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**SUBSTITUTE SENATE BILL 5817**

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**State of Washington**

**61st Legislature**

**2009 Regular Session**

**By** Senate Agriculture & Rural Economic Development (originally sponsored by Senators Becker, Schoesler, Morton, Brandland, Holmquist, Stevens, Swecker, McCaslin, Carrell, Delvin, Honeyford, King, Kastama, Hatfield, Parlette, Hewitt, and Roach)

READ FIRST TIME 02/25/09.

1       AN ACT Relating to current use valuation of farm and agricultural  
2 lands; and amending RCW 84.34.020 and 84.34.108.

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 agricultural 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~~) agricultural purposes  
17 as may be established by rule;

18 (b)(i) Any parcel of land that is five acres or more but less than  
19 twenty acres devoted primarily to commercial agricultural (~~uses~~)  
20 purposes, which has produced a gross income from commercial  
21 agricultural (~~uses~~) purposes equivalent to, as of January 1, 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 commercial agricultural (~~uses~~) purposes" includes, but is not  
33 limited to, the wholesale value of agricultural products donated to  
34 nonprofit food banks or feeding programs;

35 (c) Any parcel of land of less than five acres devoted primarily to  
36 commercial agricultural (~~uses~~) purposes which has produced a gross  
37 income as of January 1, 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 commercial agricultural purposes, including wetlands preservation,  
16 provided such incidental use does not exceed twenty percent of the  
17 classified land and the land on which appurtenances necessary to the  
18 production, preparation, or sale of the agricultural products exist in  
19 conjunction with the lands producing such products. Agricultural lands  
20 shall also include any parcel of land of one to five acres, which is  
21 not contiguous, but which otherwise constitutes an integral part of  
22 farming operations being conducted on land qualifying under this  
23 section as "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 commercial agricultural purposes.

30 (3) "Timber land" means any parcel of land that is five or more  
31 acres or multiple parcels of land that are contiguous and total five or  
32 more acres which is or are devoted primarily to the growth and harvest  
33 of timber for commercial purposes. Timber land means the land only and  
34 does not include a residential homesite. The term includes land used  
35 for incidental uses that are compatible with the growing and harvesting  
36 of timber but no more than ten percent of the land may be used for such  
37 incidental uses. It also includes the land on which appurtenances

1 necessary for the production, preparation, or sale of the timber  
2 products exist in conjunction with land producing these products.

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

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

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

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

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

16 (a) Land that was previously classified under subsection (2) of  
17 this section, that no longer meets the criteria of subsection (2) of  
18 this section, and that is reclassified under subsection (1) of this  
19 section; or

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

24 (9) "Commercial agricultural purpose" means the use of land for the  
25 production of an agricultural commodity for sale or to engage in a  
26 qualifying commercial agricultural activity, prior to and subsequent to  
27 the application for classification, that demonstrates that the owner or  
28 lessee is engaged in and intends to obtain through lawful means a  
29 monetary income from the production of an agricultural commodity or is  
30 engaging in a qualifying commercial agricultural activity.

31 (a) For the purposes of this subsection (9), production of an  
32 agricultural commodity means those plants and animals useful to humans,  
33 which includes, but is not limited to: Forages, sod crops, dairy and  
34 dairy products, poultry and poultry products, livestock, fruits,  
35 vegetables, flowers, seeds, grasses, privately cultured freshwater fish  
36 and fish products, apiaries and apiary products, and Christmas trees.

37 (b) For the purposes of this subsection (9), a qualifying  
38 commercial agricultural activity includes equestrian-related activities

1 for which a charge is made. "Equestrian-related activities" under this  
2 subsection (9) includes activities such as: Stabling, training,  
3 riding, conducting clinics, providing schools, conducting shows, and  
4 grazing for feed, that otherwise meets the income requirements of  
5 subsections (2)(a), (b), or (c) of this section.

6 (c) For the purposes of this subsection (9), commercial  
7 agricultural purpose includes land that is cultivated for which there  
8 has been an investment of greater than five hundred dollars per acre  
9 for the production of an agricultural product prior to that product  
10 being planted or reaching maturity with an expectation that an  
11 agricultural product will be harvested within seven years.

12 **Sec. 2.** RCW 84.34.108 and 2007 c 54 s 25 are each amended to read  
13 as follows:

14 (1) When land has once been classified under this chapter, a  
15 notation of the classification shall be made each year upon the  
16 assessment and tax rolls and the land shall be valued pursuant to RCW  
17 84.34.060 or 84.34.065 until removal of all or a portion of the  
18 classification by the assessor upon occurrence of any of the following:

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

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

26 (c) Sale or transfer of all or a portion of the land to a new  
27 owner, unless the new owner has signed a notice of classification  
28 continuance, except transfer to an owner who is an heir or devisee of  
29 a deceased owner shall not, by itself, result in removal of  
30 classification. The notice of continuance shall be on a form prepared  
31 by the department. If the notice of continuance is not signed by the  
32 new owner and attached to the real estate excise tax affidavit, all  
33 additional taxes calculated pursuant to subsection (4) of this section  
34 shall become due and payable by the seller or transferor at time of  
35 sale. The auditor shall not accept an instrument of conveyance  
36 regarding classified land for filing or recording unless the new owner  
37 has signed the notice of continuance or the additional tax has been

1 paid, as evidenced by the real estate excise tax stamp affixed thereto  
2 by the treasurer. The seller, transferor, or new owner may appeal the  
3 new assessed valuation calculated under subsection (4) of this section  
4 to the county board of equalization in accordance with the provisions  
5 of RCW 84.40.038. Jurisdiction is hereby conferred on the county board  
6 of equalization to hear these appeals;

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

12 The granting authority, upon request of an assessor, shall provide  
13 reasonable assistance to the assessor in making a determination whether  
14 the land continues to meet the qualifications of RCW 84.34.020 (1) or  
15 (3). The assistance shall be provided within thirty days of receipt of  
16 the request.

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

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

20 (b) The creation, sale, or transfer of a fee interest or a  
21 conservation easement for the riparian open space program under RCW  
22 76.09.040.

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

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

1 treasurer shall mail notice to the owner of the amount thereof and the  
2 date on which payment is due. The amount of the additional tax,  
3 applicable interest, and penalty shall be determined as follows:

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

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

14 (c) The amount of the penalty shall be as provided in RCW  
15 84.34.080. The penalty shall not be imposed if the removal satisfies  
16 the conditions of RCW 84.34.070.

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

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

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

35 (b)(i) A taking through the exercise of the power of eminent  
36 domain, or (ii) sale or transfer to an entity having the power of  
37 eminent domain in anticipation of the exercise of such power, said

1 entity having manifested its intent in writing or by other official  
2 action;

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

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

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

11 (f) Acquisition of property interests by state agencies or agencies  
12 or organizations qualified under RCW 84.34.210 and 64.04.130 for the  
13 purposes enumerated in those sections. At such time as these property  
14 interests are not used for the purposes enumerated in RCW 84.34.210 and  
15 64.04.130 the additional tax specified in subsection (4) of this  
16 section shall be imposed;

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

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

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

24 (j) The creation, sale, or transfer of a fee interest or a  
25 conservation easement for the riparian open space program under RCW  
26 76.09.040; (~~(e)~~)

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

34 (l)(i) The discovery that the land was classified under this  
35 chapter in error through no fault of the owner. For purposes of this  
36 subsection (6)(l), "fault" means a knowingly false or misleading  
37 statement, or other act or omission not in good faith, that contributed



1 to the approval of classification under this chapter or the failure of  
2 the assessor to remove the land from classification under this chapter.

3 (ii) For purposes of this subsection (6), the discovery that land  
4 was classified under this chapter in error through no fault of the  
5 owner is not the sole reason for removal of classification pursuant to  
6 subsection (1) of this section if an independent basis for removal  
7 exists. Examples of an independent basis for removal include the owner  
8 changing the use of the land or failing to meet any applicable income  
9 criteria required for classification under this chapter.

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