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HOUSE BILL 1287

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State of Washington                      63rd Legislature                      2013 Regular Session

By Representatives Appleton, Dahlquist, Hurst, McCoy, Ryu, Santos, and Pollet

Read first time 01/22/13. Referred to Committee on Community Development, Housing & Tribal Affairs.

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; and amending RCW 82.29A.010, 82.29A.020,  
4 84.36.010, 84.36.451, and 84.40.230.

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

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

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

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

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

1 governmental units for services rendered to such lessees of publicly  
2 owned property or community centers. For the purposes of this  
3 subsection, "community center" has the same meaning as provided in RCW  
4 84.36.010.

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

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

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

16 The definitions in this section apply throughout this chapter  
17 unless the context requires otherwise.

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

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

36 (i) Road or utility easements, rights of access, occupancy, or use  
37 granted solely for the purpose of removing materials or products

1 purchased from a public owner or the lessee of a public owner, or  
2 rights of access, occupancy, or use granted solely for the purpose of  
3 natural energy resource exploration(~~(.—"Leasehold interest" does not~~  
4 ~~include)); or~~

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

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

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

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

36 (c) "Contract rent" means the amount of consideration due as  
37 payment for a leasehold interest, including: The total of cash  
38 payments made to the lessor or to another party for the benefit of the

1 lessor according to the requirements of the lease or agreement,  
2 including any rents paid by a sublessee; expenditures for the  
3 protection of the lessor's interest when required by the terms of the  
4 lease or agreement; and expenditures for improvements to the property  
5 to the extent that such improvements become the property of the lessor.  
6 Where the consideration conveyed for the leasehold interest is made in  
7 combination with payment for concession or other rights granted by the  
8 lessor, only that portion of such payment which represents  
9 consideration for the leasehold interest is part of contract rent.

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

30 (e) Any prepaid contract rent is considered to have been paid in  
31 the year due and not in the year actually paid with respect to  
32 prepayment for a period of more than one year. Expenditures for  
33 improvements with a useful life of more than one year which are  
34 included as part of contract rent must be treated as prepaid contract  
35 rent and prorated over the useful life of the improvement or the  
36 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  
38 prior to January 1, 1976, must be prorated from the date of prepayment.

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

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

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

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

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

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

37 (6) "Products" includes natural resource products such as cut or

1 picked evergreen foliage, Cascara bark, wild edible mushrooms, native  
2 ornamental trees and shrubs, ore and minerals, natural gas, geothermal  
3 water and steam, and forage removed through the grazing of livestock.

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

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

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

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

32 (b) "Essential government services" means services such as tribal  
33 administration, public facilities, fire, police, public health,  
34 education, sewer, water, environmental and land use, transportation,  
35 ~~((and))~~ utility services, and economic development.

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

3       (1) The following property shall be exempt from taxation: Any and  
4 all rights to occupy or use any real or personal property owned in fee  
5 or held in trust by:

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

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

14       (c) (~~Including~~) Any leasehold interest arising from the property  
15 identified in (a) and (b) of this subsection as defined in RCW  
16 82.29A.020.

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

18       (a) Any such leasehold interests which are a part of operating  
19 properties of public utilities subject to assessment under chapter  
20 84.12 RCW; or

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

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

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

28       When any real property is sold on contract by the United States of  
29 America, the state, (~~or~~) any county or municipality, or any federally  
30 recognized Indian tribe, and the contract expresses or implies that the  
31 vendee is entitled to the possession, use, benefits and profits thereof  
32 and therefrom so long as the vendee complies with the terms of the  
33 contract, it (~~shall be~~) is deemed that the vendor retains title  
34 merely as security for the fulfillment of the contract, and the  
35 property (~~shall~~) must be assessed and taxed in the same manner as  
36 other similar property in private ownership is taxed, and the tax roll  
37 (~~shall~~) must contain, opposite the description of the property so

1 assessed the following notation: "Subject to title remaining in the  
2 vendor" or other notation of similar significance. No foreclosure for  
3 delinquent taxes nor any deed issued pursuant thereto (~~shall~~) may  
4 extinguish or otherwise affect the title of the vendor. In any case  
5 under former law where the contract and not the property was taxed no  
6 deed of the property described in such contract (~~shall~~) may ever be  
7 executed and delivered by the state or any county or municipality until  
8 all taxes assessed against such contract and local assessments assessed  
9 against the land described thereon are fully paid.

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