

1                   A bill to be entitled  
2       An act relating to mitigation; amending s. 373.4137,  
3       F.S.; revising legislative intent to encourage the use  
4       of other mitigation options that satisfy state and  
5       federal requirements; providing the Department of  
6       Transportation or a transportation authority the  
7       option of participating in a mitigation project;  
8       requiring the Department of Transportation or a  
9       transportation authority to submit lists of its  
10      projects in the adopted work program to the water  
11      management districts; requiring a list rather than a  
12      survey of threatened or endangered species and species  
13      of special concern affected by a proposed project;  
14      providing conditions for the release of certain  
15      environmental mitigation funds; prohibiting a  
16      mitigation plan from being implemented unless the plan  
17      is submitted to and approved by the Department of  
18      Environmental Protection; providing additional factors  
19      that must be explained regarding the choice of  
20      mitigation bank; removing a provision requiring an  
21      explanation for excluding certain projects from the  
22      mitigation plan; providing criteria that the  
23      Department of Transportation must use in determining  
24      which projects to include in or exclude from the  
25      mitigation plan; amending s. 373.4135, F.S.;  
26      authorizing a governmental entity to create or provide  
27      mitigation for projects other than its own under  
28      specified circumstances; providing applicability;

29 providing an effective date.

30

31 Be It Enacted by the Legislature of the State of Florida:

32

33 Section 1. Subsections (1) and (2), paragraph (c) of  
 34 subsection (3), and subsections (4) and (5) of section 373.4137,  
 35 Florida Statutes, are amended to read:

36 373.4137 Mitigation requirements for specified  
 37 transportation projects.—

38 (1) The Legislature finds that environmental mitigation  
 39 for the impact of transportation projects proposed by the  
 40 Department of Transportation or a transportation authority  
 41 established pursuant to chapter 348 or chapter 349 can be more  
 42 effectively achieved by regional, long-range mitigation planning  
 43 rather than on a project-by-project basis. It is the intent of  
 44 the Legislature that mitigation to offset the adverse effects of  
 45 these transportation projects be funded by the Department of  
 46 Transportation and be carried out by ~~the water management~~  
 47 ~~districts, including~~ the use of mitigation banks and any other  
 48 mitigation options that satisfy state and federal requirements  
 49 ~~established pursuant to this part.~~

50 (2) Environmental impact inventories for transportation  
 51 projects proposed by the Department of Transportation or a  
 52 transportation authority established pursuant to chapter 348 or  
 53 chapter 349 shall be developed as follows:

54 (a) By July 1 of each year, the Department of  
 55 Transportation, or a transportation authority established  
 56 pursuant to chapter 348 or chapter 349 which chooses to

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57 participate in the program, shall submit to the water management  
58 districts a list ~~copy~~ of its projects in the adopted work  
59 program and an environmental impact inventory of habitats  
60 addressed in the rules adopted pursuant to this part and s. 404  
61 of the Clean Water Act, 33 U.S.C. s. 1344, which may be impacted  
62 by its plan of construction for transportation projects in the  
63 next 3 years of the tentative work program. The Department of  
64 Transportation or a transportation authority established  
65 pursuant to chapter 348 or chapter 349 may also include in its  
66 environmental impact inventory the habitat impacts of any future  
67 transportation project. The Department of Transportation and  
68 each transportation authority established pursuant to chapter  
69 348 or chapter 349 may fund any mitigation activities for future  
70 projects using current year funds.

71 (b) The environmental impact inventory shall include a  
72 description of these habitat impacts, including their location,  
73 acreage, and type; state water quality classification of  
74 impacted wetlands and other surface waters; any other state or  
75 regional designations for these habitats; and a list ~~survey~~ of  
76 threatened species, endangered species, and species of special  
77 concern affected by the proposed project.

78 (3)

79 (c) Except for current mitigation projects in the  
80 monitoring and maintenance phase and except as allowed by  
81 paragraph (d), the water management districts may request a  
82 transfer of funds from an escrow account no sooner than 30 days  
83 before ~~prior to~~ the date the funds are needed to pay for  
84 activities associated with development or implementation of the

85 approved mitigation plan described in subsection (4) for the  
86 current fiscal year, including, but not limited to, design,  
87 engineering, production, and staff support. Actual conceptual  
88 plan preparation costs incurred before plan approval may be  
89 submitted to the Department of Transportation or the appropriate  
90 transportation authority each year with the plan. The conceptual  
91 plan preparation costs of each water management district will be  
92 paid from mitigation funds associated with the environmental  
93 impact inventory for the current year. The amount transferred to  
94 the escrow accounts each year by the Department of  
95 Transportation and participating transportation authorities  
96 established pursuant to chapter 348 or chapter 349 shall  
97 correspond to a cost per acre of \$75,000 multiplied by the  
98 projected acres of impact identified in the environmental impact  
99 inventory described in subsection (2). However, the \$75,000 cost  
100 per acre does not constitute an admission against interest by  
101 the state or its subdivisions and ~~nor~~ is not ~~the cost~~ admissible  
102 as evidence of full compensation for any property acquired by  
103 eminent domain or through inverse condemnation. Each July 1, the  
104 cost per acre shall be adjusted by the percentage change in the  
105 average of the Consumer Price Index issued by the United States  
106 Department of Labor for the most recent 12-month period ending  
107 September 30, compared to the base year average, which is the  
108 average for the 12-month period ending September 30, 1996. Each  
109 quarter, the projected acreage of impact shall be reconciled  
110 with the acreage of impact of projects as permitted, including  
111 permit modifications, pursuant to this part and s. 404 of the  
112 Clean Water Act, 33 U.S.C. s. 1344. The subject year's transfer

113 of funds shall be adjusted accordingly to reflect the acreage of  
114 impacts as permitted. The Department of Transportation and  
115 participating transportation authorities established pursuant to  
116 chapter 348 or chapter 349 are authorized to transfer such funds  
117 from the escrow accounts to the water management districts to  
118 carry out the mitigation programs. Environmental mitigation  
119 funds that are identified for or maintained in an escrow account  
120 for the benefit of a water management district may be released  
121 if the associated transportation project is excluded in whole or  
122 part from the mitigation plan. For a mitigation project that is  
123 in the maintenance and monitoring phase, the water management  
124 district may request and receive a one-time payment based on the  
125 project's expected future maintenance and monitoring costs. Upon  
126 disbursement of the final maintenance and monitoring payment,  
127 the escrow account for the project established by the Department  
128 of Transportation or the participating transportation authority  
129 may be closed. Any interest earned on these disbursed funds  
130 shall remain with the water management district and must be used  
131 as authorized under this section.

132 (4) Before ~~Prior to~~ March 1 of each year, each water  
133 management district, in consultation with the Department of  
134 Environmental Protection, the United States Army Corps of  
135 Engineers, the Department of Transportation, participating  
136 transportation authorities established pursuant to chapter 348  
137 or chapter 349, and other appropriate federal, state, and local  
138 governments, and other interested parties, including entities  
139 operating mitigation banks, shall develop a plan for the primary  
140 purpose of complying with the mitigation requirements adopted

141 pursuant to this part and 33 U.S.C. s. 1344. In developing such  
 142 plans, the districts shall use ~~utilize~~ sound ecosystem  
 143 management practices to address significant water resource needs  
 144 and shall focus on activities of the Department of Environmental  
 145 Protection and the water management districts, such as surface  
 146 water improvement and management (SWIM) projects and lands  
 147 identified for potential acquisition for preservation,  
 148 restoration, or enhancement, and the control of invasive and  
 149 exotic plants in wetlands and other surface waters, to the  
 150 extent that the ~~such~~ activities comply with the mitigation  
 151 requirements adopted under this part and 33 U.S.C. s. 1344. In  
 152 determining the activities to be included in the ~~such~~ plans, the  
 153 districts shall ~~also~~ consider the purchase of credits from  
 154 public or private mitigation banks permitted under s. 373.4136  
 155 and associated federal authorization and shall include the ~~such~~  
 156 purchase as a part of the mitigation plan when the ~~such~~ purchase  
 157 would offset the impact of the transportation project, provide  
 158 equal benefits to the water resources than other mitigation  
 159 options being considered, and provide the most cost-effective  
 160 mitigation option. The mitigation plan shall be submitted to the  
 161 water management district governing board, or its designee, for  
 162 review and approval. At least 14 days before ~~prior to~~ approval,  
 163 the water management district shall provide a copy of the draft  
 164 mitigation plan to any person who has requested a copy. The plan  
 165 may not be implemented until it is submitted to and approved, in  
 166 part or in its entirety, by the Department of Environmental  
 167 Protection.

168 (a) For each transportation project with a funding request

169 for the next fiscal year, the mitigation plan must include a  
170 brief explanation of why a mitigation bank was or was not chosen  
171 as a mitigation option, including an estimation of identifiable  
172 costs of the mitigation bank and nonbank options and other  
173 factors such as time saved, liability for success of the  
174 mitigation, and long-term maintenance to the extent practicable.

175 (b) Specific projects may be excluded from the mitigation  
176 plan, in whole or in part, and are ~~shall~~ not be subject to this  
177 section upon the election agreement of the Department of  
178 Transportation, ~~or~~ a transportation authority if applicable, or  
179 ~~and~~ the appropriate water management district ~~that the inclusion~~  
180 ~~of such projects would hamper the efficiency or timeliness of~~  
181 ~~the mitigation planning and permitting process. The water~~  
182 ~~management district may choose to exclude a project in whole or~~  
183 ~~in part if the district is unable to identify mitigation that~~  
184 ~~would offset impacts of the project.~~

185 (c) When determining which projects to include in or  
186 exclude from the mitigation plan, the Department of  
187 Transportation shall investigate using credits from a permitted  
188 private mitigation bank before those projects are submitted to,  
189 or are allowed to remain in, the plan.

190 1. The investigation shall include the cost-effectiveness  
191 of private mitigation bank credits.

192 2. The cost-effectiveness analysis must be in writing and  
193 consider:

194 a. How the nominal cost of the private mitigation bank  
195 credits compares with the nominal cost for any given project to  
196 be included in the plan;

197 b. The value of complying with federal transportation  
 198 policies for federal aid projects;

199 c. The value that private mitigation bank credits provide  
 200 as the result of the expedited approvals by the Army Corps of  
 201 Engineers when private mitigation banks are used; and

202 d. The value that private mitigation banks provide to the  
 203 state and its residents as a result of the state and federal  
 204 liability for the success of the mitigation transferring to the  
 205 private mitigation bank when credits are purchased from the  
 206 private mitigation bank.

207 (5) The water management district shall ensure ~~be~~  
 208 ~~responsible for ensuring~~ that mitigation requirements pursuant  
 209 to 33 U.S.C. s. 1344 are met for the impacts identified in the  
 210 environmental impact inventory described in subsection (2), by  
 211 implementation of the approved plan described in subsection (4)  
 212 to the extent funding is provided by the Department of  
 213 Transportation, or a transportation authority established  
 214 pursuant to chapter 348 or chapter 349, if applicable. During  
 215 the federal permitting process, the water management district  
 216 may deviate from the approved mitigation plan in order to comply  
 217 with federal permitting requirements.

218 Section 2. Paragraphs (b) through (e) of subsection (1) of  
 219 section 373.4135, Florida Statutes, are redesignated as  
 220 paragraphs (c) through (f), respectively, and a new paragraph  
 221 (b) is added to that subsection to read:

222 373.4135 Mitigation banks and offsite regional  
 223 mitigation.—

224 (1) The Legislature finds that the adverse impacts of



225 activities regulated under this part may be offset by the  
226 creation, maintenance, and use of mitigation banks and offsite  
227 regional mitigation. Mitigation banks and offsite regional  
228 mitigation can enhance the certainty of mitigation and provide  
229 ecological value due to the improved likelihood of environmental  
230 success associated with their proper construction, maintenance,  
231 and management. Therefore, the department and the water  
232 management districts are directed to participate in and  
233 encourage the establishment of private and public mitigation  
234 banks and offsite regional mitigation. Mitigation banks and  
235 offsite regional mitigation should emphasize the restoration and  
236 enhancement of degraded ecosystems and the preservation of  
237 uplands and wetlands as intact ecosystems rather than alteration  
238 of landscapes to create wetlands. This is best accomplished  
239 through restoration of ecological communities that were  
240 historically present.

241 (b) Notwithstanding the provisions of this section, a  
242 governmental entity may not create or provide mitigation for a  
243 project other than its own unless the governmental entity uses  
244 land that was not previously purchased for conservation and  
245 unless the governmental entity provides the same financial  
246 assurances as required for mitigation banks permitted under s.  
247 373.4136. This paragraph does not apply to:

248 1. Mitigation banks permitted before December 31, 2011,  
249 under s. 373.4136;

250 2. Offsite regional mitigation areas established before  
251 December 31, 2011, under subsection (6);

252 3. Mitigation for transportation projects under ss.

253 | 373.4137 and 373.4139;  
 254 |       4. Mitigation for impacts from mining activities under s.  
 255 | 373.41492;  
 256 |       5. Mitigation provided for single-family lots or  
 257 | homeowners under subsection (7);  
 258 |       6. Entities authorized in chapter 98-492, Laws of Florida;  
 259 |       7. Mitigation provided for electric utility impacts  
 260 | certified under part II of chapter 403; or  
 261 |       8. Mitigation provided on sovereign submerged lands under  
 262 | subsection (6).  
 263 |       Section 3. This act shall take effect upon becoming a law.