
HOUSE BILL 1817

State of Washington 52nd Legislature 1991 Regular Session

By Representatives Rasmussen, Belcher, Haugen, Rayburn, Chandler, McLean, Fraser, Grant, Roland, Kremen, Betrozoff, Sheldon, Ferguson, Riley, Forner, P. Johnson, Cantwell, Jacobsen, Ludwig, Anderson, Spanel, Brumsickle, Vance, Nealey, Zellinsky, Dorn, Brough, Franklin, Orr, Hargrove, O'Brien, Wang, Jones, Peery, G. Fisher, Fuhrman, Broback, Holland, Phillips, May, Winsley, Edmondson, D. Sommers, Bowman, Paris, Basich, Wynne, Heavey, Ogden, Morris, Wineberry, Tate, Mitchell, Horn, Moyer, Sprenkle and Brekke.

Read first time February 11, 1991. Referred to Committee on Natural Resources & Parks\Revenue.

1 AN ACT Relating to current uses classification of wetlands; and
2 amending RCW 82.45.120, 84.34.020, 84.34.030, 84.34.037, 84.34.060,
3 84.34.080, 84.34.108, 84.34.145, 84.34.210, 84.34.220, and 84.48.075.

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

5 **Sec. 1.** RCW 82.45.120 and 1981 c 167 s 5 are each amended to read
6 as follows:

7 The department of revenue is authorized and shall prescribe minimum
8 standards for uniformity in reporting, application, and collection of
9 the real estate excise tax imposed by this chapter.

10 The department of revenue shall also prescribe a real estate excise
11 tax affidavit form which shall require the following:

- 12 (1) Identification of the seller and purchaser;
- 13 (2) Description of the property involved including the tax parcel
14 or account number(s);
- 15 (3) Date of sale, type of instrument of sale, nature of transfer;

1 (4) Gross sales price;

2 (5) Whether or not the land is classified or designated as forest
3 land under chapter 84.33 RCW; or classified as open space land, farm
4 and agricultural land, wetland land, or timberland under chapter 84.34
5 RCW; or at the time of sale exempt from property tax under chapter
6 84.36 RCW;

7 (6) Whether or not the property is land only, land with new
8 building (new construction), or land with a previously used building;
9 and

10 (7) The following questions, the responses to which are not
11 required:

12 (a) Is this property at the time of sale subject to an elderly,
13 disability, or physical improvement exemption?

14 (b) Does any building have a heat pump or solar heating or cooling
15 system?

16 (c) Does this transaction divide a current parcel of land?

17 (d) Does this transaction include current crops or merchantable
18 timber?

19 (e) Does this transaction involve a trade, a partial interest,
20 corporate affiliates, related parties, a trust, a receivership, or an
21 estate?

22 (f) Is the grantee acting as a nominee for a third party?

23 (g) Is the principal use of the land agricultural, apartments (four
24 or more units), commercial, condominium, industrial, mobile home site,
25 recreational, residential, or growing timber?

26 The affidavit form shall contain a statement of the potential
27 compensating and additional tax liability under chapters 84.33 and
28 84.34 RCW, a statement of the collection of taxes under RCW 84.36.262
29 and 84.36.810, and a statement of the applicable penalties for perjury
30 under chapter 9A.72 RCW.

1 Each county shall use the affidavit form prescribed and furnished
2 by the department of revenue.

3 The affidavit shall be signed by either the seller or the buyer, or
4 the agent of either, under oath attesting to all required information.

5 **Sec. 2.** RCW 84.34.020 and 1988 c 253 s 3 are each amended to read
6 as follows:

7 As used in this chapter, unless a different meaning is required by
8 the context:

9 (1) "Open space land" means (a) any land area so designated by an
10 official comprehensive land use plan adopted by any city or county and
11 zoned accordingly or (b) any land area, the preservation of which in
12 its present use would (i) conserve and enhance natural or scenic
13 resources, or (ii) protect streams or water supply, (iii) promote
14 conservation of soils, wetlands, beaches or tidal marshes, or (iv)
15 enhance the value to the public of abutting or neighboring parks,
16 forests, wildlife preserves, nature reservations or sanctuaries or
17 other open space, or (v) enhance recreation opportunities, or (vi)
18 preserve historic sites, or (vii) retain in its natural state tracts of
19 land not less than five acres situated in an urban area and open to
20 public use on such conditions as may be reasonably required by the
21 legislative body granting the open space classification.

22 (2) "Farm and agricultural land" means either (a) land in any
23 contiguous ownership of twenty or more acres (i) devoted primarily to
24 the production of livestock or agricultural commodities for commercial
25 purposes, or (ii) enrolled in the federal conservation reserve program
26 or its successor administered by the United States department of
27 agriculture; (b) any parcel of land five acres or more but less than
28 twenty acres devoted primarily to agricultural uses, which has produced
29 a gross income from agricultural uses equivalent to one hundred dollars

1 or more per acre per year for three of the five calendar years
2 preceding the date of application for classification under this
3 chapter; or (c) any parcel of land of less than five acres devoted
4 primarily to agricultural uses which has produced a gross income of one
5 thousand dollars or more per year for three of the five calendar years
6 preceding the date of application for classification under this
7 chapter. Agricultural lands shall also include farm woodlots of less
8 than twenty and more than five acres and the land on which
9 appurtenances necessary to the production, preparation or sale of the
10 agricultural products exist in conjunction with the lands producing
11 such products. Agricultural lands shall also include any parcel of
12 land of one to five acres, which is not contiguous, but which otherwise
13 constitutes an integral part of farming operations being conducted on
14 land qualifying under this section as "farm and agricultural lands".

15 (3) "Timber land" means land in any contiguous ownership of five or
16 more acres which is devoted primarily to the growth and harvest of
17 forest crops and which is not classified as reforestation land pursuant
18 to chapter 84.28 RCW. Timber land means the land only.

19 (4) "Wetland land" means areas of land one-fourth of an acre or
20 larger, that are inundated or saturated by surface water or ground
21 water at a frequency and duration sufficient to support, and that under
22 normal circumstances do support, a prevalence of vegetation typically
23 adapted for life in saturated soil conditions. Wetlands generally
24 include swamps, marshes, bogs, and similar areas. Wetlands do not
25 include those artificial wetlands intentionally created from nonwetland
26 sites, including, but not limited to, irrigation and drainage ditches,
27 grass-lined swales, canals, detention facilities, wastewater treatment
28 facilities, farm ponds, and landscape amenities. However, wetlands may
29 include those artificial wetlands intentionally created from nonwetland

1 areas created to mitigate conversion of wetlands, if permitted by the
2 county or city.

3 (5) "Current" or "currently" means as of the date on which property
4 is to be listed and valued by the county assessor.

5 ~~((5))~~ (6) "Owner" means the party or parties having the fee
6 interest in land, except that where land is subject to real estate
7 contract "owner" shall mean the contract vendee.

8 ~~((6))~~ (7) "Contiguous" means land adjoining and touching other
9 property held by the same ownership. Land divided by a public road,
10 but otherwise an integral part of a farming operation, shall be
11 considered contiguous.

12 **Sec. 3.** RCW 84.34.030 and 1989 c 378 s 10 are each amended to read
13 as follows:

14 An owner of agricultural land desiring current use classification
15 under subsection (2) of RCW 84.34.020 shall make application to the
16 county assessor upon forms prepared by the state department of revenue
17 and supplied by the county assessor. An owner of open space or timber
18 land desiring current use classification under subsections (1) ~~((and))~~,
19 (3), and (4) of RCW 84.34.020 shall make application to the county
20 legislative authority upon forms prepared by the state department of
21 revenue and supplied by the county assessor. The application shall be
22 accompanied by a reasonable processing fee if such processing fee is
23 established by the city or county legislative authority. Said
24 application shall require only such information reasonably necessary to
25 properly classify an area of land under this chapter with a notarized
26 verification of the truth thereof and shall include a statement that
27 the applicant is aware of the potential tax liability involved when
28 such land ceases to be designated as open space, farm and agricultural,
29 wetland, or timber land. Applications must be made during the calendar

1 year preceding that in which such classification is to begin. The
2 assessor shall make necessary information, including copies of this
3 chapter and applicable regulations, readily available to interested
4 parties, and shall render reasonable assistance to such parties upon
5 request.

6 **Sec. 4.** RCW 84.34.037 and 1985 c 393 s 1 are each amended to read
7 as follows:

8 Applications for classification under RCW 84.34.020 subsection (1)
9 (~~(1)~~), (3), or (4) shall be made to the county legislative authority.
10 An application made for classification of land under RCW 84.34.020
11 subsection (1)(b), (~~(1)~~) (3), or (4) which is in an area subject to a
12 comprehensive plan shall be acted upon in the same manner in which an
13 amendment to the comprehensive plan is processed. Application made for
14 classification of land which is in an area not subject to a
15 comprehensive plan shall be acted upon after a public hearing and after
16 notice of the hearing shall have been given by one publication in a
17 newspaper of general circulation in the area at least ten days before
18 the hearing: PROVIDED, That applications for classification of land in
19 an incorporated area shall be acted upon by a determining authority
20 composed of three members of the county legislative body and three
21 members of the city legislative body in which the land is located.

22 In determining whether an application made for classification under
23 RCW 84.34.020, subsection (1)(b), (~~(1)~~) (3), or (4) should be approved
24 or disapproved, the granting authority may take cognizance of the
25 benefits to the general welfare of preserving the current use of the
26 property which is the subject of application, and may consider whether
27 or not preservation of current use of the land when balanced against
28 the resulting revenue loss or tax shift from granting the application
29 will (1) conserve or enhance natural, cultural, or scenic resources,

1 (2) protect streams, stream corridors, wetlands, natural shorelines and
2 aquifers, (3) protect soil resources and unique or critical wildlife
3 and native plant habitat, (4) promote conservation principles by
4 example or by offering educational opportunities, (5) enhance the value
5 of abutting or neighboring parks, forests, wildlife preserves, nature
6 reservations, sanctuaries, or other open spaces, (6) enhance recreation
7 opportunities, (7) preserve historic and archaeological sites, (8)
8 affect any other factors relevant in weighing benefits to the general
9 welfare of preserving the current use of the property: PROVIDED, That
10 if a public benefit rating system is adopted under RCW 84.34.055, the
11 county legislative authority shall rate property applying for
12 classification under RCW 84.34.020(1)(b) according to the public
13 benefit rating system in determining whether an application should be
14 approved or disapproved, but when such a system is adopted, open space
15 properties then classified under this chapter which do not qualify
16 under the system shall not be removed from classification but may be
17 rated according to the public benefit rating system: PROVIDED FURTHER,
18 That the granting authority may approve the application with respect to
19 only part of the land which is the subject of the application: AND
20 PROVIDED FURTHER, That if any part of the application is denied, the
21 applicant may withdraw the entire application: AND PROVIDED FURTHER,
22 That the granting authority in approving in part or whole an
23 application for land classified pursuant to RCW 84.34.020 (1) ~~((e))~~,
24 (3), or (4) may also require that certain conditions be met, including
25 but not limited to the granting of easements: AND PROVIDED FURTHER,
26 That the granting or denial of the application for current use
27 classification is a legislative determination and shall be reviewable
28 only for arbitrary and capricious actions. The granting authority may
29 not require the granting of easements for land classified pursuant to

1 RCW 84.34.020(3) and may not require public access for land classified
2 pursuant to RCW 84.34.020(4).

3 **Sec. 5.** RCW 84.34.060 and 1985 c 393 s 2 are each amended to read
4 as follows:

5 In determining the true and fair value of open space land, wetland,
6 and timber land, which has been classified as such under the provisions
7 of this chapter, the assessor shall consider only the use to which such
8 property and improvements is currently applied and shall not consider
9 potential uses of such property. The assessor shall compute the
10 assessed value of such property by using the same assessment ratio
11 which he or she applies generally in computing the assessed value of
12 other property: PROVIDED, That the assessed valuation of open space
13 land and wetland land with no current use shall not be less than that
14 which would result if it were to be assessed for agricultural uses,
15 except that the assessed valuation of open space and wetland land with
16 no current use may be valued based on the public benefit rating system
17 adopted under RCW 84.34.055: PROVIDED FURTHER, That timber land shall
18 be valued according to chapter 84.33 RCW.

19 **Sec. 6.** RCW 84.34.080 and 1973 1st ex.s. c 212 s 9 are each
20 amended to read as follows:

21 When land which has been classified under this chapter as open
22 space land, farm and agricultural land, wetland land, or timber land is
23 applied to some other use, except through compliance with RCW
24 84.34.070, or except as a result solely from any one of the conditions
25 listed in RCW 84.34.108(5), the owner shall within sixty days notify
26 the county assessor of such change in use and additional real property
27 tax shall be imposed upon such land in an amount equal to the sum of
28 the following:

- 1 (1) The total amount of the additional tax due under RCW 84.34.108;
2 plus
3 (2) A penalty amounting to twenty percent of the amount determined
4 in subsection (1) of this section.

5 **Sec. 7.** RCW 84.34.108 and 1989 c 378 s 35 are each amended to read
6 as follows:

7 (1) When land has once been classified under this chapter, a
8 notation of such designation shall be made each year upon the
9 assessment and tax rolls and such land shall be valued pursuant to RCW
10 84.34.060 or 84.34.065 until removal of all or a portion of such
11 designation by the assessor upon occurrence of any of the following:

12 (a) Receipt of notice from the owner to remove all or a portion of
13 such designation;

14 (b) Sale or transfer to an ownership making all or a portion of
15 such land exempt from ad valorem taxation;

16 (c) Sale or transfer of all or a portion of such land to a new
17 owner, unless the new owner has signed a notice of classification
18 continuance. The signed notice of continuance shall be attached to the
19 real estate excise tax affidavit provided for in RCW 82.45.120, as now
20 or hereafter amended. The notice of continuance shall be on a form
21 prepared by the department of revenue. If the notice of continuance is
22 not signed by the new owner and attached to the real estate excise tax
23 affidavit, all additional taxes calculated pursuant to subsection (3)
24 of this section shall become due and payable by the seller or
25 transferor at time of sale. The county auditor shall not accept an
26 instrument of conveyance of classified land for filing or recording
27 unless the new owner has signed the notice of continuance or the
28 additional tax has been paid. The seller, transferor, or new owner may
29 appeal the new assessed valuation calculated under subsection (3) of

1 this section to the county board of equalization. Jurisdiction is
2 hereby conferred on the county board of equalization to hear these
3 appeals;

4 (d) Determination by the assessor, after giving the owner written
5 notice and an opportunity to be heard, that all or a portion of such
6 land is no longer primarily devoted to and used for the purposes under
7 which it was granted classification.

8 (2) Within thirty days after such removal of all or a portion of
9 such land from current use classification, the assessor shall notify
10 the owner in writing, setting forth the reasons for such removal. The
11 seller, transferor, or owner may appeal such removal to the county
12 board of equalization.

13 (3) Unless the removal is reversed on appeal, the assessor shall
14 revalue the affected land with reference to full market value on the
15 date of removal from classification. Both the assessed valuation
16 before and after the removal of classification shall be listed and
17 taxes shall be allocated according to that part of the year to which
18 each assessed valuation applies. Except as provided in subsection (5)
19 of this section, an additional tax shall be imposed which shall be due
20 and payable to the county treasurer thirty days after the owner is
21 notified of the amount of the additional tax. As soon as possible, the
22 assessor shall compute the amount of such an additional tax and the
23 treasurer shall mail notice to the owner of the amount thereof and the
24 date on which payment is due. The amount of such additional tax shall
25 be equal to:

26 (a) The difference between the property tax paid as "open space
27 land", "farm and agricultural land", "wetland land", or "timber land"
28 and the amount of property tax otherwise due and payable for the seven
29 years last past had the land not been so classified; plus

1 (b) Interest upon the amounts of such additional tax paid at the
2 same statutory rate charged on delinquent property taxes from the dates
3 on which such additional tax could have been paid without penalty if
4 the land had been assessed at a value without regard to this chapter.

5 (4) Additional tax, together with applicable interest thereon,
6 shall become a lien on such land which shall attach at the time such
7 land is removed from current use classification under this chapter and
8 shall have priority to and shall be fully paid and satisfied before any
9 recognizance, mortgage, judgment, debt, obligation or responsibility to
10 or with which such land may become charged or liable. Such lien may be
11 foreclosed upon expiration of the same period after delinquency and in
12 the same manner provided by law for foreclosure of liens for delinquent
13 real property taxes as provided in RCW 84.64.050 now or as hereafter
14 amended. Any additional tax unpaid on its due date shall thereupon
15 become delinquent. From the date of delinquency until paid, interest
16 shall be charged at the same rate applied by law to delinquent ad
17 valorem property taxes.

18 (5) The additional tax specified in subsection (3) of this section
19 shall not be imposed if the removal of designation pursuant to
20 subsection (1) of this section resulted solely from:

21 (a) Transfer to a government entity in exchange for other land
22 located within the state of Washington;

23 (b) A taking through the exercise of the power of eminent domain,
24 or sale or transfer to an entity having the power of eminent domain in
25 anticipation of the exercise of such power;

26 (c) Sale or transfer of land within two years after the death of
27 the owner of at least a fifty percent interest in such land;

28 (d) A natural disaster such as a flood, windstorm, earthquake, or
29 other such calamity rather than by virtue of the act of the landowner
30 changing the use of such property;

1 (e) Official action by an agency of the state of Washington or by
2 the county or city within which the land is located which disallows the
3 present use of such land;

4 (f) Transfer to a church and such land would qualify for property
5 tax exemption pursuant to RCW 84.36.020; or

6 (g) Acquisition of property interests by state agencies or agencies
7 or organizations qualified under RCW 84.34.210 and 64.04.130 for the
8 purposes enumerated in those sections: PROVIDED, That at such time as
9 these property interests are not used for the purposes enumerated in
10 RCW 84.34.210 and 64.04.130 the additional tax specified in subsection
11 (3) of this section shall be imposed.

12 **Sec. 8.** RCW 84.34.145 and 1973 1st ex.s. c 212 s 11 are each
13 amended to read as follows:

14 The county legislative authority shall appoint a five member
15 committee representing the active farming community within the county
16 to serve in an advisory capacity to the county assessor in implementing
17 assessment guidelines as established by the department of revenue for
18 the assessment of open space, farms and agricultural lands, wetland
19 land, and timber lands classified pursuant to this 1973 amendatory act.

20 **Sec. 9.** RCW 84.34.210 and 1987 c 341 s 2 are each amended to read
21 as follows:

22 Any county, city, town, metropolitan municipal corporation,
23 nonprofit historic preservation corporation as defined in RCW
24 64.04.130, or nonprofit nature conservancy corporation or association,
25 as such are defined in RCW 84.34.250, may acquire by purchase, gift,
26 grant, bequest, devise, lease, or otherwise, except by eminent domain,
27 the fee simple or any lesser interest, development right, easement,
28 covenant, or other contractual right necessary to protect, preserve,

1 maintain, improve, restore, limit the future use of, or otherwise
2 conserve, selected open space land, farm and agricultural land, wetland
3 land, and timber land as such are defined in chapter 84.34 RCW for
4 public use or enjoyment. Among interests that may be so acquired are
5 mineral rights. Any county, city, town, metropolitan municipal
6 corporation, nonprofit historic preservation corporation as defined in
7 RCW 64.04.130, or nonprofit nature conservancy corporation or
8 association, as such are defined in RCW 84.34.250, may acquire such
9 property for the purpose of conveying or leasing the property back to
10 its original owner or other person under such covenants or other
11 contractual arrangements as will limit the future use of the property
12 in accordance with the purposes of this 1971 amendatory act.

13 **Sec. 10.** RCW 84.34.220 and 1987 c 341 s 3 are each amended to read
14 as follows:

15 In accordance with the authority granted in RCW 84.34.210, a
16 county, city, town, metropolitan municipal corporation, nonprofit
17 historic preservation corporation as defined in RCW 64.04.130, or
18 nonprofit nature conservancy corporation or association, as such are
19 defined in RCW 84.34.250, may specifically purchase or otherwise
20 acquire, except by eminent domain, rights in perpetuity to future
21 development of any open space land, farm and agricultural land, wetland
22 land, and timber land which are so designated under the provisions of
23 chapter 84.34 RCW and taxed at current use assessment as provided by
24 that chapter. For the purposes of this 1971 amendatory act, such
25 developmental rights shall be termed "conservation futures". The
26 private owner may retain the right to continue any existing open space
27 use of the land, and to develop any other open space use, but, under
28 the terms of purchase of conservation futures, the county, city, town,
29 metropolitan municipal corporation, nonprofit historic preservation

1 corporation as defined in RCW 64.04.130, or nonprofit nature
2 conservancy corporation or association, as such are defined in RCW
3 84.34.250, may forbid or restrict building thereon, or may require that
4 improvements cannot be made without county, city, town, metropolitan
5 municipal corporation, nonprofit historic preservation corporation as
6 defined in RCW 64.04.130, or nonprofit nature conservancy corporation
7 or association, as such are defined in RCW 84.34.250, permission. The
8 land may be alienated or sold and used as formerly by the new owner,
9 subject to the terms of the agreement made by the county, city, town,
10 metropolitan municipal corporation, nonprofit historic preservation
11 corporation as defined in RCW 64.04.130, or nonprofit nature
12 conservancy corporation or association, as such are defined in RCW
13 84.34.250, with the original owner.

14 **Sec. 11.** RCW 84.48.075 and 1988 c 222 s 23 are each amended to
15 read as follows:

16 (1) The department of revenue shall annually, prior to the first
17 Monday in September, determine and submit to each assessor a
18 preliminary indicated ratio for each county: PROVIDED, That the
19 department shall establish rules and regulations pertinent to the
20 determination of the indicated ratio, the indicated real property ratio
21 and the indicated personal property ratio: PROVIDED FURTHER, That
22 these rules and regulations may provide that data, as is necessary for
23 said determination, which is available from the county assessor of any
24 county and which has been audited as to its validity by the department,
25 shall be utilized by the department in determining the indicated ratio.

26 (2) To such extent as is reasonable, the department may define use
27 classes of property for the purposes of determination of the indicated
28 ratio. Such use classes may be defined with respect to property use

1 and may include agricultural, open space, wetland, timber and forest
2 lands.

3 (3) The department shall review each county's preliminary ratio
4 with the assessor, a landowner, or an owner of an intercounty public
5 utility or private car company of that county, if requested by the
6 assessor, a landowner, or an owner of an intercounty public utility or
7 private car company of that county, respectively, between the first and
8 third Mondays of September. Prior to equalization of assessments
9 pursuant to RCW 84.48.080 and after the third Monday of September, the
10 department shall certify to each county assessor the real and personal
11 property ratio for that county.

12 (4) The department of revenue shall also examine procedures used by
13 the assessor to assess real and personal property in the county,
14 including calculations, use of prescribed value schedules, and efforts
15 to locate all taxable property in the county. If any examination by
16 the department discloses other than market value is being listed on the
17 county assessment rolls of the county by the assessor and, after due
18 notification by the department, is not corrected, the department of
19 revenue shall, in accordance with rules adopted by the department,
20 adjust the ratio of that type of property, which adjustment shall be
21 used for determining the county's indicated ratio.