

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5359

62nd Legislature
2011 Regular Session

Passed by the Senate January 1, 0001
YEAS 0 NAYS 0

President of the Senate

Passed by the House January 1, 0001
YEAS 0 NAYS 0

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5359** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5359

Passed Legislature - 2011 Regular Session

State of Washington 62nd Legislature 2011 Regular Session

By Senate Agriculture & Rural Economic Development (originally sponsored by Senators Morton, Swecker, Honeyford, and Schoesler)

READ FIRST TIME 02/08/11.

1 AN ACT Relating to contiguous land under current use open space
2 property tax programs; and amending RCW 84.34.020, 84.33.035,
3 84.33.078, and 82.04.333.

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

5 **Sec. 1.** RCW 84.34.020 and 2010 c 106 s 304 are each amended to
6 read 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 (~~shall~~)
3 also 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 (ii) "Family" includes only:

14 (A) An individual and his or her spouse or domestic partner, child,
15 stepchild, adopted child, grandchild, parent, stepparent, grandparent,
16 cousin, or sibling;

17 (B) The spouse or domestic partner of an individual's child,
18 stepchild, adopted child, grandchild, parent, stepparent, grandparent,
19 cousin, or sibling;

20 (C) A child, stepchild, adopted child, grandchild, parent,
21 stepparent, grandparent, cousin, or sibling of the individual's spouse
22 or the individual's domestic partner; and

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

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

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

29 (a) Land that was previously classified under subsection (2) of
30 this section, that no longer meets the criteria of subsection (2) of
31 this section, and that is reclassified under subsection (1) of this
32 section; or

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

1 **Sec. 2.** RCW 84.33.035 and 2004 c 177 s 1 are each amended to read
2 as follows:

3 Unless the context clearly requires otherwise, the definitions in
4 this section apply throughout this chapter.

5 (1) "Agricultural methods" means the cultivation of trees that are
6 grown on land prepared by intensive cultivation and tilling, such as
7 irrigating, plowing, or turning over the soil, and on which all
8 unwanted plant growth is controlled continuously for the exclusive
9 purpose of raising trees such as Christmas trees and short-rotation
10 hardwoods.

11 (2) "Average rate of inflation" means the annual rate of inflation
12 as determined by the department averaged over the period of time as
13 provided in RCW 84.33.220 (1) and (2). This rate (~~shall~~) must be
14 published in the state register by the department not later than
15 January 1st of each year for use in that assessment year.

16 (3) "Composite property tax rate" for a county means the total
17 amount of property taxes levied upon forest lands by all taxing
18 districts in the county other than the state, divided by the total
19 assessed value of all forest land in the county.

20 (4) "Contiguous" means land adjoining and touching other property
21 held by the same ownership. Land divided by a public road, but
22 otherwise an integral part of a timber growing and harvesting
23 operation, is considered contiguous. Solely for the purposes of this
24 subsection (4), "same ownership" has the same meaning as in RCW
25 84.34.020(6).

26 (5) "Forest land" is synonymous with "designated forest land" and
27 means any parcel of land that is twenty or more acres or multiple
28 parcels of land that are contiguous and total twenty or more acres that
29 is or are devoted primarily to growing and harvesting timber.
30 Designated forest land means the land only and does not include a
31 residential homesite. The term includes land used for incidental uses
32 that are compatible with the growing and harvesting of timber but no
33 more than ten percent of the land may be used for such incidental uses.
34 It also includes the land on which appurtenances necessary for the
35 production, preparation, or sale of the timber products exist in
36 conjunction with land producing these products.

37 (~~(5)~~) (6) "Harvested" means the time when in the ordinary course
38 of business the quantity of timber by species is first definitely

1 determined. The amount harvested (~~(shall)~~) must be determined by the
2 Scribner Decimal C Scale or other prevalent measuring practice adjusted
3 to arrive at substantially equivalent measurements, as approved by the
4 department.

5 (~~(+6)~~) (7) "Harvester" means every person who from the person's
6 own land or from the land of another under a right or license granted
7 by lease or contract, either directly or by contracting with others for
8 the necessary labor or mechanical services, fells, cuts, or takes
9 timber for sale or for commercial or industrial use. When the United
10 States or any instrumentality thereof, the state, including its
11 departments and institutions and political subdivisions, or any
12 municipal corporation therein so fells, cuts, or takes timber for sale
13 or for commercial or industrial use, the harvester is the first person
14 other than the United States or any instrumentality thereof, the state,
15 including its departments and institutions and political subdivisions,
16 or any municipal corporation therein, who acquires title to or a
17 possessory interest in the timber. The term "harvester" does not
18 include persons performing under contract the necessary labor or
19 mechanical services for a harvester.

20 (~~(+7)~~) (8) "Harvesting and marketing costs" means only those costs
21 directly associated with harvesting the timber from the land and
22 delivering it to the buyer and may include the costs of disposing of
23 logging residues. Any other costs that are not directly and
24 exclusively related to harvesting and marketing of the timber, such as
25 costs of permanent roads or costs of reforesting the land following
26 harvest, are not harvesting and marketing costs.

27 (~~(+8)~~) (9) "Incidental use" means a use of designated forest land
28 that is compatible with its purpose for growing and harvesting timber.
29 An incidental use may include a gravel pit, a shed or land used to
30 store machinery or equipment used in conjunction with the timber
31 enterprise, and any other use that does not interfere with or indicate
32 that the forest land is no longer primarily being used to grow and
33 harvest timber.

34 (~~(+9)~~) (10) "Local government" means any city, town, county,
35 water-sewer district, public utility district, port district,
36 irrigation district, flood control district, or any other municipal
37 corporation, quasi-municipal corporation, or other political

1 subdivision authorized to levy special benefit assessments for sanitary
2 or storm sewerage systems, domestic water supply or distribution
3 systems, or road construction or improvement purposes.

4 ~~((+10+))~~ (11) "Local improvement district" means any local
5 improvement district, utility local improvement district, local utility
6 district, road improvement district, or any similar unit created by a
7 local government for the purpose of levying special benefit assessments
8 against property specially benefited by improvements relating to the
9 districts.

10 ~~((+11+))~~ (12) "Owner" means the party or parties having the fee
11 interest in land, except where land is subject to a real estate
12 contract "owner" means the contract vendee.

13 ~~((+12+))~~ (13) "Primarily" or "primary use" means the existing use
14 of the land is so prevalent that when the characteristic use of the
15 land is evaluated any other use appears to be conflicting or
16 nonrelated.

17 ~~((+13+))~~ (14) "Short-rotation hardwoods" means hardwood trees, such
18 as but not limited to hybrid cottonwoods, cultivated by agricultural
19 methods in growing cycles shorter than fifteen years.

20 ~~((+14+))~~ (15) "Small harvester" means every person who from his or
21 her own land or from the land of another under a right or license
22 granted by lease or contract, either directly or by contracting with
23 others for the necessary labor or mechanical services, fells, cuts, or
24 takes timber for sale or for commercial or industrial use in an amount
25 not exceeding two million board feet in a calendar year. When the
26 United States or any instrumentality thereof, the state, including its
27 departments and institutions and political subdivisions, or any
28 municipal corporation therein so fells, cuts, or takes timber for sale
29 or for commercial or industrial use, not exceeding these amounts, the
30 small harvester is the first person other than the United States or any
31 instrumentality thereof, the state, including its departments and
32 institutions and political subdivisions, or any municipal corporation
33 therein, who acquires title to or a possessory interest in the timber.
34 Small harvester does not include persons performing under contract the
35 necessary labor or mechanical services for a harvester, and it does not
36 include the harvesters of Christmas trees or short-rotation hardwoods.

37 ~~((+15+))~~ (16) "Special benefit assessments" means special
38 assessments levied or capable of being levied in any local improvement

1 district or otherwise levied or capable of being levied by a local
2 government to pay for all or part of the costs of a local improvement
3 and which may be levied only for the special benefits to be realized by
4 property by reason of that local improvement.

5 ~~((+16+))~~ (17) "Stumpage value of timber" means the appropriate
6 stumpage value shown on tables prepared by the department under RCW
7 84.33.091~~((, provided that))~~. However, for timber harvested from
8 public land and sold under a competitive bidding process, stumpage
9 value ~~((shall))~~ means the actual amount paid to the seller in cash or
10 other consideration. The stumpage value of timber from public land
11 does not include harvesting and marketing costs if the timber from
12 public land is harvested by, or under contract for, the United States
13 or any instrumentality of the United States, the state, including its
14 departments and institutions and political subdivisions, or any
15 municipal corporation therein. Whenever payment for the stumpage
16 includes considerations other than cash, the value ~~((shall be))~~ is the
17 fair market value of the other consideration. If the other
18 consideration is permanent roads, the value of the roads ~~((shall))~~ must
19 be the appraised value as appraised by the seller.

20 ~~((+17+))~~ (18) "Timber" means forest trees, standing or down, on
21 privately or publicly owned land, and except as provided in RCW
22 84.33.170 includes Christmas trees and short-rotation hardwoods.

23 ~~((+18+))~~ (19) "Timber assessed value" for a county means the sum
24 of: (a) The total stumpage value of timber harvested from publicly
25 owned land in the county multiplied by the public timber ratio, plus;
26 (b) the total stumpage value of timber harvested from privately owned
27 land in the county multiplied by the private timber ratio. The
28 numerator of the public timber ratio is the rate of tax imposed by the
29 county under RCW 84.33.051 on public timber harvests for the year of
30 the calculation. The numerator of the private timber ratio is the rate
31 of tax imposed by the county under RCW 84.33.051 on private timber
32 harvests for the year of the calculation. The denominator of the
33 private timber ratio and the public timber ratio is the composite
34 property tax rate for the county for taxes due in the year of the
35 calculation, expressed as a percentage of assessed value. The
36 department ~~((shall))~~ must use the stumpage value of timber harvested
37 during the most recent four calendar quarters for which the information

1 is available. The department (~~shall~~) must calculate the timber
2 assessed value for each county before October 1st of each year.

3 (~~(+19)~~) (20) "Timber assessed value" for a taxing district means
4 the timber assessed value for the county multiplied by a ratio. The
5 numerator of the ratio is the total assessed value of forest land in
6 the taxing district. The denominator is the total assessed value of
7 forest land in the county. As used in this section, "assessed value of
8 forest land" means the assessed value of forest land for taxes due in
9 the year the timber assessed value for the county is calculated plus an
10 additional value for public forest land. The additional value for
11 public forest land is the product of the number of acres of public
12 forest land that are available for timber harvesting determined under
13 RCW 84.33.089 and the average assessed value per acre of private forest
14 land in the county.

15 (~~(+20)~~) (21) "Timber management plan" means a plan prepared by a
16 trained forester, or any other person with adequate knowledge of timber
17 management practices, concerning the use of the land to grow and
18 harvest timber. Such a plan includes:

19 (a) A legal description of the forest land;

20 (b) A statement that the forest land is held in contiguous
21 ownership of twenty or more acres and is primarily devoted to and used
22 to grow and harvest timber;

23 (c) A brief description of the timber on the forest land or, if the
24 timber on the land has been harvested, the owner's plan to restock the
25 land with timber;

26 (d) A statement about whether the forest land is also used to graze
27 livestock;

28 (e) A statement about whether the land has been used in compliance
29 with the restocking, forest management, fire protection, insect and
30 disease control, and forest debris provisions of Title 76 RCW; and

31 (f) If the land has been recently harvested or supports a growth of
32 brush and noncommercial type timber, a description of the owner's plan
33 to restock the forest land within three years.

34 **Sec. 3.** RCW 84.33.078 and 2004 c 177 s 4 are each amended to read
35 as follows:

36 If the timber from public land is harvested by the state, its
37 departments and institutions and political subdivisions, or any

1 municipal corporation therein, the governmental unit, or governmental
2 units, that harvest or market the timber must provide the harvester
3 purchasing the timber with its harvesting and marketing costs as
4 defined in RCW 84.33.035(~~(+7)~~).

5 **Sec. 4.** RCW 82.04.333 and 2007 c 48 s 5 are each amended to read
6 as follows:

7 In computing tax under this chapter, a person who is a small
8 harvester as defined in RCW 84.33.035(~~(+14)~~) may deduct an amount not
9 to exceed one hundred thousand dollars per tax year from the gross
10 receipts or value of products proceeding or accruing from timber
11 harvested by that person. A deduction under this section may not
12 reduce the amount of tax due to less than zero.

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