

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE HOUSE BILL 1287

Chapter 207, Laws of 2014

63rd Legislature
2014 Regular Session

PROPERTY TAXES--TRIBAL PROPERTY

EFFECTIVE DATE: 06/12/14

Passed by the House March 11, 2014
Yeas 61 Nays 37

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate March 7, 2014
Yeas 37 Nays 12

BRAD OWEN

President of the Senate

Approved April 3, 2014, 11:10 a.m.

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 1287** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER

Chief Clerk

FILED

April 4, 2014

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE HOUSE BILL 1287

AS AMENDED BY THE SENATE

Passed Legislature - 2014 Regular Session

State of Washington 63rd Legislature 2014 Regular Session

By House Community Development, Housing & Tribal Affairs (originally sponsored by Representatives Appleton, Dahlquist, Hurst, McCoy, Ryu, Santos, and Pollet)

READ FIRST TIME 01/27/14.

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 84.36 RCW;
6 adding a new section to chapter 52.30 RCW; adding a new section to
7 chapter 43.136 RCW; creating new sections; providing an effective date;
8 and providing an expiration date.

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

10 NEW SECTION. **Sec. 1.** This section is the tax preference
11 performance statement for the tax preference contained in section 5 of
12 this act. This performance statement is only intended to be used for
13 subsequent evaluation of the tax preference. It is not intended to
14 create a private right of action by any party or be used to determine
15 eligibility for preferential tax treatment.

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

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

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

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

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

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

21 (c) The legislature finds that lessees of publicly owned property
22 or community centers are entitled to those same governmental services
23 and does hereby provide for a leasehold excise tax to fairly compensate
24 governmental units for services rendered to such lessees of publicly
25 owned property or community centers. For the purposes of this
26 subsection, "community center" has the same meaning as provided in RCW
27 84.36.010.

28 (d) The legislature also finds that eliminating the property tax on
29 property owned exclusively by federally recognized Indian tribes within
30 the state requires that the leasehold excise tax also be applied to
31 leasehold interests on tribally owned property.

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

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

3 The definitions in this section apply throughout this chapter
4 unless the context requires otherwise.

5 (1)(a) "Leasehold interest" means an interest in publicly owned
6 real or personal property which exists by virtue of any lease, permit,
7 license, or any other agreement, written or verbal, between the public
8 owner of the property and a person who would not be exempt from
9 property taxes if that person owned the property in fee, granting
10 possession and use, to a degree less than fee simple ownership.
11 However, no interest in personal property (excluding land or buildings)
12 which is owned by the United States, whether or not as trustee, or by
13 any foreign government may constitute a leasehold interest hereunder
14 when the right to use such property is granted pursuant to a contract
15 solely for the manufacture or production of articles for sale to the
16 United States or any foreign government. The term "leasehold interest"
17 includes the rights of use or occupancy by others of property which is
18 owned in fee or held in trust by a public corporation, commission, or
19 authority created under RCW 35.21.730 or 35.21.660 if the property is
20 listed on or is within a district listed on any federal or state
21 register of historical sites.

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

23 (i) Road or utility easements, rights of access, occupancy, or use
24 granted solely for the purpose of removing materials or products
25 purchased from a public owner or the lessee of a public owner, or
26 rights of access, occupancy, or use granted solely for the purpose of
27 natural energy resource exploration(~~(.—"Leasehold interest" does not~~
28 ~~include)); or~~

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

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

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

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

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

34 (d) "Contract rent" does not include: (i) Expenditures made by the
35 lessee, which under the terms of the lease or agreement, are to be
36 reimbursed by the lessor to the lessee or expenditures for improvements
37 and protection made pursuant to a lease or an agreement which requires
38 that the use of the improved property be open to the general public and

1 that no profit will inure to the lessee from the lease; (ii)
2 expenditures made by the lessee for the replacement or repair of
3 facilities due to fire or other casualty including payments for
4 insurance to provide reimbursement for losses or payments to a public
5 or private entity for protection of such property from damage or loss
6 or for alterations or additions made necessary by an action of
7 government taken after the date of the execution of the lease or
8 agreement; (iii) improvements added to publicly owned property by a
9 sublessee under an agreement executed prior to January 1, 1976, which
10 have been taxed as personal property of the sublessee prior to January
11 1, 1976, or improvements made by a sublessee of the same lessee under
12 a similar agreement executed prior to January 1, 1976, and such
13 improvements are taxable to the sublessee as personal property; (iv)
14 improvements added to publicly owned property if such improvements are
15 being taxed as personal property to any person.

16 (e) Any prepaid contract rent is considered to have been paid in
17 the year due and not in the year actually paid with respect to
18 prepayment for a period of more than one year. Expenditures for
19 improvements with a useful life of more than one year which are
20 included as part of contract rent must be treated as prepaid contract
21 rent and prorated over the useful life of the improvement or the
22 remaining term of the lease or agreement if the useful life is in
23 excess of the remaining term of the lease or agreement. Rent prepaid
24 prior to January 1, 1976, must be prorated from the date of prepayment.

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

27 (g) If it is determined by the department of revenue, upon
28 examination of a lessee's accounts or those of a lessor of publicly
29 owned property, that a lessee is occupying or using publicly owned
30 property in such a manner as to create a leasehold interest and that
31 such leasehold interest has not been established through competitive
32 bidding, or negotiated in accordance with statutory requirements
33 regarding the rent payable, or negotiated under circumstances,
34 established by public record, clearly showing that the contract rent
35 was the maximum attainable by the lessor, the department may establish
36 a taxable rent computation for use in determining the tax payable under
37 authority granted in this chapter based upon the following criteria:

38 (i) Consideration must be given to rental being paid to other lessors

1 by lessees of similar property for similar purposes over similar
2 periods of time; (ii) consideration must be given to what would be
3 considered a fair rate of return on the market value of the property
4 leased less reasonable deductions for any restrictions on use, special
5 operating requirements or provisions for concurrent use by the lessor,
6 another person or the general public.

7 (3) "Product lease" as used in this chapter means a lease of
8 property for use in the production of agricultural or marine products
9 to the extent that such lease provides for the contract rent to be paid
10 by the delivery of a stated percentage of the production of such
11 agricultural or marine products to the credit of the lessor or the
12 payment to the lessor of a stated percentage of the proceeds from the
13 sale of such products.

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

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

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

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

29 (1) The leasehold excise taxes provided for in RCW 82.29A.030 and
30 82.29A.040 (~~((shall))~~) must be paid by the lessee to the lessor and the
31 lessor (~~((shall))~~) must collect such tax and remit the same to the
32 department (~~((of revenue))~~). The tax (~~((shall))~~) must be payable at the
33 same time as payments are due to the lessor for use of the property
34 from which the leasehold interest arises, and in the case of payment of
35 contract rent to a person other than the lessor, at the time of
36 payment. The tax payment (~~((shall))~~) must be accompanied by such
37 information as the department (~~((of revenue))~~) may require. In the case

1 of prepaid contract rent the payment may be prorated in accordance with
2 instructions of the department (~~(of revenue)~~) and the prorated portion
3 of the tax (~~(shall be)~~) is due, one-half not later than May 31st and
4 the other half not later than November 30th each year.

5 (2) The lessor receiving taxes payable under the provisions of this
6 chapter (~~(shall)~~) must remit the same together with a return provided
7 by the department, to the department of revenue on or before the last
8 day of the month following the month in which the tax is collected.
9 The department may relieve any taxpayer or class of taxpayers from the
10 obligation of filing monthly returns and may require the return to
11 cover other reporting periods, but in no event (~~(shall)~~) may returns be
12 filed for a period greater than one year. The lessor (~~(shall be)~~) is
13 fully liable for collection and remittance of the tax. The amount of
14 tax until paid by the lessee to the lessor (~~(shall)~~) constitutes a debt
15 from the lessee to the lessor. The tax required by this chapter
16 (~~(shall)~~) must be stated separately from contract rent, and if not so
17 separately stated for purposes of determining the tax due from the
18 lessee to the lessor and from the lessor to the department, the
19 contract rent does not include the tax imposed by this chapter. Where
20 a lessee has failed to pay to the lessor the tax imposed by this
21 chapter and the lessor has not paid the amount of the tax to the
22 department, the department may, in its discretion, proceed directly
23 against the lessee for collection of the tax(~~(;—PROVIDED,—That)~~).
24 However, taxes due where contract rent has not been paid (~~(shall)~~) must
25 be reported by the lessor to the department and the lessee alone
26 (~~(shall be)~~) is liable for payment of the tax to the department.

27 (3) Each person having a leasehold interest subject to the tax
28 provided for in this chapter arising out of a lease of federally owned
29 or federal trust lands (~~(shall)~~), or property owned by a federally
30 recognized Indian tribe in the state and exempt from tax under RCW
31 84.36.010, must report and remit the tax due directly to the department
32 of revenue in the same manner and at the same time as the lessor would
33 be required to report and remit the tax if such lessor were a state
34 public entity.

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

37 (1) All property belonging exclusively to the United States, the

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

17 (2) Property owned by a federally recognized Indian tribe, which is
18 used for economic development purposes, may only qualify for the
19 exemption from taxes in this section if the property was owned by the
20 tribe prior to March 1, 2014.

21 (3) For the purposes of this section the following definitions
22 apply unless the context clearly requires otherwise.

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

31 (b) "Essential government services" means services such as tribal
32 administration, public facilities, fire, police, public health,
33 education, sewer, water, environmental and land use, transportation,
34 ~~((and))~~ utility services, and economic development.

35 (c) "Economic development" means commercial activities, including
36 those that facilitate the creation or retention of businesses or jobs,
37 or that improve the standard of living or economic health of tribal
38 communities.

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

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

6 (a) The United States, the state of Washington, or any political
7 subdivision or municipal corporation of the state of Washington, or a
8 federally recognized Indian tribe for property exempt under RCW
9 84.36.010; or

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

14 (c) (~~Including~~) Any leasehold interest arising from the property
15 identified in (a) and (b) of this subsection as defined in RCW
16 82.29A.020.

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

18 (a) Any such leasehold interests which are a part of operating
19 properties of public utilities subject to assessment under chapter
20 84.12 RCW; or

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

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

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

28 When any real property is sold on contract by the United States of
29 America, the state, (~~or~~) any county or municipality, or any federally
30 recognized Indian tribe, and the contract expresses or implies that the
31 vendee is entitled to the possession, use, benefits and profits thereof
32 and therefrom so long as the vendee complies with the terms of the
33 contract, it (~~shall be~~) is deemed that the vendor retains title
34 merely as security for the fulfillment of the contract, and the
35 property (~~shall~~) must be assessed and taxed in the same manner as
36 other similar property in private ownership is taxed, and the tax roll
37 (~~shall~~) must contain, opposite the description of the property so

1 assessed the following notation: "Subject to title remaining in the
2 vendor" or other notation of similar significance. No foreclosure for
3 delinquent taxes nor any deed issued pursuant thereto (~~shall~~) may
4 extinguish or otherwise affect the title of the vendor. In any case
5 under former law where the contract and not the property was taxed no
6 deed of the property described in such contract (~~shall~~) may ever be
7 executed and delivered by the state or any county or municipality until
8 all taxes assessed against such contract and local assessments assessed
9 against the land described thereon are fully paid.

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

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

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

17 (b) There is no taxable leasehold interest in the tax exempt
18 property;

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

20 (d) The property is not otherwise exempt from taxation by federal
21 law.

22 (2) The amount of the payment in lieu of leasehold excise taxes
23 must be determined jointly and in good faith negotiation between the
24 tribe that owns the property and the county in which the property is
25 located. However, the amount may not exceed the leasehold excise tax
26 amount that would otherwise be owed by a taxable leasehold interest in
27 the property. If the tribe and the county cannot agree to terms on the
28 amount of payment in lieu of taxes, the department may determine the
29 rate, provided that the amount may not exceed the leasehold excise tax
30 amount that would otherwise be owed by a taxable leasehold interest in
31 the property.

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

1 NEW SECTION. **Sec. 9.** A new section is added to chapter 84.36 RCW
2 to read as follows:

3 (1) To qualify in any year for exempt status for real or personal
4 property used exclusively for essential government services under RCW
5 84.36.010, a federally recognized Indian tribe must file an initial
6 application with the department of revenue on or before October 1st of
7 the prior year. All applications must be filed on forms prescribed by
8 the department and signed by an authorized agent of the federally
9 recognized tribe.

10 (2) If the use for essential government services is based in whole
11 or in part on economic development, the application must also include:

12 (a) If the economic development activities are those of a lessee,
13 a declaration from both the federally recognized tribe and the lessee
14 confirming a lease agreement exists for the exempt tax year.

15 (b) If the property is subject to the payment in lieu of leasehold
16 excise tax as described in section 8 of this act, a declaration from
17 both the federally recognized tribe and the county in which the
18 property is located confirming that an agreement exists for the exempt
19 tax year regarding the amount for the payment in lieu of leasehold
20 excise tax.

21 (3) A federally recognized Indian tribe which files an application
22 under the requirements of subsection (2) of this section, must file an
23 annual renewal application, on forms prescribed by the department of
24 revenue, on or before October 1st of each year. The application must
25 contain a declaration certifying the continuing exempt status of the
26 real or personal property, and that the lease agreement or agreement
27 for payment in lieu of leasehold excise tax continue in good standing,
28 or that a new lease or agreement exists.

29 NEW SECTION. **Sec. 10.** A new section is added to chapter 52.30 RCW
30 to read as follows:

31 (1) When exempt tribal property is located within the boundaries of
32 a fire protection district or a regional fire protection service
33 authority, the fire protection district or authority is authorized to
34 contract with the tribe for compensation for providing fire protection
35 services in an amount and under such terms as are mutually agreed upon
36 by the fire protection district or authority and the tribe.

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

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

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

8 NEW SECTION. **Sec. 11.** A new section is added to chapter 43.136
9 RCW to read as follows:

10 By December 1, 2020, and in compliance with RCW 43.01.036, the
11 joint legislative audit and review committee must provide an economic
12 impact report to the legislature evaluating the impacts of changes made
13 in this act regarding the leasehold tax and property tax treatment of
14 property owned by a federally recognized Indian tribe. The economic
15 impact report must indicate: The number of parcels and uses of land
16 involved; the economic impacts to tribal governments; state and local
17 government revenue reductions, increases, and shifts from all tax
18 sources affected; impacts on public infrastructure and public services;
19 impacts on business investment and business competition; a description
20 of the types of business activities affected; impacts on the number of
21 jobs created or lost; and any other data the joint legislative audit
22 and review committee deems necessary in determining the economic
23 impacts of this act.

24 NEW SECTION. **Sec. 12.** If any provision of this act or its
25 application to any person or circumstance is held invalid, the
26 remainder of the act is null and void.

27 NEW SECTION. **Sec. 13.** This act applies to taxes levied for
28 collection in 2015 and thereafter.

29 NEW SECTION. **Sec. 14.** This act expires January 1, 2022.
Passed by the House March 11, 2014.
Passed by the Senate March 7, 2014.
Approved by the Governor April 3, 2014.
Filed in Office of Secretary of State April 4, 2014.