



396914

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/25/2013	.	
	.	
	.	
	.	

The Committee on Transportation (Brandes) recommended the following:

Senate Amendment

Delete lines 57 - 445
and insert:

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 achieved by regional, long-range mitigation planning rather than on a project-by-project basis. It is the intent of the



396914

13 Legislature that mitigation to offset the adverse effects of
14 these transportation projects be funded by the Department of
15 Transportation and be carried out by the use of mitigation banks
16 and any other mitigation options that satisfy state and federal
17 requirements in an efficient, timely, and cost-effective manner.

18 (2) Environmental impact inventories for transportation
19 projects proposed by the Department of Transportation or a
20 transportation authority established pursuant to chapter 348 or
21 chapter 349 shall be developed as follows:

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



396914

42 for future projects using current year funds.

43 (b) The environmental impact inventory must ~~shall~~ include a
44 description of ~~these~~ habitat impacts, including ~~their~~ location,
45 acreage, and type; the proposed amount of mitigation needed
46 based on the functional loss as determined through the Uniform
47 Mitigation Assessment Method (UMAM) adopted in Chapter 62-345,
48 F.A.C.; identification of the proposed mitigation option; state
49 water quality classification of impacted wetlands and other
50 surface waters; any other state or regional designations for
51 these habitats; and a list of threatened species, endangered
52 species, and species of special concern affected by the proposed
53 project.

54 (c) Before projects are identified for inclusion in a water
55 management district mitigation plan as described in subsection
56 (4), the Department of Transportation must consider using
57 credits from a permitted mitigation bank. The Department of
58 Transportation must consider availability of suitable and
59 sufficient mitigation bank credits within the transportation
60 project's area, ability to satisfy commitments to regulatory and
61 resource agencies, availability of suitable and sufficient
62 mitigation purchased or developed through this section, ability
63 to complete existing water management district or Department of
64 Environmental Protection suitable mitigation sites initiated
65 with Department of Transportation mitigation funds, and ability
66 to satisfy state and federal requirements including long-term
67 maintenance and liability.

68 (3) (a) To implement the mitigation option ~~fund development~~
69 ~~and implementation of the mitigation plan for the projected~~
70 ~~impacts~~ identified in the environmental impact inventory



396914

71 described in subsection (2), the Department of Transportation
72 may purchase credits for current and future use directly from a
73 mitigation bank; purchase mitigation services through the water
74 management districts or the Department of Environmental
75 Protection; conduct its own mitigation; or use other mitigation
76 options that meet state and federal requirements. ~~shall identify~~
77 funds quarterly in an escrow account within the State
78 Transportation Trust Fund for the environmental mitigation phase
79 of projects budgeted by Funding for the identified mitigation
80 option as described in the environmental impact inventory shall
81 be included in the Department of Transportation's work program
82 developed pursuant to s. 339.135. ~~for the current fiscal year.~~
83 The escrow account shall be maintained by the Department of
84 Transportation for the benefit of the water management
85 districts. Any interest earnings from the escrow account shall
86 remain with the Department of Transportation. The amount
87 programmed each year by the Department of Transportation and
88 participating transportation authorities established pursuant to
89 chapter 348 or chapter 349 shall correspond to an estimated cost
90 per credit of \$150,000 multiplied by the projected number of
91 credits identified in the environmental impact inventory
92 described in subsection (2). This estimated cost per credit will
93 be adjusted every two years by the Department of Transportation
94 based on the average cost per UMAM credit paid through this
95 section.

96 (b) Each transportation authority established pursuant to
97 chapter 348 or chapter 349 that chooses to participate in this
98 program shall create an escrow account within its financial
99 structure and deposit funds in the account to pay for the



396914

100 environmental mitigation phase of projects budgeted for the
101 current fiscal year. The escrow account shall be maintained by
102 the authority for the benefit of the water management districts.
103 Any interest earnings from the escrow account shall remain with
104 the authority.

105 (c) For mitigation implemented by the water management
106 district or the Department of Environmental Protection, as
107 appropriate, the amount paid each year shall be based on
108 mitigation services provided by the water management districts
109 or Department of Environmental Protection pursuant to an
110 approved water management district plan, as described in
111 subsection (4). ~~Except for current mitigation projects in the~~
112 ~~monitoring and maintenance phase and except as allowed by~~
113 ~~paragraph (d),~~ The water management districts or the Department
114 of Environmental Protection, as appropriate, may request payment
115 a transfer of funds from an escrow account no sooner than 30
116 days before the date the funds are needed to pay for activities
117 associated with development or implementation of ~~the~~ permitted
118 mitigation meeting the requirements pursuant to this part, 33
119 U.S.C. s. 1344, and 33 C.F.R. s. 332, in the approved mitigation
120 plan described in subsection (4) for the current fiscal year.
121 ~~including, but not limited to, design, engineering, production,~~
122 ~~and staff support. Actual conceptual plan preparation costs~~
123 ~~incurred before plan approval may be submitted to the Department~~
124 ~~of Transportation or the appropriate transportation authority~~
125 ~~each year with the plan. The conceptual plan preparation costs~~
126 ~~of each water management district will be paid from mitigation~~
127 ~~funds associated with the environmental impact inventory for the~~
128 ~~current year. The amount transferred to the escrow accounts each~~



396914

129 ~~year by the Department of Transportation and participating~~
130 ~~transportation authorities established pursuant to chapter 348~~
131 ~~or chapter 349 shall correspond to a cost per acre of \$75,000~~
132 ~~multiplied by the projected acres of impact identified in the~~
133 ~~environmental impact inventory described in subsection (2).~~
134 ~~However, the \$75,000 cost per acre does not constitute an~~
135 ~~admission against interest by the state or its subdivisions and~~
136 ~~is not admissible as evidence of full compensation for any~~
137 ~~property acquired by eminent domain or through inverse~~
138 ~~condemnation. Each July 1, the cost per acre shall be adjusted~~
139 ~~by the percentage change in the average of the Consumer Price~~
140 ~~Index issued by the United States Department of Labor for the~~
141 ~~most recent 12-month period ending September 30, compared to the~~
142 ~~base year average, which is the average for the 12-month period~~
143 ~~ending September 30, 1996. Each quarter, the projected amount of~~
144 ~~mitigation acreage of impact shall be reconciled with the actual~~
145 ~~amount of mitigation needed for acreage of impact of projects as~~
146 ~~permitted, including permit modifications, pursuant to this part~~
147 ~~and s. 404 of the Clean Water Act, 33 U.S.C. s. 1344. The~~
148 ~~subject year's programming transfer of funds shall be adjusted~~
149 ~~accordingly to reflect the mitigation acreage of impacts as~~
150 ~~permitted. The Department of Transportation and participating~~
151 ~~transportation authorities established pursuant to chapter 348~~
152 ~~or chapter 349 are authorized to transfer such funds from the~~
153 ~~escrow accounts to the water management districts to carry out~~
154 ~~the mitigation programs. Environmental mitigation funds that are~~
155 ~~identified for or maintained in an escrow account for the~~
156 ~~benefit of a water management district may be released if the~~
157 ~~associated transportation project is excluded in whole or part~~



396914

158 ~~from the mitigation plan. For a mitigation project that is in~~
159 ~~the maintenance and monitoring phase, the water management~~
160 ~~district may request and receive a one-time payment based on the~~
161 ~~project's expected future maintenance and monitoring costs. If~~
162 ~~the water management district excludes a project from an~~
163 ~~approved water management district mitigation plan, cannot~~
164 ~~timely permit a mitigation site to offset the impacts of a~~
165 ~~Department of Transportation project identified in the~~
166 ~~environmental impact inventory, or if the proposed mitigation~~
167 ~~does not meet state and federal requirements, the Department of~~
168 ~~Transportation may use the associated funds for the purchase of~~
169 ~~mitigation bank credits or any other mitigation option that~~
170 ~~satisfies state and federal requirements. Upon final~~
171 ~~disbursement of the final maintenance and monitoring payment for~~
172 ~~mitigation of a transportation project as permitted, the~~
173 ~~obligation of the Department of Transportation or the~~
174 ~~participating transportation authority is satisfied and the~~
175 ~~water management district or the Department of Environmental~~
176 ~~Protection, as appropriate, will have continuing responsibility~~
177 ~~for the mitigation project. , the escrow account for the project~~
178 ~~established by the Department of Transportation or the~~
179 ~~participating transportation authority may be closed. Any~~
180 ~~interest earned on these disbursed funds shall remain with the~~
181 ~~water management district and must be used as authorized under~~
182 ~~this section.~~

183 (d) Beginning with the March 2014 water management district
184 mitigation plans, in the 2005-2006 fiscal year, each water
185 management district or the Department of Environmental
186 Protection, as appropriate, shall invoice the Department of



396914

187 Transportation for mitigation services to offset only the
188 impacts of a Department of Transportation project identified in
189 the environmental impact inventory, including planning, design,
190 construction, maintenance and monitoring, and other costs
191 necessary to meet requirements pursuant to this section, 33
192 U.S.C. s. 1344, and 33 C.F.R. s. 332. ~~be paid a lump-sum amount~~
193 of \$75,000 per acre, adjusted as provided under paragraph (c),
194 for federally funded transportation projects that are included
195 on the environmental impact inventory and that have an approved
196 mitigation plan. Beginning in the 2009-2010 fiscal year, each
197 water management district shall be paid a lump-sum amount of
198 \$75,000 per acre, adjusted as provided under paragraph (c), for
199 federally funded and nonfederally funded transportation projects
200 that have an approved mitigation plan. All mitigation costs,
201 including, but not limited to, the costs of preparing conceptual
202 plans and the costs of design, construction, staff support,
203 future maintenance, and monitoring the mitigated acres shall be
204 funded through these lump-sum amounts. When the water management
205 district identifies the use of mitigation bank credits to offset
206 a Department of Transportation impact, the water management
207 district shall exclude that purchase from the mitigation plan,
208 and the Department of Transportation must purchase the bank
209 credits.

210 (e) For mitigation activities occurring on existing water
211 management district or Department of Environmental Protection
212 mitigation sites initiated with Department of Transportation
213 mitigation funds prior to July 1, 2013, the water management
214 district or Department of Environmental Protection shall invoice
215 the Department of Transportation or a participating



396914

216 transportation authority at a cost per acre of \$75,000
217 multiplied by the projected acres of impact as identified in the
218 environmental impact inventory. The cost per acre shall be
219 adjusted by the percentage change in the average of the Consumer
220 Price Index issued by the United States Department of Labor for
221 the most recent 12-month period ending September 30, compared to
222 the base year average, which is the average for the 12-month
223 period ending September 30, 1996. When implementing the
224 mitigation activities necessary to offset the permitted impacts
225 as provided in the approved mitigation plan, the water
226 management district shall maintain records of the costs incurred
227 in implementing the mitigation. The records must include, but
228 are not limited to, costs for planning, land acquisition,
229 design, construction, staff support, long-term maintenance and
230 monitoring of the mitigation site, and other costs necessary to
231 meet the requirements of 33 U.S.C. s. 1344 and 33 C.F.R. s. 332.

232 (f) For purposes of preparing and implementing the
233 mitigation plans to be adopted by the water management districts
234 by March 1, 2013, for impacts based on the July 1, 2012,
235 environmental impact inventory, the funds identified in the
236 Department of Transportation's work program or participating
237 transportation authorities' escrow accounts shall correspond to
238 a cost per acre of \$75,000 multiplied by the project acres of
239 impact as identified in the environmental impact inventory. The
240 cost per acre shall be adjusted by the percentage change in the
241 average of the Consumer Price Index issued by the United States
242 Department of Labor for the most recent 12-month period ending
243 September 30, compared to the base year average, which is the
244 average for the 12-month period ending September 30, 1996.



396914

245 Payment as provided under this paragraph is limited to those
246 mitigation activities which are identified in the first year of
247 the 2013 mitigation plan and for which the transportation
248 project is permitted and is in the Department of
249 Transportation's adopted work program, or equivalent for a
250 transportation authority. When implementing the mitigation
251 activities necessary to offset the permitted impacts as provided
252 in the approved mitigation plan, the water management district
253 shall maintain records of the costs incurred in implementing the
254 mitigation. The records must include, but are not limited to,
255 costs for planning, land acquisition, design, construction,
256 staff support, long-term maintenance and monitoring of the
257 mitigation site, and other costs necessary to meet the
258 requirements of 33 U.S.C. s. 1344 and 33 C.F.R. s. 332. To the
259 extent monies paid to a water management district by the
260 Department of Transportation or a participating transportation
261 authority exceed the amount expended by the water management
262 districts in implementing the mitigation to offset the permitted
263 impacts, these funds must be refunded to the Department of
264 Transportation or participating transportation authority. This
265 paragraph expires June 30, 2014.

266 (4) Before March 1 of each year, each water management
267 district shall develop a mitigation plan to offset only the
268 impacts of transportation projects in the environmental impact
269 inventory for which a water management district is implementing
270 mitigation that meets the requirements of this section, 33
271 U.S.C. s. 1344, and 33 C.F.R. s. 332. The water management-
272 district mitigation plan must be developed⁷ in consultation with
273 the Department of Environmental Protection, the United States



396914

274 Army Corps of Engineers, the Department of Transportation,
275 participating transportation authorities established pursuant to
276 chapter 348 or chapter 349, and other appropriate federal,
277 state, and local governments, and other interested parties,
278 including entities operating mitigation banks, ~~shall develop a~~
279 ~~plan for the primary purpose of complying with the mitigation~~
280 ~~requirements adopted pursuant to this part and 33 U.S.C. s.~~
281 ~~1344.~~ In developing such plans, the water management districts
282 shall use sound ecosystem management practices to address
283 significant water resource needs and consider ~~shall focus on~~
284 activities of the Department of Environmental Protection and the
285 water management districts, such as surface water improvement
286 and management (SWIM) projects and lands identified for
287 potential acquisition for preservation, restoration, or
288 enhancement, and the control of invasive and exotic plants in
289 wetlands and other surface waters, to the extent that the
290 activities comply with the mitigation requirements adopted under
291 this part, ~~and~~ 33 U.S.C. s. 1344, and 33 C.F.R. s. 332. The
292 water management district mitigation plan shall identify each
293 site where the water management district will mitigate for a
294 transportation project. For each mitigation site, the water
295 management district shall provide the scope of the mitigation
296 services, provide the Functional Gain as determined through the
297 UMAM per Chapter 62-345, F.A.C., describe how the mitigation
298 offsets the impacts of each transportation project as permitted,
299 and provide a schedule for the mitigation services. ~~In~~
300 ~~determining the activities to be included in the plans, the~~
301 ~~districts shall consider the purchase of credits from public or~~
302 ~~private mitigation banks permitted under s. 373.4136 and~~



396914

303 ~~associated federal authorization and shall include the purchase~~
304 ~~as a part of the mitigation plan when the purchase would offset~~
305 ~~the impact of the transportation project, provide equal benefits~~
306 ~~to the water resources than other mitigation options being~~
307 ~~considered, and provide the most cost-effective mitigation~~
308 ~~option.~~ The water management districts shall maintain records of
309 costs incurred and payments received for providing these
310 services. Records must include, but are not limited to,
311 planning, land acquisition, design, construction, staff support,
312 long-term maintenance and monitoring of the mitigation site, and
313 other costs necessary to meet the requirements of 33 U.S.C. s.
314 1344 and 33 C.F.R. s. 332. To the extent monies paid to a water
315 management district by the Department of Transportation or a
316 participating transportation authority exceed the amount
317 expended by the water management districts in providing the
318 mitigation services to offset the permitted transportation
319 project impacts, these monies shall be refunded to the
320 Department of Transportation or participating transportation
321 authority. The mitigation plan shall be submitted to the water
322 management district governing board, or its designee, for review
323 and approval. At least 14 days before approval by the governing
324 board, the water management district shall provide a copy of the
325 draft mitigation plan to the Department of Environmental
326 Protection and any person who has requested a copy. Subsequent
327 to governing board approval, the mitigation plan must be
328 submitted to the Department of Environmental Protection for
329 approval. The plan may not be implemented until it is submitted
330 to and approved, in part or in its entirety, by the Department
331 of Environmental Protection.



396914

332 ~~(a) For each transportation project with a funding request~~
333 ~~for the next fiscal year, the mitigation plan must include a~~
334 ~~brief explanation of why a mitigation bank was or was not chosen~~
335 ~~as a mitigation option, including an estimation of identifiable~~
336 ~~costs of the mitigation bank and nonbank options and other~~
337 ~~factors such as time saved, liability for success of the~~
338 ~~mitigation, and long term maintenance.~~

339 (a)~~(b)~~ Specific projects may be excluded from the
340 mitigation plan, in whole or in part, and are not subject to
341 this section upon the election of the Department of
342 Transportation, a transportation authority if applicable, or the
343 appropriate water management district. Neither the Department of
344 Transportation nor a participating transportation authority
345 shall exclude a transportation project from the mitigation plan
346 when mitigation is scheduled for implementation by the water
347 management district in the current fiscal year, except when the
348 transportation project is removed from the Department of
349 Transportation's work program or transportation authority
350 funding plan, the mitigation cannot be timely permitted to
351 offset the impacts of a Department of Transportation project
352 identified in the environmental impact inventory or the proposed
353 mitigation does not meet state and federal requirements. If a
354 project is removed from the work program or the mitigation plan,
355 costs expended by the water management district prior to removal
356 are eligible for reimbursement by the Department of
357 Transportation or participating transportation authority.

358 (b)~~(c)~~ When determining which projects to include in or
359 exclude from the mitigation plan, the Department of
360 Transportation shall investigate using credits from a permitted



396914

361 mitigation bank before those projects are submitted for
362 inclusion in a water management district mitigation ~~the~~ plan.
363 ~~The investigation shall consider the cost-effectiveness of~~
364 ~~mitigation bank credits, including, but not limited to, factors~~
365 ~~such as time saved, transfer of liability for success of the~~
366 ~~mitigation, and long-term maintenance.~~ The Department of
367 Transportation shall exclude a project from the mitigation plan
368 when the investigation undertaken pursuant to this paragraph
369 results in the conclusion that the use of credits from a
370 permitted mitigation bank promotes efficiency, timeliness in
371 project delivery, cost-effectiveness, and transfer of liability
372 for success and long-term maintenance.

373 (5) The water management district shall ensure that
374 mitigation requirements pursuant to 33 U.S.C. s. 1344 and 33
375 C.F.R. s. 332 are met for the impacts identified in the
376 environmental impact inventory for which the water management
377 district will implement mitigation described in subsection (2),
378 by implementation of the approved mitigation plan described in
379 subsection (4) to the extent funding is provided by the
380 Department of Transportation, or a transportation authority
381 established pursuant to chapter 348 or chapter 349, if
382 applicable. In developing and implementing the mitigation plan,
383 the water management district shall comply with federal
384 permitting requirements pursuant to 33 U.S.C. s. 1344 and 33
385 C.F.R. s. 332. During the federal permitting process, the water
386 management district may deviate from the approved mitigation
387 plan in order to comply with federal permitting requirements
388 upon notice and coordination with the Department of
389 Transportation or participating transportation authority.



396914

390 (6) The water management district mitigation plans shall be
391 updated annually to reflect the most current Department of
392 Transportation work program and project list of a transportation
393 authority established pursuant to chapter 348 or chapter 349, if
394 applicable, and may be amended throughout the year to anticipate
395 schedule changes or additional projects which may arise. Before
396 an amendment of the mitigation plan to include new projects, the
397 Department of Transportation shall consider mitigation banks and
398 other available mitigation options that meet state and federal
399 requirements. Each update and amendment of the mitigation plan
400 shall be submitted to the governing board of the water
401 management district or its designee for approval. However, such
402 approval shall not be applicable to a deviation as described in
403 subsection (5).

404 (7) Upon approval by the governing board of the water
405 management district and the Department of Environmental
406 Protection ~~or its designee~~, the mitigation plan shall be deemed
407 to satisfy the mitigation requirements under this part for
408 impacts specifically identified in the environmental impact
409 inventory described in subsection (2) and any other mitigation
410 requirements imposed by local, regional, and state agencies for
411 these same impacts. The approval of the governing board of the
412 water management district ~~or its designee~~ and the Department of
413 Environmental Protection shall authorize the activities proposed
414 in the mitigation plan, and no other state, regional, or local
415 permit or approval shall be necessary.

416 (8) This section shall not be construed to eliminate the
417 need for the Department of Transportation or a transportation
418 authority established pursuant to chapter 348 or chapter 349 to



396914

419 comply with the requirement to implement practicable design
420 modifications, including realignment of transportation projects,
421 to reduce or eliminate the impacts of its transportation
422 projects on wetlands and other surface waters as required by
423 rules adopted pursuant to this part, or to diminish the
424 authority under this part to regulate other impacts, including
425 water quantity or water quality impacts, or impacts regulated
426 under this part that are not identified in the environmental
427 impact inventory described in subsection (2).

428 ~~(9) The process for environmental mitigation for the impact~~
429 ~~of transportation projects under this section shall be available~~
430 ~~to an expressway, bridge, or transportation authority~~
431 ~~established under chapter 348 or chapter 349. Use of this~~
432 ~~process may be initiated by an authority depositing the~~
433 ~~requisite funds into an escrow account set up by the authority~~
434 ~~and filing an environmental impact inventory with the~~
435 ~~appropriate water management district. An authority that~~
436 ~~initiates the environmental mitigation process established by~~
437 ~~this section shall comply with subsection (6) by timely~~
438 ~~providing the appropriate water management district with the~~
439 ~~requisite work program information. A water management district~~
440 ~~may draw down funds from the escrow account as provided in this~~
441 ~~section.~~