
SUBSTITUTE SENATE BILL 5996

State of Washington

62nd Legislature

2012 Regular Session

By Senate Agriculture, Water & Rural Economic Development (originally sponsored by Senators Schoesler, Hatfield, Haugen, Becker, and Fraser)

READ FIRST TIME 02/03/12.

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) Individuals who are all 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)(A) "Family" means both immediate and extended family and
19 includes ((only)):

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

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

28 ~~((+C))~~ (III) 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))~~ (IV) The spouse or domestic partner of any individual
33 described in (b)(ii)~~((+C))~~ (A)(III) of this subsection (6).

34 (B) For the purposes of (b)(ii)(A) of this subsection, the term
35 "cousin" includes only those individuals who are a direct lineal
36 descendant of a family member who has held title to the property and
37 who share one or more common ancestors with all other persons making an
38 application under RCW 84.34.030.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 (a) The land will be used to grow and harvest timber; and

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

36 (4) The application (~~shall~~) must be made upon forms prepared by

1 the department and supplied by the assessor, and (~~shall~~) must include
2 the following:

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

5 (b) The date or dates of acquisition of the land;

6 (c) A brief description of the timber on the land, or if the timber
7 has been harvested, the owner's plan for restocking;

8 (d) A copy of the timber management plan, if one exists, for the
9 land prepared by a trained forester or any other person with adequate
10 knowledge of timber management practices;

11 (e) If a timber management plan exists, an explanation of the
12 nature and extent to which the management plan has been implemented;

13 (f) Whether the land is used for grazing;

14 (g) Whether the land has been subdivided or a plat has been filed
15 with respect to the land;

16 (h) Whether the land and the applicant are in compliance with the
17 restocking, forest management, fire protection, insect and disease
18 control, and forest debris provisions of Title 76 RCW or any applicable
19 rules under Title 76 RCW;

20 (i) Whether the land is subject to forest fire protection
21 assessments under RCW 76.04.610;

22 (j) Whether the land is subject to a lease, option, or other right
23 that permits it to be used for any purpose other than growing and
24 harvesting timber;

25 (k) A summary of the past experience and activity of the applicant
26 in growing and harvesting timber;

27 (l) A summary of current and continuing activity of the applicant
28 in growing and harvesting timber;

29 (m) A statement that the applicant is aware of the potential tax
30 liability involved when the land ceases to be designated as forest
31 land;

32 (n) (~~An affirmation~~) A declaration from each applicant, in
33 accordance with the requirements of RCW 9A.72.085, that the statements
34 contained in the application are true (~~and that~~); the land described
35 in the application meets the definition of forest land in RCW
36 84.33.035; and, if applicable, the parcels for which designation under
37 this chapter is sought meet the definition of contiguous in RCW
38 84.34.020; and

1 (o) A description and/or drawing showing what areas of land for
2 which designation is sought are used for incidental uses compatible
3 with the definition of forest land in RCW 84.33.035.

4 (5) The assessor (~~(shall)~~) must afford the applicant an opportunity
5 to be heard if the applicant so requests.

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

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

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

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

33 (7) The application (~~(shall-be)~~) is deemed to have been approved
34 unless, prior to May 1st of the year after the application was mailed
35 or delivered to the assessor, the assessor notifies the applicant in
36 writing of the extent to which the application is denied.

37 (8) An owner who receives notice that his or her application has

1 been denied, in whole or in part, may appeal the denial to the county
2 board of equalization in accordance with the provisions of RCW
3 84.40.038.

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