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## Transportation Committee

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### SSB 5684

**Brief Description:** Addressing environmental mitigation in highway construction.

**Sponsors:** Senate Committee on Transportation (originally sponsored by Senators Haugen, Swecker, Ranker, Hatfield, Jarrett and Kline).

#### Brief Summary of Substitute Bill

- Requires the Washington State Department of Transportation (WSDOT) to consider using public lands before it considers using agricultural lands of long-term commercial significance when selecting sites to meet state and federal mitigation requirements for highway construction projects.
- Provides that if public lands are not available that meet environmental mitigation requirements, the WSDOT may use other lands but must make every effort to avoid any net loss of agricultural lands of long-term commercial significance.

**Hearing Date:** 3/23/09

**Staff:** Kathryn Leathers (786-7114)

#### Background:

Under the State Environmental Policy Act and the National Environmental Policy Act (SEPA and NEPA), the Washington State Department of Transportation (WSDOT) is required to review unavoidable environmental impacts of transportation construction projects and to identify possible mitigation measures. Mitigation may include enhancing existing environments, restoring environments, or creating new habitats, such as new wetlands.

In addition to compliance with NEPA, a WSDOT transportation project that includes federal funding or is subject to federal approval must comply with other related federal laws, including the Endangered Species Act, the Clean Water Act, the Land and Water Conservation Fund Act, and the United States Department of Transportation (USDOT) Act.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

The USDOT Act establishes that it is a national policy to preserve the natural beauty of certain public lands and historic sites. Under Section 4(f) of the USDOT Act, federal agencies may not approve a transportation program or project that requires the use of any publicly-owned land from a significant public park, recreation area, or wildlife and waterfowl refuge, or any land from a significant historic site, unless a determination is made that: (1) the use will have no more than a de minimis impact on the area; or (2) there is no feasible and prudent alternative to using the property; and (3) the program or project includes all possible planning to minimize harm to the property resulting from the use. Before a federal agency may approve the use of such public lands for a transportation project, the state agency must demonstrate that there are unique problems or unusual factors involved in the use of alternative properties.

Under the state's Growth Management Act certain counties and cities are required to designate agricultural lands that are of long-term commercial significance and develop conservation strategies applicable to those lands. "Agricultural land" means land primarily devoted to the commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products, or of berries, grain, hay, straw, turf, seed, Christmas trees not subject to certain excise taxes, finfish in upland hatcheries, or livestock, and that has long-term commercial significance for agricultural production. The phrase "long-term commercial significance" is defined to include the growing capacity, productivity, and soil composition of land for long-term commercial production, in consideration with the land's proximity to population areas and the possibility of more intense uses of the land.

**Summary of Bill:**

In the process of reviewing potential sites to be used for environmental mitigation of a highway construction project, the WSDOT must, to the greatest extent possible, consider using public lands for mitigation purposes before agricultural lands of long-term significance are considered. If public lands that meet the required mitigation needs are not available, the WSDOT may consider the use of other lands but must make every effort to avoid any net loss of agricultural lands of long-term commercial significance.

**Appropriation:** None.

**Fiscal Note:** Preliminary fiscal note available.

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