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**SUBSTITUTE SENATE BILL 5661**

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**State of Washington**

**56th Legislature**

**1999 Regular Session**

**By** Senate Committee on Ways & Means (originally sponsored by Senators Rasmussen and Honeyford; by request of Department of Revenue)

Read first time 02/26/1999.

1 AN ACT Relating to leasehold excise tax clarification and  
2 administrative simplification; and amending RCW 82.29A.010, 82.29A.020,  
3 and 82.29A.130.

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

5 **Sec. 1.** RCW 82.29A.010 and 1975-'76 2nd ex.s. c 61 s 1 are each  
6 amended to read as follows:

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

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

16 (c) The legislature finds that lessees of publicly owned property  
17 are entitled to those same governmental services and does hereby  
18 provide for a leasehold excise tax to fairly compensate governmental  
19 units for services rendered to such lessees of publicly owned property.

1       (2) The legislature further finds that experience gained by  
2 lessors, lessees, and the department of revenue since enactment of the  
3 leasehold excise tax under this chapter has shed light on areas in the  
4 leasehold excise statutes that need explanation and clarification. The  
5 purpose of chapter . . . , Laws of 1999 (this act) is to make those  
6 changes.

7       **Sec. 2.** RCW 82.29A.020 and 1991 c 272 s 23 are each amended to  
8 read as follows:

9       As used in this chapter the following terms shall be defined as  
10 follows, unless the context otherwise requires:

11       (1) "Leasehold interest" shall mean an interest in publicly owned  
12 real or personal property which exists by virtue of any lease, permit,  
13 license, or any other agreement, written or verbal, between the public  
14 owner of the property and a person who would not be exempt from  
15 property taxes if that person owned the property in fee, granting  
16 possession and use, to a degree less than fee simple ownership:  
17 PROVIDED, That no interest in personal property (excluding land or  
18 buildings) which is owned by the United States, whether or not as  
19 trustee, or by any foreign government shall constitute a leasehold  
20 interest hereunder when the right to use such property is granted  
21 pursuant to a contract solely for the manufacture or production of  
22 articles for sale to the United States or any foreign government. The  
23 term "leasehold interest" shall include the rights of use or occupancy  
24 by others of property which is owned in fee or held in trust by a  
25 public corporation, commission, or authority created under RCW  
26 35.21.730 or 35.21.660 if the property is listed on or is within a  
27 district listed on any federal or state register of historical sites.  
28 The term "leasehold interest" shall not include road or utility  
29 easements ~~((or))~~, rights of access, occupancy, or use granted solely  
30 for the purpose of removing materials or products purchased from a  
31 public owner or the lessee of a public owner, or rights of access,  
32 occupancy, or use granted solely for the purpose of natural energy  
33 resource exploration.

34       (2) "Taxable rent" shall mean contract rent as defined in  
35 subsection (a) of this subsection in all cases where the lease or  
36 agreement has been established or renegotiated through competitive  
37 bidding, or negotiated or renegotiated in accordance with statutory  
38 requirements regarding the rent payable, or negotiated or renegotiated

1 under circumstances, established by public record, clearly showing that  
2 the contract rent was the maximum attainable by the lessor: PROVIDED,  
3 That after January 1, 1986, with respect to any lease which has been in  
4 effect for ten years or more without renegotiation, taxable rent may be  
5 established by procedures set forth in subsection (b) of this  
6 subsection. All other leasehold interests shall be subject to the  
7 determination of taxable rent under the terms of subsection (b) of this  
8 subsection.

9 For purposes of determining leasehold excise tax on any lands on  
10 the Hanford reservation subleased to a private or public entity by the  
11 department of ecology, taxable rent shall include only the annual cash  
12 rental payment made by such entity to the department of ecology as  
13 specifically referred to as rent in the sublease agreement between the  
14 parties and shall not include any other fees, assessments, or charges  
15 imposed on or collected by such entity irrespective of whether the  
16 private or public entity pays or collects such other fees, assessments,  
17 or charges as specified in the sublease agreement.

18 (a) "Contract rent" shall mean the amount of consideration due as  
19 payment for a leasehold interest, including: The total of cash  
20 payments made to the lessor or to another party for the benefit of the  
21 lessor according to the requirements of the lease or agreement,  
22 including any rents paid by a sublessee; expenditures for the  
23 protection of the lessor's interest when required by the terms of the  
24 lease or agreement; and expenditures for improvements to the property  
25 to the extent that such improvements become the property of the lessor.  
26 Where the consideration conveyed for the leasehold interest is made in  
27 combination with payment for concession or other rights granted by the  
28 lessor, only that portion of such payment which represents  
29 consideration for the leasehold interest shall be part of contract  
30 rent.

31 "Contract rent" shall not include: (i) Expenditures made by the  
32 lessee, which under the terms of the lease or agreement, are to be  
33 reimbursed by the lessor to the lessee or expenditures for improvements  
34 and protection made pursuant to a lease or an agreement which requires  
35 that the use of the improved property be open to the general public and  
36 that no profit will inure to the lessee from the lease; (ii)  
37 expenditures made by the lessee for the replacement or repair of  
38 facilities due to fire or other casualty including payments for  
39 insurance to provide reimbursement for losses or payments to a public

1 or private entity for protection of such property from damage or loss  
2 or for alterations or additions made necessary by an action of  
3 government taken after the date of the execution of the lease or  
4 agreement; (iii) improvements added to publicly owned property by a  
5 sublessee under an agreement executed prior to January 1, 1976, which  
6 have been taxed as personal property of the sublessee prior to January  
7 1, 1976, or improvements made by a sublessee of the same lessee under  
8 a similar agreement executed prior to January 1, 1976, and such  
9 improvements shall be taxable to the sublessee as personal property;  
10 (iv) improvements added to publicly owned property if such improvements  
11 are being taxed as personal property to any person.

12 Any prepaid contract rent shall be considered to have been paid in  
13 the year due and not in the year actually paid with respect to  
14 prepayment for a period of more than one year. Expenditures for  
15 improvements with a useful life of more than one year which are  
16 included as part of contract rent shall be treated as prepaid contract  
17 rent and prorated over the useful life of the improvement or the  
18 remaining term of the lease or agreement if the useful life is in  
19 excess of the remaining term of the lease or agreement. Rent prepaid  
20 prior to January 1, 1976, shall be prorated from the date of  
21 prepayment.

22 With respect to a "product lease", the value of agricultural  
23 products received as rent shall be the value at the ~~((place))~~ time of  
24 delivery ~~((as of the fifteenth day of the month of delivery))~~ to the  
25 storage facility; with respect to all other products received as  
26 contract rent, the value shall be that value determined at the time of  
27 sale under terms of the lease.

28 (b) If it shall be determined by the department of revenue, upon  
29 examination of a lessee's accounts or those of a lessor of publicly  
30 owned property, that a lessee is occupying or using publicly owned  
31 property in such a manner as to create a leasehold interest and that  
32 such leasehold interest has not been established through competitive  
33 bidding, or negotiated in accordance with statutory requirements  
34 regarding the rent payable, or negotiated under circumstances,  
35 established by public record, clearly showing that the contract rent  
36 was the maximum attainable by the lessor, the department may establish  
37 a taxable rent computation for use in determining the tax payable under  
38 authority granted in this chapter based upon the following criteria:  
39 (i) Consideration shall be given to rental being paid to other lessors

1 by lessees of similar property for similar purposes over similar  
2 periods of time; (ii) consideration shall be given to what would be  
3 considered a fair rate of return on the market value of the property  
4 leased less reasonable deductions for any restrictions on use, special  
5 operating requirements or provisions for concurrent use by the lessor,  
6 another person or the general public.

7 (3) "Product lease" as used in this chapter shall mean a lease of  
8 property for use in the production of agricultural or marine products  
9 to the extent that such lease provides for the contract rent to be paid  
10 by the delivery of a stated percentage of the production of such  
11 agricultural or marine products to the credit of the lessor or the  
12 payment to the lessor of a stated percentage of the proceeds from the  
13 sale of such products.

14 (4) "Renegotiated" means a change in the lease agreement which  
15 changes the agreed time of possession, restrictions on use, the rate of  
16 the cash rental or of any other consideration payable by the lessee to  
17 or for the benefit of the lessor, other than any such change required  
18 by the terms of the lease or agreement. In addition "renegotiated"  
19 shall mean a continuation of possession by the lessee beyond the date  
20 when, under the terms of the lease agreement, the lessee had the right  
21 to vacate the premises without any further liability to the lessor.

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

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

27 **Sec. 3.** RCW 82.29A.130 and 1997 c 220 s 202 (Referendum Bill No.  
28 48) are each amended to read as follows:

29 The following leasehold interests shall be exempt from taxes  
30 imposed pursuant to RCW 82.29A.030 and 82.29A.040:

31 (1) All leasehold interests constituting a part of the operating  
32 properties of any public utility which is assessed and taxed as a  
33 public utility pursuant to chapter 84.12 RCW.

34 (2) All leasehold interests in facilities owned or used by a  
35 school, college or university which leasehold provides housing for  
36 students and which is otherwise exempt from taxation under provisions  
37 of RCW 84.36.010 and 84.36.050.

1 (3) All leasehold interests of subsidized housing where the fee  
2 ownership of such property is vested in the government of the United  
3 States, or the state of Washington or any political subdivision thereof  
4 but only if income qualification exists for such housing.

5 (4) All leasehold interests used for fair purposes of a nonprofit  
6 fair association that sponsors or conducts a fair or fairs which  
7 receive support from revenues collected pursuant to RCW 67.16.100 and  
8 allocated by the director of the department of agriculture where the  
9 fee ownership of such property is vested in the government of the  
10 United States, the state of Washington or any of its political  
11 subdivisions: PROVIDED, That this exemption shall not apply to the  
12 leasehold interest of any sublessee of such nonprofit fair association  
13 if such leasehold interest would be taxable if it were the primary  
14 lease.

15 (5) All leasehold interests in any property of any public entity  
16 used as a residence by an employee of that public entity who is  
17 required as a condition of employment to live in the publicly owned  
18 property.

19 (6) All leasehold interests held by enrolled Indians of lands owned  
20 or held by any Indian or Indian tribe where the fee ownership of such  
21 property is vested in or held in trust by the United States and which  
22 are not subleased to other than to a lessee which would qualify  
23 pursuant to this chapter, RCW 84.36.451 and 84.40.175.

24 (7) All leasehold interests in any real property of any Indian or  
25 Indian tribe, band, or community that is held in trust by the United  
26 States or is subject to a restriction against alienation imposed by the  
27 United States: PROVIDED, That this exemption shall apply only where it  
28 is determined that contract rent paid is greater than or equal to  
29 ninety percent of fair market rental, to be determined by the  
30 department of revenue using the same criteria used to establish taxable  
31 rent in RCW 82.29A.020(2)(b).

32 (8) All leasehold interests for which annual taxable rent is less  
33 than two hundred fifty dollars per year. For purposes of this  
34 subsection leasehold interests held by the same lessee in contiguous  
35 properties owned by the same lessor shall be deemed a single leasehold  
36 interest.

37 (9) All leasehold interests which give use or possession of the  
38 leased property for a continuous period of less than thirty days:  
39 PROVIDED, That for purposes of this subsection, successive leases or

1 lease renewals giving substantially continuous use of possession of the  
2 same property to the same lessee shall be deemed a single leasehold  
3 interest: PROVIDED FURTHER, That no leasehold interest shall be deemed  
4 to give use or possession for a period of less than thirty days solely  
5 by virtue of the reservation by the public lessor of the right to use  
6 the property or to allow third parties to use the property on an  
7 occasional, temporary basis.

8 (10) All leasehold interests under month-to-month leases in  
9 residential units rented for residential purposes of the lessee pending  
10 destruction or removal for the purpose of constructing a public highway  
11 or building.

12 (11) All leasehold interests in any publicly owned real or personal  
13 property to the extent such leasehold interests arises solely by virtue  
14 of a contract for public improvements or work executed under the public  
15 works statutes of this state or of the United States between the public  
16 owner of the property and a contractor.

17 (12) All leasehold interests that give use or possession of state  
18 adult correctional facilities for the purposes of operating  
19 correctional industries under RCW 72.09.100.

20 (13) All leasehold interests used to provide organized and  
21 supervised recreational activities for disabled persons of all ages in  
22 a camp facility and for public recreational purposes by a nonprofit  
23 organization, association, or corporation that would be exempt from  
24 property tax under RCW 84.36.030(1) if it owned the property. If the  
25 publicly owned property is used for any taxable purpose, the leasehold  
26 excise taxes set forth in RCW 82.29A.030 and 82.29A.040 shall be  
27 imposed and shall be apportioned accordingly.

28 (14) All leasehold interests in the public or entertainment areas  
29 of a baseball stadium with natural turf and a retractable roof or  
30 canopy that is in a county with a population of over one million, that  
31 has a seating capacity of over forty thousand, and that is constructed  
32 on or after January 1, 1995. "Public or entertainment areas" include  
33 ticket sales areas, ramps and stairs, lobbies and concourses, parking  
34 areas, concession areas, restaurants, hospitality and stadium club  
35 areas, kitchens or other work areas primarily servicing other public or  
36 entertainment areas, public rest room areas, press and media areas,  
37 control booths, broadcast and production areas, retail sales areas,  
38 museum and exhibit areas, scoreboards or other public displays, storage  
39 areas, loading, staging, and servicing areas, seating areas and suites,

1 the playing field, and any other areas to which the public has access  
2 or which are used for the production of the entertainment event or  
3 other public usage, and any other personal property used for these  
4 purposes. "Public or entertainment areas" does not include locker  
5 rooms or private offices exclusively used by the lessee.

6 (15) All leasehold interests in the public or entertainment areas  
7 of a stadium and exhibition center, as defined in RCW 36.102.010, that  
8 is constructed on or after January 1, 1998. For the purposes of this  
9 subsection, "public or entertainment areas" has the same meaning as in  
10 subsection (14) of this section, and includes exhibition areas.

11 (16) All leasehold interests in property owned by a public  
12 development authority that is used as a public area. As used in this  
13 subsection, "public area" includes sidewalks, plazas, and esplanades.

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