

EHB 1287 - H AMD 527

By Representative Appleton

NOT CONSIDERED

1 Strike everything after the enacting clause and insert the
2 following:

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

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

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

14 (c) The legislature finds that lessees of publicly owned property
15 or community centers are entitled to those same governmental services
16 and does hereby provide for a leasehold excise tax to fairly compensate
17 governmental units for services rendered to such lessees of publicly
18 owned property or community centers. For the purposes of this
19 subsection, "community center" has the same meaning as provided in RCW
20 84.36.010.

21 (d) The legislature also finds that eliminating the property tax on
22 property owned exclusively by federally recognized Indian tribes within
23 the state requires that the leasehold excise tax also be applied to
24 leasehold interests on tribally owned property.

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

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

3 The definitions in this section apply throughout this chapter
4 unless the context requires otherwise.

5 (1)(a) "Leasehold interest" means an interest in publicly owned
6 real or personal property which exists by virtue of any lease, permit,
7 license, or any other agreement, written or verbal, between the public
8 owner of the property and a person who would not be exempt from
9 property taxes if that person owned the property in fee, granting
10 possession and use, to a degree less than fee simple ownership.
11 However, no interest in personal property (excluding land or buildings)
12 which is owned by the United States, whether or not as trustee, or by
13 any foreign government may constitute a leasehold interest hereunder
14 when the right to use such property is granted pursuant to a contract
15 solely for the manufacture or production of articles for sale to the
16 United States or any foreign government. The term "leasehold interest"
17 includes the rights of use or occupancy by others of property which is
18 owned in fee or held in trust by a public corporation, commission, or
19 authority created under RCW 35.21.730 or 35.21.660 if the property is
20 listed on or is within a district listed on any federal or state
21 register of historical sites.

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

23 (i) Road or utility easements, rights of access, occupancy, or use
24 granted solely for the purpose of removing materials or products
25 purchased from a public owner or the lessee of a public owner, or
26 rights of access, occupancy, or use granted solely for the purpose of
27 natural energy resource exploration(~~(.—"Leasehold interest" does not~~
28 ~~include)); or~~

29 (ii) The preferential use of publicly owned cargo cranes and docks
30 and associated areas used in the loading and discharging of cargo
31 located at a port district marine facility. "Preferential use" means
32 that publicly owned real or personal property is used by a private
33 party under a written agreement with the public owner, but the public
34 owner or any third party maintains a right to use the property when not
35 being used by the private party.

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

1 (2)(a) "Taxable rent" means contract rent as defined in (c) of this
2 subsection in all cases where the lease or agreement has been
3 established or renegotiated through competitive bidding, or negotiated
4 or renegotiated in accordance with statutory requirements regarding the
5 rent payable, or negotiated or renegotiated under circumstances,
6 established by public record, clearly showing that the contract rent
7 was the maximum attainable by the lessor. However, after January 1,
8 1986, with respect to any lease which has been in effect for ten years
9 or more without renegotiation, taxable rent may be established by
10 procedures set forth in (g) of this subsection. All other leasehold
11 interests are subject to the determination of taxable rent under the
12 terms of (g) of this subsection.

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

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

34 (d) "Contract rent" does not include: (i) Expenditures made by the
35 lessee, which under the terms of the lease or agreement, are to be
36 reimbursed by the lessor to the lessee or expenditures for improvements
37 and protection made pursuant to a lease or an agreement which requires
38 that the use of the improved property be open to the general public and

1 that no profit will inure to the lessee from the lease; (ii)
2 expenditures made by the lessee for the replacement or repair of
3 facilities due to fire or other casualty including payments for
4 insurance to provide reimbursement for losses or payments to a public
5 or private entity for protection of such property from damage or loss
6 or for alterations or additions made necessary by an action of
7 government taken after the date of the execution of the lease or
8 agreement; (iii) improvements added to publicly owned property by a
9 sublessee under an agreement executed prior to January 1, 1976, which
10 have been taxed as personal property of the sublessee prior to January
11 1, 1976, or improvements made by a sublessee of the same lessee under
12 a similar agreement executed prior to January 1, 1976, and such
13 improvements are taxable to the sublessee as personal property; (iv)
14 improvements added to publicly owned property if such improvements are
15 being taxed as personal property to any person.

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

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

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

38 (i) Consideration must 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 must 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 means 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 means a continuation of possession by the lessee beyond the date when,
20 under the terms of the lease agreement, the lessee had the right to
21 vacate the premises without any further liability to the lessor.

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

23 (6) "Products" includes 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 84.36.010 and 2010 c 281 s 1 are each amended to read
28 as follows:

29 (1) All property belonging exclusively to the United States, the
30 state, or any county or municipal corporation; all property belonging
31 exclusively to any federally recognized Indian tribe, if (a) the tribe
32 is located in the state, ((if that)) and (b) the property is used
33 exclusively for essential government services; all state route number
34 16 corridor transportation systems and facilities constructed under
35 chapter 47.46 RCW; all property under a financing contract pursuant to
36 chapter 39.94 RCW or recorded agreement granting immediate possession
37 and use to the public bodies listed in this section or under an order

1 of immediate possession and use pursuant to RCW 8.04.090; and, for a
2 period of forty years from acquisition, all property of a community
3 center; is exempt from taxation. All property belonging exclusively to
4 a foreign national government is exempt from taxation if that property
5 is used exclusively as an office or residence for a consul or other
6 official representative of the foreign national government, and if the
7 consul or other official representative is a citizen of that foreign
8 nation.

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

11 (a) "Community center" means property, including a building or
12 buildings, determined to be surplus to the needs of a district by a
13 local school board, and purchased or acquired by a nonprofit
14 organization for the purposes of converting them into community
15 facilities for the delivery of nonresidential coordinated services for
16 community members. The community center may make space available to
17 businesses, individuals, or other parties through the loan or rental of
18 space in or on the property.

19 (b) "Essential government services" means services such as tribal
20 administration, public facilities, fire, police, public health,
21 education, sewer, water, environmental and land use, transportation,
22 ~~((and))~~ utility services, and economic development.

23 (c) "Economic development" means commercial activities, including
24 those that facilitate the creation or retention of businesses or jobs,
25 or that improve the standard of living or economic health of tribal
26 communities.

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

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

32 (a) The United States, the state of Washington, or any political
33 subdivision or municipal corporation of the state of Washington, or a
34 federally recognized Indian tribe for property exempt under RCW
35 84.36.010; or

36 (b) A public corporation, commission, or authority created under

1 RCW 35.21.730 or 35.21.660 if the property is listed on or is within a
2 district listed on any federal or state register of historical sites;
3 and

4 (c) (~~Including~~) Any leasehold interest arising from the property
5 identified in (a) and (b) of this subsection as defined in RCW
6 82.29A.020.

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

8 (a) Any such leasehold interests which are a part of operating
9 properties of public utilities subject to assessment under chapter
10 84.12 RCW; or

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

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

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

18 When any real property is sold on contract by the United States of
19 America, the state, (~~or~~) any county or municipality, or any federally
20 recognized Indian tribe, and the contract expresses or implies that the
21 vendee is entitled to the possession, use, benefits and profits thereof
22 and therefrom so long as the vendee complies with the terms of the
23 contract, it (~~shall be~~) is deemed that the vendor retains title
24 merely as security for the fulfillment of the contract, and the
25 property (~~shall~~) must be assessed and taxed in the same manner as
26 other similar property in private ownership is taxed, and the tax roll
27 (~~shall~~) must contain, opposite the description of the property so
28 assessed the following notation: "Subject to title remaining in the
29 vendor" or other notation of similar significance. No foreclosure for
30 delinquent taxes nor any deed issued pursuant thereto (~~shall~~) may
31 extinguish or otherwise affect the title of the vendor. In any case
32 under former law where the contract and not the property was taxed no
33 deed of the property described in such contract (~~shall~~) may ever be
34 executed and delivered by the state or any county or municipality until
35 all taxes assessed against such contract and local assessments assessed
36 against the land described thereon are fully paid.

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

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

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

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

10 (c) The property is not otherwise exempt from taxation by federal
11 law.

12 (2) The department must determine the amount of the payment in lieu
13 of leasehold excise taxes based on the fair market rental value of the
14 tax exempt property. In determining the fair market rental value,
15 consideration must be given to rent being paid to other lessors by
16 lessees of similar property for similar purposes over similar periods
17 of time. The amount may not exceed the leasehold excise tax amount
18 that would otherwise be owed by a taxable leasehold interest in the
19 property. The department must notify the governing body of any tribe
20 owning property that is subject to payment and the amount that is owed.

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

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

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

34 (c) The department may indicate either the exact apportionment to
35 taxing units or it may direct in general terms that county treasurers
36 must apportion any such lieu payment in the manner provided in this
37 section. In either event, the department must certify to the state
38 treasurer the basis of apportionment and the state treasurer must

1 transmit any such lieu payment, together with a statement of the basis
2 of apportionment, to the county treasurer in accordance with such
3 certification.

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

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

8 (1) When exempt tribal property is located within the boundaries of
9 a fire protection district or a regional fire protection service
10 authority, the fire protection district or authority is authorized to
11 contract with the tribe for compensation for providing fire protection
12 services in an amount and under such terms as are mutually agreed upon
13 by the fire protection district or authority and the tribe.

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

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

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

21 NEW SECTION. **Sec. 8.** By December 1, 2018, and in compliance with
22 RCW 43.01.036, the joint legislative audit and review committee must
23 provide an economic impact report to the legislature evaluating the
24 impacts of changes made in this act regarding the leasehold tax and
25 property tax treatment of property owned by a federally recognized
26 Indian tribe. The economic impact report must indicate: The number of
27 parcels and uses of land involved; the economic impacts to tribal
28 governments; state and local government revenue reductions, increases,
29 and shifts from all tax sources affected; impacts on public
30 infrastructure and public services; impacts on business investment and
31 business competition; a description of the types of business activities
32 affected; impacts on the number of jobs created or lost; and any other
33 data the joint legislative audit and review committee deems necessary
34 in determining the economic impacts of this act.

1 NEW SECTION. **Sec. 9.** If any provision of this act or its
2 application to any person or circumstance is held invalid, the
3 remainder of the act or the application of the provision to other
4 persons or circumstances is not affected.

5 NEW SECTION. **Sec. 10.** This act takes effect September 1, 2013.

6 NEW SECTION. **Sec. 11.** This act expires July 1, 2020."

7 Correct the title.

EFFECT: (1) Includes a definition of "economic development" for purposes of tax exempt property owned by a tribe.

(2) Specifies that the property tax exemption applies to tribes that are located within the state.

(3) Creates a mechanism for tribes with tax exempt property used for economic development to make a payment in lieu of the leasehold excise tax if there is no private leasehold in the property to tax.

(4) Requires a five-year economic impact study by the Joint Legislative Audit and Review Committee.

(5) Adds effective date and severability clauses.

(6) Adds an expiration date of seven years.

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