 million in rent

while occupying one third of the Building during the 80-year leasehold (the "Transaction").

Division II's published decision in Case No. 57985-5-II blessing the Transaction is untenable. Not only does it hold that UW has plenary authority to enter into the Transaction despite a specific statute that permits lease-construction-leaseback transactions only if certain conditions are met, but it also held that the $150 million arrangement fell outside a public-bidding statute that applies to all state university development projects. Because Division II's published opinion conflicts with court decisions on public bidding and express statutory language and also raises issues of first impression that have broad public impact far beyond the parties in this case, the issues in this petition meet the criteria of RAP 13.4(b) and warrant this Court's review.

III. ISSUES PRESENTED FOR REVIEW

A. When a Washington public higher education institution commits to pay millions in rent to a developer on the express condition that the developer perform demolition and construction work under a lease-construction-lease-back transaction, is that rent-based consideration a "cost" that implicates RCW 28B.10.350's competitive-bidding requirements for procurements for building, construction, and demolition in higher education?

B. When a specific statute authorizes UW to enter into lease-construction-lease-back transactions for eight categories of buildings, but only if certain conditions are met, can UW override that express legislative direction and undertake a lease-construction-lease-back transaction that is not specifically authorized by the statute?

IV. STATEMENT OF THE CASE

This petition presents issues of first impression regarding UW's use of a "new Public-Private Partnership model" ("P3"), CP 99, that involves a "different funding process than other University buildings." CP 701. UW admits it is a "test case" for the other 18 buildings that UW plans for the $3 billion development of its West Campus, "[i]f it works." CP 274, 603, 608.

When UW first embarked on this procurement, it secured $20 million in appropriations from the Legislature in 2018 based on a representation that UW would construct a $120 million building using an alternative public works method authorized under Ch. 39.10 RCW. CP 598, 612, 623–628, 639–642, 766. Instead, after it received this $20 million appropriation, UW decided to pursue the new P3 model at issue here. UW now projects that the Building's overall cost will exceed $250 million, CP 678–679, 842, and that UW's capital commitment will be at least $71.8 million. Tr. Ex. 156 at 3.

In January 2020, UW released a request for qualifications. CP 305. The request stated that any developers shortlisted would participate in a request for proposals ("RFP"). CP 304. ARE and three other developers received the RFP in November 2020. CP 94, 162, 228. The RFP stated UW "may elect to work directly with the Developer on other similar projects in the future without further competitive requests for proposals," CP 109, giving developers not only a chance to construct the Building, but an

opportunity to construct—without further competitive bidding—the West Campus's 18 other buildings (worth $3 billion) using the same P3 structure.

The RFP attached three interrelated draft contracts ("Contracts") that provide for a lease-construction-lease-back arrangement, in which UW leases its land (Site W27) to the developer for 80 years "on the express condition" that the developer demolish the existing buildings, construct the Building, and lease back to UW between 10 and 30 percent of the Building. CP 136, 146. The RFP confirmed that UW will receive payments under its ground lease, but will give an advance commitment to the developer to pay it millions of dollars in rent under the Building lease. CP 122–123. Under this transaction, UW will control the Building's design, naming rights, and tenant roster. CP 107, 139. The Building will revert to UW's ownership at the ground lease's conclusion. CP 135, 161, 247. As UW later admitted in its briefing before the Court of Appeals, "UW's lease-lease-back plan for Site W27 helps UW provide a 'state-

of-the-art facility for research' and does so through entering 'a financing arrangement that leverage[s] funding sources and reduce[s] the costs of such complex facilities to the state.'" Resp. br. at 32.

After the developers submitted their RFP responses, in March 2021, UW selected Wexford Science + Technology, LLC ("Wexford"). CP 163.

Petitioners sued, asserting that the Transaction was illegal on two grounds: (1) UW lacks statutory authority to enter into a lease-construction-lease-back transaction ("Claim 1") and, independently, (2) the Transaction must be awarded using competitive, sealed bidding under RCW 28B.10.350, which UW failed to do ("Claim 2").[1] CP 735–42. In response, UW claimed that Petitioner' concerns are mere "sour grapes" of a disappointed bidder. Resp. br. at 53, 66; CP 57, 64.

[1] The trial court denied Petitioners' third claim, that the UW arbitrarily and capriciously selected Wexford, after a bench trial. CP 1456.

On March 10, 2022—after the trial court issued summary judgment in UW's favor on Claim 1 and Claim 2—UW's Board of Regents approved UW executing the Contracts with Wexford, which occurred in the weeks thereafter. Tr. Ex. 156 at 8–9; Tr. Ex. 157 at 1, Tr. Ex. 158 at 1, Tr. Ex. 159 at 1.[2]

In its December 5, 2023, published decision, Division II affirmed the trial court's summary judgment order on Claims 1 and 2. *See* Op. at 12–13, 16, 24. Several media outlets have published articles about this case and Division II's decision.[3] This timely petition follows.

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[2] UW later amended the Contracts to increase the amount of rent it would pay Wexford as consideration in part for Wexford demolishing an additional building. *See* Tr. Ex. 157 at 1–2; Tr. Ex. 158 at 9. This amended agreement to demolish a second building and pay Wexford additional rent is the subject of a follow-on lawsuit that is pending appeal with Division II. *See Alexandria Real Estate Equities Inc. v. University of Washington*, No. 22-2-02911-34 (Thurston Cnty. Sup. Ct. 2023), Index # 71, Notice of Appeal to Court of Appeals (filed Dec. 22, 2023), *appeal docket number pending*.

[3] *See* Lisa Stiffler, *Univ. of Washington Set to Break Ground on 69-Acre Redevelopment to Create Seattle Innovation Hub*, GEEKWIRE, Jan. 4, 2024, https://www.geekwire.com/2024/univ-

V. ARGUMENT WHY REVIEW SHOULD BE GRANTED

Division II's published decision gives State public higher education institutions the green light not only to enter into novel lease-construction-lease-back transactions that lack statutory authorization, but also to evade competitive bidding laws. The public policy implications of this case, as well as the two novel issues of law it presents, warrant this Court's review. RAP 13.4(b)(1), (2), (4).

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of-washington-set-to-break-ground-on-69-acre-redevelopment-to-create-seattle-innovation-hub/; Marc Stiles, *Court rules against Alexandria in dispute with UW over pivotal project*, PUGET SOUND BUS. J., Dec. 6, 2023, https://www.bizjournals.com/seattle/news/2023/03/19/alexandria-uw-lease-decision.html; *University of Washington Prevails Over Alexandria in PBX Project Dispute*, Dec. 6, 2023, THEREGISTRY, https://news.theregistryps.com/university-of-washington-prevails-over-alexandria-in-pbx-project-dispute/; Dana Bartholomew, *Court vindicates bid process for Wexford project in UW in Seattle*, THEREALDEAL, Dec. 7, 2023, https://therealdeal.com/national/2023/12/07/court-oks-contract-for-wexford-project-with-uw-in-seattle/; Kurt Schlosser, *UW prevails in lawsuit filed by developer that lost bid to build new clean energy research facility*, GEEKWIRE, Mar. 8, 2023, https://www.geekwire.com/2023/uw-prevails-in-lawsuit-developer-that-lost-bid-to-build-new-clean-energy-research-facility/.

A. This Court's Review Is Necessary Because Division II's Decision Would Allow Public Agencies To Evade Strong Public Policy In Favor Of Competitive Bidding Requirements.

The default principle is public bidding for higher education procurements that involve construction, remodeling, or demolition work. RCW 28B.10.350 provides that "[w]hen the cost to The Evergreen College or any regional or state university of any building, construction, renovation, remodeling, or demolition, other than maintenance or repairs, will equal or exceed the sum of $90,000,"[4] then sealed bidding requirements apply.[5] Despite UW's advance commitment to pay $150 million in rent "on the express condition" that the developer demolish two buildings and construct a new one, in response to Claim 2, Division II concluded that UW's costs were not a "cost" that

[4] The current version of RCW 28B.10.350 increased this threshold to $110,000.

[5] Although RCW 28B.10.350 does not define "cost," it does not exclude lease-construction-lease-back transactions from its purview.

triggered RCW 28B.10.350's sealed bidding requirements. Op. at 16. Division II's decision condones an evasion of public bidding, clashing with various Washington authorities and a strong public policy in favor of a broad interpretation of competitive bidding statutes.

Washington courts have long recognized and respected the strong public policy in favor of competitive bidding requirements. *Platt Elec. Supply v. Seattle*, 16 Wn. App. 265, 269, 555 P.2d 421 (1976) (explaining that it is "well settled that there is a strong public policy in the State of Washington favoring competitive bidding laws"). This is because competitive bidding requirements "prevent fraud, collusion, favoritism, and improvidence in the administration of public business, as well as [] insure that the [public entity] receives the best work or supplies at the most reasonable prices practicable." *Edwards v. City of Renton*, 67 Wn.2d 598, 602, 409 P.2d 153 (1965); *see also Equitable Shipyards, Inc. v. State By & Through Dep't of Transp.*, 93 Wn.2d 465, 473, 611 P.2d 396 (1980) (explaining

that "[t]he primary purpose of public bidding is to benefit the taxpayers by procuring the best work or material at the lowest price practicable" and that competitive bidding provides bidders "with a fair forum for the award of public contracts").

Courts afford competitive bidding statutes "more liberal construction." *Sw. Wash. Ch., Nat. Elec. Contractors Ass'n v. Pierce County*, 100 Wn.2d 109, 116, 667 P.2d 1092 (1983); *see also* 1984 AGO No. 17, at 10 (explaining that "any ambiguity relating to public works contracts is to be resolved in favor of utilization of a bidding procedure").

This Court has stated that it is "axiomatic that plans, schemes, or devices which thwart or circumvent the whole objects and purposes of [public bidding] statutory provisions are invalid." *Edwards*, 67 Wn.2d at 602–03. In other words, compliance with statutory bidding requirements is mandatory. *Manson Const. & Eng'g Co. v. State*, 24 Wn. App. 185, 190, 600 P.2d 643 (1979) (explaining that unless "permitted by

legislation, public contracts shall be let only after competitive bidding procedures have been complied with").

This Court has granted review of cases involving public bidding, because these cases inherently have broad public impact across the state. *See, e.g.*, *Sw. Wash. Ch., Nat. Elec. Contractors Ass'n*, 100 Wn.2d at 116; *Equitable Shipyards*, 93 Wn.2d at 473; *Painting & Decorating Contractors of Am. Inc. v. Ellensburg Sch. Dist.*, 96 Wn.2d 806, 810, 638 P.2d 1220 (1982) (holding on direct review that school district had to submit work to public bidding); *Miller v. State*, 73 Wn. 790, 794–95, 440 P.2d 840 (1968) (determining that procurement was subject to competitive bidding statute that applied "[i]nsofar as practicable"); *Edwards*, 67 Wn.2d at 601–02 (concluding that city's "financial arrangement" contravened "the purpose, intent and spirit of the pertinent municipal budget and bid statutes").

In this case of first impression, Division II failed to afford RCW 28B.10.350's sealed bidding requirements the deference that they are owed, conflicting with established Washington

precedent. [6] Division II should have applied a "liberal construction" to what constitutes a "cost" to the State, as the Court of Appeals did in *Supporters of the Center, Inc. v. Moore*, 119 Wn. App. 352, 80 P.3d 618 (2003). There, after acknowledging that "[t]here is no bright-line definition of when a project is executed at the cost of the State," the Court of Appeals considered "both the source of the funding and the character of the project in deciding whether it [was] executed at the cost of the state." *Id.* at 358–59. Rather than apply the test set forth in *Supporters*—which focuses on a transaction's substance rather than self-serving labels—Division II here

[6] This Court often accepts questions of statutory interpretation that are matters of first impression. *See, e.g.*, *State v. Grocery Manufacturers Ass'n*, 195 Wn.2d 442, 461 P.3d 334 (2020) (analyzing Fair Campaign Practices Act); *Birrueta v. Dep't of Labor & Indus.*, 186 Wn.2d 537, 379 P.3d 120 (2016) (determining whether statute addressed repayment of industrial insurance benefits); *Rental Housing Ass'n v. City of Des Moines*, 165 Wn.2d 525, 199 P.3d 393 (2009) (considering whether city's response to Public Records Act request triggered statute of limitations); *Glass v. Stahl Specialty Co.*, 97 Wn.2d 880, 652 P.2d 948 (1982) (analyzing 1981 tort-reform legislation).

applied a narrow test that focused solely on how UW characterized what it would incur costs for—*i.e.*, space in the Building. *See* Op. at 16 ("Because UW will not incur any costs for, or closely associated with, 'building, construction, renovation, remodeling, or demolition,' former RCW 28B.10.350(1) and its competitive bidding requirements do not apply."). This test failed to follow the rule in *Supporters* instructing courts to consider the character and substance of the project when determining whether it is a "cost" to the State.

Furthermore, the Division II's decision to limit what constitutes a "cost" under RCW 28B.10.350 by excluding "rent" violates the rule that "[i]t is the function of the legislature, not the judiciary or an administrative agency, to circumscribe competitive bidding." *Manson Constr.*, 24 Wn. App. at 190. Indeed, as a matter of statutory interpretation, two related statutes within the same chapter—RCW 28B.10.300(5) and RCW 28B.10.320—both refer to "rental" as a type of "cost" of "construction" as used in those statutes. In ignoring RCW

28B.10.320 and dismissing RCW 28B.10.300(5) as not applying to the facts at hand, the court missed the forest for the trees: these statutory provisions demonstrate that the Legislature recognized rent is a cost to the State. *See* RCW 28B.10.300(5) ("to pay as rental or otherwise the cost of the acquisition"). Accordingly, Division II's decision conflicts with published Court of Appeals decisions and this Court's recognition of Washington's strong public policy favoring broad application of bidding requirements.[7]

Additionally, Division II's reasoning is of substantial public interest, as it draws a roadmap for *all* State higher education institutions to avoid competitive bidding requirements under RCW 28B.10.350(1), given that it applies to all

[7] It is noteworthy that the Idaho Supreme Court has already determined that rent paid by a state agency as part of a lease-construction-lease-back transaction can be treated as a cost (there, an "expenditure") that implicates Idaho's competitive bidding laws under similar lease-construction-lease-back transactions. *Swensen v. Buildings, Inc.*, 93 Idaho 466, 467–69, 463 P.2d 932 (1970).

Washington public universities and Evergreen State College. Indeed, all a State higher education institution would have to do to evade RCW 28B.10.350—like UW did here—is structure a procurement so that any "cost" to the State is not formally labeled for building, construction, renovation, remodeling, or demolition. The ability to so easily thwart application of competitive bidding requirements conflicts with Washington's strong public policy in favor of their broad application. Indeed, a 1988 AGO analyzing whether a lease-construction-lease-back transaction was "executed at the cost of the state" concluded that it would be contrary to public policy if State agencies could evade applicable requirements "by so easy a device as a lease/lease-back arrangement." 1988 AGO No. 17.[8]

[8] This Court's insight on whether rent constitutes a "cost" would also resolve an alleged conflict between the 1988 AGO and a 2008 AGO. UW claims that the 2008 AGO supports the proposition that rent does not constitute a cost of construction, even though that AGO addressed a materially different type of contract that is expressly authorized under RCW 39.94 RCW. *See* 2008 AGO No. 10 (2008).

Public bidding is the overarching public policy in Washington to safeguard public funds from fraud, waste, and corruption. Anything like this P3 arrangement is the exception to that principle and must be narrowly construed. Division II failed to do so, and review by this Court is warranted.

B. Division II's Decision Conflicts With This Court's Precedent, Misinterprets The Legislature's Use Of The "Except As Otherwise Provided By Law" Limitation, And Has Significant Implications For Multiple Key Washington Stakeholders.

Rather than safeguarding the expenditure of public funds and effectuating the Legislature's intent, Division II's decision on UW's authority to undertake this novel lease-construction-lease-back construction arrangement directly contradicts this Court's prior precedent, undermining the Legislature's use of the phrase "except as otherwise provided by law" in many contexts. It also has far-reaching collateral consequences impacting Washington's public higher education institutions and Washington taxpayers. As such, guidance from this Court is warranted. *See* RAP 13.4(b)(1), (2), (4).

1. Division II's Conclusion That UW Has Authority To Enter Into The Transaction Under RCW 28B.20.130(1) Conflicts With This Court's Precedent.

RCW 28B.20.130(1) affords UW's board of regents "full control of the university and its property of various kinds, except as otherwise provided by law." In *University of Washington v. City of Seattle*, 188 Wn.2d 823, 832, 399 P.3d 519 (2017), this Court stated that RCW 28B.20.130(1)'s "except as otherwise provided by law" provision is clear on its face: "the Regents' control over UW property *may be limited, at least, by other applicable state statutes*." (emphasis added). As a result, this Court concluded that where another law is *applicable*, UW's authority under RCW 28B.20.130(1) "must yield." *Id.* at 833 ("[I]f the [Growth Management Act ("GMA")] is *applicable*, then the regents' authority *must yield* unless there is a specific statute that conflicts with the GMA's application to a particular portion of UW's property." (emphasis added)).

In establishing this test, this Court specifically acknowledged that "there was no implicit amendment of RCW 28B.20.130(1), and there is no conflict between the statute [RCW 28B.20.130(1)] and the GMA." *Id*. Thus, this Court did not require the limiting statute to explicitly or implicitly amend or conflict with RCW 28B.20.130(1) for it to function as an "except as otherwise provided by law" limitation. *See id.*

Contrary to *University of Washington*, Division II did not analyze whether another law, RCW 28B.10.300–.305, was "applicable," requiring RCW 28B.20.130(1)'s authority to "yield." RCW 28B.10.300–.305 provides UW specific authority to enter into lease-construction-lease-back transactions, but it only applies to buildings that will "*primarily*" be used for eight specific categories: "(1) Dormitories (2) Hospitals (3) Infirmaries (4) Dining halls (5) Student activities (6) Services of every kind for students, including, but not limited to housing, employment, registration, financial aid, counseling, testing and offices of the deal of students (7) Vehicular parking [or] (8)

Student, faculty and employee housing and boarding." RCW 28B.10.300(1), (3); RCW 28B.10.305 (emphasis added). Here, UW has admitted that it will only occupy 10-to-30 percent of the Building, the rest being leased to non-UW tenants. CP 162–63. UW cannot show that the Building will *primarily* be used for any of the eight purposes authorized by the Legislature.[9] Division II was wrong to deviate from the plain language in RCW 28B.10.300–.305, which is contrary to a "bedrock principle of statutory interpretation." *Fed. Home Loan Bank of Seattle v. Credit Suisse Sec. (USA) LLC*, 194 Wn.2d 253, 258, 449 P.3d 1019 (2019).

Division II incorrectly reasoned that RCW 28B.20.130(1) and RCW 28B.10.300–.305 are both grants of authority, and because both were grants of authority, "[w]ithout some language in RCW 28B.10.300 more *overtly enacting a limitation*…the statute cannot be reasonably seen as functioning as an 'except as

[9] At the very least, the Building's use was a question of fact that should have precluded summary judgment.

otherwise provided by law' limitation of the broad authority given to UW from RCW 28B.20.130." Op. at 12 (emphasis added).

Division II's requirement that a statute must have "overtly" limiting language directly conflicts with this Court's *University of Washington* decision, which dictates that the correct analysis is simply whether another statute applies, even if that statute contains no "implicit amendment" to RCW 28B.20.130. *See* 188 Wn.2d at 833. And the court's reasoning transforms what should have been a limiting statute—a statute mandating that a higher education institution can only enter contracts for projects "primarily" used for the eight purposes authorized by the Legislature—into the exact opposite: a supplemental authority. As a result, Division II's decision contradicts this Court's established test used to determine what statutes act as an "except as otherwise provided by law" limitation, warranting review by this Court. RAP 13.4(b)(1).

Adding to the confusion, Division II's reasoning improperly renders RCW 28B.10.300–.305, and statutes like it that grant UW various authorities, superfluous. This Court has long stated that "statutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous." *State v. Pratt*, 196 Wn.2d 849, 854, 479 P.3d 680 (2021). Contrary to this fundamental tenant of statutory interpretation, Division II seemingly acknowledged that this new test would render additional grants of authority to UW duplicative of its plenary powers: "[W]e are persuaded that the legislature has the prerogative to provide clear authorization for the specific projects listed in RCW 28B.10.300 without eviscerating the broad authority of RCW 28B.20.130." Op. at 13 n.6. But if this were true, then the Legislature would feel no need in other statutes, like RCW 28B.140.030, to designate authorities provided to UW as "supplemental to any existing or future authority." Accordingly, Division II unnecessarily injects confusion into the analysis surrounding the

Legislature's reliance on the "except as otherwise provided by law" limitation.

Indeed, the Legislature knows how to authorize various State agencies to engage in public-private-partnership transactions, but it expressly *declined* to authorize what UW is undertaking to do. In 1999, the Legislature afforded UW the authority to use P3 structures with respect to development of the University (or Metropolitan) Tract, but not other parts of campus, like the West Campus. *See* RCW 28B.20.381.

Furthermore, in 2018, the Legislature considered and failed to pass H.B. 2726, entitled, "AN ACT Relating to public-private partnerships for alternative public works contracts." CP 407–69. The bill would have permitted public entities, including educational institutions like UW, to engage in procurements using P3 structures. *Id.* This shows the Legislature has acknowledged that additional legislation is necessary to authorize the Transaction in this case. *See*, *e.g.*, *Spokane County Health Dist. V. Brockett*, 120 Wn.2d 140, 153–55, 839 P.2d 324

(1992) (using evidence of "successive drafts" and failed legislation to ascertain legislative intent). Division II's opinion, which judicially blesses this novel arrangement even where Legislation failed to pass and that UW admits was a "test case" for its $3 billion West Campus redevelopment, is an issue of substantial public importance that warrants this Court's review. RAP 13.4(b)(4).

Division II's opinion, on an issue of first impression, has statewide impact.[10] Although this case is about UW, all State public higher education facilities will ultimately follow Division II's holding, as they all have the same authorizing "full control" language as UW and thus are also limited by the same "except as

[10] This Court regularly accepts for review issues of first impression. *See, e.g.*, *State v. Taylor*, 193 Wn.2d 691, 444 P.3d 1194 (2019) (applying *Old Chief* doctrine in a no-contact order setting); *Tabingo v. American Triumph LLC*, 188 Wn.2d 41, 391 P.3d 434 (2017) (assessing punitive damages claims in vessel unseaworthiness cases); *In re Guardianship of Lamb*, 173 Wn.2d 173, 265 P.3d 876 (2011) (considering whether guardians can use their fees for advocacy work); *Dolan v. King County*, 172 Wn.2d 299, 258 P.3d 20 (2011) (analyzing whether public private defender staff were entitled to public pensions).

otherwise provided by law" provision. *See* RCW 28B.40.120 (The Evergreen State College); RCW 28B.35.120 (regional universities). As "creatures of statute, with 'no powers that are not conferred by statute, and none that the legislature cannot take away or ignore,'" State public higher education institutions require clarity about the scope of the statutory powers the Legislature has afforded them. *Univ. of Wash.*, 188 Wn.2d at 830. This Court has also said that "[i]f there is any doubt about a claimed grant of power it must be denied." *Chem. Bank v. Wash. Pub. Power Supply Sys.*, 99 Wn.2d 772, 792, 666 P.2d 329 (1983). Division II's published opinion raises significant, statewide questions about the validity of public institutions' authority to enter into novel financing arrangements for public construction even without public bidding. Simply put, this is a Supreme Court case. RAP 13.4(b)(4).

Given the foregoing, Division II's conclusion that the limiting statute must ***also*** include language that explicitly limits UW's general authority over its property is irreconcilable with

University of Washington and a seminal canon of statutory interpretation, warranting this Court's review.

2. Division II's Decision Will Have Far-Reaching Effects On Key Washington Stakeholders, Justifying This Court's Review.

Compounding the direct conflict with this Court's prior precedent, Division II's interpretation of RCW 28B.20.130(1)'s "except as otherwise provided by law" limitation has extensive consequences outside of this litigation: it impacts how the phrase "except as otherwise provided by law" will be interpreted in a broad range of statutory enactments and in ways that the Legislature could not have intended.

a. Division II's Decision Introduces Confusion Into Dozens Of Statutory Schemes That Include The "Except As Otherwise Provided By Law" Limitation.

Division II's decision on Claim 1 implicates the Legislature's use of the "except as otherwise provided by law" limitation in contexts *outside* of RCW 28B.20.130(1), creating confusion and conflict for multiple State agencies. The

Legislature has used the exact phrase "except as otherwise provided by law" in at least sixty different instances, implicating statutes regarding transactions between State agencies (RCW 39.34.130), school districts (RCW 28A.323.070), licensing schemes (RCW 70.345.030), criminal procedures (RCW 10.77.250), voting by electors (RCW 29A.56.090), and more. Even more broadly, Division II's decision affects the untold number of statutes that the Legislature intended to act as the "except as otherwise provided by law" limitation, which will instead, under Division II's reasoning, act as supplemental authorities. Because Division II's interpretation of the phrase "except as otherwise provided by law" creates confusion across dozens of statutory schemes with diverse interests and broad public consequences, this Court's input on how this phrase should be interpreted and consistently applied is necessary. RAP 13.4(b)(4).

b. In Addition To The Potential $3 Billion In Procurements At Issue, The Continued Use Of *Ultra Vires* Transactions Harms Taxpayers.

Determining whether UW has exceeded the scope of its statutory authority in pursuing the Transaction, and future lease-construction-lease-back transactions, impacts Washington taxpayers, as "[a]ll taxpayers are presumed harmed where a government entity acts unlawfully." *Friends of N. Spokane County Parks v. Spokane County*, 184 Wn. App. 105, 122, 336 P.3d 632 (2015). If public higher education institutions do not have the statutory authority to enter into a transaction, it is void. *See Failor's Pharm. v. Dep't of Soc. & Health Servs.*, 125 Wn.2d 488, 499, 886 P.2d 147 (1994) (a "government contract beyond an agency's authority is void and unenforceable").

It is no wonder that this Court routinely grants review of government authority to undertake large public construction projects like this $3 billion redevelopment of UW's Seattle campus. *See, e.g., Wash. State Major League Baseball Stadium Pub. Facilities Dist. v. Huber Hunt & Nichols-Kiewit Constr. Co.*,

165 Wn.2d 679, 202 P.3d 924 (2009) (whether public district constructing stadium was engaged in act of sovereign); *HTK Mgmt., L.L.C. v. Seattle Popular Monorail Auth.*, 155 Wn.2d 612, 121 P.3d 1166 (2005) (whether city transportation authority had authority to condemn property to build new monorail station); *Citizens for Clean Air v. City of Spokane*, 114 Wn.2d 20, 41, 785 P.2d 447 (1990) (directly reviewing challenge to city's construction of trash incinerator).

Here, UW has stated that the procurement at issue was a "test case" and, if successful, UW intended to use lease-construction-lease-back transactions for the development of the West Campus's other 18 proposed buildings at a cost to Washington taxpayers of $3 billion. CP 274, 603. Indeed, the Building has already cost taxpayers $20 million in state appropriations, with UW now projecting that it will incur $71.8 million in capital costs and pay the developer $150 million in rent, maintenance, and operations for this Building alone. CP 678–79; Tr. Ex. 156 at 3. The hundreds of millions of dollars UW

has already conceded it will have to pay in connection with this Building suggests that its $3 billion estimate for the 18 other West Campus buildings severely underestimates the ultimate costs to Washington taxpayers and the public for its "test case" use of lease-construction-lease-back transactions to develop a part of its campus.

Moreover, given the identical plenary authority statutes for Washington's other public universities and Evergreen State College, Division II's published decision approving UW's use of a lease-construction-lease-back transaction here sets the stage for all other State higher education institutions to pursue this type of transaction to develop their own properties going forward. *See* RCW 28B.40.120(1); RCW 28B.35.120(1). Thus, definitive guidance from this Court is needed as to whether State higher education institutions have general statutory authority to enter into transactions like this, notwithstanding the limitations in RCW 28B.10.300–.305 for such lease-construction-lease-back transactions. RAP 13.4(b)(4).

VI. CONCLUSION

Far from being the mere "sour grapes" of a disappointed bidder, the issues identified for appeal raise substantial and novel questions for this Court that implicate dozens of statutory schemes, strong public policy in support of competitive bidding to protect against fraud, waste, and abuse, and billions of dollars in public procurement funds. Given the conflicts with this Court's prior decisions and published Court of Appeals' decisions, as well as the substantial public interest in this case, Petitioners respectfully request this Court grant this petition.

I certify that this document contains 4,989 words.

Respectfully submitted this 4th day of January, 2024.

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CERTIFICATE OF SERVICE

I certify that on the date below, I caused the foregoing to be served via email pursuant to the parties' e-service agreement, and to be filed via the Washington State Appellate Courts' E-Filing Portal, which provides email notification with link(s) to:

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APPENDIX

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

ALEXANDRIA REAL ESTATE EQUITIES, INC., a Washington State Taxpayer, JOHN JOSEPH COX, a Washington State Taxpayer, and DEAN A. TAKKO, a Washington State Taxpayer, Appellants, v. UNIVERSITY OF WASHINGTON, a Public Institution of Higher Education and Agency of the State of Washington. Respondent.	No. 57985-5-II PUBLISHED OPINION

PRICE, J. — This case arises from a selection process used by the University of Washington (UW) to retain a real estate developer for a new building on its campus. The development plan involved a variation of a leaseback arrangement. UW proposed to enter an 80-year ground lease with a developer for the property. The developer, in turn, would demolish an existing building and construct the new one, incurring all of the costs. The developer would own the building for the 80-year duration of the ground lease, but UW would agree in advance to lease back a portion of the building space from the developer. At the end of the ground lease, the building's ownership would return to UW.

Alexandria Real Equities, Inc. (ARE) was one of the two finalists to negotiate for the development contract, but UW ultimately selected ARE's competitor.

Litigation resulted. At the superior court, ARE and two individual taxpayers asserted three claims against the university—(1) UW lacked authority to enter into this particular type of agreement, (2) UW failed to use a required competitive bidding procedure to select a developer, and (3) UW's selection process was arbitrary and capricious because it did not follow the selection process described in a request for developers' proposals. The superior court granted UW summary judgment on the first and second claims, and the third claim proceeded to a bench trial. Following the trial, the superior court dismissed ARE's third claim for lack of standing and because it concluded UW's selection process was not arbitrary and capricious. ARE appeals.

We affirm the superior court's summary judgment order because UW had authority to enter into the contracts with ARE's competitor and UW was not required to strictly adhere to a specific competitive bidding process. We also affirm the dismissal of ARE's third claim because ARE lacked standing for the claim.

FACTS

I. BACKGROUND

A. UW'S DEVELOPMENT PLANS

UW is a state university with a campus in Seattle and is governed by a "Board of Regents." In 2019, UW began its process to redevelop its West Campus (a 70-acre portion of its Seattle campus) to create an "innovation district." Clerk's Papers (CP) at 1458. UW wanted the new West Campus to serve as a central location for students and faculty in multiple fields to partner with businesses, government, nonprofit organizations, and the Seattle community to solve critical problems. UW created a 30-year plan to redevelop West Campus, with 19 locations identified for reconstruction.

The first site selected for reconstruction was site W27. The site is a 1.5-acre property, and its redevelopment is focused on clean energy science and technologies. The new building will "house UW faculty, students, classrooms[,] and research facilities, along with public and private sector tenants with compatible research and technologies." CP at 96. UW intends for the building to "[f]acilitate[] multidisciplinary academic and professional exploration," "[p]rovide[] students with immersive and experiential learning environments," and "enhance[] strong connections between UW faculty, staff[,] and students with external partners to expand the impact of UW research, teaching/learning[,] and public service activities." CP at 98. The construction of the new building will utilize a "ground lease development structure" that UW had previously used for other projects outside of West Campus. CP at 161.

Under the ground lease development structure, UW executes a long-term, 80-year ground lease to the developer. The developer then demolishes the existing building and designs, finances, and constructs the new building. The developer owns the building for the term of the ground lease, bearing full responsibility for project risks and costs. Throughout the duration of the ground lease, UW agrees to lease approximately 30,000 square feet (about 9 percent) of the new building at a fixed rate. UW also has the option to lease an additional 70,000 square feet, which would bring its total usage of the building to about 30 percent. The remainder of the building is leased to non-UW tenants, but with certain restrictions—the tenants must be "private and public tenants that have activities, research[,] and/or products focused on sustainable solutions and [that] are complementary with the UW's education and research mission." CP at 107. At the end of the 80-year duration, the developer returns ownership of the building to UW.

To begin the construction process, UW hired Jones Lang LaSalle Americas, Inc. (JLL), a firm that helps public entities with development solutions, to provide real estate services for the site W27 development. JLL created a general procedure for the site W27 development, involving a two-step process for selecting a developer. First, a "Request for Qualifications" (RFQ) would solicit potential developers. Second, the responding developers with the best overall proposals would be invited to participate further with a "Request for Proposals" (RFP).

In January 2020, UW posted the RFQ for development of site W27, including the details about the proposed ground lease development structure. UW received responses from 11 developers. UW selected four of the developers to participate in the next-step RFP process, two of which were ARE and Wexford Science & Technology, LLC (Wexford).

The RFP provided to the selected developers described UW's intent to negotiate the ground lease development structure. The RFP stated that UW "may elect to work directly with [the] Developer on other similar projects in the future without further competitive requests for proposals." CP at 109. Additionally, the RFP explained that the developers' proposals would be evaluated and scored by UW's evaluators, called the "Slating Committee," "based on the criteria identified in [the] RFP." CP at 126.

UW received proposals from three developers, including ARE and Wexford. The developers were able to submit questions to UW as part of the negotiation process; one developer asked UW to "describe any associated scoring, ranking, or numerical weights assigned to the criteria." Ex. 66, at 3. In response, UW issued an addendum to the RFP, stating it would evaluate the proposals for specified criteria in the RFP, but would not at that time indicate weight or importance of the items. UW's Slating Committee reviewed the proposals and conducted

interviews but did not use actual scorecards for the different developers. Ultimately, UW selected Wexford as the developer for site W27.

B. UW/WEXFORD LEASES

UW began negotiating the leases for the development with Wexford. Wexford won the bid to be the developer, leading UW to execute the contracts with Wexford's related entity, LS W27 JV, LLC (LS W27)[1]. The parties signed an initial agreement to lease in March 2022. The subsequent ground and building leases were signed in May 2022.

The ground lease required Wexford to design, finance, construct, and maintain the facility. The companion building lease then required Wexford to lease 100,000 square feet of building space back to UW. The ground lease self-executes upon "closing," which is dependent on certain conditions precedent. The only relevant condition precedent is the absence of litigation that would prevent UW or Wexford from performing under the leases. The building lease self-executes when the building is substantially completed.

C. ARE'S SUBSEQUENT ACTIONS

When ARE learned Wexford had been selected as the site W27 developer, its lawyer wrote to UW's President questioning the "methodology and objectivity of the RFP process." CP at 153. The letter requested that UW reconsider and select ARE instead. UW declined.

ARE and its Senior Vice President, John Cox, then sent letters to the Washington State Attorney General asserting that the RFP selection process was illegal and requesting the attorney

[1] Wexford had a five percent equity interest in LS W27.

general "enjoin the execution/performance of the illegal [c]ontracts." CP at 769. The attorney general declined to respond.

II. ARE'S COMPLAINTS AND UW'S MOTION FOR SUMMARY JUDGMENT

In June 2021, ARE, together with two individual taxpayers, Cox (in his individual capacity) and former state legislator Dean Takko, filed a lawsuit against UW, asserting two claims.[2] ARE's first claim (Claim 1) contended UW lacked authority to enter into the leases for site W27. ARE's second claim (Claim 2) alleged UW failed to use competitive bidding procedures required under public works law.

UW moved for summary judgment on both of ARE's claims in August 2021. UW asserted it had general authority to enter into the leases through several different statutes, including RCWs 28B.20.130, 28B.140.010, and 28B.10.300. UW also argued the building's construction was not a public work because UW was not incurring construction costs and, therefore, the statutory competitive bidding process did not apply.

While UW's summary judgment motion was pending, ARE filed an amended complaint adding a third claim (Claim 3). ARE's Claim 3 asserted that UW's developer selection process was arbitrary and capricious.

The superior court granted UW's summary judgment motion and dismissed Claims 1 and 2.[3] Claim 3 remained.

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[2] Although ARE, Cox, and Takko were plaintiffs as to all claims, we refer to the plaintiffs collectively as ARE for brevity.

[3] ARE filed a supplemental declaration on January 4, 2022, with additional evidence it wanted the superior court to consider for summary judgment. The supplemental declaration included exhibits with information about postconstruction costs UW will incur while renting building space from

III. BENCH TRIAL

ARE and UW proceeded to a bench trial on Claim 3.[4] After hearing testimony from numerous witnesses and considering over 100 exhibits, the superior court rejected ARE's Claim 3. The superior court determined that ARE lacked standing to pursue Claim 3 and further determined UW was not arbitrary and capricious in its selection of Wexford.

The superior court entered lengthy findings of fact. In ruling for UW, the superior court determined that ARE lacked standing as a disappointed bidder and as a taxpayer. Findings of fact relevant to those decisions included the following:

> 34. UW and Wexford have executed the contracts (the Amended and Restated Agreement to Lease, the Ground Lease, and the Building Lease, collectively the Leases) that were procured and negotiated in connection with the Site W27 development.
>
> . . . .
>
> 36. The Leases are self-executing and require UW and Wexford to "close" on the transaction subject to certain Conditions Precedent. The Ground Lease commences upon "Closing" and the Office Lease commences upon substantial completion of the Site W27 Facility.
>
> 37. The only relevant "Condition Precedent" provides that UW and Wexford's obligations are conditioned on there being no litigation that would affect UW's or Wexford's ability to perform.
>
> . . . .
>
> 39. [ARE] presented evidence at trial as to the costs incurred in responding to the W27 RFP and anticipated profits that it believes it would have earned had it been selected as the W27 developer.

Wexford. UW objected to consideration of the evidence because it was not timely filed in accordance with CR 56. The superior court agreed and did not consider the declaration.

[4] Only ARE, the company, participated in the bench trial because the superior court had previously dismissed Cox and Takko from Claim 3 based on standing.

CP at 1469-70.

Conclusions of law relevant to the superior court's standing decisions included the following:

> 1. The Court concludes that [ARE] lacks standing to pursue its claim in this matter, both as a disappointed bidder and as a taxpayer, as follows:
>
> 2. The Court concludes that [ARE] lacks standing as a disappointed bidder to pursue its claims. Under Washington law, a bidder loses standing to pursue claims concerning the procurement of a public project once the contracts at issue have been executed. *Dick Enterprises, Inc. v. Metro. King County*, 83 Wn. App. 566, 572, 922 P.2d 184 (1996). A disappointed bidder's sole remedy under Washington law is to sue to enjoin execution of the contract at issue in the procurement.
>
> . . . .
>
> 4. The Court concludes that the Leases bind UW and Wexford to the terms of the proposed W27 development, subject only to a litigation contingency that allows Wexford to terminate the Amended and Restated Agreement to Lease.
>
> 5. Any remaining or future agreements or contracts between UW and Wexford associated with Site W27 development flow from the agreement that has already been signed. [ARE] lacks disappointed bidder standing to challenge such contracts to the extent they flow from any agreements related to Site W27 in existence at the time of trial.
>
> . . . .
>
> 7. The Court concludes that [ARE] lacks standing as a Washington State taxpayer to pursue its claims because it has failed to establish that it has incurred any "special injury" beyond that suffered by any other Washington taxpayer.
>
> 8. The evidence of injury or damages presented by [ARE] included costs incurred in responding to the RFP and selection process and the alleged loss of its anticipated profits. These alleged losses or damages are only associated with [ARE] not being selected as the developer for the W27 project.

CP at 1470-72. Thus, Claim 3 was dismissed.

ARE appeals the summary judgment order dismissing Claims 1 and 2 and the conclusions of law dismissing Claim 3.[5]

ANALYSIS

I. CLAIMS 1 AND 2 WERE PROPERLY DISMISSED ON SUMMARY JUDGMENT

ARE challenges the superior court's dismissal of Claims 1 and 2 at summary judgment. For Claim 1, ARE argues UW did not have statutory authority to enter into a transaction under the ground lease development structure. For Claim 2, ARE asserts, even if UW had authority to enter into the transaction, UW failed to comply with the statutory bidding procedures required for selecting a developer. We affirm the superior court on both claims.

A. SUMMARY JUDGMENT STANDARD OF REVIEW

We review a superior court's grant of summary judgment de novo. *Crisostomo Vargas v. Inland Wash., LLC*, 194 Wn.2d 720, 728, 452 P.3d 1205 (2019). Summary judgment may be granted if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. CR 56(c); *Meyers v. Ferndale Sch. Dist.*, 197 Wn.2d 281, 287, 481 P.3d 1084 (2021). A genuine issue of material fact exists if reasonable minds could disagree on the conclusion of a factual issue controlling the outcome of the litigation. *Sartin v. Estate of McPike*, 15 Wn. App. 2d 163, 172, 475 P.3d 522 (2020), *review denied*, 196 Wn.2d 1046 (2021). When determining whether to grant summary judgment, we view all facts and inferences in the light most favorable to the nonmoving party. *Id.*

[5] As noted above, the superior court had previously dismissed Cox and Takko for Claim 3 based on standing. Because that order has not been appealed, only ARE, the company, remains an appellant for Claim 3.

B. CLAIM 1—UW HAD AUTHORITY TO ENTER TRANSACTION

ARE argues UW had no authority to enter into transactions arising from a ground lease development structure. UW responds by claiming statutory authority from three individual statutes—RCW 28B.20.130, RCW 28B.10.300, and RCW 28B.140.010. We determine that RCW 28B.20.130 grants UW the authority to enter into the transaction with Wexford.

The legislature has granted broad authority to UW for managing its own property. Indeed, chapter 28B.20 RCW applies exclusively to UW and grants the UW Board of Regents expansive powers under statute. *See* RCW 28B.20.020. Relevant here, RCW 28B.20.130 provides the Board of Regents with "[g]eneral powers and duties," including the grant of "full control of the university and its property of various kinds, except as otherwise provided by law." RCW 28B.20.130(1).

ARE appears to agree that RCW 28B.20.130 grants broad power to UW. But ARE focuses on the statute's language, "except as otherwise provided by law," and contends the language has been interpreted to limit UW's "full control" when there is an applicable statute. *See Univ. of Wash. v. City of Seattle*, 188 Wn.2d 823, 832-33, 399 P.3d 519 (2017); RCW 28B.20.130.

For this case, ARE argues there is such a statute—RCW 28B.10.300—that limits UW's authority to engage in this project. RCW 28B.10.300 generally applies to all state universities in Washington, not just UW, and authorizes them to enter ground lease transactions for eight specific building types. The statute permits boards of regents for various state universities to enter into contracts for:

> [T]he construction, installation, equipping, repairing, renovating and betterment of buildings and facilities for the following:
>
> (a) Dormitories
>
> (b) Hospitals
>
> (c) Infirmaries
>
> (d) Dining halls
>
> (e) Student activities
>
> (f) Services of every kind for students, including, but not limited to, housing, employment, registration, financial aid, counseling, testing and offices of the dean of students
>
> (g) Vehicular parking
>
> (h) Student, faculty and employee housing and boarding[.]

RCW 28B.10.300(1). Such contracts include leases. RCW 28B.10.300(3).

ARE contends the site W27 building does not fall into any of these eight building types. And because this project falls outside of the eight building types specifically permitted by RCW 28B.10.300, ARE argues this statute operates to limit UW's very general authority under RCW 28B.20.130. In other words, the limitation of distinct building types in RCW 28B.10.300 constitutes the "except as otherwise provided by law" limitation in RCW 28B.20.130.

UW disputes this argument. UW acknowledges the limitation from the "except as otherwise provided by law" clause, but argues that RCW 28B.10.300 is not the type of statute that limits its authority under RCW 28B.20.130. According to UW, RCW 28B.10.300 *grants* power to public universities to enter into agreements, not *limits* their power to enter into them. One statute granting authority to all Washington universities cannot operate to limit UW's broader grant of

authority in a separate statute. UW essentially argues two positive grants of authority cannot limit one another.

UW's position is persuasive. RCW 28B.10.300 provides state universities the authority to enter into certain transactions, but it does not, on its face, prohibit universities from entering into any transactions. Moreover, there is no language in the statute indicating that the eight building types are the entire universe of permitted building types for which universities may contract; the statute, for example, does not state that universities are *only* authorized to contract for the enumerated building types. Without some language in RCW 28B.10.300 more overtly enacting a limitation on the authority of the universities, rather than merely acting as a grant of authority, the statute cannot be reasonably seen as functioning as an "except as otherwise provided by law" limitation of the broad authority given to UW from RCW 28B.20.130. Simply put, both statutes *grant* UW authority to manage its property holdings. *See Hood Canal Sand & Gravel, LLC v. Goldmark*, 195 Wn. App. 284, 300, 381 P.3d 95 (2016) (determining chapters that individually granted DNR "expansive authority to grant easements" and "certain narrow authority . . . to grant easements" did not conflict). Thus, RCW 28B.10.300 does not limit UW's broad authority to enter into property lease agreements.

UW's ability to control its property under RCW 28B.20.130, while not limitless, is broad. ARE fails to cite any law that prevents this broad grant of authority from permitting the

development structure chosen for site W27.[6] Thus, the superior court properly dismissed Claim 1. We affirm the superior court.[7]

C. CLAIM 2—COMPETITIVE BIDDING REQUIREMENTS DO NOT APPLY

ARE's Claim 2 is related to competitive bidding laws. ARE argues that assuming UW has the authority to enter into the development structure, UW failed to follow competitive bidding procedures required by law. ARE asserts that because UW will incur costs associated with the new site W27 building, it is a public work that requires competitive bidding. ARE contends that because the bidding for the development did not comply with these laws, UW's transactions with Wexford are ultra vires and void. We disagree.

Generally, public policy favors competitive bidding laws in Washington. *See Manson Constr. & Eng'g Co. v. State*, 24 Wn. App. 185, 190, 600 P.2d 643 (1979), *review denied*, 93 Wn.2d 1004 (1980). Thus, even if a construction contract is within an agency's general authority, noncompliance with statutorily mandated procedures is ultra vires and renders the contract void. *Failor's Pharmacy v. Dep't of Soc. & Health Servs.*, 125 Wn.2d 488, 499, 886 P.2d 147 (1994); *see also Bankston v. Pierce County*, 174 Wn. App. 932, 939, 301 P.3d 495 (2013) ("When a public

[6] ARE contends that such a broad reading of RCW 28B.20.130 would make RCW 28B.10.300 superfluous. But considering the breadth of the grant of authority in RCW 28B.20.130, coupled with very general language of the exception—"except as otherwise provided by law"—we are persuaded that the legislature has the prerogative to provide clear authorization for the specific projects listed in RCW 28B.10.300 without eviscerating the broad authority of RCW 28B.20.130.

[7] UW also asserts that RCW 28B.10.300 and RCW 28B.140.010 each independently grant it power to enter into the transaction with Wexford. Because UW has authority under RCW 28B.20.130, we do not consider the breadth of any additional authority provided to UW by these other statutes.

body makes a contract in violation of competitive bidding laws, the contract is illegal and imposes no obligation on the public body.").

State universities are required to comply with competitive bidding procedures under certain circumstances. *See* Former RCW 28B.10.350 (2009); *A-Line Equip. Co. v. Lower Columbia Coll.*, 49 Wn. App. 217, 219, 741 P.2d 1057 (1987). Former RCW 28B.10.350 requires competitive bidding when a state university will incur over $90,000 of costs for construction:

> (1) When *the cost* to . . . any regional or state university of any *building, construction, renovation, remodeling,* or *demolition, other than maintenance or repairs,* will equal or exceed the sum of ninety thousand dollars, . . . complete plans and specifications for the work shall be prepared, the work shall be put out for public bid, and the contract shall be awarded to the responsible bidder who submits the lowest responsive bid.

(Emphasis added.) But if the construction is not being done at the cost of the university, then the construction is not for a public work and the statute would not apply. *See* Former RCW 28B.10.350(4) ("Where the estimated cost . . . is less than ninety thousand dollars . . . the publication requirements of RCW 39.04.020 [(requiring public bidding for public works)] do not apply.").

ARE argues that former RCW 28B.10.350 applies here because the cost of the construction is actually being paid in part by UW. As noted above, the development structure requires the developer to fully fund the demolition and construction costs of the building in exchange for UW's promise in advance to commit to a long-term lease of space. ARE contends UW's promised rent payments mean the construction is actually being done at the "cost" of UW.[8] Essentially, ARE

[8] In support of this argument, ARE cites to its supplemental declaration, which the superior court declined to consider below because it was not filed in accordance with CR 56. ARE argues we should consider the declaration evidence because it is "appropriately part of the record for this

argues that the millions of promised dollars that will be spent in rent are so closely tied to demolition and construction at site W27 that they must be considered payment for the cost of construction. If so, then former RCW 28B.10.350 applies and competitive bidding was required.

ARE supports its argument with this court's decision in *Supporters of the Center, Inc. v. Moore*, 119 Wn. App. 352, 80 P.3d 618 (2003). In *Supporters*, a nonprofit community group was running out of money and struggling to complete a civic performing arts center when the project received an infusion of funds from both a state agency and the city. *Id.* at 354-56. The city offered its funding through an advance of rent payments—rent that the city initially expected to pay later, only after construction was completed. *Id.* at 360. In the context of a prevailing wage dispute, this court held that this public funding, including the advance of city rent payments, made the performing arts center a public work, constructed " 'at the cost' " of public entities. *Id.* at 360 (quoting RCW 39.04.010). ARE contends that *Supporters* stands for the proposition that UW's promised rent payments should be deemed payment for costs for construction.

ARE also argues the legislature has identified rent as a cost in relation to real property acquisition, citing RCW 28B.10.300(5). That provision states that boards of regents for state universities are authorized to:

> Contract to pay as *rental* or otherwise the *cost* of the acquisition of such lands and of the construction and installation of such buildings and facilities *on the amortization plan*[.]

RCW 28B.10.300(5) (emphasis added).

---

appeal and . . . it was presented to (and called to the attention of) the [superior] court." Appellants' Opening Br. at 20 n.8. The declaration appears to merely include additional postconstruction rent figures and anticipated maintenance costs. Because the supplemental declaration, even if it is considered, does not change our analysis, we decline to further address this issue.

ARE's position is unpersuasive. First, *Supporters* does not have application here. The circumstances are not similar; UW is not making any *advanced* rent payments to actually fund the building's demolition or construction. The developer for site W27 will pay the demolition and construction costs in their entirety.

Second, RCW 28B.10.300(5) is similarly inapplicable. This provision narrowly pertains to the acquisition of buildings and facilities *on an amortization plan*. ARE fails to explain how this apparent application can be broadly construed to equate lease payments to costs of construction in the general sense—especially when the statute does not have any relation to competitive bidding laws.

Although UW has committed to spending public funds in leasing space at the new building, the funds will be paid as rent only *after all construction is completed*; the building lease self-executes when the building is substantially complete. UW will not incur any risk for the building or costs for the stated construction activities—all those costs are incurred by the developer, as is the nature of the ground lease development structure. Because UW will not incur any costs for, or closely associated with, "building, construction, renovation, remodeling, or demolition," former RCW 28B.10.350(1) and its competitive bidding requirements do not apply.

In short, ARE's Claim 2 fails; UW was not required to use competitive bidding procedures under former RCW 28B.10.350. We affirm the superior court's dismissal of this claim.

II. CLAIM 3—SUPERIOR COURT DID NOT ERR WHEN IT RULED FOR UW

ARE's Claim 3 alleged that assuming UW had the authority to enter the development structure and assuming competitive bidding laws did not apply, UW's developer selection process

was arbitrary and capricious. After an extensive bench trial, the superior court determined that ARE did not have standing to pursue this claim.[9]

ARE argues the superior court erred and it had standing both as a disappointed bidder and a taxpayer.[10] We hold that ARE did not have standing for Claim 3.

A. LEGAL PRINCIPLES

On appeal, we review the superior court's findings of fact after a bench trial for substantial evidence. *Harrison Mem'l Hosp. v. Gagnon*, 110 Wn. App. 475, 485, 40 P.3d 1221, *review denied*, 147 Wn.2d 1011 (2002). Unchallenged findings of fact are verities on appeal. *Harris v. Urell*, 133 Wn. App. 130, 137, 135 P.3d 530 (2006), *review denied*, 160 Wn.2d 1012 (2007).

We review conclusions of law de novo to determine if they are supported by the findings of fact. *Scott's Excavating Vancouver, LLC v. Winlock Props., LLC*, 176 Wn. App. 335, 342, 308 P.3d 791 (2013), *review denied*, 179 Wn.2d 1011 (2014).

B. ARE DID NOT ESTABLISH STANDING AS A DISAPPOINTED BIDDER

ARE first argues it has standing for Claim 3 as a disappointed bidder. We disagree.

A disappointed bidder may pursue injunctive relief before contract formation based on disappointed bidder standing. *BBG Grp., LLC v. City of Monroe*, 96 Wn. App. 517, 519-20, 982 P.2d 1176 (1999). However, a disappointed bidder loses standing once the contracts at issue

[9] The superior court also determined, substantively, that UW's developer selection process was not arbitrary and capricious. But because the superior court's decision on standing, if not error, would be dispositive, we limit our discussion to that aspect of the superior court's decision.

[10] ARE challenges the superior court's conclusions of law, but notably does not assign error to any of the superior court's findings of fact.

have been executed. *Dick Enterprises*, 83 Wn. App. at 571. Contract formation is the "bright-line cutoff point." *Id.* at 571.

ARE has two main arguments about its disappointed bidder standing. ARE first asserts that it did not lose its disappointed bidder status because of the post-award switch in the identity of the developer. ARE points out that UW has not actually executed contracts for the site W27 development with Wexford, but with a different corporate entity, LS W27, in which Wexford has a five percent equity interest. Thus, ARE argues the contracts resulting from the RFP have not been executed and it retains disappointed bidder standing.

Second, ARE argues that it maintains disappointed bidder standing because the "Agreement to Lease" (Ex. 157) requires additional documents be completed before the overall transaction can close. ARE does not explain what documents still need to be completed but argues that those documents and a monetary deposit must be placed in escrow prior to closing.

ARE's first argument about the identities of the contracting parties fails. The superior court's findings of fact clearly found no relevance to the differences in the corporate forms of Wexford and LS W27. The superior court's findings of fact stated that Wexford remained the party that was entering the agreements with UW. CP at 1469 ("UW and Wexford have executed the contracts (the Amended and Restated Agreement to Lease, the Ground Lease, and the Building Lease, collectively the Leases) that were procured and negotiated in connection with the Site W27 development."). Because ARE has not assigned error to any of the superior court's findings of fact, they are verities on appeal. *Harris*, 133 Wn. App. at 136. Because we apply these unchallenged findings of fact to the conclusions of law, any alleged factual differences in the corporate forms of the contracting parties are irrelevant on appeal. *See id*. Thus, ARE's

disappointed bidder standing cannot be maintained based merely on UW's contract execution with LS W27 instead of Wexford.

Similarly, ARE's second argument about the alleged non-finalization of the contracts also fails. The superior court explicitly included in its findings of fact that "UW and Wexford have executed the contracts . . . that were procured and negotiated in connection with the Site W27 development." CP at 1469. ARE did not challenge this finding of fact, thus again, it is a verity. *Harris*, 133 Wn. App. at 136. Using these findings, the superior court made the following conclusions of law, rejecting the argument that something further had to happen before the contracts would be deemed executed:

> 4. The Court concludes that the Leases bind UW and Wexford to the terms of the proposed W27 development, subject only to a litigation contingency that allows Wexford to terminate the Amended and Restated Agreement to Lease.
>
> 5. Any remaining or future agreements or contracts between UW and Wexford associated with Site W27 development flow from the agreement that has already been signed. [ARE] lacks disappointed bidder standing to challenge such contracts to the extent they flow from any agreements related to Site W27 in existence at the time of trial.

CP at 1471.

Although ARE is correct that some additional documents and agreements may be necessary before this development is completed, the main contracts for the development that ARE fought to be the developer for—the agreement to lease, the ground lease, and the building lease—have all been sufficiently signed and completed. Even if the contracts are deemed to "self-execut[e]" at a later time or require other documents and actions to later be completed, the *parties* have already executed the contracts. CP at 1470. Simply put, ARE does not have disappointed bidder standing

because it did not bring its suit prior to the "bright-line cutoff point." *Dick Enterprises*, 83 Wn. App. at 571.

The superior court's findings of fact sufficiently support its conclusion of law that ARE lacks standing as a disappointed bidder for Claim 3.

C. ARE DID NOT ESTABLISH STANDING AS A TAXPAYER

ARE also argues it had standing to bring Claim 3 because it had standing as a taxpayer. We disagree and hold that the superior court's findings of fact support its conclusion of law that ARE lacked taxpayer standing.

When challenging a government entity's discretionary acts, as opposed to allegedly unlawful acts, a taxpayer can establish standing by demonstrating: (1) taxpayer status, (2) a prior demand of the attorney general, and (3) a special injury. *See Friends of N. Spokane County Parks v. Spokane County*, 184 Wn. App. 105, 120-22, 336 P.3d 632 (2014). A "special injury" is not required for taxpayer standing when a government's allegedly unlawful act is being challenged. *Id.* at 122.

To show a "special injury," the taxpayer " 'must show that [it] has a unique right or interest that is being violated, in a manner special and different from the rights of other taxpayers.' " *Id.* at 120 (quoting *Am. Legion Post No. 32 v. City of Walla Walla*, 116 Wn.2d 1, 7, 802 P.2d 784 (1991)); *Greater Harbor 2000 v. City of Seattle*, 132 Wn.2d 267, 281, 937 P.2d 1082 (1997). "The taxpayer must show that the action complained of interferes with the taxpayer's legal rights or privileges." *Greater Harbor 2000*, 132 Wn.2d at 281-82. Generally, the special injury must have a causal link between the use of the taxes and the government's discretionary action. *See generally* 74 AM. JUR. 2d *Taxpayers*' *Actions* § 26 (2d ed. 2023) (explaining that a special injury is a "special

interest in the taxation-derived fund by reason of which the taxpayer's own property rights are put in jeopardy"); *cf. Dick Enterprises*, 83 Wn. App. at 573 (disappointed bidder did not have taxpayer standing when it "d[id] not allege harm to taxpayers"); *cf. Am. Legion Post No. 32*, 116 Wn.2d at 8 (party lacked taxpayer standing when it "provide[d] no argument demonstrating it has a unique legal right or privilege different from other taxpayers that was violated by Walla Walla's levy and subsequent use of the . . . tax").

Here, after the bench trial, the superior court concluded that ARE's alleged damages did not qualify as a "special injury." The superior court's findings of fact included that "[ARE] presented evidence at trial as to the costs incurred in responding to the W27 RFP and anticipated profits that it believes it would have earned had it been selected as the W27 developer." CP at 1470. ARE has not assigned error to this finding, and it is therefore a verity on appeal. *Harris*, 133 Wn. App. at 136.

Using this finding of fact, the superior court concluded that ARE's only damages were those that were associated with being a disappointed bidder in the RFP selection process, not as a taxpayer with a special injury. The superior court's conclusions of law included:

> 7. The Court concludes that [ARE] lacks standing as a Washington State taxpayer to pursue its claims because it has failed to establish that it has incurred any "special injury" *beyond that suffered by any other Washington taxpayer*.
>
> 8. The evidence of injury or damages presented by [ARE] included costs *incurred in responding to the RFP and selection process and the alleged loss of its anticipated profits*. *These alleged losses or damages are only associated with [ARE] not being selected as the developer for the W27 project*.
>
> 9. *[ARE] fails to establish any injury to taxpayers generally from the UW's selection of Wexford's bid.* After an extensive process, the UW decisionmakers determined that the Wexford proposal was more financially advantageous. *Plaintiff has not established a special injury as a taxpayer*.

CP at 1472 (emphasis added).

ARE challenges these conclusions of law, arguing it may establish its taxpayer standing because it did sustain a special injury—injuries as a disappointed bidder. ARE claims Washington law supports its position that, if it is a taxpayer, its damages as disappointed bidder *can* constitute special injury. ARE states, "Washington courts reject additional requirements for such disappointed bidders that are also Washington taxpayers, and as such enables those disappointed bidders to continue to challenge a procurement decision based on their taxpayer standing even after contract execution." Appellants' Opening Br. at 54 (emphasis omitted). ARE argues it can show it had a special injury by "demonstrating that the government act has a connection to the use of state appropriated funds (e.g., state tax dollars being used in connection with the project)." Appellants' Opening Br. at 53. For these assertions, ARE cites *Friends of North Spokane County Parks*, 184 Wn. App. 105, and *Dick Enterprises*, 83 Wn. App. 566.

Neither case supports ARE's position. In *Dick Enterprises*, a taxpayer/disappointed bidder brought suit against a contractor when another bidder was selected, after the contract for services was executed. 83 Wn. App. at 569-70. The court held the disappointed bidder was too late to qualify for disappointed bidder standing. *Id.* at 572. But the disappointed bidder also argued it should have taxpayer standing because it would otherwise "irretrievably lose its rights to contract as the . . . bidder on the project." *Id.* at 573 (internal quotation marks omitted). In rejecting that argument, the court determined the disappointed bidder also lacked taxpayer standing because it failed to adequately invoke taxpayer standing in its pleadings. *Id.* But nothing in the case supports

ARE's assertion that damages as a disappointed bidder can constitute special injury for the purposes of establishing taxpayer standing.[11]

Similarly, *Friends of North Spokane County Parks* does not help ARE. *Friends* discusses and examines the *Dick Enterprises* decision, but it contains no discussion about the relationship between disappointed bidder status and the special injury necessary for standing as a taxpayer to challenge discretionary governmental decisions. 184 Wn. App. at 118. *Friends* is of marginal relevance, in any event, because the case involved an allegation of "unlawful" governmental action which, unlike discretionary governmental action, does not require special injury to obtain taxpayer standing. *Id.* at 122, 124.

None of the cases cited by ARE support its argument that disappointed bidder damages alone can constitute special injury for tax payer standing for discretionary governmental decisions. We presume that no such Washington cases exist. *DeHeer v. Seattle Post-Intelligencer*, 60 Wn.2d 122, 126, 372 P.2d 193 (1962) ("Where no authorities are cited in support of a proposition, the court is not required to search out authorities, but may assume that counsel, after diligent search, has found none."). Thus, ARE fails to show that damages incurred solely as a disappointed bidder,

[11] ARE also cites to *Dick Enterprises* to argue that a special injury can be shown by "demonstrating that the government act has a connection to the use of state appropriated funds (e.g., state tax dollars being used in connection with the project)." Appellants' Opening Br. at 53. And again, ARE is mistaken; ARE's citation to *Dick Enterprises* is to the part of the opinion analyzing whether the plaintiff had standing as a disappointed bidder, which has no relevance to whether a connection between government acts and the use of state appropriated funds shows special injury for *taxpayer standing*. Indeed, such an injury would not be "special," but a general injury applicable to ARE and to all other taxpayers. *See Greater Harbor 2000*, 132 Wn.2d at 281 (" '[T]he taxpayer must show . . . a unique right or interest that is being violated, in a manner special and different from the rights of other taxpayers.' ") (second alteration in original) (quoting *Am. Legion Post No. 32*, 116 Wn.2d at 7)).

even if that bidder is a taxpayer, are within the category of damages that create "special injury" necessary for taxpayer standing.

Indeed, such a holding would create a loophole for disappointed bidders (who also happen to pay taxes) when they miss the deadline to challenge a bid decision. As explained above, disappointed bidders are barred from challenging the result of a competitive bid after the contracts for the bids have been executed. *Dick Enterprises*, 83 Wn. App. at 571-72. *Dick Enterprises* explains that post-contracting relief for disappointed bidders competes with the public interest of preventing excessive taxation. *Id.* at 569, 572 ("[E]ven where the wrongful award of a contract violates a bidder's interest in a fair forum, the bidder may not sue for damages. To allow damages would violate the public interest by subjecting taxpayers to further penalties when they are already injured by paying too high a price under an illegal contract."). Such a loophole allowing standing for all disappointed bidders who are also taxpayers would utterly frustrate the policies behind cutting off disappointed bidder standing at the time of contract execution.

With these principles in mind, we hold that damages as a disappointed bidder alone, without more, are not sufficient to show special injury for taxpayer standing.

At the end of the day, ARE has only shown damages that can be fairly categorized as disappointed bidder damages. And apart from those damages, ARE has failed to articulate any possible damages that would not also be suffered by all taxpayers. Such damages, if any, would not be a special injury. Thus, ARE lacks standing as a taxpayer for Claim 3.

Because ARE did not have either disappointed bidder standing or taxpayer standing, the superior court did not err by dismissing ARE's Claim 3.

CONCLUSION

We hold the superior court did not err when it granted summary judgment on Claims 1 and 2. We also hold the superior court's conclusions of law determining ARE lacked standing and dismissing ARE's Claim 3 are supported by the findings of fact. Accordingly, we affirm the superior court.

PRICE, J.

We concur:

MAXA, P.J.

VELJACIC, J.

PDF **RCW 28B.10.350**

Construction work, remodeling, or demolition—Public bid—Exemption—Waiver—Prevailing rate of wage—Universities and The Evergreen State College. *(Effective until July 1, 2024.)*

(1) When the cost to The Evergreen State College or any regional or state university of any building, construction, renovation, remodeling, or demolition, other than maintenance or repairs, will equal or exceed the sum of $110,000, or $90,000 if the work involves one trade or craft area, complete plans and specifications for the work shall be prepared, the work shall be put out for public bid, and the contract shall be awarded to the responsible bidder who submits the lowest responsive bid.

(2) Any building, construction, renovation, remodeling, or demolition project that exceeds the dollar amounts in subsection (1) of this section is subject to the provisions of chapter 39.12 RCW.

(3) The Evergreen State College or any regional or state university may require a project to be put to public bid even when it is not required to do so under subsection (1) of this section. Any project publicly bid under this subsection is subject to the provisions of chapter 39.12 RCW.

(4) Where the estimated cost of any building, construction, renovation, remodeling, or demolition is less than $110,000 or the contract is awarded by the small works roster procedure authorized in *RCW 39.04.155, the publication requirements of RCW 39.04.020 do not apply.

(5) In the event of any emergency when the public interest or property of The Evergreen State College or a regional or state university would suffer material injury or damage by delay, the president of such college or university may declare the existence of an emergency and, reciting the facts constituting the same, may waive the requirements of this section with reference to any contract in order to correct the condition causing the emergency. For the purposes of this section, "emergency" means a condition likely to result in immediate physical injury to persons or to property of the college or university in the absence of prompt remedial action or a condition which immediately impairs the institution's ability to perform its educational obligations.

(6) This section does not apply when a contract is awarded by the small works roster procedure authorized in *RCW 39.04.155 or under any other procedure authorized for an institution of higher education.

[2023 c 97 § 1; 2009 c 229 § 2; 2007 c 495 § 1; 2001 c 38 § 1; 2000 c 138 § 202; 1993 c 379 § 109; 1985 c 152 § 1; 1979 ex.s. c 12 § 1; 1977 ex.s. c 169 § 14; 1971 ex.s. c 258 § 1.]

NOTES:

***Reviser's note:** RCW 39.04.155 was repealed by 2023 c 395 § 37, effective July 1, 2024.

Purpose—Part headings not law—2000 c 138: See notes following RCW 39.04.155.

Intent—Severability—Effective date—1993 c 379: See notes following RCW 28B.10.029.

Severability—1979 ex.s. c 12: "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." [1979 ex.s. c 12 § 3.]

Severability—Nomenclature—Savings—1977 ex.s. c 169: See notes following RCW 28B.10.016.

Severability—1971 ex.s. c 258: "If any provision of this 1971 amendatory 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." [**1971 ex.s. c 258 § 3**.]

*Subcontractors to be identified by bidder, when: RCW **39.30.060**.*

PDF **RCW 28B.10.350**

Construction work, remodeling, or demolition—Public bid—Exemption—Waiver—Prevailing rate of wage—Universities and The Evergreen State College. *(Effective July 1, 2024.)*

(1) When the cost to The Evergreen State College or any regional or state university of any building, construction, renovation, remodeling, or demolition, other than maintenance or repairs, will equal or exceed the sum of $110,000, or $90,000 if the work involves one trade or craft area, complete plans and specifications for the work shall be prepared, the work shall be put out for public bid, and the contract shall be awarded to the responsible bidder who submits the lowest responsive bid.

(2) Any building, construction, renovation, remodeling, or demolition project that exceeds the dollar amounts in subsection (1) of this section is subject to the provisions of chapter **39.12** RCW.

(3) The Evergreen State College or any regional or state university may require a project to be put to public bid even when it is not required to do so under subsection (1) of this section. Any project publicly bid under this subsection is subject to the provisions of chapter **39.12** RCW.

(4) Where the estimated cost of any building, construction, renovation, remodeling, or demolition is less than $110,000 or the contract is awarded by the small works roster procedure authorized in RCW **39.04.151** through **39.04.154**, the publication requirements of RCW **39.04.020** do not apply.

(5) In the event of any emergency when the public interest or property of The Evergreen State College or a regional or state university would suffer material injury or damage by delay, the president of such college or university may declare the existence of an emergency and, reciting the facts constituting the same, may waive the requirements of this section with reference to any contract in order to correct the condition causing the emergency. For the purposes of this section, "emergency" means a condition likely to result in immediate physical injury to persons or to property of the college or university in the absence of prompt remedial action or a condition which immediately impairs the institution's ability to perform its educational obligations.

(6) This section does not apply when a contract is awarded by the small works roster procedure authorized in RCW **39.04.151** through **39.04.154** or under any other procedure authorized for an institution of higher education.

[**2023 c 395 § 18**; **2023 c 97 § 1**; **2009 c 229 § 2**; **2007 c 495 § 1**; **2001 c 38 § 1**; **2000 c 138 § 202**; **1993 c 379 § 109**; **1985 c 152 § 1**; **1979 ex.s. c 12 § 1**; **1977 ex.s. c 169 § 14**; **1971 ex.s. c 258 § 1**.]

NOTES:

Reviser's note: This section was amended by 2023 c 97 § 1 and by 2023 c 395 § 18, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW **1.12.025**(2). For rule of construction, see RCW **1.12.025**(1).

Effective date—2023 c 395 §§ 1-30, 32-34, 36, and 37: See note following RCW **39.04.010**.

Findings—Intent—2023 c 395: See note following RCW **39.04.010**.

Purpose—Part headings not law—2000 c 138: See notes following RCW **39.04.155**.

Intent—Severability—Effective date—1993 c 379: See notes following RCW **28B.10.029**.

Severability—1979 ex.s. c 12: "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." [**1979 ex.s. c 12 § 3**.]

Severability—Nomenclature—Savings—1977 ex.s. c 169: See notes following RCW **28B.10.016**.

Severability—1971 ex.s. c 258: "If any provision of this 1971 amendatory 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." [**1971 ex.s. c 258 § 3**.]

*Subcontractors to be identified by bidder, when: RCW **39.30.060**.*

PDF **RCW 28B.20.130**

Powers and duties of regents—General.

General powers and duties of the board of regents are as follows:

(1) To have full control of the university and its property of various kinds, except as otherwise provided by law.

(2) To employ the president of the university, his or her assistants, members of the faculty, and employees of the institution, who except as otherwise provided by law, shall hold their positions during the pleasure of said board of regents.

(3) Establish entrance requirements for students seeking admission to the university which meet or exceed the standards specified under RCW **28B.77.020**. Completion of examinations satisfactory to the university may be a prerequisite for entrance by any applicant at the university's discretion. Evidence of completion of public high schools and other educational institutions whose courses of study meet the approval of the university may be acceptable for entrance.

(4) Establish such colleges, schools, or departments necessary to carry out the purpose of the university and not otherwise proscribed by law.

(5) With the assistance of the faculty of the university, prescribe the course of study in the various colleges, schools, and departments of the institution and publish the necessary catalogues thereof.

(6) Grant to students such certificates or degrees as recommended for such students by the faculty. The board, upon recommendation of the faculty, may also confer honorary degrees upon persons other than graduates of this university in recognition of their learning or devotion to literature, art, or science: PROVIDED, That no degree shall ever be conferred in consideration of the payment of money or the giving of property of whatsoever kind.

(7) Accept such gifts, grants, conveyances, bequests, and devises, whether real or personal property, or both, in trust or otherwise, for the use or benefit of the university, its colleges, schools, departments, or agencies; and sell, lease or exchange, invest or expend the same or the proceeds, rents, profits, and income thereof except as limited by the terms of said gifts, grants, conveyances, bequests, and devises. The board shall adopt proper rules to govern and protect the receipt and expenditure of the proceeds of all fees, and the proceeds, rents, profits, and income of all gifts, grants, conveyances, bequests, and devises above-mentioned.

(8) Except as otherwise provided by law, to enter into such contracts as the regents deem essential to university purposes.

(9) To submit upon request such reports as will be helpful to the governor and to the legislature in providing for the institution.

(10) To offer new degree programs, offer off-campus programs, participate in consortia or centers, contract for off-campus educational programs, and purchase or lease major off-campus facilities in accordance with RCW **28B.77.080**.

(11) To confer honorary degrees upon persons who request an honorary degree if they were students at the university in 1942 and did not graduate because they were ordered into an internment camp. The honorary degree may also be requested by a representative of deceased persons who meet these requirements. For the purposes of this subsection, "internment camp" means a relocation center to which persons were ordered evacuated by Presidential Executive Order 9066, signed February 19, 1942.

[**2012 c 229 § 804**; **2010 c 51 § 1**; **2004 c 275 § 52**; **1998 c 245 § 16**; **1985 c 370 § 92**; **1977 c 75 § 20**; **1969 ex.s. c 223 § 28B.20.130**. Prior: 1939 c 176 § 1, part; 1927 c 227 § 1, part; 1909 c 97 p 240 § 5, part; RRS § 4557, part; prior: 1895 c 101 § 2, part; 1893 c 122 § 10, part; 1890 pp 396, 397, 398 §§ 7, 9, 11. Formerly RCW **28.77.130**, **28.77.140**.]

NOTES:

Effective date—2012 c 229 §§ 101, 117, 401, 402, 501 through 594, 601 through 609, 701 through 708, 801 through 821, 902, and 904: See note following RCW **28B.77.005**.

Part headings not law—2004 c 275: See note following RCW **28B.76.090**.

PDF **RCW 28B.10.300**

Acquisition, construction, equipping and betterment of lands, buildings and facilities at universities and The Evergreen State College—Authorized.

The boards of regents of the state universities and the boards of trustees of the regional universities and The Evergreen State College are severally authorized to:

(1) Enter into contracts with persons, firms or corporations for the construction, installation, equipping, repairing, renovating and betterment of buildings and facilities for the following:

(a) Dormitories

(b) Hospitals

(c) Infirmaries

(d) Dining halls

(e) Student activities

(f) Services of every kind for students, including, but not limited to, housing, employment, registration, financial aid, counseling, testing and offices of the dean of students

(g) Vehicular parking

(h) Student, faculty and employee housing and boarding;

(2) Purchase or lease lands and other appurtenances necessary for the construction and installation of such buildings and facilities and to purchase or lease lands with buildings and facilities constructed or installed thereon suitable for the purposes aforesaid;

(3) Lease to any persons, firms, or corporations such portions of the campus of their respective institutions as may be necessary for the construction and installation of buildings and facilities for the purposes aforesaid and the reasonable use thereof;

(4) Borrow money to pay the cost of the acquisition of such lands and of the construction, installation, equipping, repairing, renovating, and betterment of such buildings and facilities, including interest during construction and other incidental costs, and to issue revenue bonds or other evidence of indebtedness therefor, and to refinance the same before or at maturity and to provide for the amortization of such indebtedness from services and activities fees or from the rentals, fees, charges, and other income derived through the ownership, operation and use of such lands, buildings, and facilities and any other dormitory, hospital, infirmary, dining, student activities, student services, vehicular parking, housing or boarding building or facility at the institution;

(5) Contract to pay as rental or otherwise the cost of the acquisition of such lands and of the construction and installation of such buildings and facilities on the amortization plan; the contract not to run over forty years;

(6) Expend on the amortization plan services and activities fees and/or any part of all of the fees, charges, rentals, and other income derived from any or all revenue-producing lands, buildings, and facilities of their respective institutions, heretofore or hereafter acquired, constructed or installed, including but not limited to income from rooms, dormitories, dining rooms, hospitals, infirmaries, housing or student activity buildings, vehicular parking facilities, land or the appurtenances thereon, and to pledge such services and activities fees and/or the net income derived through the ownership, operation and use of any lands, buildings or facilities of the nature described in subsection (1) hereof for the payment of part or all of the rental, acquisition, construction, and installation, and the betterment, repair, and renovation or other contract charges, bonds or other evidence of indebtedness agreed to be paid on account of the acquisition, construction, installation or rental of, or the betterment, repair or renovation of, lands, buildings, facilities and equipment of the nature authorized by this section.

[**1977 ex.s. c 169 § 13**; **1973 1st ex.s. c 130 § 1**; **1969 ex.s. c 223 § 28B.10.300**. Prior: **1967 ex.s. c 107 § 1**; **1963 c 167 § 1**; **1961 c 229 § 2**; prior: (i) 1950 ex.s. c 17 § 1, part; 1947 c 64 § 1, part; 1933 ex.s. c 23 § 1, part; 1925 ex.s. c 91 § 1, part; Rem. Supp. 1947 § 4543-1, part. (ii) 1947 c 64 § 2, part;

1933 ex.s. c 23 § 2, part; 1925 ex.s. c 91 § 2, part; Rem. Supp. 1947 § 4543-2, part. Formerly RCW **28.76.180**.]

NOTES:

Severability—Nomenclature—Savings—1977 ex.s. c 169: See notes following RCW **28B.10.016**.

*Prior bonds validated: See **1961 c 229 § 10**.*

PDF **RCW 28B.10.305**

Acquisition, construction, equipping and betterment of lands, buildings and facilities at universities and The Evergreen State College—Use of lands, buildings, and facilities.

The lands, buildings, facilities, and equipment acquired, constructed or installed for those purposes shall be used in the respective institutions primarily for:

(1) Dormitories

(2) Hospitals

(3) Infirmaries

(4) Dining halls

(5) Student activities

(6) Services of every kind for students, including, but not limited to housing, employment, registration, financial aid, counseling, testing and offices of the dean of students

(7) Vehicular parking

(8) Student, faculty and employee housing and boarding.

[**1969 ex.s. c 223 § 28B.10.305**. Prior: **1967 ex.s. c 107 § 2**; **1963 c 167 § 2**; **1961 c 229 § 3**; prior: 1950 ex.s. c 17 § 1, part; 1947 c 64 § 1, part; 1933 ex.s. c 23 § 1, part; 1925 ex.s. c 91 § 1, part; Rem. Supp. 1947 § 4543-1, part. Formerly RCW **28.76.190**.]

SEYFARTH SHAW LLP

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