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**SUBSTITUTE SENATE BILL 6162**

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**State of Washington**

**63rd Legislature**

**2014 Regular Session**

**By** Senate Governmental Operations (originally sponsored by Senators Litzow, Rolfes, Fain, Sheldon, McCoy, Hasegawa, McAuliffe, Conway, and Kline)

READ FIRST TIME 02/07/14.

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 82.29A.050, 84.36.010, 84.36.451, and 84.40.230; adding a new section  
5 to chapter 82.29A RCW; adding a new section to chapter 52.30 RCW;  
6 adding a new section to chapter 43.136 RCW; providing an effective  
7 date; and providing an expiration date.

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

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

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

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

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

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

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

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

19 The definitions in this section apply throughout this chapter  
20 unless the context requires otherwise.

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

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

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

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

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

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

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

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

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

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

1 remaining term of the lease or agreement if the useful life is in  
2 excess of the remaining term of the lease or agreement. Rent prepaid  
3 prior to January 1, 1976, must be prorated from the date of prepayment.

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

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

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

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

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

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

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

6 **Sec. 3.** RCW 82.29A.050 and 1992 c 206 s 6 are each amended to read  
7 as follows:

8 (1) The leasehold excise taxes provided for in RCW 82.29A.030 and  
9 82.29A.040 (~~shall~~) must be paid by the lessee to the lessor and the  
10 lessor (~~shall~~) must collect such tax and remit the same to the  
11 department (~~of revenue~~). The tax (~~shall~~) must be payable at the  
12 same time as payments are due to the lessor for use of the property  
13 from which the leasehold interest arises, and in the case of payment of  
14 contract rent to a person other than the lessor, at the time of  
15 payment. The tax payment (~~shall~~) must be accompanied by such  
16 information as the department (~~of revenue~~) may require. In the case  
17 of prepaid contract rent the payment may be prorated in accordance with  
18 instructions of the department (~~of revenue~~) and the prorated portion  
19 of the tax (~~shall be~~) is due, one-half not later than May 31<sup>st</sup> and  
20 the other half not later than November 30<sup>th</sup> each year.

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

1 department, the department may, in its discretion, proceed directly  
2 against the lessee for collection of the tax(~~(+---PROVIDED, That)~~).  
3 However, taxes due where contract rent has not been paid (~~(shall)~~) must  
4 be reported by the lessor to the department and the lessee alone  
5 (~~(shall be)~~) is liable for payment of the tax to the department.

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

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

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

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

35 (a) "Community center" means property, including a building or  
36 buildings, determined to be surplus to the needs of a district by a  
37 local school board, and purchased or acquired by a nonprofit

1 organization for the purposes of converting them into community  
2 facilities for the delivery of nonresidential coordinated services for  
3 community members. The community center may make space available to  
4 businesses, individuals, or other parties through the loan or rental of  
5 space in or on the property.

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

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

14 **Sec. 5.** RCW 84.36.451 and 2001 c 26 s 2 are each amended to read  
15 as follows:

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

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

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

27 (c) (~~Including~~) Any leasehold interest arising from the property  
28 identified in (a) and (b) of this subsection as defined in RCW  
29 82.29A.020.

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

31 (a) Any such leasehold interests which are a part of operating  
32 properties of public utilities subject to assessment under chapter  
33 84.12 RCW; or

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



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

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

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

24 NEW SECTION. **Sec. 7.** A new section is added to chapter 82.29A RCW  
25 to read as follows:

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

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

31 (b) There is no taxable leasehold interest in the tax exempt  
32 property;

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

34 (d) The property is not otherwise exempt from taxation by federal  
35 law.

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

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

11 NEW SECTION. **Sec. 8.** A new section is added to chapter 52.30 RCW  
12 to read as follows:

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

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

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

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

26 NEW SECTION. **Sec. 9.** A new section is added to chapter 43.136 RCW  
27 to read as follows:

28 By December 1, 2020, and in compliance with RCW 43.01.036, the  
29 joint legislative audit and review committee must provide an economic  
30 impact report to the legislature evaluating the impacts of changes made  
31 in this act regarding the leasehold tax and property tax treatment of  
32 property owned by a federally recognized Indian tribe. The economic  
33 impact report must indicate: The number of parcels and uses of land  
34 involved; the economic impacts to tribal governments; state and local  
35 government revenue reductions, increases, and shifts from all tax  
36 sources affected; impacts on public infrastructure and public services;

1 impacts on business investment and business competition; a description  
2 of the types of business activities affected; impacts on the number of  
3 jobs created or lost; and any other data the joint legislative audit  
4 and review committee deems necessary in determining the economic  
5 impacts of this act.

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

10 NEW SECTION. **Sec. 11.** This act takes effect January 1, 2015.

11 NEW SECTION. **Sec. 12.** This act expires July 1, 2022.

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