
SENATE BILL 5305

State of Washington

62nd Legislature

2011 Regular Session

By Senators Chase and Swecker

Read first time 01/20/11. Referred to Committee on Government Operations, Tribal Relations & Elections.

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 84.36.010, 84.36.451, and 84.40.230; and adding a new section to
5 chapter 52.30 RCW.

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

7 **Sec. 1.** RCW 82.29A.010 and 2010 c 281 s 2 are each amended to read
8 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 or community centers are entitled to those same governmental services

1 and does hereby provide for a leasehold excise tax to fairly compensate
2 governmental units for services rendered to such lessees of publicly
3 owned property or community centers. For the purposes of this
4 subsection, "community center" has the same meaning as provided in RCW
5 84.36.010.

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

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

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. The
31 term "leasehold interest" shall include the rights of use or occupancy
32 by others of property which is owned in fee or held in trust by a
33 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 "Publicly owned real or personal property" includes real or personal
5 property owned by a federally recognized Indian tribe in the state and
6 exempt from tax under RCW 84.36.010.

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

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

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

1 lessor, only that portion of such payment which represents
2 consideration for the leasehold interest shall be part of contract
3 rent.

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

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

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

36 (b) If it shall be determined by the department of revenue, upon
37 examination of a lessee's accounts or those of a lessor of publicly
38 owned property, that a lessee is occupying or using publicly owned

1 property in such a manner as to create a leasehold interest and that
2 such leasehold interest has not been established through competitive
3 bidding, or negotiated in accordance with statutory requirements
4 regarding the rent payable, or negotiated under circumstances,
5 established by public record, clearly showing that the contract rent
6 was the maximum attainable by the lessor, the department may establish
7 a taxable rent computation for use in determining the tax payable under
8 authority granted in this chapter based upon the following criteria:
9 (i) Consideration shall be given to rental being paid to other lessors
10 by lessees of similar property for similar purposes over similar
11 periods of time; (ii) consideration shall be given to what would be
12 considered a fair rate of return on the market value of the property
13 leased less reasonable deductions for any restrictions on use, special
14 operating requirements or provisions for concurrent use by the lessor,
15 another person or the general public.

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

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

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

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

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

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

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

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

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

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

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

36 (a) The United States, the state of Washington, or any political

1 subdivision or municipal corporation of the state of Washington, or a
2 federally recognized Indian tribe for property exempt under RCW
3 84.36.010; or

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

8 (c) (~~Including~~) Any leasehold interest arising from the property
9 identified in (a) and (b) of this subsection as defined in RCW
10 82.29A.020.

11 (2) The exemption under this section shall not apply to:

12 (a) Any such leasehold interests which are a part of operating
13 properties of public utilities subject to assessment under chapter
14 84.12 RCW; or

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

18 (3) The exemption under this section shall not be construed to
19 modify the provisions of RCW 84.40.230.

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

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

1 shall ever be executed and delivered by the state or any county or
2 municipality until all taxes assessed against such contract and local
3 assessments assessed against the land described thereon are fully paid.

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

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

12 (2) For the purposes of this section, the following definitions
13 apply unless the context clearly requires otherwise:

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

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

--- END ---