
SENATE BILL 6162

State of Washington

63rd Legislature

2014 Regular Session

By Senators Litzow, Rolfes, Fain, Sheldon, McCoy, Hasegawa, McAuliffe, Conway, and Kline

Read first time 01/16/14. Referred to Committee on Governmental Operations.

1 AN ACT Relating to subjecting federally recognized Indian tribes to
2 the same conditions as state and local governments for property owned
3 exclusively by the tribe; amending RCW 82.29A.010, 82.29A.020,
4 84.36.010, 84.36.451, and 84.40.230; adding a new section to chapter
5 82.29A RCW; adding a new section to chapter 52.30 RCW; creating a new
6 section; providing an effective date; and providing an expiration date.

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

8 **Sec. 1.** RCW 82.29A.010 and 2010 c 281 s 2 are each amended to read
9 as follows:

10 (1)(a) The legislature hereby recognizes that properties of the
11 state of Washington, counties, school districts, and other municipal
12 corporations are exempted by Article 7, section 1 of the state
13 Constitution from property tax obligations, but that private lessees of
14 such public properties receive substantial benefits from governmental
15 services provided by units of government.

16 (b) The legislature further recognizes that a uniform method of
17 taxation should apply to such leasehold interests in publicly owned
18 property.

1 (c) The legislature finds that lessees of publicly owned property
2 or community centers are entitled to those same governmental services
3 and does hereby provide for a leasehold excise tax to fairly compensate
4 governmental units for services rendered to such lessees of publicly
5 owned property or community centers. For the purposes of this
6 subsection, "community center" has the same meaning as provided in RCW
7 84.36.010.

8 (d) The legislature also finds that eliminating the property tax on
9 property owned exclusively by federally recognized Indian tribes within
10 the state requires that the leasehold excise tax also be applied to
11 leasehold interests on tribally owned property.

12 (2) The legislature further finds that experience gained by
13 lessors, lessees, and the department of revenue since enactment of the
14 leasehold excise tax under this chapter has shed light on areas in the
15 leasehold excise statutes that need explanation and clarification. The
16 purpose of chapter 220, Laws of 1999 is to make those changes.

17 **Sec. 2.** RCW 82.29A.020 and 2012 2nd sp.s. c 6 s 501 are each
18 amended to read as follows:

19 The definitions in this section apply throughout this chapter
20 unless the context requires otherwise.

21 (1)(a) "Leasehold interest" means an interest in publicly owned
22 real or personal property which exists by virtue of any lease, permit,
23 license, or any other agreement, written or verbal, between the public
24 owner of the property and a person who would not be exempt from
25 property taxes if that person owned the property in fee, granting
26 possession and use, to a degree less than fee simple ownership.
27 However, no interest in personal property (excluding land or buildings)
28 which is owned by the United States, whether or not as trustee, or by
29 any foreign government may constitute a leasehold interest hereunder
30 when the right to use such property is granted pursuant to a contract
31 solely for the manufacture or production of articles for sale to the
32 United States or any foreign government. The term "leasehold interest"
33 includes the rights of use or occupancy by others of property which is
34 owned in fee or held in trust by a public corporation, commission, or
35 authority created under RCW 35.21.730 or 35.21.660 if the property is
36 listed on or is within a district listed on any federal or state
37 register of historical sites.

1 **(b)** The term "leasehold interest" does not include:

2 **(i)** Road or utility easements, rights of access, occupancy, or use
3 granted solely for the purpose of removing materials or products
4 purchased from a public owner or the lessee of a public owner, or
5 rights of access, occupancy, or use granted solely for the purpose of
6 natural energy resource exploration(~~(.—"Leasehold interest" does not~~
7 ~~include)); or~~

8 **(ii)** The preferential use of publicly owned cargo cranes and docks
9 and associated areas used in the loading and discharging of cargo
10 located at a port district marine facility. "Preferential use" means
11 that publicly owned real or personal property is used by a private
12 party under a written agreement with the public owner, but the public
13 owner or any third party maintains a right to use the property when not
14 being used by the private party.

15 **(c)** "Publicly owned real or personal property" includes real or
16 personal property owned by a federally recognized Indian tribe in the
17 state and exempt from tax under RCW 84.36.010.

18 (2)(a) "Taxable rent" means contract rent as defined in (c) of this
19 subsection in all cases where the lease or agreement has been
20 established or renegotiated through competitive bidding, or negotiated
21 or renegotiated in accordance with statutory requirements regarding the
22 rent payable, or negotiated or renegotiated under circumstances,
23 established by public record, clearly showing that the contract rent
24 was the maximum attainable by the lessor. However, after January 1,
25 1986, with respect to any lease which has been in effect for ten years
26 or more without renegotiation, taxable rent may be established by
27 procedures set forth in (g) of this subsection. All other leasehold
28 interests are subject to the determination of taxable rent under the
29 terms of (g) of this subsection.

30 (b) For purposes of determining leasehold excise tax on any lands
31 on the Hanford reservation subleased to a private or public entity by
32 the department of ecology, taxable rent includes only the annual cash
33 rental payment made by such entity to the department of ecology as
34 specifically referred to as rent in the sublease agreement between the
35 parties and does not include any other fees, assessments, or charges
36 imposed on or collected by such entity irrespective of whether the
37 private or public entity pays or collects such other fees, assessments,
38 or charges as specified in the sublease agreement.

1 (c) "Contract rent" means the amount of consideration due as
2 payment for a leasehold interest, including: The total of cash
3 payments made to the lessor or to another party for the benefit of the
4 lessor according to the requirements of the lease or agreement,
5 including any rents paid by a sublessee; expenditures for the
6 protection of the lessor's interest when required by the terms of the
7 lease or agreement; and expenditures for improvements to the property
8 to the extent that such improvements become the property of the lessor.
9 Where the consideration conveyed for the leasehold interest is made in
10 combination with payment for concession or other rights granted by the
11 lessor, only that portion of such payment which represents
12 consideration for the leasehold interest is part of contract rent.

13 (d) "Contract rent" does not include: (i) Expenditures made by the
14 lessee, which under the terms of the lease or agreement, are to be
15 reimbursed by the lessor to the lessee or expenditures for improvements
16 and protection made pursuant to a lease or an agreement which requires
17 that the use of the improved property be open to the general public and
18 that no profit will inure to the lessee from the lease; (ii)
19 expenditures made by the lessee for the replacement or repair of
20 facilities due to fire or other casualty including payments for
21 insurance to provide reimbursement for losses or payments to a public
22 or private entity for protection of such property from damage or loss
23 or for alterations or additions made necessary by an action of
24 government taken after the date of the execution of the lease or
25 agreement; (iii) improvements added to publicly owned property by a
26 sublessee under an agreement executed prior to January 1, 1976, which
27 have been taxed as personal property of the sublessee prior to January
28 1, 1976, or improvements made by a sublessee of the same lessee under
29 a similar agreement executed prior to January 1, 1976, and such
30 improvements are taxable to the sublessee as personal property; (iv)
31 improvements added to publicly owned property if such improvements are
32 being taxed as personal property to any person.

33 (e) Any prepaid contract rent is considered to have been paid in
34 the year due and not in the year actually paid with respect to
35 prepayment for a period of more than one year. Expenditures for
36 improvements with a useful life of more than one year which are
37 included as part of contract rent must be treated as prepaid contract
38 rent and prorated over the useful life of the improvement or the

1 remaining term of the lease or agreement if the useful life is in
2 excess of the remaining term of the lease or agreement. Rent prepaid
3 prior to January 1, 1976, must be prorated from the date of prepayment.

4 (f) With respect to a "product lease", the value is that value
5 determined at the time of sale under terms of the lease.

6 (g) If it is determined by the department of revenue, upon
7 examination of a lessee's accounts or those of a lessor of publicly
8 owned property, that a lessee is occupying or using publicly owned
9 property in such a manner as to create a leasehold interest and that
10 such leasehold interest has not been established through competitive
11 bidding, or negotiated in accordance with statutory requirements
12 regarding the rent payable, or negotiated under circumstances,
13 established by public record, clearly showing that the contract rent
14 was the maximum attainable by the lessor, the department may establish
15 a taxable rent computation for use in determining the tax payable under
16 authority granted in this chapter based upon the following criteria:

17 (i) Consideration must be given to rental being paid to other lessors
18 by lessees of similar property for similar purposes over similar
19 periods of time; (ii) consideration must be given to what would be
20 considered a fair rate of return on the market value of the property
21 leased less reasonable deductions for any restrictions on use, special
22 operating requirements or provisions for concurrent use by the lessor,
23 another person or the general public.

24 (3) "Product lease" as used in this chapter means a lease of
25 property for use in the production of agricultural or marine products
26 to the extent that such lease provides for the contract rent to be paid
27 by the delivery of a stated percentage of the production of such
28 agricultural or marine products to the credit of the lessor or the
29 payment to the lessor of a stated percentage of the proceeds from the
30 sale of such products.

31 (4) "Renegotiated" means a change in the lease agreement which
32 changes the agreed time of possession, restrictions on use, the rate of
33 the cash rental or of any other consideration payable by the lessee to
34 or for the benefit of the lessor, other than any such change required
35 by the terms of the lease or agreement. In addition "renegotiated"
36 means a continuation of possession by the lessee beyond the date when,
37 under the terms of the lease agreement, the lessee had the right to
38 vacate the premises without any further liability to the lessor.

1 (5) "City" means any city or town.

2 (6) "Products" includes natural resource products such as cut or
3 picked evergreen foliage, Cascara bark, wild edible mushrooms, native
4 ornamental trees and shrubs, ore and minerals, natural gas, geothermal
5 water and steam, and forage removed through the grazing of livestock.

6 **Sec. 3.** RCW 84.36.010 and 2010 c 281 s 1 are each amended to read
7 as follows:

8 (1) All property belonging exclusively to the United States, the
9 state, or any county or municipal corporation; all property belonging
10 exclusively to any federally recognized Indian tribe, if (a) the tribe
11 is located in the state, ((if that)) and (b) the property is used
12 exclusively for essential government services; all state route number
13 16 corridor transportation systems and facilities constructed under
14 chapter 47.46 RCW; all property under a financing contract pursuant to
15 chapter 39.94 RCW or recorded agreement granting immediate possession
16 and use to the public bodies listed in this section or under an order
17 of immediate possession and use pursuant to RCW 8.04.090; and, for a
18 period of forty years from acquisition, all property of a community
19 center; is exempt from taxation. All property belonging exclusively to
20 a foreign national government is exempt from taxation if that property
21 is used exclusively as an office or residence for a consul or other
22 official representative of the foreign national government, and if the
23 consul or other official representative is a citizen of that foreign
24 nation.

25 (2) For the purposes of this section the following definitions
26 apply unless the context clearly requires otherwise.

27 (a) "Community center" means property, including a building or
28 buildings, determined to be surplus to the needs of a district by a
29 local school board, and purchased or acquired by a nonprofit
30 organization for the purposes of converting them into community
31 facilities for the delivery of nonresidential coordinated services for
32 community members. The community center may make space available to
33 businesses, individuals, or other parties through the loan or rental of
34 space in or on the property.

35 (b) "Essential government services" means services such as tribal
36 administration, public facilities, fire, police, public health,

1 education, sewer, water, environmental and land use, transportation,
2 (~~and~~) utility services, and economic development.

3 (c) "Economic development" means commercial activities, including
4 those that facilitate the creation or retention of businesses or jobs,
5 or that improve the standard of living or economic health of tribal
6 communities.

7 **Sec. 4.** RCW 84.36.451 and 2001 c 26 s 2 are each amended to read
8 as follows:

9 (1) The following property (~~shall be~~) is exempt from taxation:
10 Any and all rights to occupy or use any real or personal property owned
11 in fee or held in trust by:

12 (a) The United States, the state of Washington, or any political
13 subdivision or municipal corporation of the state of Washington, or a
14 federally recognized Indian tribe for property exempt under RCW
15 84.36.010; or

16 (b) A public corporation, commission, or authority created under
17 RCW 35.21.730 or 35.21.660 if the property is listed on or is within a
18 district listed on any federal or state register of historical sites;
19 and

20 (c) (~~Including~~) Any leasehold interest arising from the property
21 identified in (a) and (b) of this subsection as defined in RCW
22 82.29A.020.

23 (2) The exemption under this section (~~shall~~) does not apply to:

24 (a) Any such leasehold interests which are a part of operating
25 properties of public utilities subject to assessment under chapter
26 84.12 RCW; or

27 (b) Any such leasehold interest consisting of three thousand or
28 more residential and recreational lots that are or may be subleased for
29 residential and recreational purposes.

30 (3) The exemption under this section (~~shall~~) may not be construed
31 to modify the provisions of RCW 84.40.230.

32 **Sec. 5.** RCW 84.40.230 and 1994 c 124 s 25 are each amended to read
33 as follows:

34 When any real property is sold on contract by the United States of
35 America, the state, (~~or~~) any county or municipality, or any federally
36 recognized Indian tribe, and the contract expresses or implies that the

1 vendee is entitled to the possession, use, benefits and profits thereof
2 and therefrom so long as the vendee complies with the terms of the
3 contract, it (~~shall be~~) is deemed that the vendor retains title
4 merely as security for the fulfillment of the contract, and the
5 property (~~shall~~) must be assessed and taxed in the same manner as
6 other similar property in private ownership is taxed, and the tax roll
7 (~~shall~~) must contain, opposite the description of the property so
8 assessed the following notation: "Subject to title remaining in the
9 vendor" or other notation of similar significance. No foreclosure for
10 delinquent taxes nor any deed issued pursuant thereto (~~shall~~) may
11 extinguish or otherwise affect the title of the vendor. In any case
12 under former law where the contract and not the property was taxed no
13 deed of the property described in such contract (~~shall~~) may ever be
14 executed and delivered by the state or any county or municipality until
15 all taxes assessed against such contract and local assessments assessed
16 against the land described thereon are fully paid.

17 NEW SECTION. **Sec. 6.** A new section is added to chapter 82.29A RCW
18 to read as follows:

19 (1) Property owned exclusively by a federally recognized Indian
20 tribe that is exempt from property tax under RCW 84.36.010 is subject
21 to payment in lieu of leasehold excise taxes, if:

22 (a) The tax exempt property is used exclusively for economic
23 development, as defined in RCW 84.36.010;

24 (b) There is no taxable leasehold interest in the tax exempt
25 property; and

26 (c) The property is not otherwise exempt from taxation by federal
27 law.

28 (2) The department must determine the amount of the payment in lieu
29 of leasehold excise taxes based on the fair market rental value of the
30 tax exempt property. In determining the fair market rental value,
31 consideration must be given to rent being paid to other lessors by
32 lessees of similar property for similar purposes over similar periods
33 of time. The amount may not exceed the leasehold excise tax amount
34 that would otherwise be owed by a taxable leasehold interest in the
35 property. The department must notify the governing body of any tribe
36 owning property that is subject to payment and the amount that is owed.

1 (3) The department must collect all payments in lieu of leasehold
2 excise taxes and transmit all such moneys to the state treasurer. The
3 state treasurer must transfer the same to each respective county
4 treasurer in compliance with apportionments made by the department.

5 (4)(a) The department must apportion all such moneys received to
6 the state and to the taxing districts in the same proportion that the
7 state and each taxing district would have shared if a leasehold excise
8 tax had been levied. The department must apply the same basis of
9 apportionment as that of leasehold excise taxes first collectible in
10 the year in which such lieu payment is made.

11 (b) If any such payment cannot be apportioned in accordance with
12 (a) of this subsection, the department must determine an apportionment
13 on an equitable and proper basis.

14 (c) The department may indicate either the exact apportionment to
15 taxing units or it may direct in general terms that county treasurers
16 must apportion any such lieu payment in the manner provided in this
17 section. In either event, the department must certify to the state
18 treasurer the basis of apportionment and the state treasurer must
19 transmit any such lieu payment, together with a statement of the basis
20 of apportionment, to the county treasurer in accordance with such
21 certification.

22 (5) This section does not apply to deep-water ports and the
23 property affiliated with deep-water port-related activities.

24 NEW SECTION. **Sec. 7.** A new section is added to chapter 52.30 RCW
25 to read as follows:

26 (1) When exempt tribal property is located within the boundaries of
27 a fire protection district or a regional fire protection service
28 authority, the fire protection district or authority is authorized to
29 contract with the tribe for compensation for providing fire protection
30 services in an amount and under such terms as are mutually agreed upon
31 by the fire protection district or authority and the tribe.

32 (2) The definitions in this subsection apply throughout this
33 section unless the context clearly requires otherwise.

34 (a) "Exempt tribal property" means property that is owned
35 exclusively by a federally recognized Indian tribe and that is exempt
36 from taxation under RCW 84.36.010.

1 (b) "Regional fire protection service authority" or "authority" has
2 the same meaning as provided in RCW 52.26.020.

3 NEW SECTION. **Sec. 8.** By December 1, 2017, and in compliance with
4 RCW 43.01.036, the joint legislative audit and review committee must
5 provide an economic impact report to the legislature evaluating the
6 impacts of changes made in this act regarding the leasehold tax and
7 property tax treatment of property owned by a federally recognized
8 Indian tribe. The economic impact report must indicate: The number of
9 parcels and uses of land involved; the economic impacts to tribal
10 governments; state and local government revenue reductions, increases,
11 and shifts from all tax sources affected; impacts on public
12 infrastructure and public services; impacts on business investment and
13 business competition; a description of the types of business activities
14 affected; impacts on the number of jobs created or lost; and any other
15 data the joint legislative audit and review committee deems necessary
16 in determining the economic impacts of this act.

17 NEW SECTION. **Sec. 9.** If any provision of this act or its
18 application to any person or circumstance is held invalid, the
19 remainder of the act or the application of the provision to other
20 persons or circumstances is not affected.

21 NEW SECTION. **Sec. 10.** This act takes effect September 1, 2014.

22 NEW SECTION. **Sec. 11.** This act expires July 1, 2021.

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