

1 Department of Environmental Protection;
2 providing an effective date.

3
4 Be It Enacted by the Legislature of the State of Florida:

5
6 Section 1. Subsection (10) is added to section
7 337.251, Florida Statutes, to read:

8 337.251 Lease of property for joint public-private
9 development and areas above or below department property.--

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

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

14 339.55 State-funded infrastructure bank.--

15 (2) The bank may lend capital costs or provide credit
16 enhancements for a transportation facility project that is on
17 the State Highway System or that provides for increased
18 mobility on the state's transportation system or provides
19 intermodal connectivity with airports, seaports, rail
20 facilities, and other transportation terminals, pursuant to s.
21 341.053, for the movement of people and goods. Loans from the
22 bank may be subordinated to senior project debt that has an
23 investment grade rating of "BBB" or higher. Notwithstanding
24 any other provision of law, the total outstanding state-funded
25 infrastructure bank loan repayments over the average term of
26 the loan repayment period, as needed to meet the requirements
27 of the documents authorizing the bonds issued or proposed to
28 be issued under s. 215.617 to be paid from the State
29 Transportation Trust Fund, may not exceed 0.75 percent of the
30 revenues deposited into the State Transportation Trust Fund.

31

1 Section 3. Section 373.4137, Florida Statutes, is
2 amended to read:

3 373.4137 Mitigation requirements for specified
4 transportation projects.--

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

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

22 (a) By July ~~May~~ 1 of each year, the Department of
23 Transportation or a transportation authority established
24 pursuant to chapter 348 or chapter 349 shall submit to ~~the~~
25 ~~Department of Environmental Protection and~~ the water
26 management districts a copy of its adopted work program and an
27 environmental impact inventory of habitats addressed in the
28 rules adopted ~~tentatively~~, pursuant to this part and s. 404 of
29 the Clean Water Act, 33 U.S.C. s. 1344, which may be impacted
30 by its plan of construction for transportation projects in the
31 next 3 years of the tentative work program. The Department of

1 Transportation or a transportation authority established
2 pursuant to chapter 348 or chapter 349 may also include in its
3 environmental impact inventory the habitat impacts of any
4 future transportation project ~~identified in the tentative work~~
5 ~~program.~~ The Department of Transportation and each
6 transportation authority established pursuant to chapter 348
7 or chapter 349 may fund any mitigation activities for future
8 projects using current year funds.

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

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

28 (b) Each transportation authority established pursuant
29 to chapter 348 or chapter 349 that chooses to participate in
30 this program shall create an escrow account within its
31 financial structure and deposit funds in the account to pay

1 for the environmental mitigation phase of projects budgeted
2 for the current fiscal year. The escrow account shall be
3 maintained by the authority for the benefit of ~~the Department~~
4 ~~of Environmental Protection and~~ the water management
5 districts. Any interest earnings from the escrow account shall
6 remain with the authority.

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

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

1 shall remain with the water management district and must be
2 used as authorized under paragraph (4)(c).

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

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

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

27 (a) For each transportation project with a funding
28 request for the next fiscal year, the mitigation plan must
29 include a brief explanation of why a mitigation bank was or
30 was not chosen as a mitigation option, including an estimation
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1 of identifiable costs of the mitigation bank and nonbank
2 options to the extent practicable.

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

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

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

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

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

1 ~~Environmental Protection~~ for approval. However, such approval
2 shall not be applicable to a deviation as described in
3 subsection (5).

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

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

30 (9) The process for environmental mitigation for the
31 impact of transportation projects under this section shall be

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

13 Section 4. This act shall take effect July 1, 2005.

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15 SENATE SUMMARY

16 Provides for the Department of Transportation to adopt
17 rules for leasing property for public-private
18 development. Limits certain state-funded infrastructure
19 bank loans to the State Transportation Trust Fund.
20 Revises various requirements for projects intended to
21 mitigate the adverse effects of transportation projects.
22 Removes the Department of Environmental Protection from
23 the mitigation process and requires plans to be approved
24 by the water management districts. Revises requirements
25 for the escrow accounts used to fund mitigation projects.
26 (See bill for details.)
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