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**ENGROSSED HOUSE BILL 1309**

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**State of Washington 65th Legislature 2017 Regular Session**

**By** Representatives Steele, Chapman, Kretz, and Condotta

AN ACT Relating to removal of land from the current use property tax classification due to certain natural disasters; reenacting and amending RCW 84.34.108 and 84.33.140; creating new sections; and providing an expiration date.

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

NEW SECTION. **Sec.**  (1) This section is the tax preference performance statement for the tax preference contained in section 4(15), chapter . . ., Laws of 2017 (section 4(15) of this act). This preference statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(2) The legislature categorizes this tax preference as one intended to provide tax relief as indicated in RCW 82.32.808(2)(e), to grant land removed from the designated forestland due to natural disaster an exemption from compensating tax.

(3) The joint legislative audit and review committee must review the revenue impact attributable to the tax exemption in section 4(15), chapter . . ., Laws of 2017 (section 4(15) of this act), by county and statewide. In order to obtain the data necessary to perform the review, the joint legislative audit and review committee may refer to data sources including county assessor records and information from the department of revenue.

NEW SECTION. **Sec.**  (1) The legislature intends section 3 of this act to clarify that land removed from the current use classification due to wildfire, rather than by virtue of an act of the landowner changing the use of the property, is not subject to additional tax, applicable interest, and penalty, as provided in RCW 84.34.108(6)(c). The section clarifies an ambiguity in current law and therefore is exempt from the provisions of RCW 82.32.805.

(2) The automatic expiration date provisions of RCW 82.32.805(1)(a) do not apply to section 3 of this act.

**Sec.**  RCW 84.34.108 and 2014 c 97 s 311 and 2014 c 58 s 28 are each reenacted and amended to read as follows:

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

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

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

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

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

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

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

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

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

(3) Within thirty days after the removal of all or a portion of the land from current use classification under subsection (1) of this section, the assessor must notify the owner in writing, setting forth the reasons for the removal. The seller, transferor, or owner may appeal the removal to the county board of equalization in accordance with the provisions of RCW 84.40.038. The removal notice must explain the steps needed to appeal the removal decision, including when a notice of appeal must be filed, where the forms may be obtained, and how to contact the county board of equalization.

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

(a) The amount of additional tax is equal to the difference between the property tax paid as "open space land," "farm and agricultural land," or "timberland" and the amount of property tax otherwise due and payable for the seven years last past had the land not been so classified;

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

(c) The amount of the penalty must be as provided in RCW 84.34.080. The penalty may not be imposed if the removal satisfies the conditions of RCW 84.34.070.

(5) Additional tax, applicable interest, and penalty become a lien on the land that attaches at the time the land is removed from classification under this chapter and have priority to and must be fully paid and satisfied before any recognizance, mortgage, judgment, debt, obligation, or responsibility to or with which the land may become charged or liable. This lien may be foreclosed upon expiration of the same period after delinquency and in the same manner provided by law for foreclosure of liens for delinquent real property taxes as provided in RCW 84.64.050. Any additional tax unpaid on the due date ((~~are [is]~~)) is delinquent as of the due date. From the date of delinquency until paid, interest must be charged at the same rate applied by law to delinquent ad valorem property taxes.

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

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

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

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

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

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

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

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

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

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

(j) The creation, sale, or transfer of a conservation easement of private forestlands within unconfined channel migration zones or containing critical habitat for threatened or endangered species under RCW 76.09.040;

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

(l)(i) The discovery that the land was classified under this chapter in error through no fault of the owner. For purposes of this subsection (6)(l), "fault" means a knowingly false or misleading statement, or other act or omission not in good faith, that contributed to the approval of classification under this chapter or the failure of the assessor to remove the land from classification under this chapter.

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

**Sec.**  RCW 84.33.140 and 2014 c 137 s 3, 2014 c 97 s 309, and 2014 c 58 s 27 are each reenacted and amended to read as follows:

(1) When land has been designated as forestland under RCW 84.33.130, a notation of the designation must be made each year upon the assessment and tax rolls. A copy of the notice of approval together with the legal description or assessor's parcel numbers for the land must, at the expense of the applicant, be filed by the assessor in the same manner as deeds are recorded.

(2) In preparing the assessment roll as of January 1, 2002, for taxes payable in 2003 and each January 1st thereafter, the assessor must list each parcel of designated forestland at a value with respect to the grade and class provided in this subsection and adjusted as provided in subsection (3) of this section. The assessor must compute the assessed value of the land using the same assessment ratio applied generally in computing the assessed value of other property in the county. Values for the several grades of bare forestland are as follows:

|  |  |  |
| --- | --- | --- |
| LANDGRADE | OPERABILITYCLASS | VALUESPER ACRE |
|  | 1 | $234 |
| 1 | 2 |  229 |
|  | 3 |  217 |
|  | 4 |  157 |
|  | 1 |  198 |
| 2 | 2 |  190 |
|  | 3 |  183 |
|  | 4 |  132 |
|  | 1 |  154 |
| 3 | 2 |  149 |
|  | 3 |  148 |
|  | 4 |  113 |
|  | 1 |  117 |
| 4 | 2 |  114 |
|  | 3 |  113 |
|  | 4 |  86 |
|  | 1 |  85 |
| 5 | 2 |  78 |
|  | 3 |  77 |
|  | 4 |  52 |
|  | 1 |  43 |
| 6 | 2 |  39 |
|  | 3 |  39 |
|  | 4 |  37 |
|  | 1 |  21 |
| 7 | 2 |  21 |
|  | 3 |  20 |
|  | 4 |  20 |
| 8 |  |  1 |

(3) On or before December 31, 2001, the department must adjust by rule under chapter 34.05 RCW, the forestland values contained in subsection (2) of this section in accordance with this subsection, and must certify the adjusted values to the assessor who will use these values in preparing the assessment roll as of January 1, 2002. For the adjustment to be made on or before December 31, 2001, for use in the 2002 assessment year, the department must:

(a) Divide the aggregate value of all timber harvested within the state between July 1, 1996, and June 30, 2001, by the aggregate harvest volume for the same period, as determined from the harvester excise tax returns filed with the department under RCW 84.33.074; and

(b) Divide the aggregate value of all timber harvested within the state between July 1, 1995, and June 30, 2000, by the aggregate harvest volume for the same period, as determined from the harvester excise tax returns filed with the department under RCW 84.33.074; and

(c) Adjust the forestland values contained in subsection (2) of this section by a percentage equal to one-half of the percentage change in the average values of harvested timber reflected by comparing the resultant values calculated under (a) and (b) of this subsection.

(4) For the adjustments to be made on or before December 31, 2002, and each succeeding year thereafter, the same procedure described in subsection (3) of this section must be followed using harvester excise tax returns filed under RCW 84.33.074. However, this adjustment must be made to the prior year's adjusted value, and the five-year periods for calculating average harvested timber values must be successively one year more recent.

(5) Land graded, assessed, and valued as forestland must continue to be so graded, assessed, and valued until removal of designation by the assessor upon the occurrence of any of the following:

(a) Receipt of notice of request to withdraw land classified under RCW 84.34.020(3) within two years before the date of the merger under RCW 84.34.400. Land previously classified under chapter 84.34 RCW will be removed under the provisions of this chapter when two assessment years have passed following receipt of the notice as described in RCW 84.34.070(1);

(b) Receipt of notice from the owner to remove the designation;

(c) Sale or transfer to an ownership making the land exempt from ad valorem taxation;

(d) Sale or transfer of all or a portion of the land to a new owner, unless the new owner has signed a notice of forestland designation continuance, except transfer to an owner who is an heir or devisee of a deceased owner or transfer by a transfer on death deed, does not, by itself, result in removal of designation. The signed notice of continuance must be attached to the real estate excise tax affidavit provided for in RCW 82.45.150. The notice of continuance must be on a form prepared by the department. If the notice of continuance is not signed by the new owner and attached to the real estate excise tax affidavit, all compensating taxes calculated under subsection (11) of this section are due and payable by the seller or transferor at time of sale. The auditor may not accept an instrument of conveyance regarding designated forestland for filing or recording unless the new owner has signed the notice of continuance or the compensating tax has been paid, as evidenced by the real estate excise tax stamp affixed thereto by the treasurer. The seller, transferor, or new owner may appeal the new assessed valuation calculated under subsection (11) of this section to the county board of equalization in accordance with the provisions of RCW 84.40.038. Jurisdiction is hereby conferred on the county board of equalization to hear these appeals;

(e) Determination by the assessor, after giving the owner written notice and an opportunity to be heard, that:

(i) The land is no longer primarily devoted to and used for growing and harvesting timber. However, land may not be removed from designation if a governmental agency, organization, or other recipient identified in subsection (13) or (14) of this section as exempt from the payment of compensating tax has manifested its intent in writing or by other official action to acquire a property interest in the designated forestland by means of a transaction that qualifies for an exemption under subsection (13) or (14) of this section. The governmental agency, organization, or recipient must annually provide the assessor of the county in which the land is located reasonable evidence in writing of the intent to acquire the designated land as long as the intent continues or within sixty days of a request by the assessor. The assessor may not request this evidence more than once in a calendar year;

(ii) The owner has failed to comply with a final administrative or judicial order with respect to a violation of the restocking, forest management, fire protection, insect and disease control, and forest debris provisions of Title 76 RCW or any applicable rules under Title 76 RCW; or

(iii) Restocking has not occurred to the extent or within the time specified in the application for designation of such land.

(6) Land may not be removed from designation if there is a governmental restriction that prohibits, in whole or in part, the owner from harvesting timber from the owner's designated forestland. If only a portion of the parcel is impacted by governmental restrictions of this nature, the restrictions cannot be used as a basis to remove the remainder of the forestland from designation under this chapter. For the purposes of this section, "governmental restrictions" includes: (a) Any law, regulation, rule, ordinance, program, or other action adopted or taken by a federal, state, county, city, or other governmental entity; or (b) the land's zoning or its presence within an urban growth area designated under RCW 36.70A.110.

(7) The assessor has the option of requiring an owner of forestland to file a timber management plan with the assessor upon the occurrence of one of the following:

(a) An application for designation as forestland is submitted;

(b) Designated forestland is sold or transferred and a notice of continuance, described in subsection (5)(d) of this section, is signed; or

(c) The assessor has reason to believe that forestland sized less than twenty acres is no longer primarily devoted to and used for growing and harvesting timber. The assessor may require a timber management plan to assist with determining continuing eligibility as designated forestland.

(8) If land is removed from designation because of any of the circumstances listed in subsection (5)(a) through (d) of this section, the removal applies only to the land affected. If land is removed from designation because of subsection (5)(e) of this section, the removal applies only to the actual area of land that is no longer primarily devoted to the growing and harvesting of timber, without regard to any other land that may have been included in the application and approved for designation, as long as the remaining designated forestland meets the definition of forestland contained in RCW 84.33.035.

(9) Within thirty days after the removal of designation as forestland, the assessor must notify the owner in writing, setting forth the reasons for the removal. The seller, transferor, or owner may appeal the removal to the county board of equalization in accordance with the provisions of RCW 84.40.038.

(10) Unless the removal is reversed on appeal a copy of the notice of removal with a notation of the action, if any, upon appeal, together with the legal description or assessor's parcel numbers for the land removed from designation must, at the expense of the applicant, be filed by the assessor in the same manner as deeds are recorded and a notation of removal from designation must immediately be made upon the assessment and tax rolls. The assessor must revalue the land to be removed with reference to its true and fair value as of January 1st of the year of removal from designation. Both the assessed value before and after the removal of designation must be listed. Taxes based on the value of the land as forestland are assessed and payable up until the date of removal and taxes based on the true and fair value of the land are assessed and payable from the date of removal from designation.

(11) Except as provided ((~~in subsection (5)(d), (13), or (14) of~~)) otherwise in this section, a compensating tax is imposed on land removed from designation as forestland. The compensating tax is due and payable to the treasurer thirty days after the owner is notified of the amount of this tax. As soon as possible after the land is removed from designation, the assessor must compute the amount of compensating tax, and the treasurer must mail a notice to the owner of the amount of compensating tax owed and the date on which payment of this tax is due. The amount of compensating tax is equal to the difference between the amount of tax last levied on the land as designated forestland and an amount equal to the new assessed value of the land multiplied by the dollar rate of the last levy extended against the land, multiplied by a number, in no event greater than nine, equal to the number of years for which the land was designated as forestland, plus compensating taxes on the land at forestland values up until the date of removal and the prorated taxes on the land at true and fair value from the date of removal to the end of the current tax year.

(12) Compensating tax, together with applicable interest thereon, becomes a lien on the land, which attaches at the time the land is removed from designation as forestland and has priority and must be fully paid and satisfied before any recognizance, mortgage, judgment, debt, obligation, or responsibility to or with which the land may become charged or liable. The lien may be foreclosed upon expiration of the same period after delinquency and in the same manner provided by law for foreclosure of liens for delinquent real property taxes as provided in RCW 84.64.050. Any compensating tax unpaid on its due date will thereupon become delinquent. From the date of delinquency until paid, interest is charged at the same rate applied by law to delinquent ad valorem property taxes.

(13) The compensating tax specified in subsection (11) of this section may not be imposed if the removal of designation under subsection (5) of this section resulted solely from:

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

(b)(i) A taking through the exercise of the power of eminent domain, or (ii) a sale or transfer to an entity having the power of eminent domain in anticipation of the exercise of such power based on official action taken by the entity and confirmed in writing;

(c) A donation of fee title, development rights, or the right to harvest timber, to a government agency or organization qualified under RCW 84.34.210 and 64.04.130 for the purposes enumerated in those sections, or the sale or transfer of fee title to a governmental entity or a nonprofit nature conservancy corporation, as defined in RCW 64.04.130, exclusively for the protection and conservation of lands recommended for state natural area preserve purposes by the natural heritage council and natural heritage plan as defined in chapter 79.70 RCW or approved for state natural resources conservation area purposes as defined in chapter 79.71 RCW, or for acquisition and management as a community forest trust as defined in chapter 79.155 RCW. At such time as the land is not used for the purposes enumerated, the compensating tax specified in subsection (11) of this section is imposed upon the current owner;

(d) The sale or transfer of fee title to the parks and recreation commission for park and recreation purposes;

(e) Official action by an agency of the state of Washington or by the county or city within which the land is located that disallows the present use of the land;

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

(g) The creation, sale, or transfer of a conservation easement of private forestlands within unconfined channel migration zones or containing critical habitat for threatened or endangered species under RCW 76.09.040;

(h) The sale or transfer of land within two years after the death of the owner of at least a fifty percent interest in the land if the land has been assessed and valued as classified forestland, designated as forestland under this chapter, or classified under chapter 84.34 RCW continuously since 1993. The date of death shown on a death certificate is the date used for the purposes of this subsection (13)(h); or

(i)(i) The discovery that the land was designated under this chapter in error through no fault of the owner. For purposes of this subsection (13)(i), "fault" means a knowingly false or misleading statement, or other act or omission not in good faith, that contributed to the approval of designation under this chapter or the failure of the assessor to remove the land from designation under this chapter.

(ii) For purposes of this subsection (13), the discovery that land was designated under this chapter in error through no fault of the owner is not the sole reason for removal of designation under subsection (5) of this section if an independent basis for removal exists. An example of an independent basis for removal includes the land no longer being devoted to and used for growing and harvesting timber.

(14) In a county with a population of more than six hundred thousand inhabitants or in a county with a population of at least two hundred forty-five thousand inhabitants that borders Puget Sound as defined in RCW 90.71.010, the compensating tax specified in subsection (11) of this section may not be imposed if the removal of designation as forestland under subsection (5) of this section resulted solely from:

(a) An action described in subsection (13) of this section; or

(b) A transfer of a property interest to a government entity, or to a nonprofit historic preservation corporation or nonprofit nature conservancy corporation, as defined in RCW 64.04.130, to protect or enhance public resources, or to preserve, maintain, improve, restore, limit the future use of, or otherwise to conserve for public use or enjoyment, the property interest being transferred. At such time as the property interest is not used for the purposes enumerated, the compensating tax is imposed upon the current owner.

(15) Compensating tax authorized in this section may not be imposed on land removed from designation as forestland solely as a result of a natural disaster such as a flood, windstorm, earthquake, wildfire, or other such calamity rather than by virtue of the act of the landowner changing the use of the property.

NEW SECTION. **Sec.**  Section 4 of this act expires January 1, 2028.

**--- END ---**