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SENATE BILL 5465

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State of Washington

59th Legislature

2005 Regular Session

By Senators Rasmussen and Morton

Read first time 01/26/2005. Referred to Committee on Agriculture & Rural Economic Development.

1 AN ACT Relating to the taxation of land valued under the open space  
2 program; and amending RCW 84.34.108, 84.34.055, 84.34.070, 84.34.080,  
3 84.34.090, 84.34.100, 84.34.150, and 84.34.155.

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

5 **Sec. 1.** RCW 84.34.108 and 2003 c 170 s 6 are each amended to read  
6 as follows:

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

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

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

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

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

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

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

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

32 (b) The creation, sale, or transfer of a fee interest or a  
33 conservation easement for the riparian open space program under RCW  
34 76.09.040.

35 (3) Within thirty days after such removal of all or a portion of  
36 the land from current use classification, the assessor shall notify the  
37 owner in writing, setting forth the reasons for the removal. The

1 seller, transferor, or owner may appeal the removal to the county board  
2 of equalization in accordance with the provisions of RCW 84.40.038.

3 (4) Unless the removal is reversed on appeal, the assessor shall  
4 revalue the affected land with reference to its true and fair value on  
5 January 1st of the year of removal from classification. Both the  
6 assessed valuation before and after the removal of classification shall  
7 be listed and taxes shall be allocated according to that part of the  
8 year to which each assessed valuation applies. Except as provided in  
9 subsection (6) of this section, an additional tax(~~(τ)~~) and applicable  
10 interest(~~((τ) and penalty))~~) shall be imposed which shall be due and  
11 payable to the treasurer thirty days after the owner is notified of the  
12 amount of the additional tax. As soon as possible, the assessor shall  
13 compute the amount of additional tax(~~(τ)~~) and applicable interest(~~((τ~~  
14 ~~and penalty))~~) and the treasurer shall mail notice to the owner of the  
15 amount thereof and the date on which payment is due. The amount of the  
16 additional tax(~~(τ)~~) and applicable interest(~~((τ) and penalty))~~) shall be  
17 determined as follows:

18 (a) The amount of additional tax shall be equal to the difference  
19 between the property tax paid as "open space land", "farm and  
20 agricultural land", or "timber land" and the amount of property tax  
21 otherwise due and payable for the seven years last past had the land  
22 not been so classified or, for land classified as "farm and  
23 agricultural land" for the last ten years, the difference between the  
24 property tax paid as "farm and agricultural land" and the amount of  
25 property tax otherwise due and payable for the three years last past  
26 had the land not been so classified; and

27 (b) The amount of applicable interest shall be equal to the  
28 interest upon the amounts of the additional tax paid at the same  
29 statutory rate charged on delinquent property taxes from the dates on  
30 which the additional tax could have been paid without penalty if the  
31 land had been assessed at a value without regard to this chapter(~~(τ~~

32 ~~(c) The amount of the penalty shall be as provided in RCW~~  
33 ~~84.34.080. The penalty shall not be imposed if the removal satisfies~~  
34 ~~the conditions of RCW 84.34.070)).~~

35 (5) Additional tax(~~(τ)~~) and applicable interest(~~((τ) and penalty,τ)~~)  
36 shall become a lien on the land which shall attach at the time the land  
37 is removed from classification under this chapter and shall have  
38 priority to and shall be fully paid and satisfied before any

1 recognizance, mortgage, judgment, debt, obligation or responsibility to  
2 or with which the land may become charged or liable. This lien may be  
3 foreclosed upon expiration of the same period after delinquency and in  
4 the same manner provided by law for foreclosure of liens for delinquent  
5 real property taxes as provided in RCW 84.64.050 now or as hereafter  
6 amended. Any additional tax unpaid on its due date shall thereupon  
7 become delinquent. From the date of delinquency until paid, interest  
8 shall be charged at the same rate applied by law to delinquent ad  
9 valorem property taxes.

10 (6) The additional tax(~~(7)~~) and applicable interest(~~(7) and~~  
11 ~~penalty~~) specified in subsection (4) of this section shall not be  
12 imposed if the removal of classification pursuant to subsection (1) of  
13 this section resulted solely from:

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

16 (b)(i) A taking through the exercise of the power of eminent  
17 domain, or (ii) sale or transfer to an entity having the power of  
18 eminent domain in anticipation of the exercise of such power, said  
19 entity having manifested its intent in writing or by other official  
20 action;

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

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

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

29 (f) Acquisition of property interests by state agencies or agencies  
30 or organizations qualified under RCW 84.34.210 and 64.04.130 for the  
31 purposes enumerated in those sections. At such time as these property  
32 interests are not used for the purposes enumerated in RCW 84.34.210 and  
33 64.04.130 the additional tax specified in subsection (4) of this  
34 section shall be imposed;

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

37 (h) Removal of land from classification after enactment of a

1 statutory exemption that qualifies the land for exemption and receipt  
2 of notice from the owner to remove the land from classification;

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

5 (j) The creation, sale, or transfer of a fee interest or a  
6 conservation easement for the riparian open space program under RCW  
7 76.09.040; or

8 (k) The sale or transfer of land within two years after the death  
9 of the owner of at least a fifty percent interest in the land if the  
10 land has been assessed and valued as classified forest land, designated  
11 as forest land under chapter 84.33 RCW, or classified under this  
12 chapter continuously since 1993. The date of death shown on a death  
13 certificate is the date used for the purposes of this subsection  
14 (6)(k)((~~i~~ or

15 ~~(l) The sale or transfer of land after the death of the owner of at~~  
16 ~~least a fifty percent interest in the land if the land has been~~  
17 ~~assessed and valued as classified forest land, designated as forest~~  
18 ~~land under chapter 84.33 RCW, or classified under this chapter~~  
19 ~~continuously since 1993 and the sale or transfer takes place after July~~  
20 ~~22, 2001, and on or before July 22, 2003, and the death of the owner~~  
21 ~~occurred after January 1, 1991. The date of death shown on a death~~  
22 ~~certificate is the date used for the purpose of this subsection~~  
23 ~~(6)(l))).~~

24 **Sec. 2.** RCW 84.34.055 and 1994 c 264 s 76 are each amended to read  
25 as follows:

26 (1) The county legislative authority may direct the county planning  
27 commission to set open space priorities and adopt, after a public  
28 hearing, an open space plan and public benefit rating system for the  
29 county. The plan shall consist of criteria for determining eligibility  
30 of lands, the process for establishing a public benefit rating system,  
31 and an assessed valuation schedule. The assessed valuation schedule  
32 shall be developed by the county assessor and shall be a percentage of  
33 market value based upon the public benefit rating system. The open  
34 space plan, the public benefit rating system, and the assessed  
35 valuations schedule shall not be effective until approved by the county  
36 legislative authority after at least one public hearing: PROVIDED,  
37 That any county which has complied with the procedural requisites of

1 chapter 393, Laws of 1985, prior to July 28, 1985, need not repeat  
2 those procedures in order to adopt an open space plan pursuant to  
3 chapter 393, Laws of 1985.

4 (2) In adopting an open space plan, recognized sources shall be  
5 used unless the county does its own survey of important open space  
6 priorities or features, or both. Recognized sources include but are  
7 not limited to the natural heritage data base; the state office of  
8 historic preservation; the interagency committee for outdoor recreation  
9 inventory of dry accretion beach and shoreline features; state,  
10 national, county, or city registers of historic places; the shoreline  
11 master program; or studies by the parks and recreation commission and  
12 by the departments of fish and wildlife and natural resources.  
13 Features and sites may be verified by an outside expert in the field  
14 and approved by the appropriate state or local agency to be sent to the  
15 county legislative authority for final approval as open space.

16 (3) When the county open space plan is adopted, owners of open  
17 space lands then classified under this chapter shall be notified in the  
18 same manner as is provided in RCW 84.40.045 of their new assessed  
19 value. These lands may be removed from classification, upon request of  
20 owner, (~~without penalty~~) within thirty days of notification of value  
21 without the additional tax or interest under RCW 84.34.108.

22 (4) The open space plan and public benefit rating system under this  
23 section may be adopted for taxes payable in 1986 and thereafter.

24 **Sec. 3.** RCW 84.34.070 and 1992 c 69 s 10 are each amended to read  
25 as follows:

26 (1) When land has once been classified under this chapter, it shall  
27 remain under such classification and shall not be applied to other use  
28 except as provided by subsection (2) of this section (~~for at least ten~~  
29 ~~years from the date of classification~~) and shall continue under such  
30 classification until and unless withdrawn from classification after  
31 notice of request for withdrawal shall be made by the owner. (~~During~~  
32 ~~any year after eight years of the initial ten year classification~~  
33 ~~period have elapsed,~~) Notice of request for withdrawal of all or a  
34 portion of the land may be given by the owner to the assessor or  
35 assessors of the county or counties in which such land is situated. In  
36 the event that a portion of a parcel is (~~removed~~) withdrawn from  
37 classification, the remaining portion must meet the same requirements

1 as did the entire parcel when such land was originally granted  
2 classification pursuant to this chapter unless the remaining parcel has  
3 different income criteria. Within seven days the assessor shall  
4 transmit one copy of such notice to the legislative body which  
5 originally approved the application. The assessor or assessors, as the  
6 case may be, shall(~~(, when two assessment years have elapsed following~~  
7 ~~the date of receipt of such notice,~~) withdraw such land from such  
8 classification and the land shall be subject to the additional tax and  
9 applicable interest due under RCW 84.34.108. Agreement to tax  
10 according to use shall not be considered to be a contract and can be  
11 abrogated at any time by the legislature in which event no additional  
12 tax or penalty shall be imposed.

13 (2) The following reclassifications are not considered withdrawals  
14 or removals and are not subject to additional tax under RCW 84.34.108:

15 (a) Reclassification between lands under RCW 84.34.020 (2) and (3);

16 (b) Reclassification of land classified under RCW 84.34.020 (2) or  
17 (3) or chapter 84.33 RCW to open space land under RCW 84.34.020(1);

18 (c) Reclassification of land classified under RCW 84.34.020 (2) or  
19 (3) to forest land classified under chapter 84.33 RCW; and

20 (d) Reclassification of land classified as open space land under  
21 RCW 84.34.020(1)(c) and reclassified to farm and agricultural land  
22 under RCW 84.34.020(2) if the land had been previously classified as  
23 farm and agricultural land under RCW 84.34.020(2).

24 (3) Applications for reclassification shall be subject to  
25 applicable provisions of RCW 84.34.037, 84.34.035, 84.34.041, and  
26 chapter 84.33 RCW.

27 (4) The income criteria for land classified under RCW 84.34.020(2)  
28 (b) and (c) may be deferred for land being reclassified from land  
29 classified under RCW 84.34.020 (1)(c) or (3), or chapter 84.33 RCW into  
30 RCW 84.34.020(2) (b) or (c) for a period of up to five years from the  
31 date of reclassification.

32 **Sec. 4.** RCW 84.34.080 and 1999 sp.s. c 4 s 705 are each amended to  
33 read as follows:

34 When land which has been classified under this chapter as open  
35 space land, farm and agricultural land, or timber land is applied to  
36 some other use, (~~except through compliance with RCW 84.34.070, or~~)  
37 except as a result solely from any one of the conditions listed in RCW

1 84.34.108(6), the owner shall within sixty days notify the county  
2 assessor of such change in use and additional real property tax shall  
3 be imposed upon such land in an amount equal to (~~the sum of the~~  
4 ~~following:~~

5 ~~(1)) the total amount of the additional tax and applicable~~  
6 ~~interest due under RCW 84.34.108(~~~~;~~ ~~plus~~

7 ~~(2) A penalty amounting to twenty percent of the amount determined~~  
8 ~~in subsection (1) of this section)).~~

9 **Sec. 5.** RCW 84.34.090 and 1970 ex.s. c 87 s 9 are each amended to  
10 read as follows:

11 The additional tax (~~and penalties, if any,~~) provided by RCW  
12 (~~84.34.070 and~~) 84.34.080 shall be extended on the tax roll and shall  
13 be, together with the interest thereon, a lien on the land to which  
14 such tax applies as of January 1st of the year for which such  
15 additional tax is imposed. Such lien shall have priority as provided  
16 in chapter 84.60 RCW: PROVIDED, That for purposes of all periods of  
17 limitation of actions specified in Title 84 RCW, the year in which the  
18 tax became payable shall be as specified in RCW 84.34.100.

19 **Sec. 6.** RCW 84.34.100 and 1980 c 134 s 4 are each amended to read  
20 as follows:

21 The additional tax(~~, penalties, and/or~~) and interest provided by  
22 RCW (~~84.34.070 and~~) 84.34.080 shall be payable in full thirty days  
23 after the date which the treasurer's statement therefor is rendered.  
24 Such additional tax when collected shall be distributed by the county  
25 treasurer in the same manner in which current taxes applicable to the  
26 subject land are distributed.

27 **Sec. 7.** RCW 84.34.150 and 1998 c 311 s 18 are each amended to read  
28 as follows:

29 Land classified under the provisions of chapter 84.34 RCW prior to  
30 July 16, 1973, which meets the criteria for classification under this  
31 chapter, is hereby reclassified under this chapter. This change in  
32 classification shall be made without additional tax, applicable  
33 interest, (~~penalty,~~) or other requirements, but subsequent to such  
34 reclassification, the land shall be fully subject to this chapter. A



1 condition imposed by a granting authority prior to July 16, 1973, upon  
2 land classified pursuant to RCW 84.34.020 (1) or (3) shall remain in  
3 effect during the period of classification.

4 **Sec. 8.** RCW 84.34.155 and 1992 c 69 s 15 are each amended to read  
5 as follows:

6 Land classified under the provisions of RCW 84.34.020 (2) or (3)  
7 which meets the definition of forest land under the provisions of  
8 chapter 84.33 RCW, upon request for such change made by the owner to  
9 the granting authority, shall be reclassified by the assessor under the  
10 provisions of chapter 84.33 RCW. This change in classification shall  
11 be made without additional tax, applicable interest, (~~penalty,~~) or  
12 other requirements set forth in chapter 84.34 RCW: PROVIDED, That  
13 subsequent to such reclassification, the land shall be fully subject to  
14 the provisions of chapter 84.33 RCW, as now or hereafter amended.

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