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SENATE BILL 5109

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State of Washington

58th Legislature

2003 Regular Session

By Senator Mulliken

Read first time 01/15/2003. Referred to Committee on Land Use & Planning.

1 AN ACT Relating to penalties assessed when farm and agricultural  
2 land is removed from open space classification; and reenacting and  
3 amending RCW 84.34.108.

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

5 **Sec. 1.** RCW 84.34.108 and 2001 c 305 s 3, 2001 c 249 s 14, and  
6 2001 c 185 s 7 are each reenacted and amended to read 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 of  
11 classified land for filing or recording unless the new owner has signed  
12 the notice of continuance or the additional tax has been paid, as  
13 evidenced by the real estate excise tax stamp affixed thereto by the  
14 treasurer. The seller, transferor, or new owner may appeal the new  
15 assessed valuation calculated under subsection (4) of this section to  
16 the county board of equalization in accordance with the provisions of  
17 RCW 84.40.038. Jurisdiction is hereby conferred on the county board of  
18 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, applicable interest,  
10 and penalty shall be imposed which shall be due and payable to the  
11 treasurer thirty days after the owner is notified of the amount of the  
12 additional tax. As soon as possible, the assessor shall compute the  
13 amount of additional tax, applicable interest, and penalty and the  
14 treasurer shall mail notice to the owner of the amount thereof and the  
15 date on which payment is due. The amount of the additional tax,  
16 applicable interest, and penalty shall be determined as follows:

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

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

27 (c) The amount of the penalty shall be as provided in RCW  
28 84.34.080. The penalty shall not be imposed if:

29 (i) The removal satisfies the conditions of RCW 84.34.070; or  
30 (ii) Up to five acres of farm and agricultural land classified  
31 under RCW 84.34.020(2) that includes a residential homesite is removed  
32 from classification when the owner sells or transfers the remainder of  
33 the classified land to a new ownership if the new owner signs a notice  
34 of continuance; the remaining land qualifies for continued  
35 classification as farm and agricultural land under RCW 84.34.020(2);  
36 and the removed land is not transferred to a new owner within five  
37 years of the initial removal. If the land is transferred within five

1 years of the initial removal, the penalty shall be due on transfer and  
2 shall become a lien on the land and be collected in the same manner as  
3 provided in subsection (5) of this section.

4 (5) Additional tax, applicable interest, and penalty, shall become  
5 a lien on the land which shall attach at the time the land is removed  
6 from classification under this chapter and shall have priority to and  
7 shall be fully paid and satisfied before any recognizance, mortgage,  
8 judgment, debt, obligation or responsibility to or with which the land  
9 may become charged or liable. This lien may be foreclosed upon  
10 expiration of the same period after delinquency and in the same manner  
11 provided by law for foreclosure of liens for delinquent real property  
12 taxes as provided in RCW 84.64.050 now or as hereafter amended. Any  
13 additional tax unpaid on its due date shall thereupon become  
14 delinquent. From the date of delinquency until paid, interest shall be  
15 charged at the same rate applied by law to delinquent ad valorem  
16 property taxes.

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

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

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

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

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

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

36 (f) Acquisition of property interests by state agencies or agencies  
37 or organizations qualified under RCW 84.34.210 and 64.04.130 for the  
38 purposes enumerated in those sections. At such time as these property

1 interests are not used for the purposes enumerated in RCW 84.34.210 and  
2 64.04.130 the additional tax specified in subsection (4) of this  
3 section shall be imposed;

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

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

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

11 (j) The creation, sale, or transfer of a fee interest or a  
12 conservation easement for the riparian open space program under RCW  
13 76.09.040;

14 (k) The sale or transfer of land within two years after the death  
15 of the owner of at least a fifty percent interest in the land if the  
16 land has been assessed and valued as classified forest land, designated  
17 as forest land under chapter 84.33 RCW, or classified under this  
18 chapter continuously since 1993;

19 (l) The sale or transfer of land after the death of the owner of at  
20 least a fifty percent interest in the land if the land has been  
21 assessed and valued as classified forest land, designated as forest  
22 land under chapter 84.33 RCW, or classified under this chapter  
23 continuously since 1993 and the sale or transfer takes place within two  
24 years after July 22, 2001, and the death of the owner occurred after  
25 January 1, 1991; or

26 (m) The date of death shown on a death certificate is the date used  
27 for the purpose of this subsection (6).

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