
SUBSTITUTE SENATE BILL 5143

State of Washington

60th Legislature

2007 Regular Session

By Senate Committee on Ways & Means (originally sponsored by Senators Fraser, Swecker and Franklin)

READ FIRST TIME 03/05/07.

1 AN ACT Relating to agricultural land under the open space program;
2 amending RCW 84.34.020 and 84.34.108; and creating a new section.

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 lands including incidental uses as are compatible with
15 agricultural purposes, including wetlands preservation, provided such
16 incidental use does not exceed twenty percent of the classified land
17 and the land on which appurtenances necessary to the production,
18 preparation, or sale of the agricultural products exist in conjunction
19 with the lands producing such products. Agricultural lands shall also
20 include any parcel of land of one to five acres, which is not
21 contiguous, but which otherwise constitutes an integral part of farming
22 operations being conducted on land qualifying under this section as
23 "farm and agricultural lands"; ((~~or~~))

24 (e) The land on which housing for employees and the principal place
25 of residence of the farm operator or owner of land classified pursuant
26 to (a) of this subsection is sited if: The housing or residence is on
27 or contiguous to the classified parcel; and the use of the housing or
28 the residence is integral to the use of the classified land for
29 agricultural purposes; or

30 (f) The land on which housing for employees and the principal place
31 of residence of the farm operator or owner of land classified pursuant
32 to (b) and (c) of this subsection is sited if the following conditions
33 are met:

34 (i) The housing or residence is on or contiguous to the classified
35 parcel;

36 (ii) The use of the housing or the residence is integral to the use
37 of the classified land for agricultural purposes;

1 (iii) The applicant files a copy of schedule F of the federal tax
2 form 1040 with the county assessor's office with the initial
3 application and every year thereafter;

4 (iv) The annual gross income from farming or agricultural
5 activities is eighteen thousand dollars for four of the five calendar
6 years preceding the date of application for classification under this
7 chapter; and

8 (v) The classified land has produced an annual gross income under
9 (b) or (c) of this subsection derived exclusively from the following
10 products: Horticultural products; floricultural products; plant
11 cultivation products; viticultural products; fruit and vegetable
12 products, including orchard products; and poultry and egg products.

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

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

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

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

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

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

36 (a) Land that was previously classified under subsection (2) of
37 this section, that no longer meets the criteria of subsection (2) of

1 this section, and that is reclassified under subsection (1) of this
2 section; or

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

7 **Sec. 2.** RCW 84.34.108 and 2003 c 170 s 6 are each amended to read
8 as follows:

9 (1) When land has once been classified under this chapter, a
10 notation of the classification shall be made each year upon the
11 assessment and tax rolls and the land shall be valued pursuant to RCW
12 84.34.060 or 84.34.065 until removal of all or a portion of the
13 classification by the assessor upon occurrence of any of the following:

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

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

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

1 of RCW 84.40.038. Jurisdiction is hereby conferred on the county board
2 of equalization to hear these appeals;

3 (d) Determination by the assessor, after giving the owner written
4 notice and an opportunity to be heard, that all or a portion of the
5 land no longer meets the criteria for classification under this
6 chapter. The criteria for classification pursuant to this chapter
7 continue to apply after classification has been granted.

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

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

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

16 (b) The creation, sale, or transfer of a fee interest or a
17 conservation easement for the riparian open space program under RCW
18 76.09.040.

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

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

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

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

11 (c) The amount of the penalty shall be as provided in RCW
12 84.34.080. The penalty shall not be imposed if the removal satisfies
13 the conditions of RCW 84.34.070.

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

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

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

33 (b)(i) A taking through the exercise of the power of eminent
34 domain, or (ii) sale or transfer to an entity having the power of
35 eminent domain in anticipation of the exercise of such power, said
36 entity having manifested its intent in writing or by other official
37 action;

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

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

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

9 (f) Acquisition of property interests by state agencies or agencies
10 or organizations qualified under RCW 84.34.210 and 64.04.130 for the
11 purposes enumerated in those sections. At such time as these property
12 interests are not used for the purposes enumerated in RCW 84.34.210 and
13 64.04.130 the additional tax specified in subsection (4) of this
14 section shall be imposed;

15 (g) Removal of land classified as farm and agricultural land under
16 RCW 84.34.020(2)(e);

17 (h) Removal of land from classification after enactment of a
18 statutory exemption that qualifies the land for exemption and receipt
19 of notice from the owner to remove the land from classification;

20 (i) The creation, sale, or transfer of forestry riparian easements
21 under RCW 76.13.120;

22 (j) The creation, sale, or transfer of a fee interest or a
23 conservation easement for the riparian open space program under RCW
24 76.09.040;

25 (k) The sale or transfer of land within two years after the death
26 of the owner of at least a fifty percent interest in the land if the
27 land has been assessed and valued as classified forest land, designated
28 as forest land under chapter 84.33 RCW, or classified under this
29 chapter continuously since 1993. The date of death shown on a death
30 certificate is the date used for the purposes of this subsection
31 (6)(k); or

32 (l) The sale or transfer of land after the death of the owner of at
33 least a fifty percent interest in the land if the land has been
34 assessed and valued as classified forest land, designated as forest
35 land under chapter 84.33 RCW, or classified under this chapter
36 continuously since 1993 and the sale or transfer takes place after July
37 22, 2001, and on or before July 22, 2003, and the death of the owner

1 occurred after January 1, 1991. The date of death shown on a death
2 certificate is the date used for the purpose of this subsection (6)(1).

3 NEW SECTION. **Sec. 3.** This act applies to taxes levied for
4 collection in 2008 and thereafter.

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