

Bill No. CS for CS for SB 1456

Amendment No. \_\_\_\_

<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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Senator Bronson moved the following amendment:

**Senate Amendment (with title amendment)**

On page 27, between lines 26 and 27,

insert:

Section 14. Section 373.4137, Florida Statutes, is amended to read:

373.4137 Mitigation requirements.--

(1) The Legislature finds that environmental mitigation for the impact of transportation projects proposed by the Department of Transportation can be more effectively achieved by regional, long-range mitigation planning rather than on a project-by-project basis. It is the intent of the Legislature that mitigation to offset the adverse effects of these transportation projects be funded by the Department of Transportation and be carried out by the Department of Environmental Protection and the water management districts, including the use of mitigation banks established pursuant to this part.

(2) Environmental impact inventories for

Bill No. CS for CS for SB 1456

Amendment No. \_\_\_\_

1 transportation projects proposed by the Department of  
2 Transportation shall be developed as follows:

3 (a) ~~Each June 1 Beginning July 1996~~, the Department of  
4 Transportation shall submit ~~annually~~ to the Department of  
5 Environmental Protection and the water management districts a  
6 copy of its adopted work program and an inventory of habitats  
7 addressed in the rules adopted pursuant to this part and s.  
8 404 of the Clean Water Act, 33 U.S.C. s. 1344, which may be  
9 impacted by its plan of construction for transportation  
10 projects in the next first 3 years of the adopted work  
11 program. The Department of Transportation may also include in  
12 its inventory the habitat impacts of any future transportation  
13 project identified in the adopted work program.~~For the July~~  
14 ~~1996 submittal~~, The inventory may exclude those projects which  
15 have received permits pursuant to this part and s. 404 of the  
16 Clean Water Act, 33 U.S.C. s. 1344, projects for which  
17 mitigation planning or design has commenced, or projects for  
18 which mitigation has been implemented in anticipation of  
19 future permitting needs.

20 (b) The environmental impact inventory shall include a  
21 description of these habitat impacts, including their  
22 location, acreage, and type; state water quality  
23 classification of impacted wetlands and other surface waters;  
24 any other state or regional designations for these habitats;  
25 and a survey of threatened species, endangered species, and  
26 species of special concern affected by the proposed project.

27 (3) To fund the mitigation plan for the projected  
28 impacts identified in the inventory described in subsection  
29 (2), ~~beginning July 1, 1997~~, the Department of Transportation  
30 shall identify funds quarterly in an escrow account within the  
31 State Transportation Trust Fund established by the Department

Bill No. CS for CS for SB 1456

Amendment No. \_\_\_\_

1 of Transportation for the benefit of the Department of  
2 Environmental Protection. Any interest earnings from the  
3 escrow account shall be returned to the Department of  
4 Transportation. The Department of Environmental Protection  
5 shall request a transfer of funds from the escrow account to  
6 the Ecosystem Management and Restoration Trust Fund no sooner  
7 than 30 days prior to the date the funds are needed to pay for  
8 activities contained in the mitigation programs. The amount  
9 transferred each year by the Department of Transportation  
10 shall correspond to a cost per acre of \$75,000 multiplied by  
11 the projected acres of impact identified in the inventory  
12 described in subsection (2) within the water management  
13 district for that year. The water management district may  
14 draw from the trust fund no sooner than 30 days prior to the  
15 date funds are needed to pay for activities associated with  
16 development or implementation of the mitigation plan described  
17 in subsection (4). Activities associated with the development  
18 of the mitigation plan include, but are not limited to,  
19 design, engineering, production, and staff support. Each July  
20 1, ~~beginning in 1998,~~ the cost per acre shall be adjusted by  
21 the percentage change in the average of the Consumer Price  
22 Index issued by the United States Department of Labor for the  
23 most recent 12-month period ending September 30, compared to  
24 the base year average, which is the average for the 12-month  
25 period ending September 30, 1996. At the end of each year,  
26 the projected acreage of impact shall be reconciled with the  
27 acreage of impact of projects as permitted pursuant to this  
28 part and s. 404 of the Clean Water Act, 33 U.S.C. s. 1344, and  
29 the following year's transfer of funds shall be adjusted  
30 accordingly to reflect the overtransfer or undertransfer of  
31 funds from the preceding year. The Department of Environmental

Bill No. CS for CS for SB 1456

Amendment No. \_\_\_\_

1 Protection is authorized to transfer such funds from the  
2 Ecosystem Management and Restoration Trust Fund to the water  
3 management districts to carry out the mitigation programs.

4 (4) Prior to December 1 of each year 31, 1996, each  
5 water management district, in consultation with the Department  
6 of Environmental Protection, the United States Army Corps of  
7 Engineers, ~~and~~ other appropriate federal, state, and local  
8 governments, and entities operating mitigation banks which  
9 have obtained a permit pursuant to s. 373.4136, shall develop  
10 a plan for the primary purpose of complying with the  
11 mitigation requirements adopted pursuant to this part and 33  
12 U.S.C. s. 1344. This plan shall also address significant  
13 aquatic and exotic plant problems within wetlands and other  
14 surface waters. In developing such plans, the districts shall  
15 utilize sound ecosystem management practices to address  
16 significant water resource needs and shall focus on activities  
17 of the department and the water management districts, such as  
18 surface water improvement and management projects and lands  
19 identified for potential acquisition or restoration, to the  
20 extent such activities comply with the mitigation requirements  
21 adopted under this part and 33 U.S.C. s. 1344. In determining  
22 the activities to be included in such plans, the districts  
23 shall also consider the purchase of credits from public or  
24 private mitigation banks permitted under this part and shall  
25 include such purchase as a part of the mitigation plan when  
26 such purchase would offset the impact of the transportation  
27 project, provide equal benefits to the water resources than  
28 other mitigation options being considered, and provide the  
29 most cost-effective mitigation option. The mitigation plan  
30 shall be preliminarily approved by the water management  
31 district governing board and shall be submitted to the

Bill No. CS for CS for SB 1456

Amendment No. \_\_\_\_

1 secretary of the Department of Environmental Protection for  
2 review and final approval. The preliminary approval by the  
3 water management district governing board does not constitute  
4 a decision that affects substantial interests as provided by  
5 s. 120.569. At least 30 days prior to preliminary approval,  
6 the water management district shall provide a copy of the  
7 draft mitigation plan to any person who has requested a copy.

8 (a) Each mitigation plan shall include a brief  
9 explanation of why a mitigation bank was or was not chosen as  
10 a mitigation option for each transportation project addressed  
11 in the plan, including an estimation and description of  
12 identifiable costs of the mitigation bank and nonmitigation  
13 bank option to the extent practicable.

14 (b)(a) If the Department of Environmental Protection  
15 and water management districts are unable to identify  
16 mitigation that would offset the impacts of a project included  
17 in the inventory, either due to the nature of the impact or  
18 the amount of funds available, that project shall not be  
19 addressed in the mitigation plan and the project shall not be  
20 subject to the provisions of this section.

21 (c)(b) Specific projects may be excluded from the  
22 environmental impact inventory and the mitigation plan and  
23 shall not be subject to this section upon the agreement of the  
24 Department of Transportation, the Department of Environmental  
25 Protection, and the appropriate water management district that  
26 the inclusion of such projects would hamper the efficiency or  
27 timeliness of the mitigation planning and permitting process.

28 (d)(c) Those transportation projects that are proposed  
29 to commence in fiscal year 1996-1997 shall not be addressed in  
30 the mitigation plan, and the provisions of subsection (7)  
31 shall not apply to these projects. The Department of

Bill No. CS for CS for SB 1456

Amendment No. \_\_\_\_

1 Transportation may enter into interagency agreements with the  
2 Department of Environmental Protection or any water management  
3 district to perform mitigation planning and implementation for  
4 these projects.

5 (e) Surface water improvement and management or  
6 aquatic or exotic plant control projects undertaken using the  
7 \$12 million advance transferred from the Department of  
8 Transportation to the Department of Environmental Protection  
9 in fiscal year 1996-1997 shall remain available for mitigation  
10 until the \$12 million is fully credited up to and including  
11 fiscal year 2004-2005. When these projects are used as  
12 mitigation, the \$12 million advance shall be reduced by  
13 \$75,000 per acre of impact mitigated. For any fiscal year  
14 through and including fiscal year 2004-2005, to the extent the  
15 cost of developing and implementing the mitigation plans is  
16 less than the amount transferred from the Department of  
17 Transportation to the Department of Environmental Protection  
18 pursuant to subsection (3), the difference shall be credited  
19 towards the \$12 million advance.

20 ~~(d) On July 1, 1996, the Department of Transportation~~  
21 ~~shall transfer to the Department of Environmental Protection~~  
22 ~~\$12 million from the State Transportation Trust Fund for the~~  
23 ~~purposes of the surface water improvement management program~~  
24 ~~and to address statewide aquatic and exotic plant problems~~  
25 ~~within wetlands and other surface waters. Such funds shall be~~  
26 ~~considered an advance upon funds that the Department of~~  
27 ~~Transportation would provide for statewide mitigation during~~  
28 ~~the 1997-1998, 1998-1999, and 1999-2000 fiscal years. This~~  
29 ~~use of mitigation funds for surface water improvement~~  
30 ~~management projects or aquatic and exotic plant control may be~~  
31 ~~utilized as mitigation for transportation projects to the~~

Bill No. CS for CS for SB 1456

Amendment No. \_\_\_\_

1 ~~extent that it complies with the mitigation requirements~~  
2 ~~adopted pursuant to this part and 33 U.S.C. s. 1344. To the~~  
3 ~~extent that such activities result in mitigation credit for~~  
4 ~~projects permitted in fiscal year 1996-1997, all or part of~~  
5 ~~the \$12 million funding for surface water improvement~~  
6 ~~management projects or aquatic and exotic plant control in~~  
7 ~~fiscal year 1996-1997 shall be drawn from Department of~~  
8 ~~Transportation mitigation funding for fiscal year 1996-1997~~  
9 ~~rather than from mitigation funding for fiscal years~~  
10 ~~1997-1998, 1998-1999, and 1999-2000, in an amount equal to the~~  
11 ~~cost per acre of impact described in subsection (3), times the~~  
12 ~~acreage of impact that is mitigated by such plant control~~  
13 ~~activities. Any part of the \$12 million that does not result~~  
14 ~~in mitigation credit for projects permitted in fiscal year~~  
15 ~~1996-1997 shall remain available for mitigation credit during~~  
16 ~~fiscal years 1997-1998, 1998-1999, or 1999-2000.~~

17 (5) The water management district shall be responsible  
18 for ensuring that mitigation requirements pursuant to 33  
19 U.S.C. s. 1344 are met for the impacts identified in the  
20 inventory described in subsection (2), by implementation of  
21 the approved plan described in subsection (4) to the extent  
22 funding is provided as funded by the Department of  
23 Transportation. During the federal permitting process, the  
24 water management district may deviate from the approved  
25 mitigation plan in order to comply with federal permitting  
26 requirements.

27 (6) The mitigation plan shall be updated annually to  
28 reflect the most current Department of Transportation work  
29 program, and may be amended throughout the year to anticipate  
30 schedule changes or additional projects which may arise. Each  
31 update and amendment of the mitigation plan shall be submitted

Bill No. CS for CS for SB 1456

Amendment No. \_\_\_\_

1 to the secretary of the Department of Environmental Protection  
2 for approval ~~as described in subsection (4)~~. However, such  
3 approval shall not be applicable to a deviation as described  
4 in subsection (5).

5 (7) Upon approval by the secretary of the Department  
6 of Environmental Protection, the mitigation plan shall be  
7 deemed to satisfy the mitigation requirements under this part  
8 and any other mitigation requirements imposed by local,  
9 regional, and state agencies for impacts identified in the  
10 inventory described in subsection (2). The approval of the  
11 secretary shall authorize the activities proposed in the  
12 mitigation plan, and no other state, regional, or local permit  
13 or approval shall be necessary.

14 (8) This section shall not be construed to eliminate  
15 the need for the Department of Transportation to comply with  
16 the requirement to implement practicable design modifications,  
17 including realignment of transportation projects, to reduce or  
18 eliminate the impacts of its transportation projects on  
19 wetlands and other surface waters as required by rules adopted  
20 pursuant to this part, or to diminish the authority under this  
21 part to regulate other impacts, including water quantity or  
22 water quality impacts, or impacts regulated under this part  
23 that are not identified in the inventory described in  
24 subsection (2).

25 (9) The recommended mitigation plan shall be annually  
26 submitted to the Executive Office of the Governor and the  
27 Legislature through the legislative budget request of the  
28 Department of Environmental Protection in accordance with  
29 chapter 216. Any funds not directed to implement the  
30 mitigation plan should, to the greatest extent possible, be  
31 directed to fund aquatic and exotic plant problems within the



Bill No. CS for CS for SB 1456

Amendment No. \_\_\_\_

1 wetlands and other surface waters.

2 ~~(10) By December 1, 1997, the Department of~~  
3 ~~Environmental Protection, in consultation with the water~~  
4 ~~management districts, shall submit a report to the Governor,~~  
5 ~~the President of the Senate, and the Speaker of the House of~~  
6 ~~Representatives describing the implementation of this section,~~  
7 ~~including the use of public and private mitigation banks and~~  
8 ~~other types of mitigation approved in the mitigation plan.~~  
9 ~~The report shall also recommend any amendments to this section~~  
10 ~~necessary to improve the process for developing and~~  
11 ~~implementing mitigation plans for the Department of~~  
12 ~~Transportation. The report shall also include a specific~~  
13 ~~section on how private and public mitigation banks are~~  
14 ~~utilized within the mitigation plans.~~

15 Section 15. Section 86 of chapter 93-213, Laws of  
16 Florida, is amended to read:

17 Section 86. The Department of Environmental Regulation  
18 is authorized 54 career service positions for administering  
19 the state NPDES program. Twenty-five career service positions  
20 are authorized for startup of the program beginning July 1,  
21 1993, and the remaining 29 career service positions beginning  
22 January 1, 1994. The state NPDES program staffing shall start  
23 July 1, 1993, with completion targeted for 6 months following  
24 United States Environmental Protection Agency authorization to  
25 administer the National Pollutant Discharge Elimination System  
26 program. Implementation of positions is subject to review and  
27 final approval by the secretary of the Department of  
28 Environmental Regulation. The sum of \$3.2 million is hereby  
29 appropriated from the Pollution Recovery Trust Fund to cover  
30 program startup costs. ~~Such funds are to be repaid from a~~  
31 ~~fund the Legislature deems appropriate, no later than July 1,~~

Bill No. CS for CS for SB 1456

Amendment No. \_\_\_\_

1 ~~2000-~~

2 Section 16. Subsection (8) is added to section  
3 373.139, Florida Statutes, to read:

4 (8)(a) A district may not disburse district funds or  
5 assets to the federal government, or any department or agency  
6 thereof, in any agreement or other arrangement, to take  
7 property or any interest therein by eminent domain, pursuant  
8 to federal law, if such agreement or other arrangement  
9 diminishes or deprives a person or entity of any right,  
10 privilege, or compensation that they would otherwise have if  
11 the property or interest was taken by eminent domain under  
12 Florida law. Any affected person or entity shall have standing  
13 to enforce this prohibition by bringing an action in circuit  
14 court in the county in which the affected property is located.

15 (b) The Legislature declares that the Kissimmee River,  
16 Florida Project as identified in the Project Cooperation  
17 Agreement between the Department of the Army and the South  
18 Florida Water Management District, dated March 22, 1994, is in  
19 the public interest and for a public purpose. This project is  
20 necessary for the public health and welfare. The acquisition  
21 of real property, including by eminent domain, for this  
22 objective constitutes a public purpose for which it is in the  
23 public interest to expend public funds. The governing board of  
24 the district is empowered and authorized to acquire fee title  
25 or easements by eminent domain for the limited purpose of  
26 implementing the Kissimmee River, Florida Project.

27 (c) This subsection expires July 1, 2000.

28  
29 (Redesignate subsequent sections.)

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Bill No. CS for CS for SB 1456

Amendment No. \_\_\_\_

1 ===== T I T L E A M E N D M E N T =====

2 And the title is amended as follows:

3 On page 2, line 19, after the semicolon,

4

5 insert:

6 amending s. 373.4137, F.S.; requiring ongoing  
7 annual submissions, to the Department of  
8 Environmental Protection and water management  
9 districts, by the Department of Transportation  
10 of its adopted work program and inventory of  
11 impacted habitats; authorizing inclusion of  
12 habitat impacts of future transportation  
13 projects; providing activities associated with  
14 development of mitigation plans; requiring  
15 water management districts to consult with  
16 entities operating mitigation banks when  
17 developing mitigation plans; providing that a  
18 water management district's preliminary  
19 approval of a mitigation plan does not  
20 constitute a decision affecting substantial  
21 interests; requiring mitigation plans to  
22 include certain information; authorizing  
23 exclusion of certain projects from the  
24 environmental impact inventory; extending  
25 certain mitigation funding through fiscal year  
26 2004-2005; authorizing amendment of annual  
27 mitigation plans for certain purposes;  
28 providing for uses of funds not directed to  
29 implement mitigation plans; deleting obsolete  
30 provisions relating to a report; amending s. 86  
31 of ch. 93-213, Laws of Florida; deleting a

Bill No. CS for CS for SB 1456

Amendment No. \_\_\_\_

1           scheduled repayment of funds previously  
2           appropriated for startup costs of the National  
3           Pollutant Discharge Elimination System program;  
4           amending s. 373.139, F.S.; prohibiting the  
5           disbursement of certain district funds or  
6           assets in eminent domain proceedings under  
7           certain circumstances; providing standing to  
8           sue for certain persons; providing a  
9           declaration that the Kissimmee River Project is  
10          in the public interest and for a public  
11          purpose; authorizing certain eminent domain  
12          proceedings; providing for the future repeal of  
13          such provisions;

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