

By the Committee on Transportation and Representative
Betancourt

1 A bill to be entitled
2 An act relating to environmental protection;
3 amending s. 373.4137, F.S.; requiring ongoing
4 annual submissions, to the Department of
5 Environmental Protection and water management
6 districts, by the Department of Transportation
7 of its adopted work program and inventory of
8 impacted habitats; authorizing inclusion of
9 habitat impacts of future transportation
10 projects; providing activities associated with
11 development of mitigation plans; requiring
12 water management districts to consult with
13 entities operating mitigation banks when
14 developing mitigation plans; providing that a
15 water management district's preliminary
16 approval of a mitigation plan does not
17 constitute a decision affecting substantial
18 interests; requiring mitigation plans to
19 include certain information; authorizing
20 exclusion of certain projects from the
21 environmental impact inventory; extending
22 certain mitigation funding through fiscal year
23 2004-2005; authorizing amendment of annual
24 mitigation plans for certain purposes;
25 providing for uses of funds not directed to
26 implement mitigation plans; deleting obsolete
27 language relating to a report; amending s.
28 373.421, F.S.; providing for surveys of wetland
29 boundaries; providing for such surveys to be
30 performed using a global positioning system;
31 providing additional requirements for such

1 surveys; providing for the effect of such
2 surveys; amending s. 338.223, F.S.; requiring
3 environmental feasibility review prior to
4 advance right-of-way purchases for a proposed
5 turnpike project; providing exceptions for
6 hardship and protective purchases; providing an
7 effective date.

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

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11 Section 1. Section 373.4137, Florida Statutes, is
12 amended to read:

13 373.4137 Mitigation requirements.--

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

25 (2) Environmental impact inventories for
26 transportation projects proposed by the Department of
27 Transportation shall be developed as follows:

28 (a) Each June 1 ~~Beginning July 1996~~, the Department of
29 Transportation shall submit ~~annually~~ to the Department of
30 Environmental Protection and the water management districts a
31 copy of its adopted work program and an inventory of habitats

1 addressed in the rules adopted pursuant to this part and s.
2 404 of the Clean Water Act, 33 U.S.C. s. 1344, which may be
3 impacted by its plan of construction for transportation
4 projects in the next ~~first~~ 3 years of the adopted work
5 program. The Department of Transportation may also include in
6 its inventory the habitat impacts of any future transportation
7 project identified in the adopted work program. ~~For the July~~
8 ~~1996~~ ~~submittal,~~ The inventory may exclude those projects which
9 have received permits pursuant to this part and s. 404 of the
10 Clean Water Act, 33 U.S.C. s. 1344, projects for which
11 mitigation planning or design has commenced, or projects for
12 which mitigation has been implemented in anticipation of
13 future permitting needs.

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

21 (3) To fund the mitigation plan for the projected
22 impacts identified in the inventory described in subsection
23 (2), ~~beginning July 1, 1997,~~ the Department of Transportation
24 shall identify funds quarterly in an escrow account within the
25 State Transportation Trust Fund established by the Department
26 of Transportation for the benefit of the Department of
27 Environmental Protection. Any interest earnings from the
28 escrow account shall be returned to the Department of
29 Transportation. The Department of Environmental Protection
30 shall request a transfer of funds from the escrow account to
31 the Ecosystem Management and Restoration Trust Fund no sooner

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

1 Engineers, ~~and~~ other appropriate federal, state, and local
2 governments, and entities operating mitigation banks which
3 have obtained a permit pursuant to s. 373.4136, shall develop
4 a plan for the primary purpose of complying with the
5 mitigation requirements adopted pursuant to this part and 33
6 U.S.C. s. 1344. ~~This plan shall also address significant~~
7 ~~aquatic and exotic plant problems within wetlands and other~~
8 ~~surface waters.~~ In developing such plans, the districts shall
9 utilize sound ecosystem management practices to address
10 significant water resource needs. In determining the
11 activities to be included in such plans, the districts shall
12 also consider the purchase of credits from public or private
13 mitigation banks permitted under this part and shall include
14 such purchase as a part of the mitigation plan when such
15 purchase would offset the impact of the transportation
16 project, provide equal benefits to the water resources than
17 other mitigation options being considered, and provide the
18 most cost-effective mitigation option. The mitigation plan
19 shall be preliminarily approved by the water management
20 district governing board and shall be submitted to the
21 secretary of the Department of Environmental Protection for
22 review and final approval. The preliminary approval by the
23 water management district governing board does not constitute
24 a decision that affects substantial interests as provided by
25 s. 120.569. At least 30 days prior to preliminary approval,
26 the water management district shall provide a copy of the
27 draft mitigation plan to any person who has requested a copy.
28 (a) Each mitigation plan shall include a brief
29 explanation of why a mitigation bank was or was not chosen as
30 a mitigation option for each transportation project addressed
31 in the plan, including an estimation and description of

1 identifiable costs of the mitigation bank and nonmitigation
2 bank option to the extent practicable.

3 (b)~~(a)~~ If the Department of Environmental Protection
4 and water management districts are unable to identify
5 mitigation that would offset the impacts of a project included
6 in the inventory, either due to the nature of the impact or
7 the amount of funds available, that project shall not be
8 addressed in the mitigation plan and the project shall not be
9 subject to the provisions of this section.

10 (c)~~(b)~~ Specific projects may be excluded from the
11 environmental impact inventory and the mitigation plan and
12 shall not be subject to this section upon the agreement of the
13 Department of Transportation, the Department of Environmental
14 Protection, and the appropriate water management district that
15 the inclusion of such projects would hamper the efficiency or
16 timeliness of the mitigation planning and permitting process.

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

25 (e) Surface water improvement and management or
26 aquatic or exotic plant control projects undertaken using the
27 \$12 million advance transferred from the Department of
28 Transportation to the Department of Environmental Protection
29 in fiscal year 1996-1997 shall remain available for mitigation
30 until the \$12 million is fully credited up to and including
31 fiscal year 2004-2005. When these projects are used as

1 mitigation, the \$12 million advance shall be reduced by
2 \$75,000 per acre of impact mitigated. For any fiscal year
3 through and including fiscal year 2004-2005, to the extent the
4 cost of developing and implementing the mitigation plans is
5 less than the amount transferred from the Department of
6 Transportation to the Department of Environmental Protection
7 pursuant to subsection (3), the difference shall be credited
8 towards the \$12 million advance.

9 ~~(d) On July 1, 1996, the Department of Transportation~~
10 ~~shall transfer to the Department of Environmental Protection~~
11 ~~\$12 million from the State Transportation Trust Fund for the~~
12 ~~purposes of the surface water improvement management program~~
13 ~~and to address statewide aquatic and exotic plant problems~~
14 ~~within wetlands and other surface waters. Such funds shall be~~
15 ~~considered an advance upon funds that the Department of~~
16 ~~Transportation would provide for statewide mitigation during~~
17 ~~the 1997-1998, 1998-1999, and 1999-2000 fiscal years. This~~
18 ~~use of mitigation funds for surface water improvement~~
19 ~~management projects or aquatic and exotic plant control may be~~
20 ~~utilized as mitigation for transportation projects to the~~
21 ~~extent that it complies with the mitigation requirements~~
22 ~~adopted pursuant to this part and 33 U.S.C. s. 1344. To the~~
23 ~~extent that such activities result in mitigation credit for~~
24 ~~projects permitted in fiscal year 1996-1997, all or part of~~
25 ~~the \$12 million funding for surface water improvement~~
26 ~~management projects or aquatic and exotic plant control in~~
27 ~~fiscal year 1996-1997 shall be drawn from Department of~~
28 ~~Transportation mitigation funding for fiscal year 1996-1997~~
29 ~~rather than from mitigation funding for fiscal years~~
30 ~~1997-1998, 1998-1999, and 1999-2000, in an amount equal to the~~
31 ~~cost per acre of impact described in subsection (3), times the~~

1 ~~acreage of impact that is mitigated by such plant control~~
2 ~~activities. Any part of the \$12 million that does not result~~
3 ~~in mitigation credit for projects permitted in fiscal year~~
4 ~~1996-1997 shall remain available for mitigation credit during~~
5 ~~fiscal years 1997-1998, 1998-1999, or 1999-2000.~~

6 (5) The water management district shall be responsible
7 for ensuring that mitigation requirements pursuant to 33
8 U.S.C. s. 1344 are met for the impacts identified in the
9 inventory described in subsection (2), by implementation of
10 the approved plan described in subsection (4) to the extent
11 funding is provided ~~as funded~~ by the Department of
12 Transportation. During the federal permitting process, the
13 water management district may deviate from the approved
14 mitigation plan in order to comply with federal permitting
15 requirements.

16 (6) The mitigation plan shall be updated annually to
17 reflect the most current Department of Transportation work
18 program, and may be amended throughout the year to anticipate
19 schedule changes or additional projects which may arise. Each
20 update and amendment of the mitigation plan shall be submitted
21 to the secretary of the Department of Environmental Protection
22 for approval ~~as described in subsection (4)~~. However, such
23 approval shall not be applicable to a deviation as described
24 in subsection (5).

25 (7) Upon approval by the secretary of the Department
26 of Environmental Protection, the mitigation plan shall be
27 deemed to satisfy the mitigation requirements under this part
28 and any other mitigation requirements imposed by local,
29 regional, and state agencies for impacts identified in the
30 inventory described in subsection (2). The approval of the
31 secretary shall authorize the activities proposed in the

1 mitigation plan, and no other state, regional, or local permit
2 or approval shall be necessary.

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

14 (9) The recommended mitigation plan shall be annually
15 submitted to the Executive Office of the Governor and the
16 Legislature through the legislative budget request of the
17 Department of Environmental Protection in accordance with
18 chapter 216. Any funds not directed to implement the
19 mitigation plan should, to the greatest extent possible, be
20 directed to fund department or water management district
21 activities such as surface water improvement and management
22 projects and lands identified for potential acquisition or
23 restoration ~~aquatic and exotic plant problems within the~~
24 ~~wetlands and other surface waters.~~

25 ~~(10) By December 1, 1997, the Department of~~
26 ~~Environmental Protection, in consultation with the water~~
27 ~~management districts, shall submit a report to the Governor,~~
28 ~~the President of the Senate, and the Speaker of the House of~~
29 ~~Representatives describing the implementation of this section,~~
30 ~~including the use of public and private mitigation banks and~~
31 ~~other types of mitigation approved in the mitigation plan.~~

1 ~~The report shall also recommend any amendments to this section~~
2 ~~necessary to improve the process for developing and~~
3 ~~implementing mitigation plans for the Department of~~
4 ~~Transportation. The report shall also include a specific~~
5 ~~section on how private and public mitigation banks are~~
6 ~~utilized within the mitigation plans.~~

7 Section 2. Subsection (8) is added to section 373.421,
8 Florida Statutes, to read:

9 373.421 Delineation methods; formal determinations.--

10 (8) Whenever a survey or certified survey of
11 delineated wetland boundaries is required for any purpose
12 pursuant to this chapter, the survey may be performed by
13 conventional methods of land surveying or by use of a global
14 positioning system. When a global positioning system is used
15 in the survey, the equipment must provide for submeter or
16 better accuracy and be operated by or under the supervision of
17 a registered land surveyor licensed in the state, or by an
18 individual specifically trained in the use of the make, type,
19 and model of global positioning system equipment being
20 employed. Presence of the registered surveyor's seal and
21 signature shall constitute proof that the survey was conducted
22 by or under the supervision of a registered land surveyor
23 licensed in the tate. Specific proof of training shall be
24 required by the regulatory agency for any individual who is
25 not a registered land surveyor licensed in the state or who
26 does not work under the supervision of a registered land
27 surveyor licensed in the state. A global positioning system
28 survey of wetland boundaries which has been conducted in
29 accordance with this subsection shall not be considered an
30 approximate wetland delineated under rules adopted pursuant to
31 subsection (2).

1 Section 3. Paragraph (b) of subsection (2) of section
2 338.223, Florida Statutes, is amended to read:

3 338.223 Proposed turnpike projects.--

4 (2)

5 (b) In accordance with the legislative intent
6 expressed in s. 337.273, and after the requirements of
7 paragraph (1)(c) have been met, the department may acquire
8 lands and property before making a final determination of the
9 economic feasibility of a project. The requirements of
10 paragraph (1)(c) shall not apply to hardship and protective
11 purchases of advance right-of-way by the department. The cost
12 of advance acquisition of right-of-way may be paid from bonds
13 issued under s. 337.276 or from turnpike revenues. For
14 purposes of this paragraph, "hardship purchase" means purchase
15 from a property owner of a residential dwelling of not more
16 than four units who is at a disadvantage due to health
17 impairment, job loss, or significant loss of rental income.
18 For purposes of this subsection, "protective purchase" means a
19 purchase to limit development, building, or other
20 intensification of land uses within the area right-of-way
21 needed for transportation facilities. The department shall
22 give written notice to the Department of Environmental
23 Protection 30 days prior to final agency acceptance as set
24 forth in s. 119.07(3)(n), which notice shall allow the
25 Department of Environmental Protection to comment. Hardship
26 and protective purchases of right-of-way shall not influence
27 the environmental feasibility of the project, including the
28 decision relative to the need to construct the project or the
29 selection of a specific location. Costs to acquire and
30 dispose of property acquired as hardship and protective
31 purchases are considered costs of doing business for the

1 department and shall not be considered in the determination of
2 environmental feasibility for the project.
3 Section 4. This act shall take effect upon becoming a
4 law.
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