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**SUBSTITUTE SENATE BILL 5359**

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**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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