

By the Committee on Natural Resources and Senator Bronson

312-1767-98

1 A bill to be entitled
2 An act relating to environmental mitigation;
3 amending s. 373.4137, F.S.; authorizing the
4 Department of Transportation to include an
5 inventory of habitats impacted by projects in
6 the adopted work program; providing uses for
7 specified funding; providing that preliminary
8 approval of a mitigation plan is not a decision
9 affecting substantial interests; revising
10 funding provisions through future fiscal years;
11 authorizing the amendment of mitigation plans;
12 providing that the modification process does
13 not constitute an agency rule; deleting
14 obsolete provisions; providing legislative
15 findings and intent with respect to a
16 mitigation plan for the Dade County Lake Belt
17 Area to offset the impact of mining activities;
18 imposing a fee on the commercial extraction of
19 limerock and sand from the Dade County Lake
20 Belt Area; requiring the proceeds of the fee to
21 be paid to the Department of Revenue; providing
22 for transfer of the fee to the South Florida
23 Water Management District and deposit in a
24 separate interest-bearing account; providing
25 for the Department of Revenue to administer the
26 collection of the fee; authorizing the
27 department to adopt rules; providing for an
28 annual adjustment of the fee rate after a
29 specified date; specifying purposes for which
30 the proceeds of the fee may be used; requiring
31 that expenditures from the trust fund be

1 approved by an interagency committee; providing
2 for membership of the committee; providing that
3 payment of the fee satisfies certain
4 requirements for mitigation; providing for
5 suspension of imposition of the fee under
6 certain circumstances; providing an effective
7 date.

8
9 Be It Enacted by the Legislature of the State of Florida:

10
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 1, 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 an
6 inventory of habitats that may be impacted by any future
7 transportation project identified in the adopted work program.
8 ~~For the July 1996 submittal,~~The inventory may exclude those
9 projects which have received permits pursuant to this part and
10 s. 404 of the Clean Water Act, 33 U.S.C. s. 1344, projects for
11 which mitigation planning or design has commenced, or projects
12 for 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 ~~December 31,~~
30 ~~1996,~~ each water management district, in consultation with the
31 Department of Environmental Protection, the United States Army

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

26 (a) If the Department of Environmental Protection and
27 water management districts are unable to identify mitigation
28 that would offset the impacts of a project included in the
29 inventory, either due to the nature of the impact or the
30 amount of funds available, that project shall not be addressed
31

1 in the mitigation plan and the project shall not be subject to
2 the provisions of this section.

3 (b) Specific projects may be excluded from the
4 environmental impact inventory and the mitigation plan and
5 shall not be subject to this section upon the agreement of the
6 Department of Transportation, the Department of Environmental
7 Protection, and the appropriate water management district that
8 the inclusion of such projects would hamper the efficiency or
9 timeliness of the mitigation planning and permitting process.

10 (c) Those transportation projects that are proposed to
11 commence in fiscal year 1996-1997 shall not be addressed in
12 the mitigation plan, and the provisions of subsection (7)
13 shall not apply to these projects. The Department of
14 Transportation may enter into interagency agreements with the
15 Department of Environmental Protection or any water management
16 district to perform mitigation planning and implementation for
17 these projects.

18 (d) On July 1, 1996, the Department of Transportation
19 transferred ~~shall transfer~~ to the Department of Environmental
20 Protection \$12 million from the State Transportation Trust
21 Fund for the purposes of the surface water improvement
22 management program and to address statewide aquatic and exotic
23 plant problems within wetlands and other surface waters. Such
24 funds shall be considered an advance upon funds that the
25 Department of Transportation would provide for statewide
26 mitigation during the 1997-1998 through 2004-2005, ~~1998-1999,~~
27 ~~and 1999-2000~~ fiscal years. This use of mitigation funds for
28 surface water improvement management projects or aquatic and
29 exotic plant control may be utilized as mitigation for
30 transportation projects to the extent that it complies with
31 the mitigation requirements adopted pursuant to this part and

1 33 U.S.C. s. 1344. Any surface water improvement and
2 management or aquatic or exotic plant control projects
3 undertaken using the \$12-million advance which do not result
4 in mitigation credit for impacts addressed in the mitigation
5 plan for fiscal year 1996-1997 shall remain available for
6 mitigation credit during subsequent fiscal years up to and
7 including fiscal year 2004-2005, and, when used as mitigation,
8 the \$12-million advance shall be reduced by \$75,000 per acre
9 of impact mitigated. For any fiscal year through and including
10 fiscal year 2004-2005, after reducing the \$12-million advance
11 pursuant to the preceding sentence, then to the extent that
12 the costs of developing and implementing the mitigation plans
13 developed by the water management districts is less than the
14 amount transferred from the Department of Transportation to
15 the Department of Environmental Protection pursuant to
16 subsection (3), the difference for that fiscal year shall be
17 credited towards the \$12-million advance. ~~To the extent that~~
18 ~~such activities result in mitigation credit for projects~~
19 ~~permitted in fiscal year 1996-1997, all or part of the \$12~~
20 ~~million funding for surface water improvement management~~
21 ~~projects or aquatic and exotic plant control in fiscal year~~
22 ~~1996-1997 shall be drawn from Department of Transportation~~
23 ~~mitigation funding for fiscal year 1996-1997 rather than from~~
24 ~~mitigation funding for fiscal years 1997-1998, 1998-1999, and~~
25 ~~1999-2000, in an amount equal to the cost per acre of impact~~
26 ~~described in subsection (3), times the acreage of impact that~~
27 ~~is mitigated by such plant control activities. Any part of~~
28 ~~the \$12 million that does not result in mitigation credit for~~
29 ~~projects permitted in fiscal year 1996-1997 shall remain~~
30 ~~available for mitigation credit during fiscal years 1997-1998,~~
31 ~~1998-1999, or 1999-2000.~~

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

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

18 (7) In order to anticipate schedule changes or
19 additional projects that may arise, the department and water
20 management district staff may amend the mitigation plans
21 throughout the year and may establish a process for these
22 modifications. The process for these modifications does not
23 constitute a rule within the meaning of s. 120.52. Department
24 staff may request legislative funding in anticipation of these
25 changes.

26 (8)~~(7)~~ Upon approval by the secretary of the
27 Department of Environmental Protection, the mitigation plan
28 shall be deemed to satisfy the mitigation requirements under
29 this part and any other mitigation requirements imposed by
30 local, regional, and state agencies for impacts identified in
31 the inventory described in subsection (2). The approval of

1 the secretary shall authorize the activities proposed in the
2 mitigation plan, and no other state, regional, or local permit
3 or approval shall be necessary.

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

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

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

1 ~~implementing mitigation plans for the Department of~~
2 ~~Transportation. The report shall also include a specific~~
3 ~~section on how private and public mitigation banks are~~
4 ~~utilized within the mitigation plans.~~

5 Section 2. Dade County Lake Belt Mitigation Plan;
6 mitigation for mining activities within the Dade County Lake
7 Belt.--

8 (1) The Legislature finds that the impact of mining
9 within the Dade County Lake Belt Area is offset by a
10 mitigation plan that is designated the "Lake Belt Mitigation
11 Plan." The per-ton fee assessed on limestone sold from the
12 Dade County Lake Belt Area shall be used for acquiring
13 environmentally sensitive lands and for restoration,
14 maintenance, and other environmental purposes. Further, the
15 Legislature finds that the public benefit of a sustainable
16 supply of limestone construction materials for public and
17 private projects requires a coordinated approach to permitting
18 activities on wetlands within the Dade County Lake Belt in
19 order to provide the certainty necessary to encourage
20 substantial and continued investment in the limestone
21 processing plant and equipment required to efficiently extract
22 the limestone resource. It is the intent of the Legislature
23 that the Lake Belt Mitigation Plan satisfy all local, state,
24 and federal requirements for mining activity within the Dade
25 County Lake Belt Area.

26 (2) To provide for the mitigation of wetland resources
27 lost to mining activities within the Dade County Lake Belt
28 Area, effective January 1, 1999, a fee is imposed on each ton
29 of limerock and sand extracted by any person who engages in
30 the business of extracting limerock or sand from within the
31 Dade County Lake Belt Area. The fee is at the rate of 4.41

1 cents for each ton of limerock and sand sold from within the
2 Dade County Lake Belt Area in raw, processed, or manufactured
3 form, including, but not limited to, sized aggregate, cement,
4 concrete, and concrete products. Any limerock or sand that is
5 used within the mine from which the limerock or sand is
6 extracted is exempt from the fee. The amount of the fee
7 imposed under this section must be stated separately on the
8 invoice provided to the purchaser. The proceeds of the fee
9 must be paid to the Department of Revenue on or before the
10 20th day of the month following the calendar month in which
11 the sale occurs.

12 (3) The fee imposed by this section must be reported
13 to the Department of Revenue. Payment of the fee must be
14 accompanied by a form prescribed by the Department of Revenue.
15 The proceeds of the fee, less administrative costs, must be
16 transferred by the Department of Revenue to the South Florida
17 Water Management District and deposited into an
18 interest-bearing account to be maintained separately and not
19 commingled with other funds. As used in this section, the term
20 "proceeds of the fee" means all funds collected and received
21 by the Department of Revenue under this section, including
22 interest and penalties on delinquent fees. The amount deducted
23 for administrative costs may not exceed 3 percent of the total
24 revenues collected under this section and may equal only those
25 administrative costs reasonably attributable to the fee.

26 (4)(a) The Department of Revenue shall administer,
27 collect, and enforce the fee authorized under this section in
28 accordance with the procedures used to administer, collect,
29 and enforce the general sales tax imposed under chapter 212,
30 Florida Statutes. The provisions of chapter 212, Florida
31 Statutes, with respect to the authority of the Department of

1 Revenue to audit and make assessments, the keeping of books
2 and records, and the interest and penalties imposed on
3 delinquent fees apply to this section. The fee may not be
4 included in computing estimated taxes under section 212.11,
5 Florida Statutes, and the dealer's credit for collecting taxes
6 or fees provided for in section 212.12, Florida Statutes, does
7 not apply to the fee imposed by this section.

8 (b) In administering this section, the Department of
9 Revenue may employ persons and incur expenses for which funds
10 are appropriated by the Legislature. The Department of Revenue
11 shall adopt rules and prescribe and publish forms necessary to
12 administer this section. The Department of Revenue shall
13 establish audit procedures and may assess delinquent fees.

14 (5) Beginning July 1, 2000, and each July 1
15 thereafter, the per-ton fee shall be adjusted by the
16 percentage change in the average of the Consumer Price Index
17 issued by the United States Department of Labor for the most
18 recent 12-month period ending on September 30, and the
19 percentage change in the Producer's Price Index for Net Output
20 of Crushed and Broken Stone, South Atlantic Region, issued by
21 the United States Department of Labor for the most recent
22 12-month period ending on September 30, compared to the
23 average of these indexes for the base year, which is the
24 12-month period ending on September 30, 1999.

25 (6)(a) The proceeds of the fee must be used to conduct
26 mitigation activities that are appropriate to offset the loss
27 of the value and functions of wetlands as a result of mining
28 activities in the Dade County Lake Belt Area and must be used
29 in a manner consistent with the recommendations contained in
30 the reports submitted to the Legislature by the Dade County
31 Lake Belt Plan Implementation Committee and adopted under

1 section 373.4149, Florida Statutes. Such mitigation may
2 include the purchase, enhancement, restoration, and management
3 of wetlands and uplands and may also include structural
4 modifications to the existing drainage system to enhance the
5 hydrology of the Dade County Lake Belt Area. Funds may also be
6 used to reimburse other funding sources, including the Save
7 Our Rivers Land Acquisition Program and the Internal
8 Improvement Trust Fund, for the purchase of lands that were
9 acquired in areas appropriate for mitigation due to rock
10 mining and to reimburse governmental agencies that exchanged
11 land under section 373.4149, Florida Statutes, for mitigation
12 due to rock mining.

13 (b) Expenditures must be approved by an interagency
14 committee that consists of representatives from the Miami-Dade
15 County Department of Environmental Resource Management, the
16 Department of Environmental Protection, the South Florida
17 Water Management District, the Game and Fresh Water Fish
18 Commission, and, at the discretion of the committee,
19 additional members who represent federal regulatory,
20 environmental, and fish and wildlife agencies and
21 representatives of the limestone industry.

22 (7) Payment of the fee imposed by this section
23 satisfies the mitigation requirements imposed under sections
24 373.403-373.439, Florida Statutes, and any applicable county
25 ordinance for loss of the value and functions of wetlands. In
26 addition, it is the intent of the Legislature that the payment
27 of the fee imposed by this section satisfy all federal
28 mitigation requirements.

29 (8) If a general permit by the United States Army
30 Corps of Engineers, or an appropriate long-term permit for
31 mining, issued on or before September 30, 2000, is

1 inconsistent with the Dade County Lake Belt Plan, this
2 section, and sections 378.4115, 373.4149, and 373.4415,
3 Florida Statutes, the fee imposed by this section is suspended
4 until reenacted by the Legislature.

5 Section 3. This act shall take effect upon becoming a
6 law.

7
8 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
9 COMMITTEE SUBSTITUTE FOR
10 SB 986

11 The committee substitute makes a number of largely technical
12 changes intended to clarify the provisions relating to the
13 one-time \$12 million payment utilized in 1996 and the uses
14 which would satisfy cancelling this debt. Certain obsolete
15 provisions are deleted.

16 Similar provisions to those in SB 1988, relating to the Dade
17 County Lake Belt Mitigation Plan, are added to this bill.
18 Provides that a 4.41 cent per-ton fee be assessed on each ton
19 of limerock and sand extracted within the Dade County Lake
20 Belt Area. The fee is to be used for acquiring environmentally
21 sensitive lands and for restoration, maintenance, and other
22 environmental purposes.

23 The Department of Revenue shall administer, collect, and
24 enforce the fee. The proceeds of the fee, less administrative
25 costs, must be transferred by the Department of Revenue to the
26 South Florida Water Management District and deposited into an
27 interest-bearing account to be maintained separately and not
28 commingled with other funds.

29 Provides for future adjustment of the fee. Provides for
30 suspension of the fee under certain conditions.