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SENATE BILL 5996

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State of Washington                      62nd Legislature                      2011 2nd Special Session

By Senators Schoesler, Hatfield, Haugen, Becker, and Fraser

Read first time 12/14/11. Referred to Committee on Agriculture, Water & Rural Economic Development.

1            AN ACT Relating to contiguous land under the current use open space  
2 property tax programs; and amending RCW 84.34.020, 84.34.030, and  
3 84.33.130.

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

5            **Sec. 1.** RCW 84.34.020 and 2011 c 101 s 1 are each amended to read  
6 as follows:

7            As used in this chapter, unless a different meaning is required by  
8 the context:

9            (1) "Open space land" means (a) any land area so designated by an  
10 official comprehensive land use plan adopted by any city or county and  
11 zoned accordingly, or (b) any land area, the preservation of which in  
12 its present use would (i) conserve and enhance natural or scenic  
13 resources, or (ii) protect streams or water supply, or (iii) promote  
14 conservation of soils, wetlands, beaches or tidal marshes, or (iv)  
15 enhance the value to the public of abutting or neighboring parks,  
16 forests, wildlife preserves, nature reservations or sanctuaries or  
17 other open space, or (v) enhance recreation opportunities, or (vi)  
18 preserve historic sites, or (vii) preserve visual quality along  
19 highway, road, and street corridors or scenic vistas, or (viii) retain

1 in its natural state tracts of land not less than one acre situated in  
2 an urban area and open to public use on such conditions as may be  
3 reasonably required by the legislative body granting the open space  
4 classification, or (c) any land meeting the definition of farm and  
5 agricultural conservation land under subsection (8) of this section.  
6 As a condition of granting open space classification, the legislative  
7 body may not require public access on land classified under (b)(iii) of  
8 this subsection for the purpose of promoting conservation of wetlands.

9 (2) "Farm and agricultural land" means:

10 (a) Any parcel of land that is twenty or more acres or multiple  
11 parcels of land that are contiguous and total twenty or more acres:

12 (i) Devoted primarily to the production of livestock or  
13 agricultural commodities for commercial purposes;

14 (ii) Enrolled in the federal conservation reserve program or its  
15 successor administered by the United States department of agriculture;  
16 or

17 (iii) Other similar commercial activities as may be established by  
18 rule;

19 (b)(i) Any parcel of land that is five acres or more but less than  
20 twenty acres devoted primarily to agricultural uses, which has produced  
21 a gross income from agricultural uses equivalent to, as of January 1,  
22 1993:

23 (A) One hundred dollars or more per acre per year for three of the  
24 five calendar years preceding the date of application for  
25 classification under this chapter for all parcels of land that are  
26 classified under this subsection or all parcels of land for which an  
27 application for classification under this subsection is made with the  
28 granting authority prior to January 1, 1993; and

29 (B) On or after January 1, 1993, two hundred dollars or more per  
30 acre per year for three of the five calendar years preceding the date  
31 of application for classification under this chapter;

32 (ii) For the purposes of (b)(i) of this subsection, "gross income  
33 from agricultural uses" includes, but is not limited to, the wholesale  
34 value of agricultural products donated to nonprofit food banks or  
35 feeding programs;

36 (c) Any parcel of land of less than five acres devoted primarily to  
37 agricultural uses which has produced a gross income as of January 1,  
38 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. Parcels of land  
10 described in (b)(i)(A) and (c)(i) of this subsection will, upon any  
11 transfer of the property excluding a transfer to a surviving spouse or  
12 surviving state registered domestic partner, be subject to the limits  
13 of (b)(i)(B) and (c)(ii) of this subsection;

14 (d) Any parcel of land that is five acres or more but less than  
15 twenty acres devoted primarily to agricultural uses, which meet one of  
16 the following criteria:

17 (i) Has produced a gross income from agricultural uses equivalent  
18 to two hundred dollars or more per acre per year for three of the five  
19 calendar years preceding the date of application for classification  
20 under this chapter;

21 (ii) Has standing crops with an expectation of harvest within seven  
22 years, except as provided in (d)(iii) of this subsection, and a  
23 demonstrable investment in the production of those crops equivalent to  
24 one hundred dollars or more per acre in the current or previous  
25 calendar year. For the purposes of this subsection (2)(d)(ii),  
26 "standing crop" means Christmas trees, vineyards, fruit trees, or other  
27 perennial crops that: (A) Are planted using agricultural methods  
28 normally used in the commercial production of that particular crop; and  
29 (B) typically do not produce harvestable quantities in the initial  
30 years after planting; or

31 (iii) Has a standing crop of short rotation hardwoods with an  
32 expectation of harvest within fifteen years and a demonstrable  
33 investment in the production of those crops equivalent to one hundred  
34 dollars or more per acre in the current or previous calendar year;

35 (e) Any lands including incidental uses as are compatible with  
36 agricultural purposes, including wetlands preservation, provided such  
37 incidental use does not exceed twenty percent of the classified land  
38 and the land on which appurtenances necessary to the production,

1 preparation, or sale of the agricultural products exist in conjunction  
2 with the lands producing such products. Agricultural lands also  
3 include any parcel of land of one to five acres, which is not  
4 contiguous, but which otherwise constitutes an integral part of farming  
5 operations being conducted on land qualifying under this section as  
6 "farm and agricultural lands";

7 (f) The land on which housing for employees and the principal place  
8 of residence of the farm operator or owner of land classified pursuant  
9 to (a) of this subsection is sited if: The housing or residence is on  
10 or contiguous to the classified parcel; and the use of the housing or  
11 the residence is integral to the use of the classified land for  
12 agricultural purposes; or

13 (g) Any land that is used primarily for equestrian related  
14 activities for which a charge is made, including, but not limited to,  
15 stabling, training, riding, clinics, schooling, shows, or grazing for  
16 feed and that otherwise meet the requirements of (a), (b), or (c) of  
17 this subsection.

18 (3) "Timber land" means any parcel of land that is five or more  
19 acres or multiple parcels of land that are contiguous and total five or  
20 more acres which is or are devoted primarily to the growth and harvest  
21 of timber for commercial purposes. Timber land means the land only and  
22 does not include a residential homesite. The term includes land used  
23 for incidental uses that are compatible with the growing and harvesting  
24 of timber but no more than ten percent of the land may be used for such  
25 incidental uses. It also includes the land on which appurtenances  
26 necessary for the production, preparation, or sale of the timber  
27 products exist in conjunction with land producing these products.

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

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

33 (6)(a) "Contiguous" means land adjoining and touching other  
34 property held by the same ownership. Land divided by a public road,  
35 but otherwise an integral part of a farming operation, is considered  
36 contiguous.

37 (b) For purposes of this subsection (6):

1 (i) "Same ownership" means owned by the same person or persons,  
2 except that parcels owned by different persons are deemed held by the  
3 same ownership if the parcels are:

4 (A) Managed as part of a single operation; and

5 (B) Owned by:

6 (I) Members of the same family;

7 (II) Legal entities that are wholly owned by members of the same  
8 family; or

9 ~~(III) ((An individual who owns at least one of the parcels and a  
10 legal entity or entities that own the other parcel or parcels if the  
11 entity or entities are wholly owned by that individual, members of his  
12 or her family, or that individual and members of his or her family))~~  
13 Any combination of one or more individuals and legal entities, where  
14 the individuals and all of the owners of the legal entities are members  
15 of the same family. As used in (b)(i)(B) of this subsection (6),  
16 "legal entity" includes a trust in which all the beneficial owners of  
17 the trust's real property are members of the same family.

18 (ii) "Family" means both immediate and extended family and includes  
19 ((only)):

20 (A) An individual and his or her spouse or domestic partner, child,  
21 stepchild, adopted child, grandchild, great-grandchild, parent,  
22 stepparent, grandparent, great-grandparent, cousin, ~~((or))~~ sibling,  
23 aunt, uncle, niece, or nephew;

24 (B) The spouse or domestic partner of an individual's child,  
25 stepchild, adopted child, grandchild, great-grandchild, parent,  
26 stepparent, grandparent, great-grandparent, cousin, ~~((or))~~ sibling,  
27 aunt, uncle, niece, or nephew;

28 (C) A child, stepchild, adopted child, grandchild, great-  
29 grandchild, parent, stepparent, grandparent, great-grandparent, cousin,  
30 ~~((or))~~ sibling, aunt, uncle, niece, or nephew of the individual's  
31 spouse or the individual's domestic partner; ~~((and))~~

32 (D) Any other relative who is a lineal or collateral descendent of  
33 an individual who has held title to the property; and

34 (E) The spouse or domestic partner of any individual described in  
35 (b)(ii)(C) or (D) of this subsection (6).

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

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

2 (a) Land that was previously classified under subsection (2) of  
3 this section, that no longer meets the criteria of subsection (2) of  
4 this section, and that is reclassified under subsection (1) of this  
5 section; or

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

10 **Sec. 2.** RCW 84.34.030 and 1989 c 378 s 10 are each amended to read  
11 as follows:

12 (1) An owner of agricultural land desiring current use  
13 classification under (~~subsection (2) of~~) RCW 84.34.020 (~~shall~~) (2)  
14 must make application to the county assessor upon forms prepared by the  
15 state department of revenue and supplied by the county assessor.

16 (2) An owner of open space or timber land desiring current use  
17 classification under (~~subsections (1) and (3) of~~) RCW 84.34.020  
18 (~~shall~~) (1) and (3) must make application to the county legislative  
19 authority upon forms prepared by the state department of revenue and  
20 supplied by the county assessor.

21 (3) The application (~~shall~~) must be accompanied by a reasonable  
22 processing fee if such processing fee is established by the city or  
23 county legislative authority. (~~Said~~)

24 (4)(a) The application (~~shall~~) must require only such information  
25 reasonably necessary to properly classify an area of land under this  
26 chapter (~~with a notarized verification of the truth thereof and~~  
27 shall)). The application must include a declaration from each  
28 applicant, in accordance with the requirements of RCW 9A.72.085, that  
29 the information provided in the application is true; and, if  
30 applicable, the parcels for which classification under this chapter is  
31 sought meet the definition of contiguous in RCW 84.34.020. The  
32 application must also include a statement that the applicant is aware  
33 of the potential tax liability involved when such land ceases to be  
34 designated as open space, farm and agricultural, or timber land.

35 (b) Applications must be made during the calendar year preceding  
36 that in which such classification is to begin.

1       (5) The assessor (~~shall~~) must make necessary information,  
2 including copies of this chapter and applicable regulations, readily  
3 available to interested parties, and (~~shall~~) must render reasonable  
4 assistance to such parties upon request.

5       **Sec. 3.** RCW 84.33.130 and 2003 c 170 s 4 are each amended to read  
6 as follows:

7       (1) Notwithstanding any other provision of law, lands that were  
8 assessed as classified forest land before July 22, 2001, shall be  
9 designated forest land for the purposes of this chapter. The owners of  
10 previously classified forest land shall not be required to apply for  
11 designation under this chapter. As of July 22, 2001, the land and  
12 timber on such land shall be assessed and taxed in accordance with the  
13 provisions of this chapter.

14       (2) An owner of land desiring that it be designated as forest land  
15 and valued under RCW 84.33.140 as of January 1st of any year shall  
16 submit an application to the assessor of the county in which the land  
17 is located before January 1st of that year. The application shall be  
18 accompanied by a reasonable processing fee when the county legislative  
19 authority has established the requirement for such a fee.

20       (3) No application of designation is required when publicly owned  
21 forest land is exchanged for privately owned forest land designated  
22 under this chapter. The land exchanged and received by an owner  
23 subject to ad valorem taxation shall be automatically granted  
24 designation under this chapter if the following conditions are met:

- 25       (a) The land will be used to grow and harvest timber; and
- 26       (b) The owner of the land submits a document to the assessor's  
27 office that explains the details of the forest land exchange within  
28 sixty days of the closing date of the exchange. However, if the owner  
29 fails to submit information regarding the exchange by the end of this  
30 sixty-day period, the owner must file an application for designation as  
31 forest land under this chapter and the regular application process will  
32 be followed.

33       (4) The application shall be made upon forms prepared by the  
34 department and supplied by the assessor, and shall include the  
35 following:

- 36       (a) A legal description of, or assessor's parcel numbers for, all  
37 land the applicant desires to be designated as forest land;

- 1 (b) The date or dates of acquisition of the land;
- 2 (c) A brief description of the timber on the land, or if the timber  
3 has been harvested, the owner's plan for restocking;
- 4 (d) A copy of the timber management plan, if one exists, for the  
5 land prepared by a trained forester or any other person with adequate  
6 knowledge of timber management practices;
- 7 (e) If a timber management plan exists, an explanation of the  
8 nature and extent to which the management plan has been implemented;
- 9 (f) Whether the land is used for grazing;
- 10 (g) Whether the land has been subdivided or a plat has been filed  
11 with respect to the land;
- 12 (h) Whether the land and the applicant are in compliance with the  
13 restocking, forest management, fire protection, insect and disease  
14 control, and forest debris provisions of Title 76 RCW or any applicable  
15 rules under Title 76 RCW;
- 16 (i) Whether the land is subject to forest fire protection  
17 assessments under RCW 76.04.610;
- 18 (j) Whether the land is subject to a lease, option, or other right  
19 that permits it to be used for any purpose other than growing and  
20 harvesting timber;
- 21 (k) A summary of the past experience and activity of the applicant  
22 in growing and harvesting timber;
- 23 (l) A summary of current and continuing activity of the applicant  
24 in growing and harvesting timber;
- 25 (m) A statement that the applicant is aware of the potential tax  
26 liability involved when the land ceases to be designated as forest  
27 land;
- 28 (n) (~~An affirmation~~) A declaration from each applicant, in  
29 accordance with the requirements of RCW 9A.72.085, that the statements  
30 contained in the application are true (~~and that~~); the land described  
31 in the application meets the definition of forest land in RCW  
32 84.33.035; and, if applicable, the parcels for which designation under  
33 this chapter is sought meet the definition of contiguous in RCW  
34 84.34.020; and
- 35 (o) A description and/or drawing showing what areas of land for  
36 which designation is sought are used for incidental uses compatible  
37 with the definition of forest land in RCW 84.33.035.



1 (5) The assessor shall afford the applicant an opportunity to be  
2 heard if the applicant so requests.

3 (6) The assessor shall act upon the application with due regard to  
4 all relevant evidence and without any one or more items of evidence  
5 necessarily being determinative, except that the application may be  
6 denied for one of the following reasons, without regard to other items:

7 (a) The land does not contain a "merchantable stand of timber" as  
8 defined in chapter 76.09 RCW and applicable rules. This reason shall  
9 not alone be sufficient to deny the application (i) if the land has  
10 been recently harvested or supports a growth of brush or noncommercial  
11 type timber, and the application includes a plan for restocking within  
12 three years or a longer period necessitated by unavailability of seed  
13 or seedlings, or (ii) if only isolated areas within the land do not  
14 meet the minimum standards due to rock outcroppings, swamps,  
15 unproductive soil or other natural conditions;

16 (b) The applicant, with respect to the land, has failed to comply  
17 with a final administrative or judicial order with respect to a  
18 violation of the restocking, forest management, fire protection, insect  
19 and disease control, and forest debris provisions of Title 76 RCW or  
20 any applicable rules under Title 76 RCW; or

21 (c) The land abuts a body of salt water and lies between the line  
22 of ordinary high tide and a line paralleling the ordinary high tide  
23 line and two hundred feet horizontally landward from the high tide  
24 line. However, if the assessor determines that a higher and better use  
25 exists for the land but this use would not be permitted or economically  
26 feasible by virtue of any federal, state, or local law or regulation,  
27 the land shall be assessed and valued under RCW 84.33.140 without being  
28 designated as forest land.

29 (7) The application shall be deemed to have been approved unless,  
30 prior to May 1st of the year after the application was mailed or  
31 delivered to the assessor, the assessor notifies the applicant in  
32 writing of the extent to which the application is denied.

33 (8) An owner who receives notice that his or her application has  
34 been denied, in whole or in part, may appeal the denial to the county  
35 board of equalization in accordance with the provisions of RCW  
36 84.40.038.

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