

**SENATE BILL REPORT**

**SB 5775**

**AS OF FEBRUARY 25, 1993**

**Brief Description:** Providing a tax incentive for the donation of conservation easements by private landowners whose land is included in the natural heritage information system.

**SPONSORS:** Senators Fraser, Barr and M. Rasmussen

**SENATE COMMITTEE ON ECOLOGY & PARKS**

**Staff:** Gary Wilburn (786-7453)

**Hearing Dates:** February 26, 1993

**BACKGROUND:**

Open Space Taxation. Under the state's open space tax laws, property meeting certain conditions may have property taxes determined based 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.

1. Open Space Classifications

The open space category includes lands that preserve natural or scenic resource, 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.

Lands in the farm and agricultural land category must be devoted primarily to commercial agricultural purposes. To qualify for special property tax treatment, farm parcels less than five acres must generate \$1500 in farm gross income. Farm parcels less than 20 acres and greater than five acres must have income greater than \$200 per acre. Farm parcels greater than 20 acres have no income test to qualify.

In 1992 the Legislature amended the open space tax laws to created a new category of "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. Certain traditional farmland is also eligible for this category.

Lands in the timber land category must be five acres or more and 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.

## 2. Valuation of Lands in the Open Space Program

The assessed value of open space timber land and classified and designated forest land is set by statute. The value for agriculture open space lands is determined by discounting the "net cash rental" of comparable farm lands growing crops typical to the area. The discount rate is the rate of interest charged on long-term farm loans plus a component for property taxes.

The assessed value of lands in the open space category may be based simply upon the current uses of the property, or may be calculated as a percentage of market value according to the county's open space plan and public benefit rating system (PBRs). The open space plan and PBRs is optional with the county. The plan and PBRs reflects the county's open space priorities and features, based upon recognized sources such as the natural heritage data based, historic preservation inventories, the shoreline master program, and similar sources. Typically the assessed valuation schedule derived from the PBRs will award "points" in reducing the value of the property based upon the presence of features considered important by the county as reflected in the open space plan.

## 3. Removal from and Transfers with the Program

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 ten years and a two-year waiting period after notice of withdrawal is satisfied.

Land may be switched between the open space, agricultural and timber classifications without paying back taxes.

The Washington Natural Heritage Program. The Washington Natural Heritage Program is administered by the Department of Natural Resources, and is responsible for identifying, characterizing, and establishing the location of elements of natural diversity in the state. Corresponding programs have been developed in most of the states. Elements may be plant communities, aquatic systems, or special animal or plant species. Information about these elements is maintained in the Natural Heritage Information System.

Conservation Easements on Open Space Property. Local governments, nonprofit land trusts, and other entities may accept conservation easements by donation from property owners seeking to achieve the long-term conservation of the property. The easement restricts future development of the property or activities which are inconsistent with such conservation. In some cases, the donor of the easement may qualify for federal income tax benefits for the value of the donation.

In some cases, property subject to a conservation easement is also designated under the open space tax laws. In the case of property classified as farm land, it typically receives a very low valuation. For lands with important natural features or plant or animal species, the owner may desire to change classification from "open space" farm land to the "open space" open space land category, in order to cease or reduce farming activities which may adversely impact the natural features of the land. In such cases it is unclear whether this change in classification may lead to a substantial increase in assessed valuation for property tax purposes.

**SUMMARY:**

An alternative method of determining the valuation of open space land is provided for lands which meet the following four conditions:

- (1) The property is included in the Natural Heritage Information System;
- (2) The property is classified as open space;
- (3) The property is subject to a donated conservation easement; and
- (4) Prior to its classification as open space, the property was classified as agricultural land or timber land.

The assessed value of property meeting these four conditions is the lower of the value as assessed as open space, or its assessed value under the property's previous classification.

**Appropriation:** none

**Revenue:** none

**Fiscal Note:** requested February 11, 1993