

SHB 1287 - H AMD 653

By Representative Appleton

ADOPTED 02/14/2014

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** This section is the tax preference
4 performance statement for the tax preference contained in section 5 of
5 this act. This performance statement is only intended to be used for
6 subsequent evaluation of the tax preference. It is not intended to
7 create a private right of action by any party or be used to determine
8 eligibility for preferential tax treatment.

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

12 (2) It is the legislature's specific public policy objective to
13 create jobs and improve the economic health of tribal communities. It
14 is the legislature's intent to exempt property used by federally
15 recognized Indian tribes for economic development purposes, in order to
16 achieve these policy objectives.

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

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

23 (1)(a) The legislature hereby recognizes that properties of the
24 state of Washington, counties, school districts, and other municipal
25 corporations are exempted by Article 7, section 1 of the state
26 Constitution from property tax obligations, but that private lessees of
27 such public properties receive substantial benefits from governmental
28 services provided by units of government.

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

4 (c) The legislature finds that lessees of publicly owned property
5 or community centers are entitled to those same governmental services
6 and does hereby provide for a leasehold excise tax to fairly compensate
7 governmental units for services rendered to such lessees of publicly
8 owned property or community centers. For the purposes of this
9 subsection, "community center" has the same meaning as provided in RCW
10 84.36.010.

11 (d) The legislature also finds that eliminating the property tax on
12 property owned exclusively by federally recognized Indian tribes within
13 the state requires that the leasehold excise tax also be applied to
14 leasehold interests on tribally owned property.

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

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

22 The definitions in this section apply throughout this chapter
23 unless the context requires otherwise.

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

1 authority created under RCW 35.21.730 or 35.21.660 if the property is
2 listed on or is within a district listed on any federal or state
3 register of historical sites.

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

5 (i) Road or utility easements, rights of access, occupancy, or use
6 granted solely for the purpose of removing materials or products
7 purchased from a public owner or the lessee of a public owner, or
8 rights of access, occupancy, or use granted solely for the purpose of
9 natural energy resource exploration(~~(.—"Leasehold interest" does not~~
10 include)); or

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

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

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

33 (b) For purposes of determining leasehold excise tax on any lands
34 on the Hanford reservation subleased to a private or public entity by
35 the department of ecology, taxable rent includes 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 does not include any other fees, assessments, or charges

1 imposed on or collected by such entity irrespective of whether the
2 private or public entity pays or collects such other fees, assessments,
3 or charges as specified in the sublease agreement.

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

16 (d) "Contract rent" does 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 are taxable to the sublessee as personal property; (iv)
34 improvements added to publicly owned property if such improvements are
35 being taxed as personal property to any person.

36 (e) Any prepaid contract rent is 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

1 improvements with a useful life of more than one year which are
2 included as part of contract rent must be treated as prepaid contract
3 rent and prorated over the useful life of the improvement or the
4 remaining term of the lease or agreement if the useful life is in
5 excess of the remaining term of the lease or agreement. Rent prepaid
6 prior to January 1, 1976, must be prorated from the date of prepayment.

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

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

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

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

34 (4) "Renegotiated" means a change in the lease agreement which
35 changes the agreed time of possession, restrictions on use, the rate of
36 the cash rental or of any other consideration payable by the lessee to
37 or for the benefit of the lessor, other than any such change required
38 by the terms of the lease or agreement. In addition "renegotiated"

1 means a continuation of possession by the lessee beyond the date when,
2 under the terms of the lease agreement, the lessee had the right to
3 vacate the premises without any further liability to the lessor.

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

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

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

11 (1) The leasehold excise taxes provided for in RCW 82.29A.030 and
12 82.29A.040 (~~shall~~) must be paid by the lessee to the lessor and the
13 lessor (~~shall~~) must collect such tax and remit the same to the
14 department (~~of revenue~~). The tax (~~shall~~) must be payable at the
15 same time as payments are due to the lessor for use of the property
16 from which the leasehold interest arises, and in the case of payment of
17 contract rent to a person other than the lessor, at the time of
18 payment. The tax payment (~~shall~~) must be accompanied by such
19 information as the department (~~of revenue~~) may require. In the case
20 of prepaid contract rent the payment may be prorated in accordance with
21 instructions of the department (~~of revenue~~) and the prorated portion
22 of the tax (~~shall be~~) is due, one-half not later than May 31st and
23 the other half not later than November 30th each year.

24 (2) The lessor receiving taxes payable under the provisions of this
25 chapter (~~shall~~) must remit the same together with a return provided
26 by the department, to the department of revenue on or before the last
27 day of the month following the month in which the tax is collected.
28 The department may relieve any taxpayer or class of taxpayers from the
29 obligation of filing monthly returns and may require the return to
30 cover other reporting periods, but in no event (~~shall~~) may returns be
31 filed for a period greater than one year. The lessor (~~shall be~~) is
32 fully liable for collection and remittance of the tax. The amount of
33 tax until paid by the lessee to the lessor (~~shall~~) constitutes a debt
34 from the lessee to the lessor. The tax required by this chapter
35 (~~shall~~) must be stated separately from contract rent, and if not so
36 separately stated for purposes of determining the tax due from the
37 lessee to the lessor and from the lessor to the department, the

1 contract rent does not include the tax imposed by this chapter. Where
2 a lessee has failed to pay to the lessor the tax imposed by this
3 chapter and the lessor has not paid the amount of the tax to the
4 department, the department may, in its discretion, proceed directly
5 against the lessee for collection of the tax(~~(+—PROVIDED, That)~~).
6 However, taxes due where contract rent has not been paid (~~(shall)~~) must
7 be reported by the lessor to the department and the lessee alone
8 (~~(shall be)~~) is liable for payment of the tax to the department.

9 (3) Each person having a leasehold interest subject to the tax
10 provided for in this chapter arising out of a lease of federally owned
11 or federal trust lands (~~(shall)~~), or property owned by a federally
12 recognized Indian tribe in the state and exempt from tax under RCW
13 84.36.010, must report and remit the tax due directly to the department
14 of revenue in the same manner and at the same time as the lessor would
15 be required to report and remit the tax if such lessor were a state
16 public entity.

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

19 (1) All property belonging exclusively to the United States, the
20 state, or any county or municipal corporation; all property belonging
21 exclusively to any federally recognized Indian tribe, if (a) the tribe
22 is located in the state, (~~(if that)~~) and (b) the property is used
23 exclusively for essential government services; all state route number
24 16 corridor transportation systems and facilities constructed under
25 chapter 47.46 RCW; all property under a financing contract pursuant to
26 chapter 39.94 RCW or recorded agreement granting immediate possession
27 and use to the public bodies listed in this section or under an order
28 of immediate possession and use pursuant to RCW 8.04.090; and, for a
29 period of forty years from acquisition, all property of a community
30 center; is exempt from taxation. All property belonging exclusively to
31 a foreign national government is exempt from taxation if that property
32 is used exclusively as an office or residence for a consul or other
33 official representative of the foreign national government, and if the
34 consul or other official representative is a citizen of that foreign
35 nation.

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

1 (a) "Community center" means property, including a building or
2 buildings, determined to be surplus to the needs of a district by a
3 local school board, and purchased or acquired by a nonprofit
4 organization for the purposes of converting them into community
5 facilities for the delivery of nonresidential coordinated services for
6 community members. The community center may make space available to
7 businesses, individuals, or other parties through the loan or rental of
8 space in or on the property.

9 (b) "Essential government services" means services such as tribal
10 administration, public facilities, fire, police, public health,
11 education, sewer, water, environmental and land use, transportation,
12 ~~((and))~~ utility services, and economic development.

13 (c) "Economic development" means commercial activities, including
14 those that facilitate the creation or retention of businesses or jobs,
15 or that improve the standard of living or economic health of tribal
16 communities.

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

19 (1) The following property ~~((shall be))~~ is exempt from taxation:
20 Any and all rights to occupy or use any real or personal property owned
21 in fee or held in trust by:

22 (a) The United States, the state of Washington, or any political
23 subdivision or municipal corporation of the state of Washington, or a
24 federally recognized Indian tribe for property exempt under RCW
25 84.36.010; or

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

30 ~~((Including))~~ Any leasehold interest arising from the property
31 identified in (a) and (b) of this subsection as defined in RCW
32 82.29A.020.

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

34 (a) Any such leasehold interests which are a part of operating
35 properties of public utilities subject to assessment under chapter
36 84.12 RCW; or

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

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

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

8 When any real property is sold on contract by the United States of
9 America, the state, (~~or~~) any county or municipality, or any federally
10 recognized Indian tribe, and the contract expresses or implies that the
11 vendee is entitled to the possession, use, benefits and profits thereof
12 and therefrom so long as the vendee complies with the terms of the
13 contract, it (~~shall be~~) is deemed that the vendor retains title
14 merely as security for the fulfillment of the contract, and the
15 property (~~shall~~) must be assessed and taxed in the same manner as
16 other similar property in private ownership is taxed, and the tax roll
17 (~~shall~~) must contain, opposite the description of the property so
18 assessed the following notation: "Subject to title remaining in the
19 vendor" or other notation of similar significance. No foreclosure for
20 delinquent taxes nor any deed issued pursuant thereto (~~shall~~) may
21 extinguish or otherwise affect the title of the vendor. In any case
22 under former law where the contract and not the property was taxed no
23 deed of the property described in such contract (~~shall~~) may ever be
24 executed and delivered by the state or any county or municipality until
25 all taxes assessed against such contract and local assessments assessed
26 against the land described thereon are fully paid.

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

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

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

34 (b) There is no taxable leasehold interest in the tax exempt
35 property;

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

1 (d) The property is not otherwise exempt from taxation by federal
2 law.

3 (2) The amount of the payment in lieu of leasehold excise taxes
4 must be determined jointly and in good faith negotiation between the
5 tribe that owns the property and the county in which the property is
6 located. However, the amount may not exceed the leasehold excise tax
7 amount that would otherwise be owed by a taxable leasehold interest in
8 the property.

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

14 NEW SECTION. **Sec. 9.** A new section is added to chapter 52.30 RCW
15 to read as follows:

16 (1) When exempt tribal property is located within the boundaries of
17 a fire protection district or a regional fire protection service
18 authority, the fire protection district or authority is authorized to
19 contract with the tribe for compensation for providing fire protection
20 services in an amount and under such terms as are mutually agreed upon
21 by the fire protection district or authority and the tribe.

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

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

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

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

31 By December 1, 2020, and in compliance with RCW 43.01.036, the
32 joint legislative audit and review committee must provide an economic
33 impact report to the legislature evaluating the impacts of changes made
34 in this act regarding the leasehold tax and property tax treatment of
35 property owned by a federally recognized Indian tribe. The economic
36 impact report must indicate: The number of parcels and uses of land

1 involved; the economic impacts to tribal governments; state and local
2 government revenue reductions, increases, and shifts from all tax
3 sources affected; impacts on public infrastructure and public services;
4 impacts on business investment and business competition; a description
5 of the types of business activities affected; impacts on the number of
6 jobs created or lost; and any other data the joint legislative audit
7 and review committee deems necessary in determining the economic
8 impacts of this act.

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

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

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

15 Correct the title.

EFFECT: (1) Adds a tax preference performance statement; and (2)
clarifies that cities are included as local taxing districts that
receive a proportional share of the payment in lieu of taxes.

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