

Bill No. CS for CS for CS for SB 460

Barcode 712562

CHAMBER ACTION

Senate

House

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Senator Sebesta moved the following amendment:

**Senate Amendment (with title amendment)**

On page 50, after line 31,

insert:

(3) This part does not preclude the department from acquiring, holding, constructing, improving, maintaining, operating, or owning tolled or nontolled facilities funded and constructed from non-authority sources that are part of the State Highway System within the geographical boundaries of the Northwest Florida Transportation Corridor Authority.

Section 10. Subsection (10) is added to section 337.251, Florida Statutes, to read:

337.251 Lease of property for joint public-private development and areas above or below department property.--

(10) The department may adopt rules to administer the provisions of this section.

Section 11. Subsection (1) of section 337.406, Florida Statutes, is amended to read:

337.406 Unlawful use of state transportation facility

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1 right-of-way; penalties.--

2 (1) Except when leased as provided in s. 337.25(5) or  
3 otherwise authorized by the rules of the department, it is  
4 unlawful to make any use of the right-of-way of any state  
5 transportation facility, including appendages thereto, outside  
6 of an incorporated municipality in any manner that interferes  
7 with the safe and efficient movement of people and property  
8 from place to place on the transportation facility. Failure  
9 to prohibit the use of right-of-way in this manner will  
10 endanger the health, safety, and general welfare of the public  
11 by causing distractions to motorists, unsafe pedestrian  
12 movement within travel lanes, sudden stoppage or slowdown of  
13 traffic, rapid lane changing and other dangerous traffic  
14 movement, increased vehicular accidents, and motorist injuries  
15 and fatalities. Such prohibited uses include, but are not  
16 limited to, the free distribution or sale, or display or  
17 solicitation for free distribution or sale, of any  
18 merchandise, goods, property or services; the solicitation for  
19 charitable purposes; the servicing or repairing of any  
20 vehicle, except the rendering of emergency service; the  
21 storage of vehicles being serviced or repaired on abutting  
22 property or elsewhere; and the display of advertising of any  
23 sort, except that any portion of a state transportation  
24 facility may be used for an art festival, parade, fair, or  
25 other special event if permitted by the appropriate local  
26 governmental entity. Local government entities ~~within~~  
27 ~~incorporated municipalities, the local governmental entity~~ may  
28 issue permits of limited duration for the temporary use of the  
29 right-of-way of a state transportation facility for any of  
30 these prohibited uses if it is determined that the use will  
31 not interfere with the safe and efficient movement of traffic

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1 and the use will cause no danger to the public. The permitting  
 2 authority granted in this subsection shall be exercised by the  
 3 municipality within incorporated municipalities and by the  
 4 county outside an incorporated municipality. Before a road on  
 5 the State Highway System may be temporarily closed for a  
 6 special event, the local governmental entity which permits the  
 7 special event to take place must determine that the temporary  
 8 closure of the road is necessary and must obtain the prior  
 9 written approval for the temporary road closure from the  
 10 department. Nothing in this subsection shall be construed to  
 11 authorize such activities on any limited access highway the  
 12 ~~Interstate Highway System~~. Local governmental entities may,  
 13 within their respective jurisdictions, initiate enforcement  
 14 action by the appropriate code enforcement authority or law  
 15 enforcement authority for a violation of this section.

16 Section 12. Subsection (2) of section 339.55, Florida  
 17 Statutes, is amended to read:

18 339.55 State-funded infrastructure bank.--

19 (2) The bank may lend capital costs or provide credit  
 20 enhancements for a transportation facility project that is on  
 21 the State Highway System or that provides for increased  
 22 mobility on the state's transportation system or provides  
 23 intermodal connectivity with airports, seaports, rail  
 24 facilities, and other transportation terminals, pursuant to s.  
 25 341.053, for the movement of people and goods. Loans from the  
 26 bank may be subordinated to senior project debt that has an  
 27 investment grade rating of "BBB" or higher. Notwithstanding  
 28 any other provision of law, the total outstanding state-funded  
 29 infrastructure bank loan repayments over the average term of  
 30 the loan repayment period, as needed to meet the requirements  
 31 of the documents authorizing the bonds issued or proposed to

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1 be issued under s. 215.617 to be paid from the State  
2 Transportation Trust Fund, may not exceed 0.75 percent of the  
3 revenues deposited into the State Transportation Trust Fund.

4 Section 13. Section 373.4137, Florida Statutes, is  
5 amended to read:

6 373.4137 Mitigation requirements for specified  
7 transportation projects.--

8 (1) The Legislature finds that environmental  
9 mitigation for the impact of transportation projects proposed  
10 by the Department of Transportation or a transportation  
11 authority established pursuant to chapter 348 or chapter 349  
12 can be more effectively achieved by regional, long-range  
13 mitigation planning rather than on a project-by-project basis.  
14 It is the intent of the Legislature that mitigation to offset  
15 the adverse effects of these transportation projects be funded  
16 by the Department of Transportation and be carried out by ~~the~~  
17 ~~Department of Environmental Protection~~ and the water  
18 management districts, including the use of mitigation banks  
19 established pursuant to this part.

20 (2) Environmental impact inventories for  
21 transportation projects proposed by the Department of  
22 Transportation or a transportation authority established  
23 pursuant to chapter 348 or chapter 349 shall be developed as  
24 follows:

25 (a) By July ~~May~~ 1 of each year, the Department of  
26 Transportation or a transportation authority established  
27 pursuant to chapter 348 or chapter 349 shall submit to ~~the~~  
28 ~~Department of Environmental Protection~~ and the water  
29 management districts a copy of its adopted work program and an  
30 environmental impact inventory of habitats addressed in the  
31 rules adopted ~~tentatively~~, pursuant to this part and s. 404 of

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1 the Clean Water Act, 33 U.S.C. s. 1344, which may be impacted  
2 by its plan of construction for transportation projects in the  
3 next 3 years of the tentative work program. The Department of  
4 Transportation or a transportation authority established  
5 pursuant to chapter 348 or chapter 349 may also include in its  
6 environmental impact inventory the habitat impacts of any  
7 future transportation project ~~identified in the tentative work~~  
8 ~~program.~~ The Department of Transportation and each  
9 transportation authority established pursuant to chapter 348  
10 or chapter 349 may fund any mitigation activities for future  
11 projects using current year funds.

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

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

31 (b) Each transportation authority established pursuant

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

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

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1 established pursuant to chapter 348 or chapter 349 shall  
2 correspond to a cost per acre of \$75,000 multiplied by the  
3 projected acres of impact identified in the environmental  
4 impact inventory described in subsection (2). However, the  
5 \$75,000 cost per acre does not constitute an admission against  
6 interest by the state or its subdivisions nor is the cost  
7 admissible as evidence of full compensation for any property  
8 acquired by eminent domain or through inverse condemnation.  
9 Each July 1, the cost per acre shall be adjusted by the  
10 percentage change in the average of the Consumer Price Index  
11 issued by the United States Department of Labor for the most  
12 recent 12-month period ending September 30, compared to the  
13 base year average, which is the average for the 12-month  
14 period ending September 30, 1996. ~~Each quarter At the end of~~  
15 ~~each year~~, the projected acreage of impact shall be reconciled  
16 with the acreage of impact of projects as permitted, including  
17 permit modifications, pursuant to this part and s. 404 of the  
18 Clean Water Act, 33 U.S.C. s. 1344. The subject year's  
19 transfer of funds shall be adjusted accordingly to reflect the  
20 acreage of impacts as permitted ~~overtransfer or undertransfer~~  
21 ~~of funds from the preceding year~~. The Department of  
22 Transportation and participating transportation authorities  
23 established pursuant to chapter 348 or chapter 349 are  
24 authorized to transfer such funds from the escrow accounts to  
25 ~~the Department of Environmental Protection and the water~~  
26 management districts to carry out the mitigation programs. For  
27 a mitigation project that is in the maintenance and monitoring  
28 phase, the water management district may request and receive a  
29 one-time payment based on the project's expected future  
30 maintenance and monitoring costs. Upon disbursement of the  
31 final maintenance and monitoring payment, the escrow account

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1 for the project established by the Department of  
 2 Transportation or the participating transportation authority  
 3 may be closed. Any interest earned on these disbursed funds  
 4 shall remain with the water management district and must be  
 5 used as authorized under paragraph (4)(c).

6 (d) Beginning in the 2005-2006 fiscal year, each water  
 7 management district shall be paid a lump-sum amount of \$75,000  
 8 per acre, adjusted as provided under paragraph (c), for  
 9 federally funded transportation projects that are included on  
 10 the environmental impact inventory and that have an approved  
 11 mitigation plan. Beginning in the 2009-2010 fiscal year, each  
 12 water management district shall be paid a lump-sum amount of  
 13 \$75,000 per acre, adjusted as provided under paragraph (c),  
 14 for federally funded and nonfederally funded transportation  
 15 projects that have an approved mitigation plan. All mitigation  
 16 costs, including, but not limited to, the costs of preparing  
 17 conceptual plans and the costs of design, construction, staff  
 18 support, future maintenance, and monitoring the mitigated  
 19 acres shall be funded through these lump-sum amounts.

20 (4) Prior to ~~March~~ ~~December~~ 1 of each year, each water  
 21 management district, in consultation with the Department of  
 22 Environmental Protection, the United States Army Corps of  
 23 Engineers, the Department of Transportation, transportation  
 24 authorities established pursuant to chapter 348 or chapter  
 25 349, and other appropriate federal, state, and local  
 26 governments, and other interested parties, including entities  
 27 operating mitigation banks, shall develop a plan for the  
 28 primary purpose of complying with the mitigation requirements  
 29 adopted pursuant to this part and 33 U.S.C. s. 1344. ~~This plan~~  
 30 ~~shall also address significant invasive plant problems within~~  
 31 ~~wetlands and other surface waters.~~ In developing such plans,



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

30 (a) For each transportation project with a funding  
 31 request for the next fiscal year, the mitigation plan must

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1 include a brief explanation of why a mitigation bank was or  
2 was not chosen as a mitigation option, including an estimation  
3 of identifiable costs of the mitigation bank and nonbank  
4 options to the extent practicable.

5 (b) Specific projects may be excluded from the  
6 mitigation plan, in whole or in part, and shall not be subject  
7 to this section upon the agreement of the Department of  
8 Transportation, or a transportation authority if applicable,  
9 ~~the Department of Environmental Protection~~, and the  
10 appropriate water management district that the inclusion of  
11 such projects would hamper the efficiency or timeliness of the  
12 mitigation planning and permitting process, ~~or the Department~~  
13 ~~of Environmental Protection and~~ The water management district  
14 may choose to exclude a project in whole or in part if the  
15 district is are unable to identify mitigation that would  
16 offset ~~the~~ impacts of the project.

17 (c) Surface water improvement and management or  
18 invasive plant control projects undertaken using the \$12  
19 million advance transferred from the Department of  
20 Transportation to the Department of Environmental Protection  
21 in fiscal year 1996-1997 which meet the requirements for  
22 mitigation under this part and 33 U.S.C. s. 1344 shall remain  
23 available for mitigation until the \$12 million is fully  
24 credited ~~up to and including fiscal year 2005-2006~~. When these  
25 projects are used as mitigation, the \$12 million advance shall  
26 be reduced by \$75,000 per acre of impact mitigated. ~~For any~~  
27 ~~fiscal year through and including fiscal year 2005-2006~~, To  
28 the extent the cost of developing and implementing the  
29 mitigation plans is less than the funds placed in the escrow  
30 account ~~amount transferred~~ pursuant to subsection (3), the  
31 difference shall be retained by the Department of

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1 Transportation and credited towards the \$12 million advance  
2 until the Department of Transportation is fully refunded for  
3 this advance funding. After the \$12 million advance funding is  
4 fully credited ~~Except as provided in this paragraph~~, any funds  
5 not directed to implement the mitigation plan should, to the  
6 greatest extent possible, be directed to fund invasive plant  
7 control within wetlands and other surface waters, SWIM  
8 projects, or other water-resource projects approved by the  
9 governing board of the water management district which may be  
10 appropriate to offset environmental impacts of future  
11 transportation projects. The water management districts may  
12 request these funds upon submittal of the final invoice for  
13 each road project.

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

25 (6) The mitigation plans shall be updated annually to  
26 reflect the most current Department of Transportation work  
27 program and project list of a transportation authority  
28 established pursuant to chapter 348 or chapter 349, if  
29 applicable, and may be amended throughout the year to  
30 anticipate schedule changes or additional projects which may  
31 arise. Each update and amendment of the mitigation plan shall

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1 be submitted to the governing board of the water management  
 2 district or its designee ~~secretary of the Department of~~  
 3 ~~Environmental Protection~~ for approval. However, such approval  
 4 shall not be applicable to a deviation as described in  
 5 subsection (5).

6 (7) Upon approval by the governing board of the water  
 7 management district or its designee ~~secretary of the~~  
 8 ~~Department of Environmental Protection~~, the mitigation plan  
 9 shall be deemed to satisfy the mitigation requirements under  
 10 this part for impacts specifically identified in the  
 11 environmental impact inventory described in subsection (2) and  
 12 any other mitigation requirements imposed by local, regional,  
 13 and state agencies for these same impacts ~~identified in the~~  
 14 ~~inventory described in subsection (2)~~. The approval of the  
 15 governing board of the water management district or its  
 16 designee ~~secretary~~ shall authorize the activities proposed in  
 17 the mitigation plan, and no other state, regional, or local  
 18 permit or approval shall be necessary.

19 (8) This section shall not be construed to eliminate  
 20 the need for the Department of Transportation or a  
 21 transportation authority established pursuant to chapter 348  
 22 or chapter 349 to comply with the requirement to implement  
 23 practicable design modifications, including realignment of  
 24 transportation projects, to reduce or eliminate the impacts of  
 25 its transportation projects on wetlands and other surface  
 26 waters as required by rules adopted pursuant to this part, or  
 27 to diminish the authority under this part to regulate other  
 28 impacts, including water quantity or water quality impacts, or  
 29 impacts regulated under this part that are not identified in  
 30 the environmental impact inventory described in subsection  
 31 (2).

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1           (9) The process for environmental mitigation for the  
2 impact of transportation projects under this section shall be  
3 available to an expressway, bridge, or transportation  
4 authority established under chapter 348 or chapter 349. Use of  
5 this process may be initiated by an authority depositing the  
6 requisite funds into an escrow account set up by the authority  
7 and filing an environmental impact inventory with the  
8 appropriate water management district. An authority that  
9 initiates the environmental mitigation process established by  
10 this section shall comply with subsection (6) by timely  
11 providing the appropriate water management district ~~and the~~  
12 ~~Department of Environmental Protection~~ with the requisite work  
13 program information. A water management district may draw down  
14 funds from the escrow account as provided in this section.

15  
16 (Redesignate subsequent sections.)

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

20 And the title is amended as follows:

21           On page 4, line 8, after the semicolon

22

23 insert:

24           amending s. 337.406, F.S.; granting local  
25 governments authority to issue permits allowing  
26 limited temporary use of state transportation  
27 right-of-way; clarifying limited access  
28 facilities are not included in such authority;  
29 amending s. 339.55, F.S.; establishing a  
30 maximum limit on state-funded infrastructure  
31 bank loans to the State Transportation Trust

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1 Fund; amending s. 373.4137, F.S.; revising the  
2 requirements for projects intended to mitigate  
3 the adverse effects of transportation projects;  
4 removing the Department of Environmental  
5 Protection from the mitigation process;  
6 revising requirements for the Department of  
7 Transportation and the transportation  
8 authorities with respect to submitting plans  
9 and inventories; authorizing the use of  
10 current-year funds for future projects;  
11 revising the requirements for reconciling  
12 escrow accounts used to fund mitigation  
13 projects; authorizing payments to a water  
14 management district to fund the costs of future  
15 maintenance and monitoring; requiring specified  
16 lump-sum payments to be used for the mitigation  
17 costs of certain projects; authorizing a  
18 governing board of a water management district  
19 to approve the use of mitigation funds for  
20 certain future projects; requiring that  
21 mitigation plans be approved by the water  
22 management district rather than the Department  
23 of Environmental Protection;

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