

# HOUSE BILL REPORT

## ESHB 2928

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*As Passed Legislature*

**Title:** An act relating to open spaces.

**Brief Description:** Modifying open space laws.

**Sponsor(s):** By House Committee on Revenue (originally sponsored by Representatives Fraser, Wynne, Belcher, Morris, Wang, Dellwo, Scott and Jones).

**Brief History:**

Reported by House Committee on:  
Revenue, February 4, 1992, DPS;  
Passed House, February 17, 1992, 97-1;  
Amended by Senate;  
Passed Legislature.

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**HOUSE COMMITTEE ON  
REVENUE**

**Majority Report:** *The substitute bill be substituted therefor and the substitute bill do pass.* Signed by 14 members: Representatives Wang, Chair; Fraser, Vice Chair; Brumsickle, Ranking Minority Member; Wynne, Assistant Ranking Minority Member; Appelwick; Belcher; Carlson; Day; J. Kohl; Leonard; Morris; Morton; Silver; and Van Luven.

**Minority Report:** *Do not pass.* Signed by 1 member: Representative Rust.

**Staff:** Rick Peterson (786-7150).

**Background:** Property meeting certain conditions may have property taxes determined on current use values rather than market values. There are three categories of these "open space" lands: (a) open space lands, (b) farm and agriculture lands, and (c) timber lands. There are two categories of forest land; classified and designated forest land.

Open space lands are lands that preserve natural or scenic resources, protect streams or water supplies, promote conservation of soils, wetlands, beaches or tidal marshes, enhance neighboring parks, forest, wildlife preserves, nature reservations or sanctuaries, enhance recreation opportunities, preserve historic sites, and retain land in urban areas in its natural state. The legislative body

granting open space classification may require the land be open to public use.

Open space farm and agricultural lands must be devoted primarily to commercial agricultural purposes. To qualify for special property tax treatment, farm parcels less than five acres must generate \$1,000 in farm gross income. Farm parcels less than 20 acres and greater than five acres must have income greater than \$100 per acre. Farm parcels greater than 20 acres have no income test.

Open space timber land is land of five or more acres devoted primarily to the growing and harvesting of timber. Classified and designated forest land is land which is 20 or more acres and devoted primarily to the growing and harvesting of timber. The assessed value of open space timber land and classified and designated forest land is set by statute.

Applications for open space agriculture classification are made to the county assessor. A denial by the assessor can be appealed to the county legislative authority. Applications for open space or timber land are made to the county legislative authority. Appeals of county legislative authority decisions are made to the superior court.

The value for agriculture open space is determined by discounting the "net cash rental" of comparable farm lands growing crops typical to the area. Net cash rental is the average rent paid in cash or its equivalent. The discount rate is the rate of interest charged on long term farm loans plus an amount representing the average "mileage rate" for the county.

Property may be removed from open space classification by the owner giving notice to withdraw. This notification is irrevocable. Land is removed from open space classification by the assessor if it no longer is used for the purpose under which it was granted open space classification.

When property is removed from open space classification, back taxes plus interest must be paid. The back taxes represent the tax benefit received over the most recent seven years. In addition, a penalty equal to 20 percent of the back taxes is applied. The penalty may be avoided if the property remains in the program for at least 10 years and a two year waiting period after notice of withdrawal is satisfied.

Land may be switched between open space farm and agricultural land and open space timber land without paying back taxes. Land may be switched between classified and

designated forest land and open space farm and agricultural land and open space timber land.

Back taxes are also not paid if the property is transferred through exercise of eminent domain or the threat of eminent domain.

Sale or transfer to a new owner triggers removal from the open space program or from classified or designated forest land. Back taxes must be paid unless the new owner signs an agreement to continue in the program. Transfers by inheritance have traditionally not been treated as a transfer triggering removal from the program. A recent attorney general opinion, however, makes it clear that an inheritance is a transfer. Unless the new owner signs a continuance, the property is removed from the program. An exemption from the back taxes is provided for a transfer within two years of the death of an owner of at least 50 percent interest in the property.

**Summary of Bill:** Land classified as open space and classified and designated forest land are retained in the forest land program when a transfer occurs due to an inheritance. The exemption from the collection of back taxes when property is sold within two years of the death of an owner of at least 50 percent interest in the property is removed.

Classified or designated forest land may transfer to "open space" open space classification without the payment of the back taxes. Transfers from open space timber land and farm and agricultural land to "open space" open space land are allowed without the payment of additional back taxes. Transfers from open space timber land and farm and agricultural land to classified or designated forest land are allowed without the payment of additional back taxes.

A new category is created in "open space" open space called "farm and agriculture conservation land." Lands eligible for this category are those formerly classified as farm and agriculture lands that no longer meet the income test or are not being actively farmed. Traditional farmland that has not been devoted to a use inconsistent with agricultural uses, that is not in another current use classification, and has a high potential for returning to commercial agriculture is also eligible for this category. Transfer from the "open space" open space "farm and agriculture conservation land" category to farm and agricultural land is allowed if the land had been previously classified as farm and agricultural land. The income test for farm land less than 20 acres is deferred for five years when the land is reclassified from another category into farm and agricultural land.

The definition of open space is expanded to include any land area which will preserve visual quality along highways, roads, and street corridors or scenic vistas. Public access cannot be required as a condition of granting open space classification to wetlands.

The annual gross income test for farm and agricultural land is increased for farms five to 20 acres in size from \$100 to \$200 per acre. The annual gross income test is increased for farms less than five acres in size from \$1,000 to \$1,500. These changes in income test are effective for applications after January 1, 1993. Land previously classified as farm and agricultural land will retain old income tests. A transfer of classified farm land to a new owner will trigger the application of the higher income tests.

The use of in-kind payments is discontinued when determining the "net cash rental" of farm and agricultural lands.

The current allowance for farm woodlots is expanded to an allowance of up to 20 percent of the farm land for uses incidental to agricultural purposes. Wetlands preservation is considered to be an incidental use compatible with agricultural purposes.

Land under farm dwellings is assessed at farmland values. This treatment applies only to farms over 20 acres and when use of the dwelling is integral to farm operation. The current use value of land under farm dwellings is set at the average open space farm and agricultural land value plus the value of land improvements for septic, water, and power to serve the residence.

The definition of agriculture is expanded to include other activities as established by rule following consultation with a statewide advisory committee. An advisory committee is created to assist the Department of Revenue in recommending changes to rules relating to open space taxation. The membership of the advisory committee is set as follows:

- a. Four assessors, two from Western Washington and two from Eastern Washington.
- b. Two members representing natural resource protection organizations.
- c. Two members representing the public.
- d. Four members representing agriculture and forestry.

Denials by assessor of applications for farm and agricultural land classification are appealed to the county board of equalization rather than the county legislative authority.

A timber management plan is required for classification as open space timber land.

Continued open space classification is allowed if the land is transferred due to a loan default to a government agency and the agency intends to resell the property to be continued in the same use.

Property classified under open space law is required to continue to meet criteria for classification as open space for the years following initial classification.

The 20 percent penalty is charged, in addition to back taxes and applicable interest, when a property is prematurely removed from open space classification.

The intent to use power of eminent domain must be stated in writing or other official action taken before back taxes may be forgiven.

Back taxes are not charged when land under farm dwellings is removed from special assessment.

Numerous technical changes are made to the open space property tax law. The word "qualified" is changed to "classified" when referring to lands under the open space program. The requirement for the county treasurer to record farm open space values in the same place as delinquent taxes is deleted. The assessed value of "open space" open space land shall not be less than the minimum value assigned to classified farm and agriculture land. Archaic language that refers to "mileage rates" is deleted. The request by a landowner for removal from open space classification is no longer irrevocable. The interest calculated on the back taxes is distinguished from the back taxes. Property classified under the pre-1973 law is automatically reclassified under the 1973 law. Conditions imposed on land classified as open space under the pre-1973 law continue to apply after the reclassification.

An assessor may reclassify land if it was incorrectly placed in the wrong classification. This authority expires on December 31, 1995.

**Fiscal Note:** Requested January 30, 1992.

**Effective Date:** January 1, 1993.

**Testimony For:** The bill cleans up and updates the open space property tax law. It moderately increases the income thresholds for meeting the farm and agricultural land definition for land under 20 acres. It provides for up to

20 incidental uses on farm and agricultural lands. It allows transfers between categories which should encourage retention in the program. It strengthens the open space timber land qualification by requiring a timber management plan.

**Testimony Against:** None.

**Witnesses:** 1/14/92: Marlyta Deck, Washington Cattlemen's Association (in favor); Paul Dossett, Washington State Association of County Assessors (in favor); and Gordon White, independent farmer (had concerns with Section II).  
1/30/92: Tom Casey, Washington State Grange; Ben Gassaway, Washington State Association of County Assessors; Pat McElroy, Department of Natural Resources; Mike Ryherd, Washington Wildlife and Recreation Council; and Fred Saeger, Washington Association of County Officials (all in favor).