

HOUSE BILL REPORT

SSB 5684

As Passed House - Amended:

April 9, 2009

Title: An act relating to environmental mitigation in highway construction.

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 History:

Committee Activity:

Transportation: 3/23/09, 3/25/09 [DPA].

Floor Activity

Passed House - Amended: 4/9/09, 97-0.

Brief Summary of Substitute Bill (As Amended by House)

- 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.
- Establishes that the WSDOT's authority to meet environmental mitigation requirements through a certified wetland mitigation bank is not restricted by the requirement to consider using public lands before using agricultural lands of long-term commercial significance for environmental mitigation purposes.

HOUSE COMMITTEE ON TRANSPORTATION

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.

Majority Report: Do pass as amended. Signed by 26 members: Representatives Clibborn, Chair; Liias, Vice Chair; Roach, Ranking Minority Member; Rodne, Assistant Ranking Minority Member; Armstrong, Campbell, Cox, Driscoll, Eddy, Ericksen, Finn, Flannigan, Herrera, Johnson, Klippert, Kristiansen, Moeller, Rolfes, Shea, Simpson, Springer, Takko, Upthegrove, Wallace, Williams and Wood.

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 U.S. Department of Transportation (USDOT) Act.

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 Amended 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: Available.

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

Staff Summary of Public Testimony:

(In support) None.

(With concerns) Most mitigation banks were created to sell mitigation units for construction projects that require mitigation. The system is cost effective and results in better mitigation and restored habitats. Mitigation banks are desirable under both state and federal law, and have already gone through local and state permitting processes.

Most mitigation banks built in the state have reclaimed wetlands that have been drained for agricultural purposes, many of which were flooded during wet periods and are not very desirable. There is some concern that this bill will limit the Washington State Department of Transportation's ability to buy mitigation units in existing mitigation banks for projects that have already been commenced or may be started in the future just because a bank was built on what was once considered to be agricultural land of long-term significance.

(Opposed) None.

Persons Testifying: Mike Ryherd, Clear Valley Mitigation Farms.

Persons Signed In To Testify But Not Testifying: None.