

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Transportation

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BILL: SB 1104

INTRODUCER: Senator Brandes

SUBJECT: Environment

DATE: March 15, 2013                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Eichin	TR	<b>Pre-meeting</b>
2.	_____	_____	EP	_____
3.	_____	_____	AP	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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**I. Summary:**

SB 1104 revises various provisions relating to mitigation for environmental impacts of transportation projects; revises an exemption relating to public information systems located on water management district property; and revises the responsibilities of the Florida Department of Transportation (FDOT), a county, or a city to improve or maintain a road that provides access to property within the state park system;.

This bill substantially amends the following sections of the Florida Statutes: 335.06, 373.4137, and 373.618.

**II. Present Situation:**

*Environmental Mitigation for Transportation Projects*

Under existing law, FDOT and participating transportation authorities offset adverse environmental impacts of transportation projects through the use of mitigation banks and other mitigation options, including the payment of funds to water management districts (WMDs) to develop and implement mitigation plans. The mitigation plan is developed by the WMDs and is ultimately approved by the Department of Environmental Protection (DEP). The ability to exclude a project from the mitigation plan is provided to FDOT, a participating transportation authority, or a WMD.

More specifically s. 373.4137, F.S., enacted in 1996,<sup>1</sup> created mitigation requirements for specified transportation projects. Historically, the statute directed FDOT and transportation

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<sup>1</sup>Ch. 96-238-L.O.F.

authorities<sup>2</sup> to fund, and the WMD to develop and implement, mitigation plans to mitigate these impacts. In 2012, HB 599<sup>3</sup> modified the statute to reflect that adverse impacts may be offset by the use of mitigation banks or any other option that satisfies state and federal requirements. “Other” mitigation options include FDOT’s payment of funds to develop and implement mitigation plans. The mitigation plan is based on an environmental impact inventory created by FDOT reflecting habitats that would be adversely impacted by transportation projects listed in the next three years of FDOT’s tentative work program. FDOT provides funding in its work program to DEP or WMDs for its mitigation requirements. To fund the programs, the statute directs DOT and the authorities to pay \$75,000, as adjusted by a calculation using the CPI, per impacted acre.<sup>4</sup>

The statute provides that WMD-developed mitigation plans should use sound ecosystem management to address significant water resource needs and focus on activities of DEP and WMDs in wetlands and surface waters, including preservation, restoration and enhancement, as well as control of invasive and exotic vegetation. WMDs must also consider the purchase of credits from public and private mitigation banks when such purchase provides equal benefit to water resources and is the most cost effective option. Before each transportation project is added to the WMD mitigation plan, FDOT must investigate the use of mitigation bank credits considering cost-effectiveness, time saved, transfer of liability and long-term maintenance. The WMD mitigation plans are annually updated to reflect the most recent FDOT work program and transportation authority project list and may be amended throughout the year. Each update and amendment of the mitigation plan is submitted to the governing board of the WMD or its designee for approval. Final approval of the mitigation plan rests with DEP.

FDOT and the participating expressway authorities are required to transfer funds to pay for mitigation of that year’s projected impact acreage resulting from projects identified in the inventory. Quarterly, the projected impact acreage and costs are reconciled with the actual impact acreage, and costs and the balances are adjusted.

Current law provides for exclusion of specific transportation projects from the mitigation plan at the discretion of FDOT, participating transportation authorities, and the WMDs.

#### *Water Management District Public Information Systems*

SB 1986, passed by the 2012 Florida Legislature<sup>5</sup> and approved by the Governor, authorizes public information systems to be located on property owned by water management districts, when certain terms and conditions are met. The system must display messages to the general public concerning water management services, activities, events, and sponsors, as well as other public service announcements, including watering restrictions, severe weather reports, amber alerts, and other essential information needed by the public. The law expressly prohibits use of water management district funds to pay the cost to acquire, develop, construct, operate, or manage a public information system and requires that any necessary funds for a public

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<sup>2</sup> The statute applies to transportation authorities created in ch. 348 or 349, F.S.

<sup>3</sup> Ch. 2012-174, L.O.F.

<sup>4</sup> The current cost per acre is \$107,457.

<sup>5</sup> The provisions specific to water management district public information systems were inserted into the budget conforming bill by the conference committee amendment.

information system be paid for and collected from private sponsors who may display commercial messages.

Current s. 479.02, F.S., charges FDOT with the duty to “administer and enforce the provisions of this chapter and the agreement between the state and the United States Department of Transportation relating to the size, lighting, and spacing of signs in accordance with Title 1 of the Highway Beautification Act of 1965 and Title 23, United State Code, and federal regulations in effect as of the effective date of this act.” The federal-state agreement and s. 479.07, F.S., with limited exception, prohibit a person from erecting, operating, using, or maintaining any sign *on the State Highway System outside an urban area or on any portion of the interstate or federal-aid primary highway system*<sup>6</sup> without first obtaining a permit for the sign and paying an annual fee.

The italicized phrase above is further defined in that section to mean “a sign located within the controlled area (i.e., 660 feet or less from the nearest edge of the right-of-way of any portion of the State Highway System, interstate, or federal-aid primary system and beyond 660 feet of the nearest edge of the right-of-way of any portion of the State Highway System, interstate, or federal-aid primary highway system outside an urban area) which is visible from any portion of the main-traveled way (i.e., the traveled way of a highway on which through traffic is carried; and the traveled way of each of the separate roadways for traffic in opposite directions, in the case of a divided highway; but not such facilities as frontage roads, turning roadways which specifically include on-ramps or off-ramps to the interstate highway system) of such system.”<sup>7</sup>

Certain signs, commonly referred to as “on-premise” signs, are expressly exempted by s. 479.16, F.S., from the requirement to obtain a permit, if the signs comply with the provisions of s. 479.11(4)-(8), F.S. However, that section expressly specifies that the following types of messages shall not be considered information regarding government services, activities, events, or entertainment:

- Messages which specifically reference any commercial enterprise;
- Messages which reference a commercial sponsor of any event;
- Personal messages; and,
- Political campaign messages.

To the extent that any water management district public information system is not located within a “controlled area,” the provisions of SB 1986 have no effect resulting from the requirements of ch. 479, F.S. However, to the extent that any public information system is located within a “controlled area” and contains commercial messages or corporate sponsorship, such system violates both the federal-state agreement and certain provisions of ch. 479, F.S., which potentially subjects FDOT to an annual loss of 10% of federal highway funding as a result of loss of control of outdoor advertising.

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<sup>6</sup> Also includes the national highway system pursuant to 23 U.S.C. 131(t) and s. 479.01(9), F.S.

<sup>7</sup> See ss. 479.01(6) and (13), F.S.

*Access Roads to State Parks*

FDOT is currently required to maintain any road that provides access to property within the state park system if the road is a part of the State Highway System.<sup>8</sup> If the access road is part of the county road or city street system, the appropriate local government is required to maintain the road.

**III. Effect of Proposed Changes:***Environmental Mitigation for Transportation Projects*

Section 2 of the bill amends s. 373.4137, F.S., to provide that mitigation take place in an efficient, timely, and cost-effective manner. Development of environmental impact inventories for transportation projects proposed by FDOT or a transportation authority is required as follows:

- By July 1 of each year, FDOT or a participating transportation authority<sup>9</sup> must submit to the WMDs a list of its projects in its adopted work program, an environmental impact inventory of habitat impact, and the anticipated amount of mitigation needed to offset impacts. The environmental impact inventory must be based on the rules adopted pursuant to part IV of ch. 373, F.S.<sup>10</sup>, s. 404 of the Clean Water Act<sup>11</sup> and FDOT's plan of construction for transportation projects in the next three years of the tentative work program. FDOT or a transportation authority may also include in the inventory the habitat impacts and anticipated amount of mitigation needed for any future transportation project. FDOT and each transportation authority may use current year funds to fund mitigation activities for future projects.
- The environmental impact inventory must (along with the currently required habitat impacts, including location, acreage, and type), describe the proposed amount of mitigation needed based on the functional loss as determined through the Uniform Mitigation Assessment Method (UMAM)<sup>12</sup> (under which the potential number of mitigation credits needed for the impacted site are identified), and the identification of the proposed mitigation option, such as permitted mitigation banks, mitigation implemented by the WMD, or other approved options that satisfy state and federal requirements (in addition to currently required state water quality classification of impacted wetlands and other surface waters; any other state or regional designations for these habitats; and a list of threatened species, endangered species, and species of special concern affected by the proposed project).

To mitigate projected impacts identified in the environmental impact inventory, FDOT may purchase credits for current and future use directly from a mitigation bank, mitigate through the WMDs, mitigate through DEP for mitigation on state lands, or conduct its own mitigation. In evaluating its mitigation options, FDOT is required to consider efficiency, timeliness, and cost-effectiveness. The proposed mitigation option must be identified in the inventory, and funding of

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<sup>8</sup> Section 335.06, F.S.

<sup>9</sup> A transportation authority established pursuant to ch. 348 or ch. 349 may choose to participate in the program per s. 373.4137(2)(a), F.S.

<sup>10</sup> Part IV of Ch, 373, F.S., relates to the management and storage of surface waters.

<sup>11</sup> 33 USC s. 1344

<sup>12</sup> UMAM is adopted in ch. 62-345, F.A.C. Information on UMAM is available at: <http://www.dep.state.fl.us/water/wetlands/mitigation/umam.htm> (Last visited February 18, 2013).

environmental mitigation for the FDOT projects must be included in FDOT's work program.<sup>13</sup> This authority and direction replaces a process under which FDOT is directed to identify funds in an escrow account for the current fiscal year for the benefit of the WMDs to fund development and implementation of mitigation plans for transportation project impacts.

FDOT or a participating transportation authority is required to annually pay an established amount (to be discussed) for mitigation implemented by the WMD or DEP, as appropriate, and the WMDs or DEP may request payment from FDOT no sooner than 30 days before implementation of mitigation meeting the federal requirements<sup>14</sup> in the approved mitigation plan for the current fiscal year. Each quarter, the projected amount of mitigation shown in the WMD's mitigation plan must be reconciled with the actual amount of mitigation needed for projects as permitted. The subject year's transfer of funds must be adjusted to reflect the mitigation as permitted. FDOT and transportation authorities may transfer funds to WMDs or DEP to carry out mitigation for the subject year. Environmental mitigation funds identified for mitigation implemented by a WMD or DEP may be reassigned if the associated transportation project is excluded in whole or in part from the WMD mitigation plan, or if the mitigation will no longer be implemented by DEP on state lands. Upon final payment for mitigation of a transportation project as permitted, FDOT's or the participating transportation authority's obligation is satisfied, and the WMD or DEP, as appropriate, has continuing responsibility for the mitigation project.

Beginning with the July 1, 2013, environmental impact inventory and the related approved mitigation plan, the WMD or DEP must be paid for the costs associated to plan and implement the mitigation required by a permit which are based on the cost of a mitigation credit (rather than the current \$75,000 per impacted acre, adjusted by a calculation using the CPI) for a project that is in FDOT's work program, is permitted, and for which mitigation will be implemented within the current fiscal year. The cost of a mitigation credit for each mitigation project as established by the WMD or DEP may include the cost of land acquisition (in addition to currently allowed costs of preparing conceptual plans and design, construction, staff support, future maintenance, monitoring of the mitigation site), and other costs necessary to meet federal requirements. When the WMD includes the purchase of mitigation bank credits as part of the mitigation plan, the cost must be based on the cost per credit as established by the mitigation bank.

To prepare and implement mitigation plans to be adopted by the WMDs before March 1, 2013, for transportation impacts based on the July 1, 2012, environmental impact inventory, the funds identified in FDOT's work program or participating transportation authorities' escrow accounts must correspond to a cost per acre of \$75,000 multiplied by the projected acres of impact as identified in the environmental impact inventory, adjusted by the CPI (the amount paid under current law). Payment is limited to mitigation activities identified in the first year of the 2013 mitigation plan, if the transportation project is permitted and is in FDOT's adopted work program, or equivalent for a transportation authority. When implementing the mitigation activities necessary to offset the permitted transportation impacts as provided in the approved mitigation plan, the WMD must maintain records of the costs incurred in implementing the mitigation. These costs include conceptual planning, land acquisition, design, construction, staff

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<sup>13</sup> FDOT's work program is developed pursuant to s. 339.135, F.S.

<sup>14</sup> Federal Requirements are pursuant to part 33 USC 1322 and 33 CFR 332.

support, long-term maintenance and monitoring of the mitigation site, and other costs necessary to meet federal requirements. To the extent monies paid to a WMD exceed the amount spent in implementing the mitigation to offset the permitted transportation impacts, these funds shall be refunded to FDOT or the participating transportation authority. This provision expires June 30, 2014.

With respect to the annually required development of mitigation plans, and for transportation projects in the annual environmental impact inventory for which mitigation has not been specified, the bill requires the mitigation plan to identify the site where the WMD will mitigate, the scope of the mitigation activities at each mitigation site, and the functional gain at each mitigation site as determined through the UMAM. The bill also requires the plan to describe how the mitigation offsets the impacts of each transportation project as permitted, to set a schedule for the mitigation activities, and specify the cost per mitigation credit. The bill removes current direction to the WMDs to consider the purchase of credits from public or private mitigation banks as part of determining the activities to be included in the annual mitigation plans. The bill also removes the requirement that for each transportation project with a funding request for the next fiscal year, the mitigation plan must include an explanation of why a mitigation bank was or was not chosen as a mitigation option.

The WMDs must maintain records of payments received and costs incurred for implementing mitigation activities to offset impacts of permitted transportation projects. To the extent FDOT or a participating authority pays monies to a WMD that exceed the amount spent by the WMD in implementing mitigation to offset permitted transportation impacts, these funds must be refunded. As under current law, the mitigation plan must be submitted to the WMD's governing board for review and approval. The bill requires that the WMD provide a copy of the draft mitigation plan to DEP at least 14 days before governing board approval. The plan may not be implemented until it is approved by DEP.

The current authorization, upon the election of FDOT, a transportation authority, or the appropriate WMD, to exclude specific projects from the mitigation plan is limited; i.e., FDOT or a participating authority is prohibited from excluding a transportation project from the mitigation plan when mitigation is scheduled in the current fiscal year, except if the transportation project is removed from FDOT's work program or a transportation authority's funding plan. If a project is removed, costs incurred by the WMD prior to removal are eligible for reimbursement. FDOT is required to exclude a project from the mitigation plan when the currently required investigation of using credits from a permitted bank results in the conclusion that the use of credits from a permitted mitigation bank promotes efficiency, timeliness in project delivery, and cost effectiveness.

In an effort to ensure that mitigation requirements are met for the impacts identified by the environmental impact inventory, the bill directs the WMD to comply with all federal permitting requirements in developing and implementing the mitigation plan. The bill adds to WMD authority to deviate from the approved mitigation plan during the federal permitting process to comply with federal permitting requirements a duty to provide notice and coordinate with FDOT or the participating authority. The bill also requires consideration to be given to mitigation banks and other available mitigation options before amending the mitigation plan to include new projects.

Before amending the mitigation plan to include new projects, consideration shall be given to mitigation banks and other mitigation options. Each update and amendment of the mitigation plan shall be submitted to the governing board of the WMD or its designee for approval.

*Water Management District Public Information Systems*

Section 3 of the bill amends s. 373.618, F.S., to provide that a public information system located on water management district property that is subject to the Highway Beautification Act of 1965 must be approved by FDOT and the Federal Highway Administration if such approval is required by federal law and regulation under the agreement between the state and the USDOT governing outdoor advertising, thereby eliminating a potential annual loss of 10% of federal highway funding as a result of loss of control of outdoor advertising.

*Access Roads to State Parks*

Section 1 of the bill amends s. 335.06, F.S., authorizing FDOT to improve and maintain roads that are part of the county road system or city street system if the roads provide access to a state park. Counties and cities remain responsible for maintaining the roads if FDOT does not.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

FDOT authority to improve and maintain roads to state parks may facilitate public access and use of the parks. Private mitigation banks may experience increased opportunities for participation in mitigation of transportation project environmental impacts.

C. Government Sector Impact:

Section 1: The costs of a selected project to improve or maintain an off-system road that provides access to a state park would be included in FDOT's work program budget

submitted annually to the Legislature for approval. Maintenance of access to state parks facilitates state park revenues.

Section 2: The costs to mitigate for the environmental impacts of transportation projects are included in FDOT work program budget submitted annually to the Legislature for approval.

Section 3: FDOT's potential annual loss of 10% of federal highway funding as a result of loss of control of outdoor advertising is eliminated.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. **Amendments:**

None.