

2 **ESSB 5661** - H COMM AMD **ADOPTED 04/09/99**

3 By Committee on Finance

4

5 Strike everything after the enacting clause and insert the  
6 following:

7 "**Sec. 1.** RCW 82.29A.010 and 1975-'76 2nd ex.s. c 61 s 1 are each  
8 amended to read 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 are entitled to those same governmental services and does hereby  
20 provide for a leasehold excise tax to fairly compensate governmental  
21 units for services rendered to such lessees of publicly owned property.

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

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

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

32 (1) "Leasehold interest" shall mean an interest in publicly owned  
33 real or personal property which exists by virtue of any lease, permit,  
34 license, or any other agreement, written or verbal, between the public  
35 owner of the property and a person who would not be exempt from

1 property taxes if that person owned the property in fee, granting  
2 possession and use, to a degree less than fee simple ownership:  
3 PROVIDED, That no interest in personal property (excluding land or  
4 buildings) which is owned by the United States, whether or not as  
5 trustee, or by any foreign government shall constitute a leasehold  
6 interest hereunder when the right to use such property is granted  
7 pursuant to a contract solely for the manufacture or production of  
8 articles for sale to the United States or any foreign government. The  
9 term "leasehold interest" shall include the rights of use or occupancy  
10 by others of property which is owned in fee or held in trust by a  
11 public corporation, commission, or authority created under RCW  
12 35.21.730 or 35.21.660 if the property is listed on or is within a  
13 district listed on any federal or state register of historical sites.  
14 The term "leasehold interest" shall not include road or utility  
15 easements ((or)), rights of access, occupancy, or use granted solely  
16 for the purpose of removing materials or products purchased from a  
17 public owner or the lessee of a public owner, or rights of access,  
18 occupancy, or use granted solely for the purpose of natural energy  
19 resource exploration.

20 (2) "Taxable rent" shall mean contract rent as defined in  
21 subsection (a) of this subsection in all cases where the lease or  
22 agreement has been established or renegotiated through competitive  
23 bidding, or negotiated or renegotiated in accordance with statutory  
24 requirements regarding the rent payable, or negotiated or renegotiated  
25 under circumstances, established by public record, clearly showing that  
26 the contract rent was the maximum attainable by the lessor: PROVIDED,  
27 That after January 1, 1986, with respect to any lease which has been in  
28 effect for ten years or more without renegotiation, taxable rent may be  
29 established by procedures set forth in subsection (b) of this  
30 subsection. All other leasehold interests shall be subject to the  
31 determination of taxable rent under the terms of subsection (b) of this  
32 subsection.

33 For purposes of determining leasehold excise tax on any lands on  
34 the Hanford reservation subleased to a private or public entity by the  
35 department of ecology, taxable rent shall include only the annual cash  
36 rental payment made by such entity to the department of ecology as  
37 specifically referred to as rent in the sublease agreement between the  
38 parties and shall not include any other fees, assessments, or charges  
39 imposed on or collected by such entity irrespective of whether the

1 private or public entity pays or collects such other fees, assessments,  
2 or charges as specified in the sublease agreement.

3 (a) "Contract rent" shall mean the amount of consideration due as  
4 payment for a leasehold interest, including: The total of cash  
5 payments made to the lessor or to another party for the benefit of the  
6 lessor according to the requirements of the lease or agreement,  
7 including any rents paid by a sublessee; expenditures for the  
8 protection of the lessor's interest when required by the terms of the  
9 lease or agreement; and expenditures for improvements to the property  
10 to the extent that such improvements become the property of the lessor.  
11 Where the consideration conveyed for the leasehold interest is made in  
12 combination with payment for concession or other rights granted by the  
13 lessor, only that portion of such payment which represents  
14 consideration for the leasehold interest shall be part of contract  
15 rent.

16 "Contract rent" shall not include: (i) Expenditures made by the  
17 lessee, which under the terms of the lease or agreement, are to be  
18 reimbursed by the lessor to the lessee or expenditures for improvements  
19 and protection made pursuant to a lease or an agreement which requires  
20 that the use of the improved property be open to the general public and  
21 that no profit will inure to the lessee from the lease; (ii)  
22 expenditures made by the lessee for the replacement or repair of  
23 facilities due to fire or other casualty including payments for  
24 insurance to provide reimbursement for losses or payments to a public  
25 or private entity for protection of such property from damage or loss  
26 or for alterations or additions made necessary by an action of  
27 government taken after the date of the execution of the lease or  
28 agreement; (iii) improvements added to publicly owned property by a  
29 sublessee under an agreement executed prior to January 1, 1976, which  
30 have been taxed as personal property of the sublessee prior to January  
31 1, 1976, or improvements made by a sublessee of the same lessee under  
32 a similar agreement executed prior to January 1, 1976, and such  
33 improvements shall be taxable to the sublessee as personal property;  
34 (iv) improvements added to publicly owned property if such improvements  
35 are being taxed as personal property to any person.

36 Any prepaid contract rent shall be considered to have been paid in  
37 the year due and not in the year actually paid with respect to  
38 prepayment for a period of more than one year. Expenditures for  
39 improvements with a useful life of more than one year which are

1 included as part of contract rent shall be treated as prepaid contract  
2 rent and prorated over the useful life of the improvement or the  
3 remaining term of the lease or agreement if the useful life is in  
4 excess of the remaining term of the lease or agreement. Rent prepaid  
5 prior to January 1, 1976, shall be prorated from the date of  
6 prepayment.

7 With respect to a "product lease", the value (~~(of agricultural~~  
8 ~~products received as rent shall be the value at the place of delivery~~  
9 ~~as of the fifteenth day of the month of delivery; with respect to all~~  
10 ~~other products received as contract rent, the value)) shall be that  
11 value determined at the time of sale under terms of the lease.~~

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

23 (i) Consideration shall be given to rental being paid to other lessors  
24 by lessees of similar property for similar purposes over similar  
25 periods of time; (ii) consideration shall be given to what would be  
26 considered a fair rate of return on the market value of the property  
27 leased less reasonable deductions for any restrictions on use, special  
28 operating requirements or provisions for concurrent use by the lessor,  
29 another person or the general public.

30 (3) "Product lease" as used in this chapter shall mean a lease of  
31 property for use in the production of agricultural or marine products  
32 to the extent that such lease provides for the contract rent to be paid  
33 by the delivery of a stated percentage of the production of such  
34 agricultural or marine products to the credit of the lessor or the  
35 payment to the lessor of a stated percentage of the proceeds from the  
36 sale of such products.

37 (4) "Renegotiated" means a change in the lease agreement which  
38 changes the agreed time of possession, restrictions on use, the rate of  
39 the cash rental or of any other consideration payable by the lessee to

1 or for the benefit of the lessor, other than any such change required  
2 by the terms of the lease or agreement. In addition "renegotiated"  
3 shall mean a continuation of possession by the lessee beyond the date  
4 when, under the terms of the lease agreement, the lessee had the right  
5 to vacate the premises without any further liability to the lessor.

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

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

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