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ENGROSSED SUBSTITUTE HOUSE BILL 1287

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State of Washington

63rd Legislature

2014 Regular Session

**By** House Community Development, Housing & Tribal Affairs (originally sponsored by Representatives Appleton, Dahlquist, Hurst, McCoy, Ryu, Santos, and Pollet)

READ FIRST TIME 01/27/14.

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 82.29A.050, 84.36.010, 84.36.451, and 84.40.230; adding a new section  
5 to chapter 82.29A RCW; adding a new section to chapter 52.30 RCW;  
6 adding a new section to chapter 43.136 RCW; creating a new section;  
7 providing an effective date; and providing an expiration date.

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

9 NEW SECTION. **Sec. 1.** This section is the tax preference  
10 performance statement for the tax preference contained in section 5 of  
11 this act. This performance statement is only intended to be used for  
12 subsequent evaluation of the tax preference. It is not intended to  
13 create a private right of action by any party or be used to determine  
14 eligibility for preferential tax treatment.

15 (1) The legislature categorizes this tax preference as one intended  
16 to create jobs and improve the economic health of tribal communities as  
17 indicated in RCW 82.32.808(2) (c) and (f).

18 (2) It is the legislature's specific public policy objective to  
19 create jobs and improve the economic health of tribal communities. It

1 is the legislature's intent to exempt property used by federally  
2 recognized Indian tribes for economic development purposes, in order to  
3 achieve these policy objectives.

4 (3) The joint legislative audit and review committee must perform  
5 an economic impact report to the legislature as required in section 10  
6 of this act to provide the information necessary to measure the  
7 effectiveness of this act.

8 **Sec. 2.** 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.

19 (c) The legislature finds that lessees of publicly owned property  
20 or community centers are entitled to those same governmental services  
21 and does hereby provide for a leasehold excise tax to fairly compensate  
22 governmental units for services rendered to such lessees of publicly  
23 owned property or community centers. For the purposes of this  
24 subsection, "community center" has the same meaning as provided in RCW  
25 84.36.010.

26 (d) The legislature also finds that eliminating the property tax on  
27 property owned exclusively by federally recognized Indian tribes within  
28 the state requires that the leasehold excise tax also be applied to  
29 leasehold interests on tribally owned property.

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

35 **Sec. 3.** RCW 82.29A.020 and 2012 2nd sp.s. c 6 s 501 are each  
36 amended to read as follows:

1 The definitions in this section apply throughout this chapter  
2 unless the context requires otherwise.

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

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

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

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

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

37 (2)(a) "Taxable rent" means contract rent as defined in (c) of this  
38 subsection in all cases where the lease or agreement has been

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

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

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

32 (d) "Contract rent" does not include: (i) Expenditures made by the  
33 lessee, which under the terms of the lease or agreement, are to be  
34 reimbursed by the lessor to the lessee or expenditures for improvements  
35 and protection made pursuant to a lease or an agreement which requires  
36 that the use of the improved property be open to the general public and  
37 that no profit will inure to the lessee from the lease; (ii)  
38 expenditures made by the lessee for the replacement or repair of

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

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

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

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

1 considered a fair rate of return on the market value of the property  
2 leased less reasonable deductions for any restrictions on use, special  
3 operating requirements or provisions for concurrent use by the lessor,  
4 another person or the general public.

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

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

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

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

25 **Sec. 4.** RCW 82.29A.050 and 1992 c 206 s 6 are each amended to read  
26 as follows:

27 (1) The leasehold excise taxes provided for in RCW 82.29A.030 and  
28 82.29A.040 (~~shall~~) must be paid by the lessee to the lessor and the  
29 lessor (~~shall~~) must collect such tax and remit the same to the  
30 department (~~of revenue~~). The tax (~~shall~~) must be payable at the  
31 same time as payments are due to the lessor for use of the property  
32 from which the leasehold interest arises, and in the case of payment of  
33 contract rent to a person other than the lessor, at the time of  
34 payment. The tax payment (~~shall~~) must be accompanied by such  
35 information as the department (~~of revenue~~) may require. In the case  
36 of prepaid contract rent the payment may be prorated in accordance with

1 instructions of the department (~~(of revenue)~~) and the prorated portion  
2 of the tax (~~(shall be)~~) is due, one-half not later than May 31<sup>st</sup> and  
3 the other half not later than November 30<sup>th</sup> each year.

4 (2) The lessor receiving taxes payable under the provisions of this  
5 chapter (~~(shall)~~) must remit the same together with a return provided  
6 by the department, to the department of revenue on or before the last  
7 day of the month following the month in which the tax is collected.  
8 The department may relieve any taxpayer or class of taxpayers from the  
9 obligation of filing monthly returns and may require the return to  
10 cover other reporting periods, but in no event (~~(shall)~~) may returns be  
11 filed for a period greater than one year. The lessor (~~(shall be)~~) is  
12 fully liable for collection and remittance of the tax. The amount of  
13 tax until paid by the lessee to the lessor (~~(shall)~~) constitutes a debt  
14 from the lessee to the lessor. The tax required by this chapter  
15 (~~(shall)~~) must be stated separately from contract rent, and if not so  
16 separately stated for purposes of determining the tax due from the  
17 lessee to the lessor and from the lessor to the department, the  
18 contract rent does not include the tax imposed by this chapter. Where  
19 a lessee has failed to pay to the lessor the tax imposed by this  
20 chapter and the lessor has not paid the amount of the tax to the  
21 department, the department may, in its discretion, proceed directly  
22 against the lessee for collection of the tax(~~(;—PROVIDED,—That)~~).  
23 However, taxes due where contract rent has not been paid (~~(shall)~~) must  
24 be reported by the lessor to the department and the lessee alone  
25 (~~(shall be)~~) is liable for payment of the tax to the department.

26 (3) Each person having a leasehold interest subject to the tax  
27 provided for in this chapter arising out of a lease of federally owned  
28 or federal trust lands (~~(shall)~~), or property owned by a federally  
29 recognized Indian tribe in the state and exempt from tax under RCW  
30 84.36.010, must report and remit the tax due directly to the department  
31 of revenue in the same manner and at the same time as the lessor would  
32 be required to report and remit the tax if such lessor were a state  
33 public entity.

34 **Sec. 5.** RCW 84.36.010 and 2010 c 281 s 1 are each amended to read  
35 as follows:

36 (1) All property belonging exclusively to the United States, the  
37 state, or any county or municipal corporation; all property belonging

1 exclusively to any federally recognized Indian tribe, if (a) the tribe  
2 is located in the state, (~~if that~~) and (b) the property is used  
3 exclusively for essential government services; all state route number  
4 16 corridor transportation systems and facilities constructed under  
5 chapter 47.46 RCW; all property under a financing contract pursuant to  
6 chapter 39.94 RCW or recorded agreement granting immediate possession  
7 and use to the public bodies listed in this section or under an order  
8 of immediate possession and use pursuant to RCW 8.04.090; and, for a  
9 period of forty years from acquisition, all property of a community  
10 center; is exempt from taxation. All property belonging exclusively to  
11 a foreign national government is exempt from taxation if that property  
12 is used exclusively as an office or residence for a consul or other  
13 official representative of the foreign national government, and if the  
14 consul or other official representative is a citizen of that foreign  
15 nation.

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

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

26 (b) "Essential government services" means services such as tribal  
27 administration, public facilities, fire, police, public health,  
28 education, sewer, water, environmental and land use, transportation,  
29 (~~and~~) utility services, and economic development.

30 (c) "Economic development" means commercial activities, including  
31 those that facilitate the creation or retention of businesses or jobs,  
32 or that improve the standard of living or economic health of tribal  
33 communities.

34 **Sec. 6.** RCW 84.36.451 and 2001 c 26 s 2 are each amended to read  
35 as follows:

36 (1) The following property (~~shall be~~) is exempt from taxation:



1 Any and all rights to occupy or use any real or personal property owned  
2 in fee or held in trust by:

3 (a) The United States, the state of Washington, or any political  
4 subdivision or municipal corporation of the state of Washington, or a  
5 federally recognized Indian tribe for property exempt under RCW  
6 84.36.010; or

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

11 (c) (~~Including~~) Any leasehold interest arising from the property  
12 identified in (a) and (b) of this subsection as defined in RCW  
13 82.29A.020.

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

15 (a) Any such leasehold interests which are a part of operating  
16 properties of public utilities subject to assessment under chapter  
17 84.12 RCW; or

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

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

23 **Sec. 7.** RCW 84.40.230 and 1994 c 124 s 25 are each amended to read  
24 as follows:

25 When any real property is sold on contract by the United States of  
26 America, the state, (~~or~~) any county or municipality, or any federally  
27 recognized Indian tribe, and the contract expresses or implies that the  
28 vendee is entitled to the possession, use, benefits and profits thereof  
29 and therefrom so long as the vendee complies with the terms of the  
30 contract, it (~~shall be~~) is deemed that the vendor retains title  
31 merely as security for the fulfillment of the contract, and the  
32 property (~~shall~~) must be assessed and taxed in the same manner as  
33 other similar property in private ownership is taxed, and the tax roll  
34 (~~shall~~) must contain, opposite the description of the property so  
35 assessed the following notation: "Subject to title remaining in the  
36 vendor" or other notation of similar significance. No foreclosure for  
37 delinquent taxes nor any deed issued pursuant thereto (~~shall~~) may

1 extinguish or otherwise affect the title of the vendor. In any case  
2 under former law where the contract and not the property was taxed no  
3 deed of the property described in such contract (~~shall~~) may ever be  
4 executed and delivered by the state or any county or municipality until  
5 all taxes assessed against such contract and local assessments assessed  
6 against the land described thereon are fully paid.

7 NEW SECTION. Sec. 8. A new section is added to chapter 82.29A RCW  
8 to read as follows:

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

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

14 (b) There is no taxable leasehold interest in the tax exempt  
15 property;

16 (c) The property is located outside of the tribe's reservation; and

17 (d) The property is not otherwise exempt from taxation by federal  
18 law.

19 (2) The amount of the payment in lieu of leasehold excise taxes  
20 must be determined jointly and in good faith negotiation between the  
21 tribe that owns the property and the county in which the property is  
22 located. However, the amount may not exceed the leasehold excise tax  
23 amount that would otherwise be owed by a taxable leasehold interest in  
24 the property.

25 (3) Payment must be made by the tribe to the county. The county  
26 treasurer must distribute all such money collected solely to the local  
27 taxing districts, including cities, in the same proportion that each  
28 local taxing district would have shared if a leasehold excise tax had  
29 been levied.

30 NEW SECTION. Sec. 9. A new section is added to chapter 52.30 RCW  
31 to read as follows:

32 (1) When exempt tribal property is located within the boundaries of  
33 a fire protection district or a regional fire protection service  
34 authority, the fire protection district or authority is authorized to  
35 contract with the tribe for compensation for providing fire protection

1 services in an amount and under such terms as are mutually agreed upon  
2 by the fire protection district or authority and the tribe.

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

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

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

10 NEW SECTION. **Sec. 10.** A new section is added to chapter 43.136  
11 RCW to read as follows:

12 By December 1, 2020, and in compliance with RCW 43.01.036, the  
13 joint legislative audit and review committee must provide an economic  
14 impact report to the legislature evaluating the impacts of changes made  
15 in this act regarding the leasehold tax and property tax treatment of  
16 property owned by a federally recognized Indian tribe. The economic  
17 impact report must indicate: The number of parcels and uses of land  
18 involved; the economic impacts to tribal governments; state and local  
19 government revenue reductions, increases, and shifts from all tax  
20 sources affected; impacts on public infrastructure and public services;  
21 impacts on business investment and business competition; a description  
22 of the types of business activities affected; impacts on the number of  
23 jobs created or lost; and any other data the joint legislative audit  
24 and review committee deems necessary in determining the economic  
25 impacts of this act.

26 NEW SECTION. **Sec. 11.** If any provision of this act or its  
27 application to any person or circumstance is held invalid, the  
28 remainder of the act or the application of the provision to other  
29 persons or circumstances is not affected.

30 NEW SECTION. **Sec. 12.** This act takes effect January 1, 2015.

31 NEW SECTION. **Sec. 13.** This act expires July 1, 2022.

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