

Amendment No. 1 (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
1		.	
2		.	
3		.	
4		.	

ORIGINAL STAMP BELOW

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

The Committee on Transportation offered the following:

Amendment (with title amendment)

On page 1, between lines 22 and 23 of the bill

insert:

Section 2. Subsection (1), paragraph (a) of subsection (2), subsection (3), paragraph (b) of subsection (4), subsections (5) and (6) of section 373.4137, Florida Statutes, are amended and a new subsection (9) is added to that section 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, or a transportation authority established under chapter 348 or chapter 349 and 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

Amendment No. 1 (for drafter's use only)

1 Department of Environmental Protection and the water
2 management districts, including the use of mitigation banks
3 established pursuant to this part.

4 (2) Environmental impact inventories for
5 transportation projects proposed by the Department of
6 Transportation, or a transportation authority established
7 under chapter 348 or chapter 349 shall be developed as
8 follows:

9 (a) By May 1 of each year, the Department of
10 Transportation, or a transportation authority established
11 under chapter 348 or chapter 349 shall submit to the
12 Department of Environmental Protection and the water
13 management districts a copy of its adopted work program and an
14 inventory of habitats addressed in the rules tentatively,
15 pursuant to this part and s. 404 of the Clean Water Act, 33
16 U.S.C. s. 1344, which may be impacted by its plan of
17 construction for transportation projects in the next 3 years
18 of the tentative work program. The Department of
19 Transportation may also include in its inventory the habitat
20 impacts of any future transportation project identified in the
21 tentative work program.

22 (3)(a) To fund the mitigation plan for the projected
23 impacts identified in the inventory described in subsection
24 (2), the Department of Transportation shall identify funds
25 quarterly in an escrow account within the State Transportation
26 Trust Fund for the environmental mitigation phase of projects
27 budgeted by the Department of Transportation for the current
28 fiscal year. The escrow account will be maintained by the
29 Department of Transportation for the benefit of the Department
30 of Environmental Protection and the water management
31 districts. Any interest earnings from the escrow account

Amendment No. 1 (for drafter's use only)

1 shall remain with the Department of Transportation.

2 (b) Each transportation authority established under
3 chapter 348 or chapter 349 that chooses to participate in this
4 program shall create an escrow account within its financial
5 structure and deposit funds in it to pay for the environmental
6 mitigation phase of projects budgeted for the current fiscal
7 year. The escrow account will be maintained by the authority
8 for the benefit of the Department of Environmental Protection
9 and the water management districts. Any interest earnings from
10 the escrow account shall remain with the authority.

11 (c) The Department of Environmental Protection or
12 water management districts may request a transfer of funds
13 from ~~an the~~ escrow account no sooner than 30 days prior to the
14 date the funds are needed to pay for activities associated
15 with development or implementation of the approved mitigation
16 plan described in subsection (4) for the current fiscal year,
17 including, but not limited to, design, engineering,
18 production, and staff support. Actual conceptual plan
19 preparation costs incurred before plan approval may be
20 submitted to the Department of Transportation or the
21 appropriate transportation authority, and the Department of
22 Environmental Protection by November 1 of each year with the
23 plan. The conceptual plan preparation costs of each water
24 management district will be paid based on the amount approved
25 on the mitigation plan and allocated to the current fiscal
26 year projects identified by the water management district.
27 The amount transferred to the escrow accounts ~~account~~ each
28 year by the Department of Transportation and participating
29 transportation authorities established under chapter 348 or
30 349 shall correspond to a cost per acre of \$75,000 multiplied
31 by the projected acres of impact identified in the inventory

Amendment No. 1 (for drafter's use only)

1 described in subsection (2). However, the \$75,000 cost per
2 acre does not constitute an admission against interest by the
3 state or its subdivisions nor is the cost admissible as
4 evidence of full compensation for any property acquired by
5 eminent domain or through inverse condemnation. Each July 1,
6 the cost per acre shall be adjusted by the percentage change
7 in the average of the Consumer Price Index issued by the
8 United States Department of Labor for the most recent 12-month
9 period ending September 30, compared to the base year average,
10 which is the average for the 12-month period ending September
11 30, 1996. At the end of each year, the projected acreage of
12 impact shall be reconciled with the acreage of impact of
13 projects as permitted, including permit modifications,
14 pursuant to this part and s. 404 of the Clean Water Act, 33
15 U.S.C. s. 1344. The subject year's transfer of funds shall be
16 adjusted accordingly to reflect the overtransfer or
17 undertransfer of funds from the preceding year. The Department
18 of Transportation and participating transportation authorities
19 established under chapter 348 or 349 are ~~is~~ authorized to
20 transfer such funds from the escrow account to the Department
21 of Environmental Protection and the water management districts
22 to carry out the mitigation programs.

23 (4) Prior to December 1 of each year, each water
24 management district, in consultation with the Department of
25 Environmental Protection, the United States Army Corps of
26 Engineers, the Department of Transportation, and participating
27 transportation authorities established under chapter 348 or
28 349 and other appropriate federal, state, and local
29 governments, and other interested parties, including entities
30 operating mitigation banks, shall develop a plan for the
31 primary purpose of complying with the mitigation requirements

Amendment No. 1 (for drafter's use only)

1 adopted pursuant to this part and 33 U.S.C. s. 1344. This
2 plan shall also address significant invasive plant problems
3 within wetlands and other surface waters. In developing such
4 plans, the districts shall utilize sound ecosystem management
5 practices to address significant water resource needs and
6 shall focus on activities of the Department of Environmental
7 Protection and the water management districts, such as surface
8 water improvement and management (SWIM) waterbodies and lands
9 identified for potential acquisition for preservation,
10 restoration, and enhancement, to the extent that such
11 activities comply with the mitigation requirements adopted
12 under this part and 33 U.S.C. s. 1344. In determining the
13 activities to be included in such plans, the districts shall
14 also consider the purchase of credits from public or private
15 mitigation banks permitted under s. 373.4136 and associated
16 federal authorization and shall include such purchase as a
17 part of the mitigation plan when such purchase would offset
18 the impact of the transportation project, provide equal
19 benefits to the water resources than other mitigation options
20 being considered, and provide the most cost-effective
21 mitigation option. The mitigation plan shall be preliminarily
22 approved by the water management district governing board and
23 shall be submitted to the secretary of the Department of
24 Environmental Protection for review and final approval. The
25 preliminary approval by the water management district
26 governing board does not constitute a decision that affects
27 substantial interests as provided by s. 120.569. At least 30
28 days prior to preliminary approval, the water management
29 district shall provide a copy of the draft mitigation plan to
30 any person who has requested a copy.

31 (b) Specific projects may be excluded from the

Amendment No. 1 (for drafter's use only)

1 mitigation plan and shall not be subject to this section upon
2 the agreement of the Department of Transportation, a
3 transportation authority if applicable, the Department of
4 Environmental Protection, and the appropriate water management
5 district that the inclusion of such projects would hamper the
6 efficiency or timeliness of the mitigation planning and
7 permitting process, or the Department of Environmental
8 Protection and the water management district are unable to
9 identify mitigation that would offset the impacts of the
10 project.

11 (5) The water management district shall be responsible
12 for ensuring that mitigation requirements pursuant to 33
13 U.S.C. s. 1344 are met for the impacts identified in the
14 inventory described in subsection (2), by implementation of
15 the approved plan described in subsection (4) to the extent
16 funding is provided by the Department of Transportation or a
17 transportation authority established under chapter 348 or
18 chapter 349, if applicable. During the federal permitting
19 process, the water management district may deviate from the
20 approved mitigation plan in order to comply with federal
21 permitting requirements.

22 (6) The mitigation plans ~~plan~~ shall be updated
23 annually to reflect the most current Department of
24 Transportation work program and project list of a
25 transportation authority established under chapter 348 or
26 chapter 349, if applicable, and may be amended throughout the
27 year to anticipate schedule changes or additional projects
28 which may arise. Each update and amendment of the mitigation
29 plan shall be submitted to the secretary of the Department of
30 Environmental Protection for approval. However, such approval
31 shall not be applicable to a deviation as described in

Amendment No. 1 (for drafter's use only)

1 subsection (5). (8) This section shall not be construed to
 2 eliminate the need for the Department of Transportation or a
 3 transportation authority established under chapter 348 or
 4 chapter 349 to comply with the requirement to implement
 5 practicable design modifications, including realignment of
 6 transportation projects, to reduce or eliminate the impacts of
 7 its transportation projects on wetlands and other surface
 8 waters as required by rules adopted pursuant to this part, or
 9 to diminish the authority under this part to regulate other
 10 impacts, including water quantity or water quality impacts, or
 11 impacts regulated under this part that are not identified in
 12 the inventory described in subsection (2).

13 (9) The process for environmental mitigation for the
 14 impact of transportation projects under this section shall be
 15 available to an expressway, bridge, or transportation
 16 authority established under chapter 348 and chapter 349. Use
 17 of this process may be initiated by an authority depositing
 18 the requisite funds into an escrow account set up by the
 19 authority and filing an environmental impact inventory with
 20 the appropriate water management district. An authority that
 21 initiates the environmental mitigation process established by
 22 the section shall comply with subsection (6) herein by timely
 23 providing the appropriate water management district and the
 24 Department of Environmental Protection with the requisite work
 25 program information. A water management district may draw down
 26 funds from the escrow account in the manner and on the bases
 27 provided in subsection (5).

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

31 And the title is amended as follows:

Amendment No. 1 (for drafter's use only)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

On page 1, line 5, after the semicolon,
insert:
amending s. 373.4137, F.S.; providing
mitigation requirements for certain expressway
authorities;