
SENATE BILL 5792

State of Washington

61st Legislature

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By Senators Sheldon, Hatfield, Schoesler, Swecker, and Holmquist

Read first time 02/02/09. Referred to Committee on Agriculture & Rural Economic Development.

1 AN ACT Relating to current use valuation under the property tax
2 open space program; and amending RCW 84.34.020 and 84.34.108.

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

4 **Sec. 1.** RCW 84.34.020 and 2005 c 57 s 1 are each amended to read
5 as follows:

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

8 (1) "Open space land" means (a) any land area so designated by an
9 official comprehensive land use plan adopted by any city or county and
10 zoned accordingly, or (b) any land area, the preservation of which in
11 its present use would (i) conserve and enhance natural or scenic
12 resources, or (ii) protect streams or water supply, or (iii) promote
13 conservation of soils, wetlands, beaches or tidal marshes, or (iv)
14 enhance the value to the public of abutting or neighboring parks,
15 forests, wildlife preserves, nature reservations or sanctuaries or
16 other open space, or (v) enhance recreation opportunities, or (vi)
17 preserve historic sites, or (vii) preserve visual quality along
18 highway, road, and street corridors or scenic vistas, or (viii) retain
19 in its natural state tracts of land not less than one acre situated in

1 an urban area and open to public use on such conditions as may be
2 reasonably required by the legislative body granting the open space
3 classification, or (c) any land meeting the definition of farm and
4 agricultural conservation land under subsection (8) of this section.
5 As a condition of granting open space classification, the legislative
6 body may not require public access on land classified under (b)(iii) of
7 this subsection for the purpose of promoting conservation of wetlands.

8 (2) "Farm and agricultural land" means:

9 (a) Any parcel of land that is twenty or more acres or multiple
10 parcels of land that are contiguous and total twenty or more acres:

11 (i) Devoted primarily to the production of livestock or
12 agricultural commodities for commercial purposes;

13 (ii) Enrolled in the federal conservation reserve program or its
14 successor administered by the United States department of agriculture;
15 or

16 (iii) Other similar commercial activities as may be established by
17 rule;

18 (b)(i) Any parcel of land that is five acres or more but less than
19 twenty acres devoted primarily to agricultural uses, which has produced
20 a gross income from agricultural uses equivalent to, as of January 1,
21 1993:

22 (A) One hundred dollars or more per acre per year for three of the
23 five calendar years preceding the date of application for
24 classification under this chapter for all parcels of land that are
25 classified under this subsection or all parcels of land for which an
26 application for classification under this subsection is made with the
27 granting authority prior to January 1, 1993; and

28 (B) On or after January 1, 1993, two hundred dollars or more per
29 acre per year for three of the five calendar years preceding the date
30 of application for classification under this chapter;

31 (ii) For the purposes of (b)(i) of this subsection, "gross income
32 from agricultural uses" includes, but is not limited to, the wholesale
33 value of agricultural products donated to nonprofit food banks or
34 feeding programs;

35 (c) Any parcel of land of less than five acres devoted primarily to
36 agricultural uses which has produced a gross income as of January 1,
37 1993, of:

1 (i) One thousand dollars or more per year for three of the five
2 calendar years preceding the date of application for classification
3 under this chapter for all parcels of land that are classified under
4 this subsection or all parcels of land for which an application for
5 classification under this subsection is made with the granting
6 authority prior to January 1, 1993; and

7 (ii) On or after January 1, 1993, fifteen hundred dollars or more
8 per year for three of the five calendar years preceding the date of
9 application for classification under this chapter.

10 Parcels of land described in (b)(i)(A) and (c)(i) of this subsection
11 shall, upon any transfer of the property excluding a transfer to a
12 surviving spouse, be subject to the limits of (b)(i)(B) and (c)(ii) of
13 this subsection;

14 (d) Any parcel of land that is five acres or more but less than
15 twenty acres devoted primarily to agricultural uses, which meet one of
16 the following criteria:

17 (i) Has produced a gross income from agricultural uses equivalent
18 to two hundred dollars or more per acre per year for three of the five
19 calendar years preceding the date of application for classification
20 under this chapter; or

21 (ii) Has standing crops with an expectation of harvest within
22 fifteen years and a demonstrable investment in the production of those
23 crops equivalent to one hundred dollars or more per acre in the current
24 or previous calendar year;

25 (e) Any lands including incidental uses as are compatible with
26 agricultural purposes, including wetlands preservation, provided such
27 incidental use does not exceed twenty percent of the classified land
28 and the land on which appurtenances necessary to the production,
29 preparation, or sale of the agricultural products exist in conjunction
30 with the lands producing such products. Agricultural lands shall also
31 include any parcel of land of one to five acres, which is not
32 contiguous, but which otherwise constitutes an integral part of farming
33 operations being conducted on land qualifying under this section as
34 "farm and agricultural lands"; or

35 ((+e)) (f) The land on which housing for employees and the
36 principal place of residence of the farm operator or owner of land
37 classified pursuant to (a) of this subsection is sited if: The housing

1 or residence is on or contiguous to the classified parcel; and the use
2 of the housing or the residence is integral to the use of the
3 classified land for agricultural purposes.

4 (3) "Timber land" means any parcel of land that is five or more
5 acres or multiple parcels of land that are contiguous and total five or
6 more acres which is or are devoted primarily to the growth and harvest
7 of timber for commercial purposes. Timber land means the land only and
8 does not include a residential homesite. The term includes land used
9 for incidental uses that are compatible with the growing and harvesting
10 of timber but no more than ten percent of the land may be used for such
11 incidental uses. It also includes the land on which appurtenances
12 necessary for the production, preparation, or sale of the timber
13 products exist in conjunction with land producing these products.

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

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

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

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

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

27 (a) Land that was previously classified under subsection (2) of
28 this section, that no longer meets the criteria of subsection (2) of
29 this section, and that is reclassified under subsection (1) of this
30 section; or

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

35 **Sec. 2.** RCW 84.34.108 and 2007 c 54 s 25 are each amended to read
36 as follows:

37 (1) When land has once been classified under this chapter, a

1 notation of the classification shall be made each year upon the
2 assessment and tax rolls and the land shall be valued pursuant to RCW
3 84.34.060 or 84.34.065 until removal of all or a portion of the
4 classification by the assessor upon occurrence of any of the following:

5 (a) Receipt of notice from the owner to remove all or a portion of
6 the classification;

7 (b) Sale or transfer to an ownership, except a transfer that
8 resulted from a default in loan payments made to or secured by a
9 governmental agency that intends to or is required by law or regulation
10 to resell the property for the same use as before, making all or a
11 portion of the land exempt from ad valorem taxation;

12 (c) Sale or transfer of all or a portion of the land to a new
13 owner, unless the new owner has signed a notice of classification
14 continuance, except transfer to an owner who is an heir or devisee of
15 a deceased owner shall not, by itself, result in removal of
16 classification. The notice of continuance shall be on a form prepared
17 by the department. If the notice of continuance is not signed by the
18 new owner and attached to the real estate excise tax affidavit, all
19 additional taxes calculated pursuant to subsection (4) of this section
20 shall become due and payable by the seller or transferor at time of
21 sale. The auditor shall not accept an instrument of conveyance
22 regarding classified land for filing or recording unless the new owner
23 has signed the notice of continuance or the additional tax has been
24 paid, as evidenced by the real estate excise tax stamp affixed thereto
25 by the treasurer. The seller, transferor, or new owner may appeal the
26 new assessed valuation calculated under subsection (4) of this section
27 to the county board of equalization in accordance with the provisions
28 of RCW 84.40.038. Jurisdiction is hereby conferred on the county board
29 of equalization to hear these appeals;

30 (d) Determination by the assessor, after giving the owner written
31 notice and an opportunity to be heard, that all or a portion of the
32 land no longer meets the criteria for classification under this
33 chapter. The criteria for classification pursuant to this chapter
34 continue to apply after classification has been granted. The written
35 notice by the assessor must provide information regarding the process
36 to appeal a determination by a county assessor under this subsection
37 (1)(d) including timelines, petition forms, and county board of
38 equalization contact information.

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

6 (2) Land may not be removed from classification because of:

7 (a) The creation, sale, or transfer of forestry riparian easements
8 under RCW 76.13.120; or

9 (b) The creation, sale, or transfer of a fee interest or a
10 conservation easement for the riparian open space program under RCW
11 76.09.040.

12 (3) Within thirty days after such removal of all or a portion of
13 the land from current use classification, the assessor shall notify the
14 owner in writing, setting forth the reasons for the removal. The
15 seller, transferor, or owner may appeal the removal to the county board
16 of equalization in accordance with the provisions of RCW 84.40.038.

17 (4) Unless the removal is reversed on appeal, the assessor shall
18 revalue the affected land with reference to its true and fair value on
19 January 1st of the year of removal from classification. Both the
20 assessed valuation before and after the removal of classification shall
21 be listed and taxes shall be allocated according to that part of the
22 year to which each assessed valuation applies. Except as provided in
23 subsection (6) of this section, an additional tax, applicable interest,
24 and penalty shall be imposed which shall be due and payable to the
25 treasurer thirty days after the owner is notified of the amount of the
26 additional tax. As soon as possible, the assessor shall compute the
27 amount of additional tax, applicable interest, and penalty and the
28 treasurer shall mail notice to the owner of the amount thereof and the
29 date on which payment is due. The amount of the additional tax,
30 applicable interest, and penalty shall be determined as follows:

31 (a) The amount of additional tax shall be equal to the difference
32 between the property tax paid as "open space land," "farm and
33 agricultural land," or "timber land" and the amount of property tax
34 otherwise due and payable for the seven years last past had the land
35 not been so classified;

36 (b) The amount of applicable interest shall be equal to the
37 interest upon the amounts of the additional tax paid at the same

1 statutory rate charged on delinquent property taxes from the dates on
2 which the additional tax could have been paid without penalty if the
3 land had been assessed at a value without regard to this chapter;

4 (c) The amount of the penalty shall be as provided in RCW
5 84.34.080. The penalty shall not be imposed if the removal satisfies
6 the conditions of RCW 84.34.070.

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

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

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

25 (b)(i) A taking through the exercise of the power of eminent
26 domain, or (ii) sale or transfer to an entity having the power of
27 eminent domain in anticipation of the exercise of such power, said
28 entity having manifested its intent in writing or by other official
29 action;

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

33 (d) Official action by an agency of the state of Washington or by
34 the county or city within which the land is located which disallows the
35 present use of the land;

36 (e) Transfer of land to a church when the land would qualify for
37 exemption pursuant to RCW 84.36.020;

- 1 (f) Acquisition of property interests by state agencies or agencies
2 or organizations qualified under RCW 84.34.210 and 64.04.130 for the
3 purposes enumerated in those sections. At such time as these property
4 interests are not used for the purposes enumerated in RCW 84.34.210 and
5 64.04.130 the additional tax specified in subsection (4) of this
6 section shall be imposed;
- 7 (g) Removal of land classified as farm and agricultural land under
8 RCW 84.34.020(2)(~~(e)~~) (f);
- 9 (h) Removal of land from classification after enactment of a
10 statutory exemption that qualifies the land for exemption and receipt
11 of notice from the owner to remove the land from classification;
- 12 (i) The creation, sale, or transfer of forestry riparian easements
13 under RCW 76.13.120;
- 14 (j) The creation, sale, or transfer of a fee interest or a
15 conservation easement for the riparian open space program under RCW
16 76.09.040; or
- 17 (k) The sale or transfer of land within two years after the death
18 of the owner of at least a fifty percent interest in the land if the
19 land has been assessed and valued as classified forest land, designated
20 as forest land under chapter 84.33 RCW, or classified under this
21 chapter continuously since 1993. The date of death shown on a death
22 certificate is the date used for the purposes of this subsection
23 (6)(k).

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