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LEGISLATIVE ACTION

Senate

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House

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Senator Bogdanoff moved the following:

**Senate Amendment (with title amendment)**

Between lines 121 and 122  
insert:

Section 4. Subsections (1) and (2), paragraph (c) of  
subsection (3), and subsection (4) of section 373.4137, Florida  
Statutes, are amended to read:

373.4137 Mitigation requirements for specified  
transportation projects.—

(1) The Legislature finds that environmental mitigation for  
the impact of transportation projects proposed by the Department  
of Transportation or a transportation authority established  
pursuant to chapter 348 or chapter 349 can be more effectively



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14 achieved by regional, long-range mitigation planning rather than  
15 on a project-by-project basis. It is the intent of the  
16 Legislature that mitigation to offset the adverse effects of  
17 these transportation projects be funded by the Department of  
18 Transportation and be carried out by the water management  
19 districts, through including the use of private mitigation banks  
20 if available or, if a private mitigation bank is not available,  
21 through any other mitigation options that satisfy state and  
22 federal requirements established pursuant to this part.

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

27 (a) By July 1 of each year, the Department of  
28 Transportation or a transportation authority established  
29 pursuant to chapter 348 or chapter 349 which chooses to  
30 participate in this program shall submit to the water management  
31 districts a list copy of its projects in the adopted work  
32 program and an environmental impact inventory of habitats  
33 addressed in the rules adopted pursuant to this part and s. 404  
34 of the Clean Water Act, 33 U.S.C. s. 1344, which may be impacted  
35 by its plan of construction for transportation projects in the  
36 next 3 years of the tentative work program. The Department of  
37 Transportation or a transportation authority established  
38 pursuant to chapter 348 or chapter 349 may also include in its  
39 environmental impact inventory the habitat impacts of any future  
40 transportation project. The Department of Transportation and  
41 each transportation authority established pursuant to chapter  
42 348 or chapter 349 may fund any mitigation activities for future



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43 projects using current year funds.

44 (b) The environmental impact inventory shall include a  
45 description of these habitat impacts, including their location,  
46 acreage, and type; state water quality classification of  
47 impacted wetlands and other surface waters; any other state or  
48 regional designations for these habitats; and a list ~~survey~~ of  
49 threatened species, endangered species, and species of special  
50 concern affected by the proposed project.

51 (3)

52 (c) Except for current mitigation projects in the  
53 monitoring and maintenance phase and except as allowed by  
54 paragraph (d), the water management districts may request a  
55 transfer of funds from an escrow account no sooner than 30 days  
56 prior to the date the funds are needed to pay for activities  
57 associated with development or implementation of the approved  
58 mitigation plan described in subsection (4) for the current  
59 fiscal year, including, but not limited to, design, engineering,  
60 production, and staff support. Actual conceptual plan  
61 preparation costs incurred before plan approval may be submitted  
62 to the Department of Transportation or the appropriate  
63 transportation authority each year with the plan. The conceptual  
64 plan preparation costs of each water management district will be  
65 paid from mitigation funds associated with the environmental  
66 impact inventory for the current year. The amount transferred to  
67 the escrow accounts each year by the Department of  
68 Transportation and participating transportation authorities  
69 established pursuant to chapter 348 or chapter 349 shall  
70 correspond to a cost per acre of \$75,000 multiplied by the  
71 projected acres of impact identified in the environmental impact



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72 inventory described in subsection (2). However, the \$75,000 cost  
73 per acre does not constitute an admission against interest by  
74 the state or its subdivisions nor is the cost admissible as  
75 evidence of full compensation for any property acquired by  
76 eminent domain or through inverse condemnation. Each July 1, the  
77 cost per acre shall be adjusted by the percentage change in the  
78 average of the Consumer Price Index issued by the United States  
79 Department of Labor for the most recent 12-month period ending  
80 September 30, compared to the base year average, which is the  
81 average for the 12-month period ending September 30, 1996. Each  
82 quarter, the projected acreage of impact shall be reconciled  
83 with the acreage of impact of projects as permitted, including  
84 permit modifications, pursuant to this part and s. 404 of the  
85 Clean Water Act, 33 U.S.C. s. 1344. The subject year's transfer  
86 of funds shall be adjusted accordingly to reflect the acreage of  
87 impacts as permitted. The Department of Transportation and  
88 participating transportation authorities established pursuant to  
89 chapter 348 or chapter 349 are authorized to transfer such funds  
90 from the escrow accounts to the water management districts to  
91 carry out the mitigation programs. Environmental mitigation  
92 funds that are identified or maintained in an escrow account for  
93 the benefit of a water management district may be released if  
94 the associated transportation project is excluded in whole or  
95 part from the mitigation plan. For a mitigation project that is  
96 in the maintenance and monitoring phase, the water management  
97 district may request and receive a one-time payment based on the  
98 project's expected future maintenance and monitoring costs. Upon  
99 disbursement of the final maintenance and monitoring payment,  
100 the department or the participating transportation authorities'



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101 obligation will be satisfied, the water management district will  
102 have continuing responsibility for the mitigation project, and  
103 the escrow account for the project established by the Department  
104 of Transportation or the participating transportation authority  
105 may be closed. Any interest earned on these disbursed funds  
106 shall remain with the water management district and must be used  
107 as authorized under this section.

108 (4) Prior to March 1 of each year, each water management  
109 district, in consultation with the Department of Environmental  
110 Protection, the United States Army Corps of Engineers, the  
111 Department of Transportation, participating transportation  
112 authorities established pursuant to chapter 348 or chapter 349,  
113 and other appropriate federal, state, and local governments, and  
114 other interested parties, including entities operating  
115 mitigation banks, shall develop a plan for the primary purpose  
116 of complying with the mitigation requirements adopted pursuant  
117 to this part and 33 U.S.C. s. 1344. In developing such plans,  
118 private mitigation banks shall be used if available or, if a  
119 private mitigation bank is not available, the districts shall  
120 use ~~utilize~~ sound ecosystem management practices to address  
121 significant water resource needs and shall focus on activities  
122 of the Department of Environmental Protection and the water  
123 management districts, such as surface water improvement and  
124 management (SWIM) projects and lands identified for potential  
125 acquisition for preservation, restoration or enhancement, and  
126 the control of invasive and exotic plants in wetlands and other  
127 surface waters, to the extent that such activities comply with  
128 the mitigation requirements adopted under this part and 33  
129 U.S.C. s. 1344. In determining the activities to be included in



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130 such plans, the districts shall ~~also consider the purchase of~~  
131 credits from public or private mitigation banks permitted under  
132 s. 373.4136 and associated federal authorization and shall  
133 include such purchase as a part of the mitigation plan when such  
134 purchase would offset the impact of the transportation project,  
135 ~~provide equal benefits to the water resources than other~~  
136 ~~mitigation options being considered, and provide the most cost-~~  
137 ~~effective mitigation option.~~ The mitigation plan shall be  
138 submitted to the water management district governing board, or  
139 its designee, for review and approval. At least 14 days prior to  
140 approval, the water management district shall provide a copy of  
141 the draft mitigation plan to any person who has requested a  
142 copy.

143 (a) For each transportation project with a funding request  
144 for the next fiscal year, the mitigation plan must include a  
145 brief explanation of why a mitigation bank was or was not chosen  
146 as a mitigation option, including an estimation of identifiable  
147 costs of the mitigation bank and nonbank options to the extent  
148 practicable.

149 (b) Specific projects may be excluded from the mitigation  
150 plan, in whole or in part, and shall not be subject to this  
151 section upon the election agreement of the Department of  
152 Transportation, ~~or~~ a transportation authority if applicable, or  
153 ~~and~~ the appropriate water management district ~~that the inclusion~~  
154 ~~of such projects would hamper the efficiency or timeliness of~~  
155 ~~the mitigation planning and permitting process.~~ The water  
156 management district may choose to exclude a project in whole or  
157 in part if the district is unable to identify mitigation that  
158 would offset impacts of the project.



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159           Section 5. The amendments to s. 373.4137, Florida Statutes,  
160 made by this act do not apply within the territory of the  
161 Northwest Florida Water Management District until July 2, 2016.  
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163 ===== T I T L E   A M E N D M E N T =====

164 And the title is amended as follows:

165           Delete line 25

166 and insert:

167           permit; amending s. 373.4137, F.S.; revising  
168           legislative findings with respect to the options for  
169           mitigation relating to transportation projects;  
170           revising certain requirements for determining the  
171           habitat impacts of transportation projects; requiring  
172           water management districts to purchase credits from  
173           public or private mitigation banks under certain  
174           conditions; providing for the release of certain  
175           mitigation funds held for the benefit of a water  
176           management district if a project is excluded from a  
177           mitigation plan; requiring water management districts  
178           to use private mitigation banks in developing plans  
179           for complying with mitigation requirements; providing  
180           an exception; revising the procedure for excluding a  
181           project from a mitigation plan; providing for future  
182           effect of specified provisions within the territory of  
183           the Northwest Florida Water Management District;  
184           providing an effective date.