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**Transportation Committee**

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**ESSB 5164**

**Brief Description:** Authorizing the department of transportation to impose mitigation or mitigation fees.

**Sponsors:** Senate Committee on Transportation (originally sponsored by Senators Haugen, Oke, Jacobsen, Swecker, Poulsen, Spanel and Shin).

**Brief Summary of Engrossed Substitute Bill**

- Authorizes the Department of Transportation (DOT) to impose mitigation fees on development activities creating significant demand on highways of statewide significance and highways in urban growth areas.
- Exempts affordable housing and development generating less than 25 peak hour trips.
- Authorizes DOT to impose latecomer fees on behalf of another entity for infrastructure improvement projects funded with private sources.

**Hearing Date:** 3/28/05

**Staff:** Gene Baxstrom (786-7303).

**Background:**

Under current law, counties, cities, and towns planning under the Growth Management Act may impose impact fees on development activity as a portion of financing for public facilities. However, the impact fees are limited to a proportionate share of the costs and may only be imposed for those system improvements reasonably related to the new development and that will benefit the new development.

**Summary of Bill:**

The Department of Transportation (DOT) may impose mitigation or mitigation fees on development activities that create additional significant demand and need for improvements to highways of statewide significance (HSS) and related facilities or to state highways in an urban growth area (SHUGA). However, mitigation and/or mitigation fees are limited to a proportionate share of the costs, and they are only imposed for those system improvements reasonably related to the new development, are required to reasonably benefit the new development, and must be expended within six years. The method and details of how the mitigation or mitigation fee was derived must be transparent and it must be included in the local entity's assessment.

The determination of mitigation and the collection of such fees must be included in the local entities mitigation assessment unless there is no local mitigation or if DOT chooses to assess its mitigation separately.

Local jurisdictions may fund the DOT mitigation fee through alternative revenue sources.

The DOT must adopt rules regarding: criteria to determine whether a development activity creates need for improvements to designated facilities; a method for calculating the amount of mitigation fees; provisions related to non fee based mitigation; collection of the fees; adjustments allowed to standard fees to ensure fees are imposed fairly; and procedures for refunding funds not expended within the six years.

Exemptions are provided for affordable housing and development that generates less than 25 peak hour trips onto a HSS or a state highway in an SHUGA. However, development activity subject to the 25 peak-hour trip exemption may choose, at the developers option, to subject the development activity to the provisions of this section. Additionally, infrastructure improvement projects already publically funded are not to be included in mitigation or mitigation fees assessed on development activity.

The fees imposed must be deposited in a newly created transportation mitigation fee account and may only be expended for the purposes for which the fee was imposed. The account is subject to allotment procedures; however, an appropriation is not required for expenditures.

Local entities must notify DOT within two working days of any development activity that triggers State Environmental Policy Act (SEPA) or that is adjacent to a HSS or a SHUGA. Prior to issuing an Environmental Impact Statement (EIS) or a Threshold Determination (TD) the local entity will consult with DOT and include any significant adverse impacts identified by the DOT in the EIS or TD. The DOT must notify the lead agency of any such impacts in a timely manner to allow the lead agency to comply with SEPA time constraints.

The DOT may impose and collect latecomer fees on behalf of another entity for infrastructure improvement projects initially funded partially or entirely by private sources. However, there must be an agreement in place between the DOT and the entity prior to the imposition and collection of fees. The agreement must specify: the collection process; the maximum amount that may be collected; and the collection period.

**Appropriation:** None.

**Fiscal Note:** Available.

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