

By the Committee on Transportation and Economic Development
Appropriations; and Senator Sebesta

606-2070-05

1 A bill to be entitled
2 An act relating to the Department of
3 Transportation; amending s. 337.251, F.S.;
4 authorizing the department to adopt rules
5 governing the leasing of property for joint
6 public-private development; amending s.
7 337.406, F.S.; granting local governments
8 authority to issue permits allowing limited
9 temporary use of state transportation
10 right-of-way; clarifying limited access
11 facilities are not included in such authority;
12 amending s. 339.55, F.S.; establishing a
13 maximum limit on state-funded infrastructure
14 bank loans to the State Transportation Trust
15 Fund; amending s. 373.4137, F.S.; revising the
16 requirements for projects intended to mitigate
17 the adverse effects of transportation projects;
18 removing the Department of Environmental
19 Protection from the mitigation process;
20 revising requirements for the Department of
21 Transportation and the transportation
22 authorities with respect to submitting plans
23 and inventories; authorizing the use of
24 current-year funds for future projects;
25 revising the requirements for reconciling
26 escrow accounts used to fund mitigation
27 projects; authorizing payments to a water
28 management district to fund the costs of future
29 maintenance and monitoring; requiring specified
30 lump-sum payments to be used for the mitigation
31 costs of certain projects; authorizing a

1 governing board of a water management district
2 to approve the use of mitigation funds for
3 certain future projects; requiring that
4 mitigation plans be approved by the water
5 management district rather than the Department
6 of Environmental Protection; providing an
7 effective date.

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

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11 Section 1. Subsection (10) is added to section
12 337.251, Florida Statutes, to read:

13 337.251 Lease of property for joint public-private
14 development and areas above or below department property.--

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

17 Section 2. Subsection (1) of section 337.406, Florida
18 Statutes, is amended to read:

19 337.406 Unlawful use of state transportation facility
20 right-of-way; penalties.--

21 (1) Except when leased as provided in s. 337.25(5) or
22 otherwise authorized by the rules of the department, it is
23 unlawful to make any use of the right-of-way of any state
24 transportation facility, including appendages thereto, outside
25 of an incorporated municipality in any manner that interferes
26 with the safe and efficient movement of people and property
27 from place to place on the transportation facility. Failure
28 to prohibit the use of right-of-way in this manner will
29 endanger the health, safety, and general welfare of the public
30 by causing distractions to motorists, unsafe pedestrian
31 movement within travel lanes, sudden stoppage or slowdown of

1 traffic, rapid lane changing and other dangerous traffic
2 movement, increased vehicular accidents, and motorist injuries
3 and fatalities. Such prohibited uses include, but are not
4 limited to, the free distribution or sale, or display or
5 solicitation for free distribution or sale, of any
6 merchandise, goods, property or services; the solicitation for
7 charitable purposes; the servicing or repairing of any
8 vehicle, except the rendering of emergency service; the
9 storage of vehicles being serviced or repaired on abutting
10 property or elsewhere; and the display of advertising of any
11 sort, except that any portion of a state transportation
12 facility may be used for an art festival, parade, fair, or
13 other special event if permitted by the appropriate local
14 governmental entity. Local government entities ~~Within~~
15 ~~incorporated municipalities, the local governmental entity~~ may
16 issue permits of limited duration for the temporary use of the
17 right-of-way of a state transportation facility for any of
18 these prohibited uses if it is determined that the use will
19 not interfere with the safe and efficient movement of traffic
20 and the use will cause no danger to the public. The permitting
21 authority granted in this subsection shall be exercised by the
22 municipality within incorporated municipalities and by the
23 county outside an incorporated municipality. Before a road on
24 the State Highway System may be temporarily closed for a
25 special event, the local governmental entity which permits the
26 special event to take place must determine that the temporary
27 closure of the road is necessary and must obtain the prior
28 written approval for the temporary road closure from the
29 department. Nothing in this subsection shall be construed to
30 authorize such activities on any limited access highway ~~the~~
31 ~~Interstate Highway System.~~ Local governmental entities may,

1 within their respective jurisdictions, initiate enforcement
2 action by the appropriate code enforcement authority or law
3 enforcement authority for a violation of this section.

4 Section 3. Subsection (2) of section 339.55, Florida
5 Statutes, is amended to read:

6 339.55 State-funded infrastructure bank.--

7 (2) The bank may lend capital costs or provide credit
8 enhancements for a transportation facility project that is on
9 the State Highway System or that provides for increased
10 mobility on the state's transportation system or provides
11 intermodal connectivity with airports, seaports, rail
12 facilities, and other transportation terminals, pursuant to s.
13 341.053, for the movement of people and goods. Loans from the
14 bank may be subordinated to senior project debt that has an
15 investment grade rating of "BBB" or higher. Notwithstanding
16 any other provision of law, the total outstanding state-funded
17 infrastructure bank loan repayments over the average term of
18 the loan repayment period, as needed to meet the requirements
19 of the documents authorizing the bonds issued or proposed to
20 be issued under s. 215.617 to be paid from the State
21 Transportation Trust Fund, may not exceed 0.75 percent of the
22 revenues deposited into the State Transportation Trust Fund.

23 Section 4. Section 373.4137, Florida Statutes, is
24 amended to read:

25 373.4137 Mitigation requirements for specified
26 transportation projects.--

27 (1) The Legislature finds that environmental
28 mitigation for the impact of transportation projects proposed
29 by the Department of Transportation or a transportation
30 authority established pursuant to chapter 348 or chapter 349
31 can be more effectively achieved by regional, long-range

1 mitigation planning rather than on a project-by-project basis.
2 It is the intent of the Legislature that mitigation to offset
3 the adverse effects of these transportation projects be funded
4 by the Department of Transportation and be carried out by ~~the~~
5 ~~Department of Environmental Protection and~~ the water
6 management districts, including the use of mitigation banks
7 established pursuant to this part.

8 (2) Environmental impact inventories for
9 transportation projects proposed by the Department of
10 Transportation or a transportation authority established
11 pursuant to chapter 348 or chapter 349 shall be developed as
12 follows:

13 (a) By July ~~May~~ 1 of each year, the Department of
14 Transportation or a transportation authority established
15 pursuant to chapter 348 or chapter 349 shall submit to ~~the~~
16 ~~Department of Environmental Protection and~~ the water
17 management districts a copy of its adopted work program and an
18 environmental impact inventory of habitats addressed in the
19 rules adopted tentatively, pursuant to this part and s. 404 of
20 the Clean Water Act, 33 U.S.C. s. 1344, which may be impacted
21 by its plan of construction for transportation projects in the
22 next 3 years of the tentative work program. The Department of
23 Transportation or a transportation authority established
24 pursuant to chapter 348 or chapter 349 may also include in its
25 environmental impact inventory the habitat impacts of any
26 future transportation project ~~identified in the tentative work~~
27 ~~program. The Department of Transportation and each~~
28 transportation authority established pursuant to chapter 348
29 or chapter 349 may fund any mitigation activities for future
30 projects using current year funds.

1 (b) The environmental impact inventory shall include a
2 description of these habitat impacts, including their
3 location, acreage, and type; state water quality
4 classification of impacted wetlands and other surface waters;
5 any other state or regional designations for these habitats;
6 and a survey of threatened species, endangered species, and
7 species of special concern affected by the proposed project.

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

20 (b) Each transportation authority established pursuant
21 to chapter 348 or chapter 349 that chooses to participate in
22 this program shall create an escrow account within its
23 financial structure and deposit funds in the account to pay
24 for the environmental mitigation phase of projects budgeted
25 for the current fiscal year. The escrow account shall be
26 maintained by the authority for the benefit of ~~the Department~~
27 ~~of Environmental Protection and~~ the water management
28 districts. Any interest earnings from the escrow account shall
29 remain with the authority.

30 (c) Except for current mitigation projects in the
31 monitoring and maintenance phase and except as allowed by

1 ~~paragraph (d), the Department of Environmental Protection or~~
2 water management districts may request a transfer of funds
3 from an escrow account no sooner than 30 days prior to the
4 date the funds are needed to pay for activities associated
5 with development or implementation of the approved mitigation
6 plan described in subsection (4) for the current fiscal year,
7 including, but not limited to, design, engineering,
8 production, and staff support. Actual conceptual plan
9 preparation costs incurred before plan approval may be
10 submitted to the Department of Transportation or the
11 appropriate transportation authority ~~and the Department of~~
12 ~~Environmental Protection by November 1 of each year with the~~
13 plan. The conceptual plan preparation costs of each water
14 management district will be paid from mitigation funds
15 associated with the environmental impact inventory for the
16 current year ~~based on the amount approved on the mitigation~~
17 ~~plan and allocated to the current fiscal year projects~~
18 ~~identified by the water management district.~~ The amount
19 transferred to the escrow accounts each year by the Department
20 of Transportation and participating transportation authorities
21 established pursuant to chapter 348 or chapter 349 shall
22 correspond to a cost per acre of \$75,000 multiplied by the
23 projected acres of impact identified in the environmental
24 impact inventory described in subsection (2). However, the
25 \$75,000 cost per acre does not constitute an admission against
26 interest by the state or its subdivisions nor is the cost
27 admissible as evidence of full compensation for any property
28 acquired by eminent domain or through inverse condemnation.
29 Each July 1, the cost per acre shall be adjusted by the
30 percentage change in the average of the Consumer Price Index
31 issued by the United States Department of Labor for the most

1 recent 12-month period ending September 30, compared to the
2 base year average, which is the average for the 12-month
3 period ending September 30, 1996. ~~Each quarter~~ ~~At the end of~~
4 ~~each year~~, the projected acreage of impact shall be reconciled
5 with the acreage of impact of projects as permitted, including
6 permit modifications, pursuant to this part and s. 404 of the
7 Clean Water Act, 33 U.S.C. s. 1344. The subject year's
8 transfer of funds shall be adjusted accordingly to reflect the
9 acreage of impacts as permitted ~~overtransfer or undertransfer~~
10 ~~of funds from the preceding year~~. The Department of
11 Transportation and participating transportation authorities
12 established pursuant to chapter 348 or chapter 349 are
13 authorized to transfer such funds from the escrow accounts to
14 ~~the Department of Environmental Protection and the water~~
15 management districts to carry out the mitigation programs. For
16 a mitigation project that is in the maintenance and monitoring
17 phase, the water management district may request and receive a
18 one-time payment based on the project's expected future
19 maintenance and monitoring costs. Upon disbursement of the
20 final maintenance and monitoring payment, the escrow account
21 for the project established by the Department of
22 Transportation or the participating transportation authority
23 may be closed. Any interest earned on these disbursed funds
24 shall remain with the water management district and must be
25 used as authorized under paragraph (4)(c).

26 (d) Beginning in the 2005-2006 fiscal year, each water
27 management district shall be paid a lump-sum amount of \$75,000
28 per acre, adjusted as provided under paragraph (c), for
29 federally funded transportation projects that are included on
30 the environmental impact inventory and that have an approved
31 mitigation plan. Beginning in the 2009-2010 fiscal year, each

1 water management district shall be paid a lump-sum amount of
2 \$75,000 per acre, adjusted as provided under paragraph (c),
3 for federally funded and nonfederally funded transportation
4 projects that have an approved mitigation plan. All mitigation
5 costs, including, but not limited to, the costs of preparing
6 conceptual plans and the costs of design, construction, staff
7 support, future maintenance, and monitoring the mitigated
8 acres shall be funded through these lump-sum amounts.

9 (4) Prior to ~~March~~ December 1 of each year, each water
10 management district, in consultation with the Department of
11 Environmental Protection, the United States Army Corps of
12 Engineers, the Department of Transportation, transportation
13 authorities established pursuant to chapter 348 or chapter
14 349, and other appropriate federal, state, and local
15 governments, and other interested parties, including entities
16 operating mitigation banks, shall develop a plan for the
17 primary purpose of complying with the mitigation requirements
18 adopted pursuant to this part and 33 U.S.C. s. 1344. ~~This plan~~
19 ~~shall also address significant invasive plant problems within~~
20 ~~wetlands and other surface waters.~~ In developing such plans,
21 the districts shall utilize sound ecosystem management
22 practices to address significant water resource needs and
23 shall focus on activities of the Department of Environmental
24 Protection and the water management districts, such as surface
25 water improvement and management (SWIM) projects ~~waterbodies~~
26 and lands identified for potential acquisition for
27 preservation, restoration ~~or, and~~ enhancement, and the control
28 of invasive and exotic plants in wetlands and other surface
29 waters, to the extent that such activities comply with the
30 mitigation requirements adopted under this part and 33 U.S.C.
31 s. 1344. In determining the activities to be included in such

1 | plans, the districts shall also consider the purchase of
2 | credits from public or private mitigation banks permitted
3 | under s. 373.4136 and associated federal authorization and
4 | shall include such purchase as a part of the mitigation plan
5 | when such purchase would offset the impact of the
6 | transportation project, provide equal benefits to the water
7 | resources than other mitigation options being considered, and
8 | provide the most cost-effective mitigation option. The
9 | mitigation plan shall be submitted to ~~preliminarily approved~~
10 | ~~by~~ the water management district governing board, or its
11 | designee, ~~and shall be submitted to the secretary of the~~
12 | ~~Department of Environmental Protection~~ for review and final
13 | approval. ~~The preliminary approval by the water management~~
14 | ~~district governing board does not constitute a decision that~~
15 | ~~affects substantial interests as provided by s. 120.569.~~ At
16 | least ~~14~~ 30 days prior to ~~preliminary~~ approval, the water
17 | management district shall provide a copy of the draft
18 | mitigation plan to any person who has requested a copy.

19 | (a) For each transportation project with a funding
20 | request for the next fiscal year, the mitigation plan must
21 | include a brief explanation of why a mitigation bank was or
22 | was not chosen as a mitigation option, including an estimation
23 | of identifiable costs of the mitigation bank and nonbank
24 | options to the extent practicable.

25 | (b) Specific projects may be excluded from the
26 | mitigation plan, in whole or in part, and shall not be subject
27 | to this section upon the agreement of the Department of
28 | Transportation, or a transportation authority if applicable,
29 | ~~the Department of Environmental Protection~~, and the
30 | appropriate water management district that the inclusion of
31 | such projects would hamper the efficiency or timeliness of the

1 mitigation planning and permitting process, ~~or the Department~~
2 ~~of Environmental Protection and~~ The water management district
3 may choose to exclude a project in whole or in part if the
4 district is ~~are~~ unable to identify mitigation that would
5 offset ~~the~~ impacts of the project.

6 (c) Surface water improvement and management or
7 invasive plant control projects undertaken using the \$12
8 million advance transferred from the Department of
9 Transportation to the Department of Environmental Protection
10 in fiscal year 1996-1997 which meet the requirements for
11 mitigation under this part and 33 U.S.C. s. 1344 shall remain
12 available for mitigation until the \$12 million is fully
13 credited ~~up to and including fiscal year 2005-2006~~. When these
14 projects are used as mitigation, the \$12 million advance shall
15 be reduced by \$75,000 per acre of impact mitigated. ~~For any~~
16 ~~fiscal year through and including fiscal year 2005-2006~~, To
17 the extent the cost of developing and implementing the
18 mitigation plans is less than the funds placed in the escrow
19 account ~~amount transferred~~ pursuant to subsection (3), the
20 difference shall be retained by the Department of
21 Transportation and credited towards the \$12 million advance
22 until the Department of Transportation is fully refunded for
23 this advance funding. After the \$12 million advance funding is
24 fully credited ~~Except as provided in this paragraph~~, any funds
25 not directed to implement the mitigation plan should, to the
26 greatest extent possible, be directed to fund invasive plant
27 control within wetlands and other surface waters, SWIM
28 projects, or other water-resource projects approved by the
29 governing board of the water management district which may be
30 appropriate to offset environmental impacts of future
31 transportation projects. The water management districts may

1 request these funds upon submittal of the final invoice for
2 each road project.

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

14 (6) The mitigation plans shall be updated annually to
15 reflect the most current Department of Transportation work
16 program and project list of a transportation authority
17 established pursuant to chapter 348 or chapter 349, if
18 applicable, and may be amended throughout the year to
19 anticipate schedule changes or additional projects which may
20 arise. Each update and amendment of the mitigation plan shall
21 be submitted to the governing board of the water management
22 district or its designee ~~secretary of the Department of~~
23 ~~Environmental Protection~~ for approval. However, such approval
24 shall not be applicable to a deviation as described in
25 subsection (5).

26 (7) Upon approval by the governing board of the water
27 management district or its designee ~~secretary of the~~
28 ~~Department of Environmental Protection~~, the mitigation plan
29 shall be deemed to satisfy the mitigation requirements under
30 this part for impacts specifically identified in the
31 environmental impact inventory described in subsection (2) and

1 any other mitigation requirements imposed by local, regional,
2 and state agencies for these same impacts ~~identified in the~~
3 ~~inventory described in subsection (2)~~. The approval of the
4 governing board of the water management district or its
5 designee ~~secretary~~ shall authorize the activities proposed in
6 the mitigation plan, and no other state, regional, or local
7 permit or approval shall be necessary.

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

21 (9) The process for environmental mitigation for the
22 impact of transportation projects under this section shall be
23 available to an expressway, bridge, or transportation
24 authority established under chapter 348 or chapter 349. Use of
25 this process may be initiated by an authority depositing the
26 requisite funds into an escrow account set up by the authority
27 and filing an environmental impact inventory with the
28 appropriate water management district. An authority that
29 initiates the environmental mitigation process established by
30 this section shall comply with subsection (6) by timely
31 providing the appropriate water management district ~~and the~~

1 ~~Department of Environmental Protection~~ with the requisite work
2 program information. A water management district may draw down
3 funds from the escrow account as provided in this section.

4 Section 5. This act shall take effect July 1, 2005.

5
6 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
7 COMMITTEE SUBSTITUTE FOR
8 Senate Bill 718

9 Provides county governments with the same authority to issue
10 permits for the "display of advertising of any sort" as
11 currently exists for municipalities, and expands the
12 prohibition of issuing permits for "display of advertising of
13 any sort" by local governmental entities from the interstate
14 highway system to all limited access facilities.
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