

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 amending s. 373.4136, F.S.; authorizing certain
 37 seaport projects to use a mitigation bank; providing
 38 an effective date.

39

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

41

42 Section 1. Subsection (7) of section 341.301, Florida
 43 Statutes, is amended to read:

44 341.301 Definitions; ss. 341.302-341.303.—As used in ss.
 45 341.302-341.303, the term:

46 (7) "Limited covered accident" means:

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

56 (b) A collision directly between the trains, locomotives,

57 rail cars, or rail equipment of the department and National
58 Railroad Passenger Corporation only, where the collision is
59 caused by or arising from the willful misconduct of National
60 Railroad Passenger Corporation or its subsidiaries, agents,
61 licensees, employees, officers, or directors or where punitive
62 damages or exemplary damages are awarded due to the conduct of
63 National Railroad Passenger Corporation or its subsidiaries,
64 agents, licensees, employees, officers, or directors.

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

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

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

80 (a) Assume obligations pursuant to the following:

81 1.a. The department may assume the obligation by contract
82 to forever protect, defend, indemnify, and hold harmless the
83 freight rail operator, or its successors, from whom the
84 department has acquired a real property interest in the rail

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

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

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

113 a.1. The department may be solely responsible for any
 114 loss, injury, or damage to commuter rail passengers, or rail
 115 corridor invitees, or trespassers, regardless of circumstances
 116 or cause, subject to sub-subparagraph b. and subparagraphs ~~2.7~~
 117 3., 4., 5., and 6.

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

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

141 force at the time of the limited covered accident.

142 3. When only one train is involved in an incident, the
 143 department may be solely responsible for any loss, injury, or
 144 damage if the train is a department train or other train
 145 pursuant to subparagraph 4., but only if:

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

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

157 4. For the purposes of this subsection:7

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

169 the other train is treated as a department train, shall remain
 170 one-half each as to third parties outside the rail corridor who
 171 incur loss, injury, or damage as a result of the incident. The
 172 involvement of any other train shall not alter the sharing of
 173 equal responsibility as to third parties outside the rail
 174 corridor who incur loss, injury, or damage as a result of the
 175 incident; or

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

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

196 a. (I) If only a department train and freight rail

197 operator's train, or only an other train as described in sub-
 198 subparagraph 4.a. ~~subparagraph 4.~~ and a freight rail operator's
 199 train, are involved in an incident, the department may be
 200 responsible for its property and all of its people, all commuter
 201 rail passengers, and rail corridor invitees, but only if the
 202 freight rail operator is responsible for its property and all of
 203 its people, and the department and the freight rail operator
 204 each share one-half responsibility as to trespassers or third
 205 parties outside the rail corridor who incur loss, injury, or
 206 damage as a result of the incident; or

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

220 b. (I) If a department train, a freight rail operator
 221 train, and any other train are involved in an incident, the
 222 allocation of liability between the department and the freight
 223 rail operator, regardless of whether the other train is treated
 224 as a department train, shall remain one-half each as to third

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

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

253 shall not in any case reduce National Railroad Passenger
254 Corporation's third-party-sharing allocation of one-half under
255 this sub-subparagraph to less than one-third of the total third
256 party liability.

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

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

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

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

280 (b) Purchase liability insurance, which amount shall not

281 exceed \$200 million, and establish a self-insurance retention
282 fund for the purpose of paying the deductible limit established
283 in the insurance policies it may obtain, including coverage for
284 the department, any freight rail operator as described in
285 paragraph (a), National Railroad Passenger Corporation, commuter
286 rail service providers, governmental entities, or any ancillary
287 development, which self-insurance retention fund or deductible
288 shall not exceed \$10 million. The insureds shall pay a
289 reasonable monetary contribution to the cost of such liability
290 coverage for the sole benefit of the insured. Such insurance and
291 self-insurance retention fund may provide coverage for all
292 damages, including, but not limited to, compensatory, special,
293 and exemplary, and be maintained to provide an adequate fund to
294 cover claims and liabilities for loss, injury, or damage arising
295 out of or connected with the ownership, operation, maintenance,
296 and management of a rail corridor.

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

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

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

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

326 373.4137 Mitigation requirements for specified
 327 transportation projects.—

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

337 ~~districts, including~~ the use of mitigation banks and any other
338 mitigation options that satisfy state and federal requirements
339 ~~established pursuant to this part.~~

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

344 (a) By July 1 of each year, the Department of
345 Transportation, or a transportation authority established
346 pursuant to chapter 348 or chapter 349 which chooses to
347 participate in the program, shall submit to the water management
348 districts a list ~~copy~~ of its projects in the adopted work
349 program and an environmental impact inventory of habitats
350 addressed in the rules adopted pursuant to this part and s. 404
351 of the Clean Water Act, 33 U.S.C. s. 1344, which may be impacted
352 by its plan of construction for transportation projects in the
353 next 3 years of the tentative work program. The Department of
354 Transportation or a transportation authority established
355 pursuant to chapter 348 or chapter 349 may also include in its
356 environmental impact inventory the habitat impacts of any future
357 transportation project. The Department of Transportation and
358 each transportation authority established pursuant to chapter
359 348 or chapter 349 may fund any mitigation activities for future
360 projects using current year funds.

361 (b) The environmental impact inventory shall include a
362 description of these habitat impacts, including their location,
363 acreage, and type; state water quality classification of
364 impacted wetlands and other surface waters; any other state or

365 regional designations for these habitats; and a list ~~survey~~ of
366 threatened species, endangered species, and species of special
367 concern affected by the proposed project.

368 (3)

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

393 eminent domain or through inverse condemnation. Each July 1, the
394 cost per acre shall be adjusted by the percentage change in the
395 average of the Consumer Price Index issued by the United States
396 Department of Labor for the most recent 12-month period ending
397 September 30, compared to the base year average, which is the
398 average for the 12-month period ending September 30, 1996. Each
399 quarter, the projected acreage of impact shall be reconciled
400 with the acreage of impact of projects as permitted, including
401 permit modifications, pursuant to this part and s. 404 of the
402 Clean Water Act, 33 U.S.C. s. 1344. The subject year's transfer
403 of funds shall be adjusted accordingly to reflect the acreage of
404 impacts as permitted. The Department of Transportation and
405 participating transportation authorities established pursuant to
406 chapter 348 or chapter 349 are authorized to transfer such funds
407 from the escrow accounts to the water management districts to
408 carry out the mitigation programs. Environmental mitigation
409 funds that are identified for or maintained in an escrow account
410 for the benefit of a water management district may be released
411 if the associated transportation project is excluded in whole or
412 part from the mitigation plan. For a mitigation project that is
413 in the maintenance and monitoring phase, the water management
414 district may request and receive a one-time payment based on the
415 project's expected future maintenance and monitoring costs. Upon
416 disbursement of the final maintenance and monitoring payment,
417 the escrow account for the project established by the Department
418 of Transportation or the participating transportation authority
419 may be closed. Any interest earned on these disbursed funds
420 shall remain with the water management district and must be used

421 as authorized under this section.

422 (4) Before ~~Prior to~~ March 1 of each year, each water
 423 management district, in consultation with the Department of
 424 Environmental Protection, the United States Army Corps of
 425 Engineers, the Department of Transportation, participating
 426 transportation authorities established pursuant to chapter 348
 427 or chapter 349, and other appropriate federal, state, and local
 428 governments, and other interested parties, including entities
 429 operating mitigation banks, shall develop a plan for the primary
 430 purpose of complying with the mitigation requirements adopted
 431 pursuant to this part and 33 U.S.C. s. 1344. In developing such
 432 plans, the districts shall use ~~utilize~~ sound ecosystem
 433 management practices to address significant water resource needs
 434 and shall focus on activities of the Department of Environmental
 435 Protection and the water management districts, such as surface
 436 water improvement and management (SWIM) projects and lands
 437 identified for potential acquisition for preservation,
 438 restoration, or enhancement, and the control of invasive and
 439 exotic plants in wetlands and other surface waters, to the
 440 extent that the ~~such~~ activities comply with the mitigation
 441 requirements adopted under this part and 33 U.S.C. s. 1344. In
 442 determining the activities to be included in the ~~such~~ plans, the
 443 districts shall ~~also~~ consider the purchase of credits from
 444 public or private mitigation banks permitted under s. 373.4136
 445 and associated federal authorization and shall include the ~~such~~
 446 purchase as a part of the mitigation plan when the ~~such~~ purchase
 447 would offset the impact of the transportation project, provide
 448 equal benefits to the water resources than other mitigation

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

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

465 (b) Specific projects may be excluded from the mitigation
466 plan, in whole or in part, and are ~~shall~~ not be subject to this
467 section upon the election agreement of the Department of
468 Transportation, ~~or~~ a transportation authority if applicable, or
469 ~~and~~ the appropriate water management district ~~that the inclusion~~
470 ~~of such projects would hamper the efficiency or timeliness of~~
471 ~~the mitigation planning and permitting process. The water~~
472 ~~management district may choose to exclude a project in whole or~~
473 ~~in part if the district is unable to identify mitigation that~~
474 ~~would offset impacts of the project.~~

475 (c) When determining which projects to include in or
476 exclude from the mitigation plan, the Department of

477 Transportation shall investigate using credits from a permitted
478 mitigation bank before those projects are submitted for
479 inclusion in the plan. The investigation shall consider the
480 cost-effectiveness of mitigation bank credits, including, but
481 not limited to, factors such as time saved, transfer of
482 liability for success of the mitigation, and long-term
483 maintenance.

484 (5) The water management district shall ensure ~~be~~
485 ~~responsible for ensuring~~ that mitigation requirements pursuant
486 to 33 U.S.C. s. 1344 are met for the impacts identified in the
487 environmental impact inventory described in subsection (2), by
488 implementation of the approved plan described in subsection (4)
489 to the extent funding is provided by the Department of
490 Transportation, or a transportation authority established
491 pursuant to chapter 348 or chapter 349, if applicable. During
492 the federal permitting process, the water management district
493 may deviate from the approved mitigation plan in order to comply
494 with federal permitting requirements.

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

499 373.4135 Mitigation banks and offsite regional
500 mitigation.—

501 (1) The Legislature finds that the adverse impacts of
502 activities regulated under this part may be offset by the
503 creation, maintenance, and use of mitigation banks and offsite
504 regional mitigation. Mitigation banks and offsite regional

505 mitigation can enhance the certainty of mitigation and provide
506 ecological value due to the improved likelihood of environmental
507 success associated with their proper construction, maintenance,
508 and management. Therefore, the department and the water
509 management districts are directed to participate in and
510 encourage the establishment of private and public mitigation
511 banks and offsite regional mitigation. Mitigation banks and
512 offsite regional mitigation should emphasize the restoration and
513 enhancement of degraded ecosystems and the preservation of
514 uplands and wetlands as intact ecosystems rather than alteration
515 of landscapes to create wetlands. This is best accomplished
516 through restoration of ecological communities that were
517 historically present.

518 (b) Notwithstanding the provisions of this section, a
519 governmental entity may not create or provide mitigation for a
520 project other than its own unless the governmental entity uses
521 land that was not previously purchased for conservation and
522 unless the governmental entity provides the same financial
523 assurances as required for mitigation banks permitted under s.
524 373.4136. This paragraph does not apply to:

525 1. Mitigation banks permitted before December 31, 2011,
526 under s. 373.4136;

527 2. Offsite regional mitigation areas established before
528 December 31, 2011, under subsection (6);

529 3. Mitigation for transportation projects under ss.
530 373.4137 and 373.4139;

531 4. Mitigation for impacts from mining activities under s.
532 373.41492;

- 533 5. Mitigation provided for single-family lots or
- 534 homeowners under subsection (7);
- 535 6. Entities authorized in chapter 98-492, Laws of Florida;
- 536 7. Mitigation provided for electric utility impacts
- 537 certified under part II of chapter 403; or
- 538 8. Mitigation provided on sovereign submerged lands under
- 539 subsection (6).

540 Section 5. Paragraph (d) of subsection (6) of section
 541 373.4136, Florida Statutes, is amended to read:

542 373.4136 Establishment and operation of mitigation banks.—

543 (6) MITIGATION SERVICE AREA.—The department or water
 544 management district shall establish a mitigation service area
 545 for each mitigation bank permit. The department or water
 546 management district shall notify and consider comments received
 547 on the proposed mitigation service area from each local
 548 government within the proposed mitigation service area. Except
 549 as provided herein, mitigation credits may be withdrawn and used
 550 only to offset adverse impacts in the mitigation service area.
 551 The boundaries of the mitigation service area shall depend upon
 552 the geographic area where the mitigation bank could reasonably
 553 be expected to offset adverse impacts. Mitigation service areas
 554 may overlap, and mitigation service areas for two or more
 555 mitigation banks may be approved for a regional watershed.

556 (d) If the requirements in s. 373.414(1)(b) and (8) are
 557 met, the following projects or activities regulated under this
 558 part shall be eligible to use a mitigation bank, regardless of
 559 whether they are located within the mitigation service area:

- 560 1. Projects with adverse impacts partially located within

561 the mitigation service area.

562 2. Linear projects, such as roadways, transmission lines,
563 distribution lines, pipelines, ~~or~~ railways, or seaports listed
564 in s. 311.09(1).

565 3. Projects with total adverse impacts of less than 1 acre
566 in size.

567 Section 6. This act shall take effect upon becoming a law.