

SENATE BILL REPORT

SHB 1733

As of March 17, 2009

Title: An act relating to the property tax current use valuation programs.

Brief Description: Concerning the property tax current use valuation programs.

Sponsors: House Committee on Finance (originally sponsored by Representatives Goodman, Blake, Springer, Eddy, Dunshee, Rolfes and Kessler).

Brief History: Passed House: 3/06/09, 95-0.

Committee Activity: Ways & Means: 3/16/09.

SENATE COMMITTEE ON WAYS & MEANS

Staff: Dianne Criswell (786-7433)

Background: Most property is valued or assessed at its true and fair, or highest and best, value for purposes of imposing property taxes. However, article 7, section 11 of the State Constitution allows the Legislature to enact legislation assessing certain types of real property at its present or current use for purposes of imposing property taxes. Two programs of current use valuation have been established: one program for forest lands and a second current use program which includes open space lands, farm and agricultural lands, and timber lands. Properties in current use categories may be valued for tax purposes according to the current use, not the highest and best use value.

For the farm and agricultural land classification, the lands must be devoted primarily to commercial agricultural purposes. To qualify for classification as farm and agricultural land, land of less than 20 acres must meet income tests for three of the previous five years. For classified farm and agricultural land for which an application was made before January 1, 1993, and that has not been transferred to a new owner since January 1, 1993, farm parcels of less than five acres must generate \$1,000 in farm gross income, and farm parcels of between five and 20 acres must generate \$100 per acre. For other classified farm and agricultural land, farm parcels less than five acres must generate \$1,500 in farm gross income, and farm parcels of between five and 20 acres must generate \$200 per acre.

The Department of Revenue (DOR) rules, adopted to administer the open space current use laws, require that the income be from commercial agricultural production in order to meet the income requirement. Commercial agricultural activities include raising, harvesting, and

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selling lawful crops; feeding, breeding, managing, and selling of livestock, poultry, fur-bearing animals, or honey bees; dairying or selling of dairy products; animal husbandry, aquaculture, horticulture, participating in a government-funded crop reduction or acreage set-aside program; or intensive cultivation of Christmas trees or short-rotation hardwoods. Since 1971 DOR has required that animals be fed, bred, managed, and sold in order for land to be used for a "commercial agricultural purpose."

Late in 2008 DOR amended its rule (WAC 458-30-200) on an emergency basis to broaden the scope of the rule. The rule change eliminated the requirement for breeding of animals, and included the "sale" of forage through the grazing of livestock, including equines. Under the emergency rule, if a horse boarding operation pastures or grazes the boarded horses, then the "sale" of the pasture forage constitutes the sale of an agricultural product.

Land classified under the current use programs must remain under the program for at least ten years following initial classification. If the use of the property changes, the owner requests withdrawal, or a sale of the property is made and the new owner does not sign a notice of intent to continue within the current use program, then the land is withdrawn or removed from the program and additional tax, interest, and penalty apply.

Additional tax is calculated for the prior seven-year period, based on the difference between the current use valuation during the seven-year period and the market value. Interest is calculated at 12 percent per year, the same as for delinquent property taxes. The penalty is 20 percent of the additional tax and interest. An owner may appeal the removal of classification to the county board of equalization. Unless reversed upon appeal, the land is revalued to market value as of January 1 of the year of removal. If the owner wishes to withdraw the land from current use after the initial ten years, that person must notify the assessor two years prior to having the land withdrawn. The withdrawal then triggers the requirement to pay additional tax and interest as described above, but no penalty is imposed. An exception to the requirement to pay additional tax, interest, and penalties is provided for a number of circumstances. These include:

- an exchange of land with a government;
- a taking through the exercise of eminent domain;
- when use is changed by natural disaster;
- a land use restriction which prevents the current use;
- transfer of land to a church if the land qualifies for the property tax exemption for churches;
- acquisition of property for the purposes of the conservation futures program;
- removal of a farm residence or farm worker housing from current use;
- the removal of land from classification after enactment of a property tax exemption would apply;
- the creation, sale, or transfer of riparian easements or fee interest or conservation easement for the riparian open space program; and
- the sale or transfer of land within two years after the death of the owner of at least 50 percent interest if the property has been in current use since 1993.

Summary of Substitute Bill: Land used for equestrian activities such as stabling, training, riding, clinics, schooling, shows, or grazing for feed are eligible for current use valuation as farm and agricultural land.

An exception from the requirement to pay additional tax upon removal of property from a current use classification is allowed when the classification was originally granted in error through no fault of the owner.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: My district is in King County and includes many properties used for horse boarding, including riders in the Olympics. Without this legislation, many horse boarders would find continued operations unaffordable. This bill provides certainty for horse owners and persons in the equine industry after concerns were raised by recent King County Assessor Office interpretations which exclude equine activities from the current use farm and agriculture classification. We need to preserve open space by allowing equine activities to qualify for the classification. We should work to sustain the culture and heritage of the equine industry, which greatly contributes to Washington's economy.

Further, the hold harmless provision protects property owners, in all current use programs, whose property was classified and the owners participated in good faith, from assessment of back taxes when a subsequent assessor decides the property was not properly classified. This is good legislation, narrowly tailored for the equine industry, and should be enacted without amendment. In 2008 many horse boarders received notice that their use was no longer considered eligible and that they must pay the additional tax, interest, and penalties. These circumstances necessitate immediate action, or these horse boarding activities will go under.

There are increasing numbers of abandoned horses; without this bill, the situation will worsen. The commodity market for hay is also unfavorable, with Washington hay being exported to Asian markets. In 1970, there was voter approval for current use of farmland in order to preserve it. Treat horse boarding as an agricultural activity, like other properties in the current use farm and agricultural classification. There are more horses in King County than any other county in Washington. Horse boarding preserves open space in urban areas, and is important to maintain, because people board their horses near their residences in urban settings. This bill will help keep the equine industry viable in Washington. This industry is diverse and provides thousands of jobs throughout the state. We should not have to pay back tax due to a government reinterpretation of the law on which we relied to build our businesses and lives.

OTHER: Washington needs consistent administration of these programs throughout the counties. There are some concerns about allowing horse boarding services to qualify to meet the income requirements, in contrast with current law, which allows commodities produced. Additional documentation may be required, such as a federal income tax form for farm income, called the "schedule f." There are alternative classifications for horse boarding, such

as one of the current use open space subcategories or open space farm and agriculture preservation.

Persons Testifying: PRO: Representative Goodman, prime sponsor; Dan Wood, Washington Farm Bureau; Dana Kapela, Tom Pasma, Scott Dahman, Washington State Grange; Ken Cullinton, KCJ Stables.

OTHER: Robert Carlton, Washington Association of County Officials.