

1 A bill to be entitled
2 An act relating to transportation and mitigation
3 programs; amending s. 341.301, F.S.; revising the
4 definition of the term "limited covered accident";
5 amending s. 341.302, F.S.; authorizing the Department
6 of Transportation to contract to indemnify against
7 loss and purchase liability insurance coverage for
8 National Railroad Passenger Corporation subject to
9 specified terms and conditions; amending s. 373.4137,
10 F.S.; revising legislative intent to encourage the use
11 of other mitigation options that satisfy state and
12 federal requirements; providing the Department of
13 Transportation or a transportation authority the
14 option of participating in a mitigation project;
15 requiring the Department of Transportation or a
16 transportation authority to submit lists of its
17 projects in the adopted work program to the water
18 management districts; requiring a list rather than a
19 survey of threatened or endangered species and species
20 of special concern affected by a proposed project;
21 providing conditions for the release of certain
22 environmental mitigation funds; prohibiting a
23 mitigation plan from being implemented unless the plan
24 is submitted to and approved by the Department of
25 Environmental Protection; providing additional factors
26 that must be explained regarding the choice of
27 mitigation bank; removing a provision requiring an
28 explanation for excluding certain projects from the

29 mitigation plan; providing criteria that the
 30 Department of Transportation must use in determining
 31 which projects to include in or exclude from the
 32 mitigation plan; amending s. 373.4135, F.S.;
 33 authorizing a governmental entity to create or provide
 34 mitigation for projects other than its own under
 35 specified circumstances; providing applicability;
 36 providing an effective date.

37
 38 Be It Enacted by the Legislature of the State of Florida:

39
 40 Section 1. Subsection (7) of section 341.301, Florida
 41 Statutes, is amended to read:

42 341.301 Definitions; ss. 341.302-341.303.—As used in ss.
 43 341.302-341.303, the term:

44 (7) "Limited covered accident" means:

45 (a) A collision directly between the trains, locomotives,
 46 rail cars, or rail equipment of the department and the freight
 47 rail operator only, where the collision is caused by or arising
 48 from the willful misconduct of the freight rail operator or its
 49 subsidiaries, agents, licensees, employees, officers, or
 50 directors or where punitive damages or exemplary damages are
 51 awarded due to the conduct of the freight rail operator or its
 52 subsidiaries, agents, licensees, employees, officers, or
 53 directors; or

54 (b) A collision directly between the trains, locomotives,
 55 rail cars, or rail equipment of the department and National
 56 Railroad Passenger Corporation only, where the collision is

57 caused by or arising from the willful misconduct of National
58 Railroad Passenger Corporation or its subsidiaries, agents,
59 licensees, employees, officers, or directors or where punitive
60 damages or exemplary damages are awarded due to the conduct of
61 National Railroad Passenger Corporation or its subsidiaries,
62 agents, licensees, employees, officers, or directors.

63 Section 2. Subsection (17) of section 341.302, Florida
64 Statutes, is amended to read:

65 341.302 Rail program; duties and responsibilities of the
66 department.—The department, in conjunction with other
67 governmental entities, including the rail enterprise and the
68 private sector, shall develop and implement a rail program of
69 statewide application designed to ensure the proper maintenance,
70 safety, revitalization, and expansion of the rail system to
71 assure its continued and increased availability to respond to
72 statewide mobility needs. Within the resources provided pursuant
73 to chapter 216, and as authorized under federal law, the
74 department shall:

75 (17) In conjunction with the acquisition, ownership,
76 construction, operation, maintenance, and management of a rail
77 corridor, have the authority to:

78 (a) Assume obligations pursuant to the following:

79 1.a. The department may assume the obligation by contract
80 to forever protect, defend, indemnify, and hold harmless the
81 freight rail operator, or its successors, from whom the
82 department has acquired a real property interest in the rail
83 corridor, and that freight rail operator's officers, agents, and
84 employees, from and against any liability, cost, and expense,

85 including, but not limited to, commuter rail passengers and rail
 86 corridor invitees in the rail corridor, regardless of whether
 87 the loss, damage, destruction, injury, or death giving rise to
 88 any such liability, cost, or expense is caused in whole or in
 89 part, and to whatever nature or degree, by the fault, failure,
 90 negligence, misconduct, nonfeasance, or misfeasance of such
 91 freight rail operator, its successors, or its officers, agents,
 92 and employees, or any other person or persons whomsoever; or

93 b. The department may assume the obligation by contract to
 94 forever protect, defend, indemnify, and hold harmless National
 95 Railroad Passenger Corporation, or its successors, and officers,
 96 agents, and employees of National Railroad Passenger
 97 Corporation, from and against any liability, cost, and expense,
 98 including, but not limited to, commuter rail passengers and rail
 99 corridor invitees in the rail corridor, regardless of whether
 100 the loss, damage, destruction, injury, or death giving rise to
 101 any such liability, cost, or expense is caused in whole or in
 102 part, and to whatever nature or degree, by the fault, failure,
 103 negligence, misconduct, nonfeasance, or misfeasance of National
 104 Railroad Passenger Corporation, its successors, or its officers,
 105 agents, and employees, or any other person or persons
 106 whomsoever.

107 2. The ~~Provided that~~ such assumption of liability of the
 108 department by contract pursuant to sub-subparagraph 1.a. or sub-
 109 subparagraph 1.b. may ~~shall~~ not in any instance exceed the
 110 following parameters of allocation of risk:

111 a.1- The department may be solely responsible for any
 112 loss, injury, or damage to commuter rail passengers, or rail

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113 corridor invitees, or trespassers, regardless of circumstances
114 or cause, subject to sub-subparagraph b. and subparagraphs ~~2.,~~
115 3., 4., 5., and 6.

116 b.(I)2- In the event of a limited covered accident, the
117 authority of the department to protect, defend, and indemnify
118 the freight operator for all liability, cost, and expense,
119 including punitive or exemplary damages, in excess of the
120 deductible or self-insurance retention fund established under
121 paragraph (b) and actually in force at the time of the limited
122 covered accident exists only if the freight operator agrees,
123 with respect to the limited covered accident, to protect,
124 defend, and indemnify the department for the amount of the
125 deductible or self-insurance retention fund established under
126 paragraph (b) and actually in force at the time of the limited
127 covered accident.

128 (II) In the event of a limited covered accident, the
129 authority of the department to protect, defend, and indemnify
130 National Railroad Passenger Corporation for all liability, cost,
131 and expense, including punitive or exemplary damages, in excess
132 of the deductible or self-insurance retention fund established
133 under paragraph (b) and actually in force at the time of the
134 limited covered accident exists only if National Railroad
135 Passenger Corporation agrees, with respect to the limited
136 covered accident, to protect, defend, and indemnify the
137 department for the amount of the deductible or self-insurance
138 retention fund established under paragraph (b) and actually in
139 force at the time of the limited covered accident.

140 3. When only one train is involved in an incident, the

141 department may be solely responsible for any loss, injury, or
 142 damage if the train is a department train or other train
 143 pursuant to subparagraph 4., but only if:

144 a. When an incident occurs with only a freight train
 145 involved, including incidents with trespassers or at grade
 146 crossings, the freight rail operator is solely responsible for
 147 any loss, injury, or damage, except for commuter rail passengers
 148 and rail corridor invitees; or

149 b. When an incident occurs with only a National Railroad
 150 Passenger Corporation train involved, including incidents with
 151 trespassers or at grade crossings, National Railroad Passenger
 152 Corporation is solely responsible for any loss, injury, or
 153 damage, except for commuter rail passengers and rail corridor
 154 invitees.

155 4. For the purposes of this subsection:7

156 a. Any train involved in an incident that is neither the
 157 department's train nor the freight rail operator's train,
 158 hereinafter referred to in this subsection as an "other train,"
 159 may be treated as a department train, solely for purposes of any
 160 allocation of liability between the department and the freight
 161 rail operator only, but only if the department and the freight
 162 rail operator share responsibility equally as to third parties
 163 outside the rail corridor who incur loss, injury, or damage as a
 164 result of any incident involving both a department train and a
 165 freight rail operator train, and the allocation as between the
 166 department and the freight rail operator, regardless of whether
 167 the other train is treated as a department train, shall remain
 168 one-half each as to third parties outside the rail corridor who

169 incur loss, injury, or damage as a result of the incident. The
 170 involvement of any other train shall not alter the sharing of
 171 equal responsibility as to third parties outside the rail
 172 corridor who incur loss, injury, or damage as a result of the
 173 incident; or

174 b. Any train involved in an incident that is neither the
 175 department's train nor the National Railroad Passenger
 176 Corporation's train, hereinafter referred to in this subsection
 177 as an "other train," may be treated as a department train,
 178 solely for purposes of any allocation of liability between the
 179 department and National Railroad Passenger Corporation only, but
 180 only if the department and National Railroad Passenger
 181 Corporation share responsibility equally as to third parties
 182 outside the rail corridor who incur loss, injury, or damage as a
 183 result of any incident involving both a department train and a
 184 National Railroad Passenger Corporation train, and the
 185 allocation as between the department and National Railroad
 186 Passenger Corporation, regardless of whether the other train is
 187 treated as a department train, shall remain one-half each as to
 188 third parties outside the rail corridor who incur loss, injury,
 189 or damage as a result of the incident. The involvement of any
 190 other train shall not alter the sharing of equal responsibility
 191 as to third parties outside the rail corridor who incur loss,
 192 injury, or damage as a result of the incident.

193 5. When more than one train is involved in an incident:

194 a. (I) If only a department train and freight rail
 195 operator's train, or only an other train as described in sub-
 196 subparagraph 4.a. subparagraph 4. and a freight rail operator's

197 | train, are involved in an incident, the department may be
 198 | responsible for its property and all of its people, all commuter
 199 | rail passengers, and rail corridor invitees, but only if the
 200 | freight rail operator is responsible for its property and all of
 201 | its people, and the department and the freight rail operator
 202 | each share one-half responsibility as to trespassers or third
 203 | parties outside the rail corridor who incur loss, injury, or
 204 | damage as a result of the incident; or

205 | (II) If only a department train and a National Railroad
 206 | Passenger Corporation train, or only an other train as described
 207 | in sub-subparagraph 4.b. and a National Railroad Passenger
 208 | Corporation train, are involved in an incident, the department
 209 | may be responsible for its property and all of its people, all
 210 | commuter rail passengers, and rail corridor invitees, but only
 211 | if National Railroad Passenger Corporation is responsible for
 212 | its property and all of its people, all National Railroad
 213 | Passenger Corporation's rail property, and the department and
 214 | National Railroad Passenger Corporation each share one-half
 215 | responsibility as to trespassers or third parties outside the
 216 | rail corridor who incur loss, injury, or damage as a result of
 217 | the incident.

218 | b.(I) If a department train, a freight rail operator
 219 | train, and any other train are involved in an incident, the
 220 | allocation of liability between the department and the freight
 221 | rail operator, regardless of whether the other train is treated
 222 | as a department train, shall remain one-half each as to third
 223 | parties outside the rail corridor who incur loss, injury, or
 224 | damage as a result of the incident; the involvement of any other

225 | train shall not alter the sharing of equal responsibility as to
 226 | third parties outside the rail corridor who incur loss, injury,
 227 | or damage as a result of the incident; and, if the owner,
 228 | operator, or insurer of the other train makes any payment to
 229 | injured third parties outside the rail corridor who incur loss,
 230 | injury, or damage as a result of the incident, the allocation of
 231 | credit between the department and the freight rail operator as
 232 | to such payment shall not in any case reduce the freight rail
 233 | operator's third-party-sharing allocation of one-half under this
 234 | paragraph to less than one-third of the total third party
 235 | liability; or

236 | (II) If a department train, a National Railroad Passenger
 237 | Corporation train, and any other train are involved in an
 238 | incident, the allocation of liability between the department and
 239 | National Railroad Passenger Corporation, regardless of whether
 240 | the other train is treated as a department train, shall remain
 241 | one-half each as to third parties outside the rail corridor who
 242 | incur loss, injury, or damage as a result of the incident; the
 243 | involvement of any other train shall not alter the sharing of
 244 | equal responsibility as to third parties outside the rail
 245 | corridor who incur loss, injury, or damage as a result of the
 246 | incident; and, if the owner, operator, or insurer of the other
 247 | train makes any payment to injured third parties outside the
 248 | rail corridor who incur loss, injury, or damage as a result of
 249 | the incident, the allocation of credit between the department
 250 | and National Railroad Passenger Corporation as to such payment
 251 | shall not in any case reduce National Railroad Passenger
 252 | Corporation's third-party-sharing allocation of one-half under

253 this sub-subparagraph to less than one-third of the total third
254 party liability.

255 6. Any such contractual duty to protect, defend,
256 indemnify, and hold harmless such a freight rail operator or
257 National Railroad Passenger Corporation shall expressly include
258 a specific cap on the amount of the contractual duty, which
259 amount shall not exceed \$200 million without prior legislative
260 approval, and the department to purchase liability insurance and
261 establish a self-insurance retention fund in the amount of the
262 specific cap established under this subparagraph, provided that:

263 a. No such contractual duty shall in any case be effective
264 nor otherwise extend the department's liability in scope and
265 effect beyond the contractual liability insurance and self-
266 insurance retention fund required pursuant to this paragraph;
267 and

268 b. (I) The freight rail operator's compensation to the
269 department for future use of the department's rail corridor
270 shall include a monetary contribution to the cost of such
271 liability coverage for the sole benefit of the freight rail
272 operator.

273 (II) National Railroad Passenger Corporation's
274 compensation to the department for future use of the
275 department's rail corridor shall include a monetary contribution
276 to the cost of such liability coverage for the sole benefit of
277 National Railroad Passenger Corporation.

278 (b) Purchase liability insurance, which amount shall not
279 exceed \$200 million, and establish a self-insurance retention
280 fund for the purpose of paying the deductible limit established

281 in the insurance policies it may obtain, including coverage for
282 the department, any freight rail operator as described in
283 paragraph (a), National Railroad Passenger Corporation, commuter
284 rail service providers, governmental entities, or any ancillary
285 development, which self-insurance retention fund or deductible
286 shall not exceed \$10 million. The insureds shall pay a
287 reasonable monetary contribution to the cost of such liability
288 coverage for the sole benefit of the insured. Such insurance and
289 self-insurance retention fund may provide coverage for all
290 damages, including, but not limited to, compensatory, special,
291 and exemplary, and be maintained to provide an adequate fund to
292 cover claims and liabilities for loss, injury, or damage arising
293 out of or connected with the ownership, operation, maintenance,
294 and management of a rail corridor.

295 (c) Incur expenses for the purchase of advertisements,
296 marketing, and promotional items.

297
298 Neither the assumption by contract to protect, defend,
299 indemnify, and hold harmless; the purchase of insurance; nor the
300 establishment of a self-insurance retention fund shall be deemed
301 to be a waiver of any defense of sovereign immunity for torts
302 nor deemed to increase the limits of the department's or the
303 governmental entity's liability for torts as provided in s.
304 768.28. The requirements of s. 287.022(1) shall not apply to the
305 purchase of any insurance under this subsection. The provisions
306 of this subsection shall apply and inure fully as to any other
307 governmental entity providing commuter rail service and
308 constructing, operating, maintaining, or managing a rail

309 | corridor on publicly owned right-of-way under contract by the
 310 | governmental entity with the department or a governmental entity
 311 | designated by the department. Notwithstanding any law to the
 312 | contrary, procurement for the construction, operation,
 313 | maintenance, and management of any rail corridor described in
 314 | this subsection, whether by the department, a governmental
 315 | entity under contract with the department, or a governmental
 316 | entity designated by the department, shall be pursuant to s.
 317 | 287.057 and shall include, but not be limited to, criteria for
 318 | the consideration of qualifications, technical aspects of the
 319 | proposal, and price. Further, any such contract for design-build
 320 | shall be procured pursuant to the criteria in s. 337.11(7).

321 | Section 3. Subsections (1) and (2), paragraph (c) of
 322 | subsection (3), and subsections (4) and (5) of section 373.4137,
 323 | Florida Statutes, are amended to read:

324 | 373.4137 Mitigation requirements for specified
 325 | transportation projects.—

326 | (1) The Legislature finds that environmental mitigation
 327 | for the impact of transportation projects proposed by the
 328 | Department of Transportation or a transportation authority
 329 | established pursuant to chapter 348 or chapter 349 can be more
 330 | effectively achieved by regional, long-range mitigation planning
 331 | rather than on a project-by-project basis. It is the intent of
 332 | the Legislature that mitigation to offset the adverse effects of
 333 | these transportation projects be funded by the Department of
 334 | Transportation and be carried out by ~~the water management~~
 335 | ~~districts, including~~ the use of mitigation banks and any other
 336 | mitigation options that satisfy state and federal requirements

337 ~~established pursuant to this part.~~

338 (2) Environmental impact inventories for transportation
339 projects proposed by the Department of Transportation or a
340 transportation authority established pursuant to chapter 348 or
341 chapter 349 shall be developed as follows:

342 (a) By July 1 of each year, the Department of
343 Transportation, or a transportation authority established
344 pursuant to chapter 348 or chapter 349 which chooses to
345 participate in the program, shall submit to the water management
346 districts a list ~~copy~~ of its projects in the adopted work
347 program and an environmental impact inventory of habitats
348 addressed in the rules adopted pursuant to this part and s. 404
349 of the Clean Water Act, 33 U.S.C. s. 1344, which may be impacted
350 by its plan of construction for transportation projects in the
351 next 3 years of the tentative work program. The Department of
352 Transportation or a transportation authority established
353 pursuant to chapter 348 or chapter 349 may also include in its
354 environmental impact inventory the habitat impacts of any future
355 transportation project. The Department of Transportation and
356 each transportation authority established pursuant to chapter
357 348 or chapter 349 may fund any mitigation activities for future
358 projects using current year funds.

359 (b) The environmental impact inventory shall include a
360 description of these habitat impacts, including their location,
361 acreage, and type; state water quality classification of
362 impacted wetlands and other surface waters; any other state or
363 regional designations for these habitats; and a list ~~survey~~ of
364 threatened species, endangered species, and species of special

365 concern affected by the proposed project.
 366 (3)
 367 (c) Except for current mitigation projects in the
 368 monitoring and maintenance phase and except as allowed by
 369 paragraph (d), the water management districts may request a
 370 transfer of funds from an escrow account no sooner than 30 days
 371 before ~~prior to~~ the date the funds are needed to pay for
 372 activities associated with development or implementation of the
 373 approved mitigation plan described in subsection (4) for the
 374 current fiscal year, including, but not limited to, design,
 375 engineering, production, and staff support. Actual conceptual
 376 plan preparation costs incurred before plan approval may be
 377 submitted to the Department of Transportation or the appropriate
 378 transportation authority each year with the plan. The conceptual
 379 plan preparation costs of each water management district will be
 380 paid from mitigation funds associated with the environmental
 381 impact inventory for the current year. The amount transferred to
 382 the escrow accounts each year by the Department of
 383 Transportation and participating transportation authorities
 384 established pursuant to chapter 348 or chapter 349 shall
 385 correspond to a cost per acre of \$75,000 multiplied by the
 386 projected acres of impact identified in the environmental impact
 387 inventory described in subsection (2). However, the \$75,000 cost
 388 per acre does not constitute an admission against interest by
 389 the state or its subdivisions and ~~nor~~ is not ~~the cost~~ admissible
 390 as evidence of full compensation for any property acquired by
 391 eminent domain or through inverse condemnation. Each July 1, the
 392 cost per acre shall be adjusted by the percentage change in the

393 average of the Consumer Price Index issued by the United States
394 Department of Labor for the most recent 12-month period ending
395 September 30, compared to the base year average, which is the
396 average for the 12-month period ending September 30, 1996. Each
397 quarter, the projected acreage of impact shall be reconciled
398 with the acreage of impact of projects as permitted, including
399 permit modifications, pursuant to this part and s. 404 of the
400 Clean Water Act, 33 U.S.C. s. 1344. The subject year's transfer
401 of funds shall be adjusted accordingly to reflect the acreage of
402 impacts as permitted. The Department of Transportation and
403 participating transportation authorities established pursuant to
404 chapter 348 or chapter 349 are authorized to transfer such funds
405 from the escrow accounts to the water management districts to
406 carry out the mitigation programs. Environmental mitigation
407 funds that are identified for or maintained in an escrow account
408 for the benefit of a water management district may be released
409 if the associated transportation project is excluded in whole or
410 part from the mitigation plan. For a mitigation project that is
411 in the maintenance and monitoring phase, the water management
412 district may request and receive a one-time payment based on the
413 project's expected future maintenance and monitoring costs. Upon
414 disbursement of the final maintenance and monitoring payment,
415 the escrow account for the project established by the Department
416 of Transportation or the participating transportation authority
417 may be closed. Any interest earned on these disbursed funds
418 shall remain with the water management district and must be used
419 as authorized under this section.

420 (4) Before ~~Prior to~~ March 1 of each year, each water

421 management district, in consultation with the Department of
422 Environmental Protection, the United States Army Corps of
423 Engineers, the Department of Transportation, participating
424 transportation authorities established pursuant to chapter 348
425 or chapter 349, and other appropriate federal, state, and local
426 governments, and other interested parties, including entities
427 operating mitigation banks, shall develop a plan for the primary
428 purpose of complying with the mitigation requirements adopted
429 pursuant to this part and 33 U.S.C. s. 1344. In developing such
430 plans, the districts shall use ~~utilize~~ sound ecosystem
431 management practices to address significant water resource needs
432 and shall focus on activities of the Department of Environmental
433 Protection and the water management districts, such as surface
434 water improvement and management (SWIM) projects and lands
435 identified for potential acquisition for preservation,
436 restoration, or enhancement, and the control of invasive and
437 exotic plants in wetlands and other surface waters, to the
438 extent that the ~~such~~ activities comply with the mitigation
439 requirements adopted under this part and 33 U.S.C. s. 1344. In
440 determining the activities to be included in the ~~such~~ plans, the
441 districts shall ~~also~~ consider the purchase of credits from
442 public or private mitigation banks permitted under s. 373.4136
443 and associated federal authorization and shall include the ~~such~~
444 purchase as a part of the mitigation plan when the ~~such~~ purchase
445 would offset the impact of the transportation project, provide
446 equal benefits to the water resources than other mitigation
447 options being considered, and provide the most cost-effective
448 mitigation option. The mitigation plan shall be submitted to the

449 water management district governing board, or its designee, for
450 review and approval. At least 14 days before ~~prior to~~ approval,
451 the water management district shall provide a copy of the draft
452 mitigation plan to any person who has requested a copy. The plan
453 may not be implemented until it is submitted to and approved, in
454 part or in its entirety, by the Department of Environmental
455 Protection.

456 (a) For each transportation project with a funding request
457 for the next fiscal year, the mitigation plan must include a
458 brief explanation of why a mitigation bank was or was not chosen
459 as a mitigation option, including an estimation of identifiable
460 costs of the mitigation bank and nonbank options and other
461 factors such as time saved, liability for success of the
462 mitigation, and long-term maintenance ~~to the extent practicable.~~

463 (b) Specific projects may be excluded from the mitigation
464 plan, in whole or in part, and are ~~shall~~ ~~be~~ subject to this
465 section upon the election agreement of the Department of
466 Transportation, ~~or~~ a transportation authority if applicable, or
467 and the appropriate water management district ~~that the inclusion~~
468 ~~of such projects would hamper the efficiency or timeliness of~~
469 ~~the mitigation planning and permitting process. The water~~
470 ~~management district may choose to exclude a project in whole or~~
471 ~~in part if the district is unable to identify mitigation that~~
472 ~~would offset impacts of the project.~~

473 (c) When determining which projects to include in or
474 exclude from the mitigation plan, the Department of
475 Transportation shall investigate using credits from a permitted
476 private mitigation bank before those projects are submitted to,

477 or are allowed to remain in, the plan.

478 1. The investigation shall include the cost-effectiveness
479 of private mitigation bank credits.

480 2. The cost-effectiveness analysis must be in writing and
481 consider:

482 a. How the nominal cost of the private mitigation bank
483 credits compares with the nominal cost for any given project to
484 be included in the plan;

485 b. The value of complying with federal transportation
486 policies for federal aid projects;

487 c. The value that private mitigation bank credits provide
488 as the result of the expedited approvals by the Army Corps of
489 Engineers when private mitigation banks are used; and

490 d. The value that private mitigation banks provide to the
491 state and its residents as a result of the state and federal
492 liability for the success of the mitigation transferring to the
493 private mitigation bank when credits are purchased from the
494 private mitigation bank.

495 (5) The water management district shall ensure ~~be~~
496 ~~responsible for ensuring~~ that mitigation requirements pursuant
497 to 33 U.S.C. s. 1344 are met for the impacts identified in the
498 environmental impact inventory described in subsection (2), by
499 implementation of the approved plan described in subsection (4)
500 to the extent funding is provided by the Department of
501 Transportation, or a transportation authority established
502 pursuant to chapter 348 or chapter 349, if applicable. During
503 the federal permitting process, the water management district
504 may deviate from the approved mitigation plan in order to comply

505 with federal permitting requirements.

506 Section 4. Paragraphs (b) through (e) of subsection (1) of
507 section 373.4135, Florida Statutes, are redesignated as
508 paragraphs (c) through (f), respectively, and a new paragraph
509 (b) is added to that subsection to read:

510 373.4135 Mitigation banks and offsite regional
511 mitigation.—

512 (1) The Legislature finds that the adverse impacts of
513 activities regulated under this part may be offset by the
514 creation, maintenance, and use of mitigation banks and offsite
515 regional mitigation. Mitigation banks and offsite regional
516 mitigation can enhance the certainty of mitigation and provide
517 ecological value due to the improved likelihood of environmental
518 success associated with their proper construction, maintenance,
519 and management. Therefore, the department and the water
520 management districts are directed to participate in and
521 encourage the establishment of private and public mitigation
522 banks and offsite regional mitigation. Mitigation banks and
523 offsite regional mitigation should emphasize the restoration and
524 enhancement of degraded ecosystems and the preservation of
525 uplands and wetlands as intact ecosystems rather than alteration
526 of landscapes to create wetlands. This is best accomplished
527 through restoration of ecological communities that were
528 historically present.

529 (b) Notwithstanding the provisions of this section, a
530 governmental entity may not create or provide mitigation for a
531 project other than its own unless the governmental entity uses
532 land that was not previously purchased for conservation and

533 unless the governmental entity provides the same financial
534 assurances as required for mitigation banks permitted under s.
535 373.4136. This paragraph does not apply to:

- 536 1. Mitigation banks permitted before December 31, 2011,
537 under s. 373.4136;
- 538 2. Offsite regional mitigation areas established before
539 December 31, 2011, under subsection (6);
- 540 3. Mitigation for transportation projects under ss.
541 373.4137 and 373.4139;
- 542 4. Mitigation for impacts from mining activities under s.
543 373.41492;
- 544 5. Mitigation provided for single-family lots or
545 homeowners under subsection (7);
- 546 6. Entities authorized in chapter 98-492, Laws of Florida;
547 7. Mitigation provided for electric utility impacts
548 certified under part II of chapter 403; or
- 549 8. Mitigation provided on sovereign submerged lands under
550 subsection (6).

551 Section 5. This act shall take effect upon becoming a law.