

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: February 25, 1998 Revised: _____

Subject: Environmental Mitigation

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	McAuliffe	Johnson	TR	Favorable
2.	_____	_____	NR	_____
3.	_____	_____	WM	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This bill allows the Department of Transportation and the Department of Environmental Protection more flexibility in the mitigation of impacts to wetlands and other sensitive habitats from Department of Transportation projects.

The bill authorizes the Department of Transportation to include additional work program projects in the inventory of habitats beyond the three year minimum requirement. The bill authorizes water management districts to use a portion of the per acre funding received from the Department of Transportation to fund mitigation plans and the support and development of the plans, including staff support, design, engineering, and production. The bill clarifies that the preliminary approval of the mitigation plan by the water management district is not a decision affecting substantial interests.

The bill provides that the \$12 million transferred from the Department of Transportation to the Department of Environmental Protection for surface water and wetland management purposes will remain available for mitigation credit through fiscal year 1999-2000. The bill further allows the Department of Environmental Protection and the water management districts to modify mitigation plans throughout the year to accommodate changes in the Department of Transportation's production schedules or minor projects.

This bill substantially amends section 373.4137 of the Florida Statutes.

II. Present Situation:

Currently, the Department of Transportation submits annually to the Department of Environmental Protection and the water management districts a copy of the adopted work

program and an inventory of wetlands and habitats which may be impacted by transportation projects in the first three years of the adopted work program. The Department of Transportation transfers into the Ecosystem Management and Restoration Trust Fund within the Department of Environmental Protection \$75,000 for each acre within the water management districts where an impact upon wetlands has been projected. The funds are used by the water management districts for use in mitigation development and implementation activities. Water management districts are not currently authorized to use these funds for support and development of mitigation plans, including staff support, design, engineering, production.

Section 373.4137, F.S., further provides that certain projects may be excluded from a mitigation plan and mitigation plan requirements if the Department of Environmental Protection, the Department of Transportation and the appropriate water management district agree that the inclusion of the project would hamper the efficiency or timeliness of the mitigation planning and permitting process. However, the Department of Transportation must still include such a project in their inventory of affected habitats and apply for the appropriate permits.

In 1996, the department transferred \$12 million from the State Transportation Trust Fund to the Department of Environmental Protection for the surface water improvement management program to address statewide aquatic and exotic plant problems within wetlands and other surface waters. This was considered an advance upon funds which the Department of Transportation would have to pay for statewide wetland mitigation until the year 2000. The Department of Environmental Protection expended a portion of the funds on exotic plant eradication and surface water improvement projects which were not credited toward mitigation of the Department of Transportation's work program. As a result, the Department of Environmental Protection is indebted to the Department of Transportation for a portion of those funds, or mitigation credits, and is not able to replace those funds by the year 2000.

Currently, mitigation plans prepared by the water management districts are updated annually to reflect changes in the department's work program, and preliminarily approved by the water management district governing board. The plans are then submitted to the secretary of the Department of Environmental Protection for final approval.

III. Effect of Proposed Changes:

The bill amends s. 373.4137, F.S., to authorize the Department of Transportation to include additional projects identified in the adopted work program in the inventory of affected wetland habitats submitted to the Department of Environmental Protection and the water management districts beyond the current 3 years. The bill authorizes water management districts to use a portion of the \$75,000 per acre mitigation funds paid by the Department of Transportation for support and development of mitigation plans, including staff support, design, engineering, production.

The section is further amended to clarify that the Department of Transportation is not required to include projects in their inventory of affected habitats if the projects have been excluded from the

mitigation plan and mitigation plan requirements by agreement between the Department of Environmental Protection, the Department of Transportation and the appropriate water management district where the inclusion of the project would hamper the efficiency or timeliness of the mitigation planning and permitting process. The Department of Transportation must still apply for the appropriate permits.

The bill further provides that preliminary approval of a mitigation plan by the water management district governing board does not constitute a decision that affects substantial interests as provided by the Administrative Procedures Act. This clarifies that affected parties objecting to a mitigation plan may only file for an administrative hearing after the plan receives final approval from the Secretary of the Department of Environmental Protection.

The bill extends the time period that the Department of Environmental Protection has to use the Department of Transportation's \$12 million in wetlands mitigation funds to the year 2005 to allow the Department of Environmental Protection enough time to supplant the funds that were not credited toward the mitigation of Department of Transportation projects.

The bill further authorizes the Department of Environmental Protection and the water management districts to amend mitigation plans throughout the year, instead of once a year, to anticipate schedule changes or minor projects.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Unkown.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
