

By Representative Betancourt

1 A bill to be entitled
2 An act relating to environmental mitigation for
3 transportation projects; amending s. 373.4137,
4 F.S.; requiring ongoing annual submissions, to
5 the Department of Environmental Protection and
6 water management districts, by the Department
7 of Transportation of its adopted work program
8 and inventory of impacted habitats; authorizing
9 inclusion of habitat impacts of future
10 transportation projects; authorizing use of
11 certain annual funding for development of
12 mitigation plans; providing that a water
13 management district's preliminary approval of a
14 mitigation plan does not constitute a decision
15 affecting substantial interests; extending
16 certain mitigation funding through fiscal year
17 2004-2005; authorizing amendment of annual
18 mitigation plans for certain purposes;
19 providing for a process and for funding;
20 providing an effective date.

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22 Be It Enacted by the Legislature of the State of Florida:
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24 Section 1. Section 373.4137, Florida Statutes, is
25 amended to read:

26 373.4137 Mitigation requirements.--

27 (1) The Legislature finds that environmental
28 mitigation for the impact of transportation projects proposed
29 by the Department of Transportation can be more effectively
30 achieved by regional, long-range mitigation planning rather
31 than on a project-by-project basis. It is the intent of the

1 Legislature that mitigation to offset the adverse effects of
2 these transportation projects be funded by the Department of
3 Transportation and be carried out by the Department of
4 Environmental Protection and the water management districts,
5 including the use of mitigation banks established pursuant to
6 this part.

7 (2) Environmental impact inventories for
8 transportation projects proposed by the Department of
9 Transportation shall be developed as follows:

10 (a) Each July 1 ~~Beginning July 1996~~, the Department of
11 Transportation shall submit ~~annually~~ to the Department of
12 Environmental Protection and the water management districts a
13 copy of its adopted work program and an inventory of habitats
14 addressed in the rules adopted pursuant to this part and s.
15 404 of the Clean Water Act, 33 U.S.C. s. 1344, which may be
16 impacted by its plan of construction for transportation
17 projects in the next ~~first~~ 3 years of the adopted work
18 program. The Department of Transportation may also include in
19 its inventory the habitat impacts of any future transportation
20 project identified in the adopted work program. ~~For the July~~
21 ~~1996 submittal~~, The inventory may exclude those projects which
22 have received permits pursuant to this part and s. 404 of the
23 Clean Water Act, 33 U.S.C. s. 1344, projects for which
24 mitigation planning or design has commenced, or projects for
25 which mitigation has been implemented in anticipation of
26 future permitting needs.

27 (b) The environmental impact inventory shall include a
28 description of these habitat impacts, including their
29 location, acreage, and type; state water quality
30 classification of impacted wetlands and other surface waters;
31 any other state or regional designations for these habitats;

1 and a survey of threatened species, endangered species, and
2 species of special concern affected by the proposed project.
3 (3) To fund the mitigation plan for the projected
4 impacts identified in the inventory described in subsection
5 (2), ~~beginning July 1, 1997,~~ the Department of Transportation
6 shall identify funds quarterly in an escrow account within the
7 State Transportation Trust Fund established by the Department
8 of Transportation for the benefit of the Department of
9 Environmental Protection. Any interest earnings from the
10 escrow account shall be returned to the Department of
11 Transportation. The Department of Environmental Protection
12 shall request a transfer of funds from the escrow account to
13 the Ecosystem Management and Restoration Trust Fund no sooner
14 than 30 days prior to the date the funds are needed to pay for
15 activities contained in the mitigation programs. The amount
16 transferred each year by the Department of Transportation
17 shall correspond to a cost per acre of \$75,000 multiplied by
18 the projected acres of impact identified in the inventory
19 described in subsection (2) within the water management
20 district for that year. The water management district may
21 draw from the trust fund no sooner than 30 days prior to the
22 date funds are needed to pay for activities associated with
23 development or implementation of the mitigation plan described
24 in subsection (4). A portion of the per-acre funding may be
25 utilized for support and development of these plans, including
26 design, engineering, production, and staff support. Each July
27 1, ~~beginning in 1998,~~ the cost per acre shall be adjusted by
28 the percentage change in the average of the Consumer Price
29 Index issued by the United States Department of Labor for the
30 most recent 12-month period ending September 30, compared to
31 the base year average, which is the average for the 12-month

1 period ending September 30, 1996. At the end of each year,
2 the projected acreage of impact shall be reconciled with the
3 acreage of impact of projects as permitted pursuant to this
4 part and s. 404 of the Clean Water Act, 33 U.S.C. s. 1344, and
5 the following year's transfer of funds shall be adjusted
6 accordingly to reflect the overtransfer or undertransfer of
7 funds from the preceding year. The Department of Environmental
8 Protection is authorized to transfer such funds from the
9 Ecosystem Management and Restoration Trust Fund to the water
10 management districts to carry out the mitigation programs.

11 (4) Prior to December 31, 1996, each water management
12 district, in consultation with the Department of Environmental
13 Protection, the United States Army Corps of Engineers, and
14 other appropriate federal, state, and local governments, shall
15 develop a plan for the primary purpose of complying with the
16 mitigation requirements adopted pursuant to this part and 33
17 U.S.C. s. 1344. This plan shall also address significant
18 aquatic and exotic plant problems within wetlands and other
19 surface waters. In developing such plans, the districts shall
20 utilize sound ecosystem management practices to address
21 significant water resource needs. In determining the
22 activities to be included in such plans, the districts shall
23 also consider the purchase of credits from public or private
24 mitigation banks permitted under this part and shall include
25 such purchase as a part of the mitigation plan when such
26 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

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

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

16 (b) Specific projects may be excluded from ~~the~~
17 ~~mitigation plan~~ and shall not be subject to this section upon
18 the agreement of the Department of Transportation, the
19 Department of Environmental Protection, and the appropriate
20 water management district that the inclusion of such projects
21 would hamper the efficiency or timeliness of the mitigation
22 planning and permitting process.

23 (c) Those transportation projects that are proposed to
24 commence in fiscal year 1996-1997 shall not be addressed in
25 the mitigation plan, and the provisions of subsection (8)~~(7)~~
26 shall not apply to these projects. The Department of
27 Transportation may enter into interagency agreements with the
28 Department of Environmental Protection or any water management
29 district to perform mitigation planning and implementation for
30 these projects.

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1 (d) On July 1, 1996, the Department of Transportation
2 shall transfer to the Department of Environmental Protection
3 \$12 million from the State Transportation Trust Fund for the
4 purposes of the surface water improvement management program
5 and to address statewide aquatic and exotic plant problems
6 within wetlands and other surface waters. Such funds shall be
7 considered an advance upon funds that the Department of
8 Transportation would provide for statewide mitigation during
9 ~~the 1997-1998, 1998-1999, and 1999-2000~~ fiscal years 1997-1998
10 through 2004-2005. This use of mitigation funds for surface
11 water improvement management projects or aquatic and exotic
12 plant control may be utilized as mitigation for transportation
13 projects to the extent that it complies with the mitigation
14 requirements adopted pursuant to this part and 33 U.S.C. s.
15 1344. To the extent that such activities result in mitigation
16 credit for projects permitted in fiscal year 1996-1997, all or
17 part of the \$12 million funding for surface water improvement
18 management projects or aquatic and exotic plant control in
19 fiscal year 1996-1997 shall be drawn from Department of
20 Transportation mitigation funding for fiscal year 1996-1997,
21 rather than from mitigation funding for fiscal years 1997-1998
22 through 2004-2005, ~~1998-1999, and 1999-2000~~, in an amount
23 equal to the cost per acre of impact described in subsection
24 (3), times the acreage of impact that is mitigated by such
25 plant control activities. Any part of the \$12 million that
26 does not result in mitigation credit for projects permitted in
27 fiscal year 1996-1997 shall remain available for mitigation
28 credit during subsequent fiscal years, but no later than
29 fiscal year 2004-2005 ~~1997-1998, 1998-1999, or 1999-2000~~.
30 (5) The water management district shall be responsible
31 for ensuring that mitigation requirements pursuant to 33

1 U.S.C. s. 1344 are met for the impacts identified in the
2 inventory described in subsection (2), by implementation of
3 the approved plan described in subsection (4) to the extent
4 funding is provided ~~as funded~~ by the Department of
5 Transportation. During the federal permitting process, the
6 water management district may deviate from the approved
7 mitigation plan in order to comply with federal permitting
8 requirements.

9 (6) The mitigation plan shall be updated annually to
10 reflect the most current Department of Transportation work
11 program. Each update of the mitigation plan shall be
12 submitted to the secretary of the Department of Environmental
13 Protection for approval as described in subsection (4).
14 However, such approval shall not be applicable to a deviation
15 as described in subsection (5) or subsection (7).

16 (7) In order to anticipate schedule changes or minor
17 projects which may arise, the Department of Environmental
18 Protection and water management district staff are authorized
19 to amend the mitigation plans throughout the year and to
20 establish a process for these modifications. Department staff
21 may request legislative funding in anticipation of these
22 changes.

23 ~~(8)(7)~~ Upon approval by the secretary of the
24 Department of Environmental Protection, the mitigation plan
25 shall be deemed to satisfy the mitigation requirements under
26 this part and any other mitigation requirements imposed by
27 local, regional, and state agencies for impacts identified in
28 the inventory described in subsection (2). The approval of
29 the secretary shall authorize the activities proposed in the
30 mitigation plan, and no other state, regional, or local permit
31 or approval shall be necessary.

1 (9)~~(8)~~ This section shall not be construed to
2 eliminate the need for the Department of Transportation to
3 comply with the requirement to implement practicable design
4 modifications, including realignment of transportation
5 projects, to reduce or eliminate the impacts of its
6 transportation projects on wetlands and other surface waters
7 as required by rules adopted pursuant to this part, or to
8 diminish the authority under this part to regulate other
9 impacts, including water quantity or water quality impacts, or
10 impacts regulated under this part that are not identified in
11 the inventory described in subsection (2).

12 (10)~~(9)~~ The recommended mitigation plan shall be
13 annually submitted to the Executive Office of the Governor and
14 the Legislature through the legislative budget request of the
15 Department of Environmental Protection in accordance with
16 chapter 216. Any funds not directed to implement the
17 mitigation plan should, to the greatest extent possible, be
18 directed to fund aquatic and exotic plant problems within the
19 wetlands and other surface waters.

20 (11)~~(10)~~ By December 1, 1997, the Department of
21 Environmental Protection, in consultation with the water
22 management districts, shall submit a report to the Governor,
23 the President of the Senate, and the Speaker of the House of
24 Representatives describing the implementation of this section,
25 including the use of public and private mitigation banks and
26 other types of mitigation approved in the mitigation plan.
27 The report shall also recommend any amendments to this section
28 necessary to improve the process for developing and
29 implementing mitigation plans for the Department of
30 Transportation. The report shall also include a specific
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1 section on how private and public mitigation banks are
2 utilized within the mitigation plans.

3 Section 2. This act shall take effect July 1 of the
4 year in which enacted.

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7 HOUSE SUMMARY

8 For purposes of environmental mitigation of
9 transportation projects, requires ongoing annual
10 submissions by the Department of Transportation of its
11 adopted work program and inventory of impacted habitats,
12 to the Department of Environmental Protection and water
13 management districts. Authorizes the department to
14 include habitat impacts of certain future projects.
15 Authorizes use of a portion of the annual per-acre
16 mitigation funding for support and development of
17 mitigation plans. Provides that a water management
18 district's preliminary approval of a mitigation plan does
19 not constitute a decision affecting substantial
20 interests. Extends certain mitigation funding for surface
21 water management and aquatic and exotic plant control
22 through fiscal year 2004-2005. Authorizes Department of
23 Environmental Protection and water management district
24 staff to make certain amendments to mitigation plans
25 throughout the year, and to provide a process and funding
26 therefor.
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