

# SENATE BILL REPORT

## ESSB 5164

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As Passed Senate, March 14, 2005

**Title:** An act relating to mitigation or mitigation fees imposed by the department of transportation.

**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 History:**

**Committee Activity:** Transportation: 2/16/05, 3/3/05 [DPS, DNP].

Passed Senate: 3/14/05, 27-21.

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### SENATE COMMITTEE ON TRANSPORTATION

**Majority Report:** That Substitute Senate Bill No. 5164 be substituted therefor, and the substitute bill do pass.

Signed by Senators Haugen, Chair; Jacobsen, Vice Chair; Poulsen, Vice Chair; Swecker, Ranking Minority Member; Eide, Kastama, Oke, Spanel and Weinstein.

**Minority Report:** Do not pass.

Signed by Senators Benson, Esser and Mulliken.

**Staff:** Dalene Sprick (786-7321)

**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 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 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 significant demand and additional need for improvements to HSS or related facilities or SHUGA;
- a formula or a method for calculating the amount of mitigation fees to be imposed;
- provisions related to non fee based mitigation;
- administration and collection of the fees;
- provision that no development may be charged twice for the same mitigation;
- adjustments allowed to standard fees at the time the fee is imposed to consider unusual circumstances in specific cases 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 new account created under this act and may only be expended for the purpose or purposes for which the fee was imposed.

The new 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 which specifies:

- the collection process;
- the maximum amount that may be collected; and
- the period of time during which collection may occur.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which the bill is passed.

**Testimony For:** DOT currently uses three types of collection methods with the locals: two-party agreements; in-kind agreements; and three-party agreements. There is not a common assessment method as it varies by a number of factors such as congestion, rural vs. urban, and the type of development. Types of mitigation we may request include frontage, sidewalks, curbs, and medians. Out of 2,500 developments we reviewed we requested traffic mitigation in 500 instances and in 240 of those we received some sort of mitigation. We understand that some communities may be afraid to ask for or include our mitigation requests for fear of chasing off development. Support the bill however we have concerns over issues of double dipping and would prefer that this only applied to Highways of Statewide Significance.

**Testimony Against:** Concern exists that impact fees are not a legitimate solution. Historically they have raised very little revenue. In 2003, statewide only \$54 million was generated in impact fees (this number does not include schools). Impact fees squelch development and often they result in unintended consequences. We would like this to exclude housing development.

**Who Testified:** PRO: Paula Hammond, WSDOT and Ashley Probart, AWC.

CON: Trent Matson, BIAW. Neutral: Duke Swaub, AGC.