

HOUSE BILL REPORT

HB 1261

As Reported by House Committee On:
Finance

Title: An act relating to providing tax relief for certain incidental uses on open space land.

Brief Description: Providing tax relief for certain incidental uses on open space land.

Sponsors: Representatives Low, Berg, Peterson and Nance.

Brief History:

Committee Activity:

Finance: 1/28/25, 2/18/25 [DPS].

Brief Summary of Substitute Bill

- Allows for certain agritourism activities to take place on classified open space farm and agricultural land without classification removal.
- Reduces the classification removal penalty calculation for classified open space farm and agricultural land to four years of back taxes.

HOUSE COMMITTEE ON FINANCE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 15 members: Representatives Berg, Chair; Street, Vice Chair; Orcutt, Ranking Minority Member; Jacobsen, Assistant Ranking Minority Member; Abell, Chase, Mena, Parshley, Penner, Ramel, Santos, Scott, Springer, Walen and Wylie.

Staff: Kristina King (786-7190).

Background:

Property Tax.

All real and personal property is subject to a tax each year based on the highest and best use

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

unless a specific exemption is provided by law. The annual growth of all regular property tax levy revenue is limited as follows:

- For jurisdictions with a population of less than 10,000, revenue growth is limited to 1 percent.
- For jurisdictions with a population of 10,000 or more, revenue growth is limited to the lesser of inflation or 1 percent plus the value of new construction.

The state collects two regular property tax levies for common schools. The revenue growth limit applies to both levies. Participants in the senior citizens, individuals with disabilities, and qualifying veterans property tax exemption program receive a partial exemption from the original state levy and a full exemption from the additional state levy.

The Washington Constitution limits regular levies to a maximum of 1 percent of the property's value (\$10 per \$1,000 of assessed value). There are individual district rate maximums and aggregate rate maximums to keep the total tax rate for regular property taxes within the constitutional limit. For example:

- The state levy rate is limited to \$3.60 per \$1,000 of assessed value.
- County general levies are limited to \$1.80 per \$1,000 of assessed value.
- County road levies are limited to \$2.25 per \$1,000 of assessed value.
- City levies are limited to \$3.375 per \$1,000 of assessed value.

For property tax purposes, the state, counties, and cities are collectively referred to as senior taxing districts. Junior taxing districts—a term that includes fire, hospital, flood control zone, and most other special purpose districts—each have specific rate limits as well.

Current Use Classification.

Property meeting certain conditions may have property taxes determined on current use values rather than market values. There are four categories of lands that are classified and assessed on current use. Three categories are related to open spaces: open space lands, farm and agricultural lands, and timberlands. The remaining category is designated forestland.

There are various requirements the property owner must meet in order to qualify for the current use farm and agricultural land classification. There are size and income parameters as well as requirements that limit the way the land is used, the types of buildings built on the land, and the for-profit activities that are allowed to be conducted. In almost all cases, the land is required to be devoted primarily to agricultural uses or livestock production. The land may:

- have farm operator and employee housing built upon it;
- be used primarily for equestrian-related activities for which a charge is made, including stabling, training, riding, clinics, schooling, shows, or grazing for feed; or
- be primarily used for commercial horticultural purposes, including growing seedlings, trees, shrubs, vines, fruits, vegetables, flowers, herbs, and other plants in containers.

The current use farm and agricultural land classification, additionally, allows for the existence of:

- appurtenances necessary for production, preparation, or sale of agricultural products in conjunction with the lands producing such products; and
- incidental uses compatible with agricultural purposes, including wetland preservation, provided such use does not exceed 20 percent of the classified land.

The land remains in current use classification as long as it continues to be used for the purpose it was placed in the current use program. Land is removed from the program for the following reasons:

- written notice from the owner to remove all or a portion of the classified land;
- sale or transfer to an owner making all or a portion of the land exempt from property taxes, such as a sale to a governmental entity that is exempt from property taxes;
- sale or transfer to a new owner unless the owner signed a notice of continuance;
- an owner who fails to respond to a request from the assessor for information regarding use of the land;
- the granting authority denies an owner's request for reclassification;
- the assessor determines land no longer meets criteria; or
- the assessor discovers the land was classified in error.

When property is removed from current use classification, back taxes, plus interest, must be paid by the owner. For open space categories, back taxes, called additional tax, represent the tax benefit received over the most recent seven years plus interest and penalties. Additional tax becomes a lien on the property if not paid within 30 days after notification of it being due. Upon collection, the additional tax is distributed by the county treasurer in the same manner in which current taxes applicable to the subject land are distributed. The applicable interest and penalties are distributed to the county's current expense fund.

In instances when an assessor removes a property from the open space classification without voluntary withdrawal from the property owner, the owner may file an appeal of the removal to the county board of equalization in the county where the land is located. If the county board of equalization rules against the property owner, the owner may appeal the decision to the Board of Tax Appeals.

Tax Preference Performance Statement.

Tax preferences confer reduced tax liability upon a designated class of taxpayers. These include tax exclusions, deductions, exemptions, preferential tax rates, deferrals, and credits. There are over 700 tax preferences, including a variety of sales and use tax exemptions. Legislation that establishes or expands a tax preference must include a Tax Preference Performance Statement (TPPS) that identifies the public policy objective of the preference, as well as specific metrics that the Joint Legislative Audit and Review Committee (JLARC) can use to evaluate the effectiveness of the preference. All new tax preferences automatically expire after 10 years unless an alternative expiration date is provided.

Summary of Substitute Bill:

The wholesale value of agricultural products sold to consumers participating in harvest-your-own operations is added to the definition of income that qualifies land for the open space farm and agricultural land classification.

Land classified as open space farm and agricultural land upon which an existing appurtenance is located may not be removed from classification as a result of minor upgrades and alterations to the appurtenance such as the addition of a cement pad, plumbing, or electrical, or limited compatible uses including educational and recreational farming programs, seasonal farm festivals, and celebratory gatherings such as weddings as long as these incidental uses do not exceed 20 percent of the classified land. The land can be removed from open space farm and agricultural classification if:

- retaining the classification of the land exceeds 20 percent incidental use limitation; or
- the upgraded or altered structure no longer meets the definition of appurtenance.

Appurtenance is defined as something used with and related to or dependent upon another thing that is, something that belongs to something else, an adjunct. The thing appurtenant is strictly necessary and essential to the proper use and enjoyment of the land, as well as useful or necessary for carrying out the purposes for which the land is classified under open space farm and agricultural land. In terms of farm and agricultural land, an appurtenance is something used for a particular sort of farm and is widely and routinely used in the operation of the commercial agricultural enterprise. An appurtenance includes, but is not limited to, portable sanitation equipment, barn, tool shed, or equipment used for a particular purpose or task, such as tools, instruments, or machinery.

Incidental use is a use of land classified as farm and agricultural land or timberland that is compatible with commercial agricultural purposes. Incidental use for land classified as farm and agricultural land may not exceed 20 percent of the total classified land, while incidental use for timberland may not exceed 10 percent of the total classified land. An incidental use may include, but is not limited to, wetland preservation, a gravel pit, a farm woodlot, a produce stand, or an unpaved parking area necessary for the safe visiting or viewing of open space classified land.

Beginning September 1, 2025, the additional tax penalty amount for open space farm and agricultural land classification removal is reduced to four years of back taxes.

Substitute Bill Compared to Original Bill:

As compared to the original bill, the substitute bill includes the following changes:

- includes the wholesale value of harvest-your-own agricultural products in the gross income from agricultural use rather than an incidental use, provided the agricultural products are grown on the same land;
- provides a definition for "appurtenance" and adds portable sanitation equipment to

- the definition of an appurtenance;
- removes the definition of "agritourism activity";
 - provides a definition for "incidental use" and adds unpaved parking areas used for safe visiting and safe viewing of classified lands as an incidental use, provided that total incidental uses for classified farm and agricultural land do not exceed 20 percent of the classified land;
 - prohibits the removal of land beneath an existing appurtenance due to minor upgrades and alterations or limited compatible uses, such as educational and recreational farming, events such as seasonal festivals, and celebratory gatherings such as weddings, unless retaining the classification as farm and agricultural land would exceed the 20 percent incidental use limitation, or the structure no longer meets the definition of appurtenance;
 - reduces the number of years used to calculate additional tax from seven years to four years for both removals and withdrawals of classified farm and agricultural land on or after September 1, 2025;
 - makes a technical clarification to align statutes that address the 20 percent penalty for classification removal;
 - adds a savings clause;
 - adds a severability clause; and
 - provides an exemption from TPPS requirements, a JLARC review, and the 10-year automatic expiration.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Farmers are having a hard time staying afloat, and farmers must sell their farms quite often due to financial reasons. The state of Washington loses two farms a day. The open space tax status allows farms to keep their farms profitable, and without the classification, the farms would not be economically sustainable. Only 100 out of 400 farms in Washington net over \$100,000 a year. The open space classification also helps landowners provide the public service of maintaining and protecting agricultural land. Many farmers are moving away from commodity farming because it does not make money. Agritourism has kept family farms afloat by helping adjust their business to the changing times. The number of farms reporting income as agritourism farms has grown 16 percent. There is public interest in participating in and experiencing agritourism activities, and these activities help break down urban-rural barriers and expose urban families to rural agricultural life. When farmers conduct agritourism activities on their open space land, the

land is removed from the classification by the county assessors, and this is causing Washington farmers hardship. This bill will make a clarification that the land cannot be removed for having agritourism activities on the land. As industry modernizes, so should our tax statutes. Farmers in Snohomish County have been hit with these back taxes and they are significant. This bill seeks to find clarity on navigating difficult Department of Revenue regulations. This bill will help save our farms. Snohomish County is lucky to have a strong agricultural community, and agriculture is the second largest industry, and these farmers are simply trying to provide what consumers are asking of them.

(Opposed) None.

(Other) There are concerns with the administrability and constitutionality of the bill. Some terms are not defined and there might be unintended consequences for other open space categories.

Persons Testifying: (In support) Representative Sam Low, prime sponsor; Brad Tower, Washington Christmas Tree Growers; Tara Luckie; Keith Stocker, Stocker Farms, Inc; County Executive, Dave Somers, Snohomish County; Councilmember, Megan Dunn, Snohomish County; Linda Neunzig, Snohomish County; Ben Krause, Swans Trail Farms, Inc.; and Bob Ricci.

(Other) Kate Armstrong, Department of Revenue; Steve Ewing, Department of Revenue; Sue Lani Madsen, Washington Rural Environmental Network; and Linda Hjelle, WA Association of County Assessors and Snohomish County Assessor.

Persons Signed In To Testify But Not Testifying: None.