

HOUSE BILL REPORT

SHB 1580

As Passed House:

March 14, 2007

Title: An act relating to consolidating designated forest lands and open space timber lands for ease of administration.

Brief Description: Consolidating designated forest lands and open space timber lands for ease of administration.

Sponsors: By House Committee on Finance (originally sponsored by Representatives Takko, Orcutt, Lovick and Sells).

Brief History:

Committee Activity:

Finance: 2/7/07, 3/2/07 [DPS].

Floor Activity:

Passed House: 3/14/07, 96-0.

Brief Summary of Substitute Bill

- Modifies the designated forest land program to allow smaller parcels of land to be eligible.
- Provides county authority to merge its open space timber program into its designated forest land program, for the purposes of current use property taxation.

HOUSE COMMITTEE ON FINANCE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Hunter, Chair; Hasegawa, Vice Chair; Orcutt, Ranking Minority Member; Condotta, Assistant Ranking Minority Member; Conway, Ericks, McIntire, Roach and Santos.

Staff: Mark Matteson (786-7145).

Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

All property in this state is subject to the property tax each year based on the property's value unless a specific exemption is provided by law. The State Constitution authorizes agricultural, timber, and open space lands to be valued on the basis of their current use rather than fair market value. Two programs currently implement this constitutional exception to fair market value: the "forest land" program and the "open space" program.

Forest Land Program.

To qualify for current use valuation under the forest land program, the land must be 20 acres or more and be used primarily for growing and harvesting timber. Qualifying land includes land used for incidental activities that are compatible for growing and harvesting timber but that is no more than 10 percent of the overall land. Qualifying land also includes land on which buildings, machinery and other personal property necessary for the production and sale of timber products exist. A residential home site does not qualify.

Prior to statutory changes in 2001, qualifying land was either "classified" or "designated" for the purposes of the program. Land was classified as forest land if the assessor deemed the land to have no higher and better use than that for the purposes of growing and harvesting timber. Land used to grow and harvest timber but for which other uses would be more valuable could be designated as forest land, if the landowner applied to the assessor. Application included a forest management plan. In 2001 legislation, land under the program that had been classified as forest land was deemed to be designated forest land, and future additions to the program were required to go through the designation process.

The application for forest land designation includes date of acquisition, a copy of any existing timber management plan prepared by a trained forester, an explanation of the nature and extent to which any existing plan has been implemented, and other evidence of the owner's intent to continue using the property to grow timber. The timber management plan includes a statement that the forest land consists of 20 or more contiguous acres and is devoted to growing and harvesting timber. The application and the timber management plan are each required to include a legal description of the land, a description of the timber or the plan for restocking, a statement about whether the forest land is used for grazing, and a statement that the applicant is in compliance with the state's forest practice laws and rules.

The application is considered approved unless the assessor notifies the applicant of denial by May 1 of the year after application, based on the evidence within the application and as collected by the assessor. Owners may appeal denials to the local county board of equalization. If approved, valuation changes apply in the calendar year after that in which the application was made.

The valuation of designated forest land is set by statute and is based on the value of the bare land for growing and harvesting timber. The value of standing timber is exempt from property tax and harvested timber is instead subject to a separate excise tax, as described below. For the forest land program, the bare land values vary based on the grade and operability of the land and are adjusted annually by the Department of Revenue (DOR). For 2007 taxes, the values ranged from a low of \$1 per acre to a high of \$201 per acre.

Land is removed from forest land designation at the request of the owner; by sale or transfer to an ownership making the land exempt from tax; by sale or transfer to a new owner unless the new owner signs a notice of continuance; or by a determination that the land is no longer primarily used for growing and harvesting timber or is not being managed in accordance with state forest practices laws and rules. Land may not be removed from the designation if the owner is prevented from harvesting timber because of land use restrictions.

Upon removal from the designation, the land is revalued to market value as of January 1 of the year of removal. In general, land that is removed is subject to a compensating tax equal to the tax benefit received in the most recent year multiplied by the number of years the land was designated, not to exceed nine. An exception to the compensating tax is allowed under certain conditions:

- an exchange of land with a government;
- a taking through the exercise of eminent domain;
- acquisition of property for the purposes of the conservation futures program;
- transfer of lands recommended for state natural area preserve purposes by the National Heritage Council;
- a land use restriction that prevents the current use;
- transfer to the Parks and Recreation Commission for park and recreation purposes;
- the creation, sale or transfer of riparian easements or fee interest or conservation easement for the riparian open space program;
- the sale or transfer of land within two years after the death of the owner of at least 50 percent interest in the land; and
- in King County, transfer of property or a property interest to a government entity or certain types of nonprofit entities for the purpose of protecting or enhancing public resources or of conserving property interests for public use or enjoyment.

The cultivation of Christmas trees or short-rotation hardwoods on plantations is considered farming, and the land required for these activities may not be designated as forest lands.

Standing timber, except for Christmas trees and short-rotation hardwoods, is exempt from property taxes and is instead subject to a 5 percent yield tax on harvest, called the forest excise tax. However, if short-rotation hardwoods are classified under the open space timber land program, the trees are subject to the forest excise tax.

Open Space Program. Within the open space program, property may be valued at current use within three different classifications: farm and agricultural land; timber land; and open space land.

Land qualifies for the open space timber land program if the land is at least five or more acres or multiple parcels of land that are contiguous and in which there are at least five acres devoted primarily to the growth and harvest of timber for commercial purposes. Qualifications include the same limitations concerning incidental activities, property necessary for the production and sale of timber products, and residential sites as in the forest land program.

An owner desiring current use classification under the open space timber program must apply to the county legislative authority. The application includes legal description, date of acquisition, a description of the timber or the plan for restocking, a statement of whether the land is covered by a forest management plan and the extent to which the plan has been implemented, a statement about whether the forest land is used for grazing, a statement that the applicant is in compliance with the state's forest practice laws and rules, and other information that is analogous to that required under the forest land program. The elements of the application are considered a timber management plan.

If the land is within incorporated territory, the application is considered by a granting authority of three members of the city legislative authority and three of the county legislative authority. For unincorporated land, the county legislative authority is the granting authority that considers the application. A public hearing on the application is required.

The granting authority must consider the application and all relevant evidence and either approve or reject the application in whole or in part within six months of receiving the application. The authority may approve the application with respect to only part of the land. By the DOR rule, approvals are transmitted through an agreement, which must be signed by the applicant. The approval or denial of the application is a legislative determination and is reviewable only for arbitrary and capricious actions. Appeal can be made only to the superior court of the county where the application was filed.

Current use valuation will begin on January 1 of the year following the year the application was filed. Open space timber land is valued according to the same schedule by which forest lands are valued. The criteria for classification continue to apply after classification has been granted.

Land classified under the open space programs must remain under the program for at least 10 years following initial classification. An exception within the 10 year period allows lands to be transferred between current use programs in certain instances, as described below. However, if within the 10-year period the use no longer qualifies under the open space program, or 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 open space program, then the land is withdrawn 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 true and fair (i.e., market) valuation during the period. 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 10 years, he/she 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;
- acquisition of property for the purposes of the conservation futures program;
- a land use restriction that prevents the current use;
- transfer of land to a church if the land qualifies for the property tax exemption for churches;
- removal of a farm residence or farm worker housing from current use;
- the creation, sale or transfer of riparian easements or fee interest or conservation easement for the riparian open space program;
- the sale or transfer of land within two years after the death of the owner of at least 50 percent interest; and
- the removal of land from classification after enactment of a property tax exemption would apply.

Land upon which short-rotation hardwoods are cultivated may be classified under the open space timber land program or the open space farm and agriculture program. If classified under the timber land program, harvested trees are subject to the forest excise tax.

Reclassification Authority. Land that has been classified within a current use program may be reclassified to another current use program without triggering additional taxes, interest, or penalties, under certain circumstance. Allowable reclassifications are as follows:

- farm and agricultural land to timber land, open space land, or forest land;
- timber land to farm and agricultural land, open space land or forest land; and
- forest land to open space land.

Reclassification approvals are acted on in the same manner as approvals for initial classification.

Summary of Substitute Bill:

The designated forest land program is modified. Land may be designated as forest land if the land is a parcel of at least five acres and is devoted primarily to growing and harvesting timber for commercial purposes. Qualifying land includes Christmas tree and short-rotation hardwood plantations. If land use restrictions prevent the owner from harvesting timber, then the requirement to be used for commercial purposes does not apply. The specifically required elements for timber management plans are made optional. Applications are considered approved unless the assessor notifies otherwise by July 1 after the application year. The assessor may require a timber management plan if there is reason to believe that the land is no longer being used for forest land purposes.

A county is authorized to merge its open space timber land program into its designated forest land program. In a county that merges programs, the county must enact an ordinance that

terminates its open space timber land program and declares land that had been in the timber land program to be designated forest land. The date that property was classified as open space timber before the ordinance date is considered to be the date of designation under the forest land program. The County Assessor is required to notify all owners affected by the change. Any open space taxation agreement is null and void after the effective date.

The removal of land from an open space timber land program as a result of a merger of programs is exempt from additional taxes, assessments, interest, and penalties.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony:

(In support) This should have happened some time ago. The main distinction between programs is the administration. In Thurston County, the cost to apply to open space timber land is \$2,300. If a small amount of designated forest land is deeded to heirs and then subdivided, the heirs would be burdened by this high fee in order to stay in current use. Under either program, the assessor can require a timber management plan.

In 2004, there was a rush to subdivide parcels in Lewis County. There were 1,400 parcels that needed to get into open space timber land or else lose their current use status. It was overwhelming. So we got together and crafted this piece of legislation. The Association of County Officials (WACO) feels that this is way overdue. The trees are the same, and the tax is the same. It is silly to explain to people that "it's the law." We're the front line, and sending letters to try to explain the distinction is not the most pleasant thing.

The Washington Forest Protection Association supports this. The purpose of current use taxation is to avoid forced conversions due to development. Timber is one of the lowest uses. Without current use valuation, forest owners could be easily swamped by taxes. In designated forest land, there are over 6.6 million acres. In open space timber land, there are only 112,000 acres. There ought to be more but potential participants are confused. Some counties are using their open space programs for purposes beyond current use and timber land purposes.

This has been a WACO priority for the last two years. We have done extensive work with stakeholders. It is on the table to consider an amendment to "opt out." We consider this a people bill. The two programs can be very confusing. The changes leave untouched "open" space and farm and agricultural land programs.

(Opposed) The Association of Counties opposes this. The legislative authorities in our urban counties have invested a lot of effort into the open space programs. People want to get into

current use to avoid high assessments. The legislative granting authorities are the gatekeepers, and make sure that legitimate land and uses are considered. We would be interested in an opt-in amendment. There are indeed more people seeking this tax treatment.

Persons Testifying: (In support) Representative Takko, prime sponsor; Diane Dorey, Lewis County Assessor; John Ehrenreich, Washington Forest Protection Association; Bruce Walker, Assessor of Pacific County; Robert Carlton, Washington Association of County Officials; Brad Flaherty and Drew Shirk, Department of Revenue.

(Opposed) Julie Murray, Washington State Association of Counties.

Persons Signed In To Testify But Not Testifying: None.