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**SENATE BILL 5227**

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**State of Washington**

**53rd Legislature**

**1993 Regular Session**

**By** Senators Skratek, Haugen, Sheldon, Erwin, Winsley, M. Rasmussen, Barr and Roach

Read first time 01/18/93. Referred to Committee on Labor & Commerce.

1 AN ACT Relating to taxing property based on actual use; amending  
2 RCW 84.34.010, 84.34.020, 84.34.030, 84.34.035, 84.34.045, 84.34.060,  
3 84.34.080, and 84.34.108; adding a new section to chapter 84.34 RCW;  
4 and providing a contingent effective date.

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

6 **Sec. 1.** RCW 84.34.010 and 1973 1st ex.s. c 212 s 1 are each  
7 amended to read as follows:

8 The legislature hereby declares that it is in the best interest of  
9 the state to maintain, preserve, conserve and otherwise continue in  
10 existence adequate open space lands for the production of food, fiber  
11 and forest crops, and to assure the use and enjoyment of natural  
12 resources and scenic beauty for the economic and social well-being of  
13 the state and its citizens. The legislature further declares that  
14 assessment practices must be so designed as to permit the continued  
15 availability of open space lands for these purposes, and it is the  
16 intent of this chapter so to provide. The legislature further declares  
17 its intent that farm and agricultural lands shall be valued on the  
18 basis of their value for use as authorized by section 11 of Article VII  
19 of the Constitution of the state of Washington.

1       The legislature further declares that detached single-family  
2 dwelling which are located on land which is zoned or classified for a  
3 use more intense than single-family dwellings may be subject to  
4 significant property tax pressure and that pressure may contribute to  
5 a loss of housing.

6       **Sec. 2.** RCW 84.34.020 and 1992 c 69 s 4 are each amended to read  
7 as follows:

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

10       (1) "Open space land" means (a) any land area so designated by an  
11 official comprehensive land use plan adopted by any city or county and  
12 zoned accordingly(~~(+,+)~~), or (b) any land area, the preservation of  
13 which in its present use would (i) conserve and enhance natural or  
14 scenic resources, or (ii) protect streams or water supply, or (iii)  
15 promote conservation of soils, wetlands, beaches or tidal marshes, or  
16 (iv) enhance the value to the public of abutting or neighboring parks,  
17 forests, wildlife preserves, nature reservations or sanctuaries or  
18 other open space, or (v) enhance recreation opportunities, or (vi)  
19 preserve historic sites, or (vii) preserve visual quality along  
20 highway, road, and street corridors or scenic vistas, or (viii) retain  
21 in its natural state tracts of land not less than one acre situated in  
22 an urban area and open to public use on such conditions as may be  
23 reasonably required by the legislative body granting the open space  
24 classification, or (c) any land meeting the definition of farm and  
25 agricultural conservation land under subsection (8) of this section.  
26 As a condition of granting open space classification, the legislative  
27 body may not require public access on land classified under (b)(iii) of  
28 this subsection for the purpose of promoting conservation of wetlands.

29       (2) "Farm and agricultural land" means either (a) any parcel of  
30 land that is twenty or more acres or multiple parcels of land that are  
31 contiguous and total twenty or more acres (i) devoted primarily to the  
32 production of livestock or agricultural commodities for commercial  
33 purposes, (ii) enrolled in the federal conservation reserve program or  
34 its successor administered by the United States department of  
35 agriculture, or (iii) other similar commercial activities as may be  
36 established by rule (~~following consultation with the advisory~~  
37 ~~committee established in section 19 of this act~~); (b) any parcel of  
38 land that is five acres or more but less than twenty acres devoted

1 primarily to agricultural uses, which has produced a gross income from  
2 agricultural uses equivalent to, as of January 1, 1993, (i) one hundred  
3 dollars or more per acre per year for three of the five calendar years  
4 preceding the date of application for classification under this chapter  
5 for all parcels of land that are classified under this subsection or  
6 all parcels of land for which an application for classification under  
7 this subsection is made with the granting authority prior to January 1,  
8 1993, and (ii) on or after January 1, 1993, two hundred dollars or more  
9 per acre per year for three of the five calendar years preceding the  
10 date of application for classification under this chapter; (c) any  
11 parcel of land of less than five acres devoted primarily to  
12 agricultural uses which has produced a gross income as of January 1,  
13 1993, of (i) one thousand dollars or more per year for three of the  
14 five calendar years preceding the date of application for  
15 classification under this chapter for all parcels of land that are  
16 classified under this subsection or all parcels of land for which an  
17 application for classification under this subsection is made with the  
18 granting authority prior to January 1, 1993, and (ii) on or after  
19 January 1, 1993, fifteen hundred dollars or more per year for three of  
20 the five calendar years preceding the date of application for  
21 classification under this chapter. Parcels of land described in (b)(i)  
22 and (c)(i) of this subsection shall, upon any transfer of the property  
23 excluding a transfer to a surviving spouse, be subject to the limits of  
24 (b)(ii) and (c)(ii) of this subsection. Agricultural lands shall also  
25 include such incidental uses as are compatible with agricultural  
26 purposes, including wetlands preservation, provided such incidental use  
27 does not exceed twenty percent of the classified land and the land on  
28 which appurtenances necessary to the production, preparation, or sale  
29 of the agricultural products exist in conjunction with the lands  
30 producing such products. Agricultural lands shall also include any  
31 parcel of land of one to five acres, which is not contiguous, but which  
32 otherwise constitutes an integral part of farming operations being  
33 conducted on land qualifying under this section as "farm and  
34 agricultural lands"; or (d) the land on which housing for employees and  
35 the principal place of residence of the farm operator or owner of land  
36 classified pursuant to (a) of this subsection is sited if: The housing  
37 or residence is on or contiguous to the classified parcel; and the use  
38 of the housing or the residence is integral to the use of the  
39 classified land for agricultural purposes.

1 (3) "Timber land" means any parcel of land that is five or more  
2 acres or multiple parcels of land that are contiguous and total five or  
3 more acres which is or are devoted primarily to the growth and harvest  
4 of forest crops for commercial purposes. A timber management plan  
5 shall be filed with the county legislative authority at the time (a) an  
6 application is made for classification as timber land pursuant to this  
7 chapter or (b) when a sale or transfer of timber land occurs and a  
8 notice of classification continuance is signed. Timber land means the  
9 land only.

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

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

15 (6) "Contiguous" means land adjoining and touching other property  
16 held by the same ownership. Land divided by a public road, but  
17 otherwise an integral part of a farming operation, shall be considered  
18 contiguous.

19 (7) "Granting authority" means the appropriate agency or official  
20 who acts on an application for classification of land pursuant to this  
21 chapter.

22 (8) "Farm and agricultural conservation land" means either:

23 (a) Land that was previously classified under subsection (2) of  
24 this section, that no longer meets the criteria of subsection (2) of  
25 this section, and that is reclassified under subsection (1) of this  
26 section; or

27 (b) Land that is traditional farmland that is not classified under  
28 chapter 84.33 or 84.34 RCW, that has not been irrevocably devoted to a  
29 use inconsistent with agricultural uses, and that has a high potential  
30 for returning to commercial agriculture.

31 (9) "Zoned or classified for more intense use" means a binding  
32 decision by a city or county legislative authority to permit a parcel  
33 of land to be the site of residential use with higher densities than a  
34 detached single-family dwelling or for mixed, commercial, or industrial  
35 purposes.

36 (10) "Single-family dwelling" means a structure used as a home,  
37 residence, or sleeping place by one or by two or more persons  
38 maintaining a common household and includes but is not limited to  
39 built-on-site homes, manufactured homes, and modular homes.

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

3       An owner of agricultural land desiring current use classification  
4 under subsection (2) of RCW 84.34.020 or a parcel of land on which one  
5 detached single-family dwelling is located when the land is zoned or  
6 classified for more intense use shall make application to the county  
7 assessor upon forms prepared by the state department of revenue and  
8 supplied by the county assessor. An owner of open space or timber land  
9 desiring current use classification under subsections (1) and (3) of  
10 RCW 84.34.020 shall make application to the county legislative  
11 authority upon forms prepared by the state department of revenue and  
12 supplied by the county assessor. The application shall be accompanied  
13 by a reasonable processing fee if such processing fee is established by  
14 the city or county legislative authority. Said application shall  
15 require only such information reasonably necessary to properly classify  
16 an area of land under this chapter with a notarized verification of the  
17 truth thereof and shall include a statement that the applicant is aware  
18 of the potential tax liability involved when such land ceases to be  
19 designated as open space, farm and agricultural or timber land.  
20 Applications must be made during the calendar year preceding that in  
21 which such classification is to begin. The assessor shall make  
22 necessary information, including copies of this chapter and applicable  
23 regulations, readily available to interested parties, and shall render  
24 reasonable assistance to such parties upon request.

25       **Sec. 4.** RCW 84.34.035 and 1992 c 69 s 5 are each amended to read  
26 as follows:

27       The assessor shall act upon the application for current use  
28 classification of farm and agricultural lands under RCW 84.34.020(2) or  
29 the parcel of land on which one detached single-family dwelling is  
30 located where the land is zoned or classified for more intense use,  
31 with due regard to all relevant evidence. The application shall be  
32 deemed to have been approved unless, prior to the first day of May of  
33 the year after such application was mailed or delivered to the  
34 assessor, the assessor shall notify the applicant in writing of the  
35 extent to which the application is denied. An owner who receives  
36 notice that his or her application has been denied may appeal such  
37 denial to the board of equalization in the county where the property is  
38 located. The appeal shall be filed in accordance with RCW 84.40.038,

1 within thirty days after the mailing of the notice of denial. Within  
2 ten days following approval of the application, the assessor shall  
3 submit notification of such approval to the county auditor for  
4 recording in the place and manner provided for the public recording of  
5 state tax liens on real property. The assessor shall retain a copy of  
6 all applications.

7 The assessor shall, as to any such land, make a notation each year  
8 on the assessment list and the tax roll of the assessed value of such  
9 land for the use for which it is classified in addition to the assessed  
10 value of such land were it not so classified.

11 **Sec. 5.** RCW 84.34.045 and 1992 c 69 s 21 are each amended to read  
12 as follows:

13 If approval of an application for classification or  
14 reclassification under RCW 84.34.020 (1), (2), ~~((or))~~ (3), or (9)  
15 results in the incorrect classification of a parcel of land the  
16 assessor may place the property in the correct classification. Such a  
17 correction shall not be considered a withdrawal or removal and is not  
18 subject to additional tax under RCW 84.34.108. The assessor will  
19 notify the landowner of any correction of classification.

20 This section expires on December 31, 1995.

21 **Sec. 6.** RCW 84.34.060 and 1992 c 69 s 8 are each amended to read  
22 as follows:

23 In determining the true and fair value of open space land, land on  
24 which one detached single-family dwelling is located when the land is  
25 zoned or classified for more intense use, and timber land, which has  
26 been classified as such under the provisions of this chapter, the  
27 assessor shall consider only the use to which such property and  
28 improvements is currently applied and shall not consider potential uses  
29 of such property. The assessed valuation of open space land shall not  
30 be less than the minimum value per acre of classified farm and  
31 agricultural land except that the assessed valuation of open space land  
32 may be valued based on the public benefit rating system adopted under  
33 RCW 84.34.055: PROVIDED FURTHER, That timber land shall be valued  
34 according to chapter 84.33 RCW.

35 NEW SECTION. **Sec. 7.** A new section is added to chapter 84.34 RCW  
36 to read as follows:

1       The true and fair value of land zoned or classified for a more  
2 intense use on which detached single-family dwelling is located shall  
3 be determined using the comparable sales method. The comparable sales  
4 used shall not include any land zoned for other than detached single-  
5 family residential purposes. The comparable sales used shall be of  
6 land as comparable as is practical to the subject parcel in terms of  
7 square footage or acreage, topography, and minimum permitted lot size  
8 for residential purposes and shall be as near to the parcel in terms of  
9 location as is necessary for determining the value. Any improvements  
10 on or to the land shall be valued by the method customarily employed by  
11 the assessor.

12       **Sec. 8.** RCW 84.34.080 and 1992 c 69 s 11 are each amended to read  
13 as follows:

14       When land which has been classified under this chapter as open  
15 space land, farm and agricultural land, ~~((or))~~ timber land, or land  
16 which is zoned or classified for more intense use is applied to some  
17 other use, except through compliance with RCW 84.34.070, or except as  
18 a result solely from any one of the conditions listed in RCW  
19 84.34.108(5), the owner shall within sixty days notify the county  
20 assessor of such change in use and additional real property tax shall  
21 be imposed upon such land in an amount equal to the sum of the  
22 following:

23       (1) The total amount of the additional tax and applicable interest  
24 due under RCW 84.34.108; plus

25       (2) A penalty amounting to twenty percent of the amount determined  
26 in subsection (1) of this section.

27       **Sec. 9.** RCW 84.34.108 and 1992 c 69 s 12 are each amended to read  
28 as follows:

29       (1) When land has once been classified under this chapter, a  
30 notation of such classification shall be made each year upon the  
31 assessment and tax rolls and such land shall be valued pursuant to RCW  
32 84.34.060 or 84.34.065 until removal of all or a portion of such  
33 classification by the assessor upon occurrence of any of the following:

34       (a) Receipt of notice from the owner to remove all or a portion of  
35 such classification;

36       (b) Sale or transfer to an ownership, except a transfer that  
37 resulted from a default in loan payments made to or secured by a

1 governmental agency that intends to or is required by law or regulation  
2 to resell the property for the same use as before, making all or a  
3 portion of such land exempt from ad valorem taxation;

4 (c) Sale or transfer of all or a portion of such land to a new  
5 owner, unless the new owner has signed a notice of classification  
6 continuance, except transfer to an owner who is an heir or devisee of  
7 a deceased owner shall not, by itself, result in removal of  
8 classification. The signed notice of continuance shall be attached to  
9 the real estate excise tax affidavit provided for in RCW 82.45.120, as  
10 now or hereafter amended. The notice of continuance shall be on a form  
11 prepared by the department of revenue. If the notice of continuance is  
12 not signed by the new owner and attached to the real estate excise tax  
13 affidavit, all additional taxes calculated pursuant to subsection (3)  
14 of this section shall become due and payable by the seller or  
15 transferor at time of sale. The county auditor shall not accept an  
16 instrument of conveyance of classified land for filing or recording  
17 unless the new owner has signed the notice of continuance or the  
18 additional tax has been paid. The seller, transferor, or new owner may  
19 appeal the new assessed valuation calculated under subsection (3) of  
20 this section to the county board of equalization. Jurisdiction is  
21 hereby conferred on the county board of equalization to hear these  
22 appeals;

23 (d) Determination by the assessor, after giving the owner written  
24 notice and an opportunity to be heard, that all or a portion of such  
25 land no longer meets the criteria for classification under this  
26 chapter. The criteria for classification pursuant to this chapter  
27 continue to apply after classification has been granted.

28 The granting authority, upon request of an assessor, shall provide  
29 reasonable assistance to the assessor in making a determination whether  
30 such land continues to meet the qualifications of RCW 84.34.020 (1) or  
31 (3). The assistance shall be provided within thirty days of receipt of  
32 the request.

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

38 (3) Unless the removal is reversed on appeal, the assessor shall  
39 revalue the affected land with reference to full market value on the

1 date of removal from classification. Both the assessed valuation  
2 before and after the removal of classification shall be listed and  
3 taxes shall be allocated according to that part of the year to which  
4 each assessed valuation applies. Except as provided in subsection (5)  
5 of this section, an additional tax, applicable interest, and penalty  
6 shall be imposed which shall be due and payable to the county treasurer  
7 thirty days after the owner is notified of the amount of the additional  
8 tax. As soon as possible, the assessor shall compute the amount of  
9 such an additional tax, applicable interest, and penalty and the  
10 treasurer shall mail notice to the owner of the amount thereof and the  
11 date on which payment is due. The amount of such additional tax,  
12 applicable interest, and penalty shall be determined as follows:

13 (a) The amount of additional tax shall be equal to the difference  
14 between the property tax paid as "open space land", "farm and  
15 agricultural land", ~~((or))~~ "timber land", or "land zoned or classified  
16 for more intense use" and the amount of property tax otherwise due and  
17 payable for the seven years last past had the land not been so  
18 classified;

19 (b) The amount of applicable interest shall be equal to the  
20 interest upon the amounts of such additional tax paid at the same  
21 statutory rate charged on delinquent property taxes from the dates on  
22 which such additional tax could have been paid without penalty if the  
23 land had been assessed at a value without regard to this chapter;

24 (c) The amount of the penalty shall be as provided in RCW  
25 84.34.080. The penalty shall not be imposed if the removal satisfies  
26 the conditions of RCW 84.34.070.

27 (4) Additional tax, applicable interest, and penalty, shall become  
28 a lien on such land which shall attach at the time such land is removed  
29 from classification under this chapter and shall have priority to and  
30 shall be fully paid and satisfied before any recognizance, mortgage,  
31 judgment, debt, obligation or responsibility to or with which such land  
32 may become charged or liable. Such lien may be foreclosed upon  
33 expiration of the same period after delinquency and in the same manner  
34 provided by law for foreclosure of liens for delinquent real property  
35 taxes as provided in RCW 84.64.050 now or as hereafter amended. Any  
36 additional tax unpaid on its due date shall thereupon become  
37 delinquent. From the date of delinquency until paid, interest shall be  
38 charged at the same rate applied by law to delinquent ad valorem  
39 property taxes.

1 (5) The additional tax, applicable interest, and penalty specified  
2 in subsection (3) of this section shall not be imposed if the removal  
3 of classification pursuant to subsection (1) of this section resulted  
4 solely from:

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

7 (b)(i) A taking through the exercise of the power of eminent  
8 domain, or (ii) sale or transfer to an entity having the power of  
9 eminent domain in anticipation of the exercise of such power, said  
10 entity having manifested its intent in writing or by other official  
11 action;

12 (c) A natural disaster such as a flood, windstorm, earthquake, or  
13 other such calamity rather than by virtue of the act of the landowner  
14 changing the use of such property;

15 (d) Official action by an agency of the state of Washington or by  
16 the county or city within which the land is located which disallows the  
17 present use of such land;

18 (e) Transfer of land to a church when such land would qualify for  
19 exemption pursuant to RCW 84.36.020;

20 (f) Acquisition of property interests by state agencies or agencies  
21 or organizations qualified under RCW 84.34.210 and 64.04.130 for the  
22 purposes enumerated in those sections: PROVIDED, That at such time as  
23 these property interests are not used for the purposes enumerated in  
24 RCW 84.34.210 and 64.04.130 the additional tax specified in subsection  
25 (3) of this section shall be imposed; or

26 (g) Removal of land classified as farm and agricultural land under  
27 RCW 84.34.020(2)(d).

28 NEW SECTION. **Sec. 10.** This act shall take effect January 1, 1994,  
29 if the proposed amendment to Article VII, section 11 of the state  
30 Constitution (single-family use, SJR . . ., S-0418.1/93) is validly  
31 submitted to and is approved and ratified by the voters at the next  
32 general election. If the proposed amendment is not so approved and  
33 ratified, this act is void in its entirety.

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