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**SUBSTITUTE SENATE BILL 5154**

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**State of Washington**

**59th Legislature**

**2005 Regular Session**

**By** Senate Committee on Government Operations & Elections (originally sponsored by Senators Pridemore and Zarelli)

READ FIRST TIME 02/07/05.

1       AN ACT Relating to a leasehold excise tax exemption for certain  
2 historical property; and amending RCW 82.29A.130 and 82.29A.020.

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

4       **Sec. 1.** RCW 82.29A.130 and 1999 c 165 s 21 are each amended to  
5 read as follows:

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

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

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

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

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

11 (5) All leasehold interests in any property of any public entity  
12 used as a residence by an employee of that public entity who is  
13 required as a condition of employment to live in the publicly owned  
14 property.

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

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

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

33 (9) All leasehold interests which give use or possession of the  
34 leased property for a continuous period of less than thirty days:  
35 PROVIDED, That for purposes of this subsection, successive leases or  
36 lease renewals giving substantially continuous use of possession of the  
37 same property to the same lessee shall be deemed a single leasehold  
38 interest: PROVIDED FURTHER, That no leasehold interest shall be deemed

1 to give use or possession for a period of less than thirty days solely  
2 by virtue of the reservation by the public lessor of the right to use  
3 the property or to allow third parties to use the property on an  
4 occasional, temporary basis.

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

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

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

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

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

1 other public usage, and any other personal property used for these  
2 purposes. "Public or entertainment areas" does not include locker  
3 rooms or private offices exclusively used by the lessee.

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

9 (16) All leasehold interests in public facilities districts, as  
10 provided in chapter 36.100 or 35.57 RCW.

11 (17) All leasehold interests in property that is: (a) Owned by a  
12 municipal corporation; (b) listed on any federal or state register of  
13 historical sites; and (c) wholly contained within a designated national  
14 historic reserve under 16 U.S.C. Sec. 461.

15 **Sec. 2.** RCW 82.29A.020 and 1999 c 220 s 2 are each amended to read  
16 as follows:

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

19 (1) "Leasehold interest" shall mean an interest in publicly owned  
20 real or personal property which exists by virtue of any lease, permit,  
21 license, or any other agreement, written or verbal, between the public  
22 owner of the property and a person who would not be exempt from  
23 property taxes if that person owned the property in fee, granting  
24 possession and use, to a degree less than fee simple ownership:  
25 PROVIDED, That no interest in personal property (excluding land or  
26 buildings) which is owned by the United States, whether or not as  
27 trustee, or by any foreign government shall constitute a leasehold  
28 interest hereunder when the right to use such property is granted  
29 pursuant to a contract solely for the manufacture or production of  
30 articles for sale to the United States or any foreign government.

31 ~~((The term "leasehold interest" shall include the rights of use or~~  
32 ~~occupancy by others of property which is owned in fee or held in trust~~  
33 ~~by a public corporation, commission, or authority created under RCW~~  
34 ~~35.21.730 or 35.21.660 if the property is listed on or is within a~~  
35 ~~district listed on any federal or state register of historical sites.))~~

36 The term "leasehold interest" shall not include road or utility  
37 easements, rights of access, occupancy, or use granted solely for the

1 purpose of removing materials or products purchased from a public owner  
2 or the lessee of a public owner, or rights of access, occupancy, or use  
3 granted solely for the purpose of natural energy resource exploration.

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

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

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

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

21 Any prepaid contract rent shall be considered to have been paid in  
22 the year due and not in the year actually paid with respect to  
23 prepayment for a period of more than one year. Expenditures for  
24 improvements with a useful life of more than one year which are  
25 included as part of contract rent shall be treated as prepaid contract  
26 rent and prorated over the useful life of the improvement or the  
27 remaining term of the lease or agreement if the useful life is in  
28 excess of the remaining term of the lease or agreement. Rent prepaid  
29 prior to January 1, 1976, shall be prorated from the date of  
30 prepayment.

31 With respect to a "product lease", the value shall be that value  
32 determined at the time of sale under terms of the lease.

33 (b) If it shall be determined by the department of revenue, upon  
34 examination of a lessee's accounts or those of a lessor of publicly  
35 owned property, that a lessee is occupying or using publicly owned  
36 property in such a manner as to create a leasehold interest and that  
37 such leasehold interest has not been established through competitive  
38 bidding, or negotiated in accordance with statutory requirements

1 regarding the rent payable, or negotiated under circumstances,  
2 established by public record, clearly showing that the contract rent  
3 was the maximum attainable by the lessor, the department may establish  
4 a taxable rent computation for use in determining the tax payable under  
5 authority granted in this chapter based upon the following criteria:  
6 (i) Consideration shall be given to rental being paid to other lessors  
7 by lessees of similar property for similar purposes over similar  
8 periods of time; (ii) consideration shall be given to what would be  
9 considered a fair rate of return on the market value of the property  
10 leased less reasonable deductions for any restrictions on use, special  
11 operating requirements or provisions for concurrent use by the lessor,  
12 another person or the general public.

13 (3) "Product lease" as used in this chapter shall mean a lease of  
14 property for use in the production of agricultural or marine products  
15 to the extent that such lease provides for the contract rent to be paid  
16 by the delivery of a stated percentage of the production of such  
17 agricultural or marine products to the credit of the lessor or the  
18 payment to the lessor of a stated percentage of the proceeds from the  
19 sale of such products.

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

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

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

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