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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.