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SENATE BILL 6158

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State of Washington

62nd Legislature

2012 Regular Session

By Senator Chase

Read first time 01/12/12. Referred to Committee on Government Operations, Tribal Relations & Elections.

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; and adding a new section to  
5 chapter 52.30 RCW.

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

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

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

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

18 (c) The legislature finds that lessees of publicly owned property  
19 or community centers are entitled to those same governmental services

1 and does hereby provide for a leasehold excise tax to fairly compensate  
2 governmental units for services rendered to such lessees of publicly  
3 owned property or community centers. For the purposes of this  
4 subsection, "community center" has the same meaning as provided in RCW  
5 84.36.010.

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

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

15 **Sec. 2.** RCW 82.29A.020 and 1999 c 220 s 2 are each amended to read  
16 as follows:

17 ~~((As used in this chapter the following terms shall be defined as~~  
18 ~~follows,))~~ The definitions in this section apply throughout this  
19 chapter unless the context otherwise requires:

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

1 utility easements, rights of access, occupancy, or use granted solely  
2 for the purpose of removing materials or products purchased from a  
3 public owner or the lessee of a public owner, or rights of access,  
4 occupancy, or use granted solely for the purpose of natural energy  
5 resource exploration. "Publicly owned real or personal property"  
6 includes real or personal property owned by a federally recognized  
7 Indian tribe in the state and exempt from tax under RCW 84.36.010.

8 (2)(a)(i) "Taxable rent" (~~shall~~) means contract rent as defined  
9 in (~~subsection (a)~~) (b) of this subsection in all cases where the  
10 lease or agreement has been established or renegotiated through  
11 competitive bidding, or negotiated or renegotiated in accordance with  
12 statutory requirements regarding the rent payable, or negotiated or  
13 renegotiated under circumstances, established by public record, clearly  
14 showing that the contract rent was the maximum attainable by the  
15 lessor(~~(+PROVIDED, That)~~). However, after January 1, 1986, with  
16 respect to any lease which has been in effect for ten years or more  
17 without renegotiation, taxable rent may be established by procedures  
18 set forth in (~~subsection (b)~~) (c) of this subsection. All other  
19 leasehold interests (~~shall be~~) are subject to the determination of  
20 taxable rent under the terms of (~~subsection (b)~~) (c) of this  
21 subsection.

22 (ii) For purposes of determining leasehold excise tax on any lands  
23 on the Hanford reservation subleased to a private or public entity by  
24 the department of ecology, taxable rent (~~shall~~) includes only the  
25 annual cash rental payment made by such entity to the department of  
26 ecology as specifically referred to as rent in the sublease agreement  
27 between the parties and (~~shall~~) does not include any other fees,  
28 assessments, or charges imposed on or collected by such entity  
29 irrespective of whether the private or public entity pays or collects  
30 such other fees, assessments, or charges as specified in the sublease  
31 agreement.

32 (~~(a)~~) (b)(i) "Contract rent" (~~shall~~) means the amount of  
33 consideration due as payment for a leasehold interest, including: The  
34 total of cash payments made to the lessor or to another party for the  
35 benefit of the lessor according to the requirements of the lease or  
36 agreement, including any rents paid by a sublessee; expenditures for  
37 the protection of the lessor's interest when required by the terms of  
38 the lease or agreement; and expenditures for improvements to the

1 property to the extent that such improvements become the property of  
2 the lessor. Where the consideration conveyed for the leasehold  
3 interest is made in combination with payment for concession or other  
4 rights granted by the lessor, only that portion of such payment which  
5 represents consideration for the leasehold interest (~~shall be~~) is  
6 part of contract rent.

7 (ii) "Contract rent" (~~shall~~) does not include:

8 ~~((+i))~~ (A) Expenditures made by the lessee, which under the terms  
9 of the lease or agreement, are to be reimbursed by the lessor to the  
10 lessee or expenditures for improvements and protection made pursuant to  
11 a lease or an agreement which requires that the use of the improved  
12 property be open to the general public and that no profit will inure to  
13 the lessee from the lease;

14 ~~((+ii))~~ (B) Expenditures made by the lessee for the replacement or  
15 repair of facilities due to fire or other casualty including payments  
16 for insurance to provide reimbursement for losses or payments to a  
17 public or private entity for protection of such property from damage or  
18 loss or for alterations or additions made necessary by an action of  
19 government taken after the date of the execution of the lease or  
20 agreement;

21 ~~((+iii))~~ (C) Improvements added to publicly owned property by a  
22 sublessee under an agreement executed prior to January 1, 1976, which  
23 have been taxed as personal property of the sublessee prior to January  
24 1, 1976, or improvements made by a sublessee of the same lessee under  
25 a similar agreement executed prior to January 1, 1976, and such  
26 improvements (~~shall be~~) are taxable to the sublessee as personal  
27 property;

28 ~~((+iv))~~ (D) Improvements added to publicly owned property if such  
29 improvements are being taxed as personal property to any person.

30 (iii) Any prepaid contract rent (~~shall be~~) is considered to have  
31 been paid in the year due and not in the year actually paid with  
32 respect to prepayment for a period of more than one year. Expenditures  
33 for improvements with a useful life of more than one year which are  
34 included as part of contract rent (~~shall be~~) are treated as prepaid  
35 contract rent and prorated over the useful life of the improvement or  
36 the remaining term of the lease or agreement if the useful life is in  
37 excess of the remaining term of the lease or agreement. Rent prepaid

1 prior to January 1, 1976, (~~shall be~~) is prorated from the date of  
2 prepayment.

3 (iv) With respect to a "product lease", the value (~~shall be~~) is  
4 that value determined at the time of sale under terms of the lease.

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

17 (i) Consideration (~~shall be~~) is given to rental being paid to  
18 other lessors by lessees of similar property for similar purposes over  
19 similar periods of time;

20 (ii) Consideration (~~shall be~~) is given to what would be  
21 considered a fair rate of return on the market value of the property  
22 leased less reasonable deductions for any restrictions on use, special  
23 operating requirements or provisions for concurrent use by the lessor,  
24 another person or the general public.

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

32 (4) "Renegotiated" means a change in the lease agreement which  
33 changes the agreed time of possession, restrictions on use, the rate of  
34 the cash rental or of any other consideration payable by the lessee to  
35 or for the benefit of the lessor, other than any such change required  
36 by the terms of the lease or agreement. In addition "renegotiated"  
37 shall mean a continuation of possession by the lessee beyond the date

1 when, under the terms of the lease agreement, the lessee had the right  
2 to vacate the premises without any further liability to the lessor.

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

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

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

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

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

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

36 (~~(b) "Essential government services" means services such as tribal~~

1 administration, ~~public facilities, fire, police, public health,~~  
2 ~~education, sewer, water, environmental and land use, transportation,~~  
3 ~~and utility services.))~~

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

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

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

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

17 (c) (~~Including~~) Any leasehold interest arising from the property  
18 identified in (a) and (b) of this subsection as defined in RCW  
19 82.29A.020.

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

21 (a) Any such leasehold interests which are a part of operating  
22 properties of public utilities subject to assessment under chapter  
23 84.12 RCW; or

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

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

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

31 When any real property is sold on contract by the United States of  
32 America, the state, (~~or~~) any county or municipality, or any federally  
33 recognized Indian tribe, and the contract expresses or implies that the  
34 vendee is entitled to the possession, use, benefits and profits thereof  
35 and therefrom so long as the vendee complies with the terms of the  
36 contract, it shall be deemed that the vendor retains title merely as

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

14 NEW SECTION. **Sec. 6.** A new section is added to chapter 52.30 RCW  
15 to read as follows:

16 (1) When exempt tribal property is located within the boundaries of  
17 a fire protection district or a regional fire protection service  
18 authority, the fire protection district or authority is authorized to  
19 contract with the tribe for compensation for providing fire protection  
20 services in an amount and under such terms as are mutually agreed upon  
21 by the fire protection district or authority and the tribe.

22 (2) For the purposes of this section, the following definitions  
23 apply unless the context clearly requires otherwise:

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

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

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