

By the Committee on General Government Appropriations and  
Senator Baker

601-00099-09A

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1                   A bill to be entitled  
2           An act relating to mitigation funding for  
3           transportation projects; amending s. 373.4137, F.S.;  
4           deleting provisions directing that certain funds of  
5           the Department of Transportation be used for invasive  
6           plant control, SWIM projects, or other water resource  
7           projects; providing an effective date.  
8

9 Be It Enacted by the Legislature of the State of Florida:  
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11           Section 1. Paragraph (c) of subsection (3) and paragraph  
12           (c) of subsection (4) of section 373.4137, Florida Statutes, are  
13           amended to read:

14           373.4137 Mitigation requirements for specified  
15           transportation projects.—

16           (3)

17           (c) Except for current mitigation projects in the  
18           monitoring and maintenance phase and except as allowed by  
19           paragraph (d), the water management districts may request a  
20           transfer of funds from an escrow account no sooner than 30 days  
21           prior to the date the funds are needed to pay for activities  
22           associated with development or implementation of the approved  
23           mitigation plan described in subsection (4) for the current  
24           fiscal year, including, but not limited to, design, engineering,  
25           production, and staff support. Actual conceptual plan  
26           preparation costs incurred before plan approval may be submitted  
27           to the Department of Transportation or the appropriate  
28           transportation authority each year with the plan. The conceptual  
29           plan preparation costs of each water management district will be

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30 paid from mitigation funds associated with the environmental  
31 impact inventory for the current year. The amount transferred to  
32 the escrow accounts each year by the Department of  
33 Transportation and participating transportation authorities  
34 established pursuant to chapter 348 or chapter 349 shall  
35 correspond to a cost per acre of \$75,000 multiplied by the  
36 projected acres of impact identified in the environmental impact  
37 inventory described in subsection (2). However, the \$75,000 cost  
38 per acre does not constitute an admission against interest by  
39 the state or its subdivisions nor is the cost admissible as  
40 evidence of full compensation for any property acquired by  
41 eminent domain or through inverse condemnation. Each July 1, the  
42 cost per acre shall be adjusted by the percentage change in the  
43 average of the Consumer Price Index issued by the United States  
44 Department of Labor for the most recent 12-month period ending  
45 September 30, compared to the base year average, which is the  
46 average for the 12-month period ending September 30, 1996. Each  
47 quarter, the projected acreage of impact shall be reconciled  
48 with the acreage of impact of projects as permitted, including  
49 permit modifications, pursuant to this part and s. 404 of the  
50 Clean Water Act, 33 U.S.C. s. 1344. The subject year's transfer  
51 of funds shall be adjusted accordingly to reflect the acreage of  
52 impacts as permitted. The Department of Transportation and  
53 participating transportation authorities established pursuant to  
54 chapter 348 or chapter 349 are authorized to transfer such funds  
55 from the escrow accounts to the water management districts to  
56 carry out the mitigation programs. For a mitigation project that  
57 is in the maintenance and monitoring phase, the water management  
58 district may request and receive a one-time payment based on the

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59 project's expected future maintenance and monitoring costs. Upon  
60 disbursement of the final maintenance and monitoring payment,  
61 the escrow account for the project established by the Department  
62 of Transportation or the participating transportation authority  
63 may be closed. Any interest earned on these disbursed funds  
64 shall remain with the water management district and must be used  
65 as authorized under this section ~~paragraph (4)(c)~~.

66 (4) Prior to March 1 of each year, each water management  
67 district, in consultation with the Department of Environmental  
68 Protection, the United States Army Corps of Engineers, the  
69 Department of Transportation, transportation authorities  
70 established pursuant to chapter 348 or chapter 349, and other  
71 appropriate federal, state, and local governments, and other  
72 interested parties, including entities operating mitigation  
73 banks, shall develop a plan for the primary purpose of complying  
74 with the mitigation requirements adopted pursuant to this part  
75 and 33 U.S.C. s. 1344. In developing such plans, the districts  
76 shall utilize sound ecosystem management practices to address  
77 significant water resource needs and shall focus on activities  
78 of the Department of Environmental Protection and the water  
79 management districts, such as surface water improvement and  
80 management (SWIM) projects and lands identified for potential  
81 acquisition for preservation, restoration or enhancement, and  
82 the control of invasive and exotic plants in wetlands and other  
83 surface waters, to the extent that such activities comply with  
84 the mitigation requirements adopted under this part and 33  
85 U.S.C. s. 1344. In determining the activities to be included in  
86 such plans, the districts shall also consider the purchase of  
87 credits from public or private mitigation banks permitted under

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88 s. 373.4136 and associated federal authorization and shall  
89 include such purchase as a part of the mitigation plan when such  
90 purchase would offset the impact of the transportation project,  
91 provide equal benefits to the water resources than other  
92 mitigation options being considered, and provide the most cost-  
93 effective mitigation option. The mitigation plan shall be  
94 submitted to the water management district governing board, or  
95 its designee, for review and approval. At least 14 days prior to  
96 approval, the water management district shall provide a copy of  
97 the draft mitigation plan to any person who has requested a  
98 copy.

99 ~~(c) Surface water improvement and management or invasive  
100 plant control projects undertaken using the \$12 million advance  
101 transferred from the Department of Transportation to the  
102 Department of Environmental Protection in fiscal year 1996-1997  
103 which meet the requirements for mitigation under this part and  
104 33 U.S.C. s. 1344 shall remain available for mitigation until  
105 the \$12 million is fully credited. When these projects are used  
106 as mitigation, the \$12 million advance shall be reduced by  
107 \$75,000 per acre of impact mitigated. To the extent the cost of  
108 developing and implementing the mitigation plans is less than  
109 the funds placed in the escrow account pursuant to subsection  
110 (3), the difference shall be retained by the Department of  
111 Transportation and credited towards the \$12 million advance  
112 until the Department of Transportation is fully refunded for  
113 this advance funding. After the \$12 million advance funding is  
114 fully credited, any funds not directed to implement the  
115 mitigation plan should, to the greatest extent possible, be  
116 directed to fund invasive plant control within wetlands and~~

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117 ~~other surface waters, SWIM projects, or other water resource~~  
118 ~~projects approved by the governing board of the water management~~  
119 ~~district which may be appropriate to offset environmental~~  
120 ~~impacts of future transportation projects. The water management~~  
121 ~~districts may request these funds upon submittal of the final~~  
122 ~~invoice for each road project.~~

123       Section 2. This act shall take effect upon becoming a law.