

By Senator Brandes

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1 A bill to be entitled
2 An act relating to the environment; amending s.
3 335.06, F.S.; revising the responsibilities of the
4 Department of Transportation, a county, or a
5 municipality to improve or maintain a road that
6 provides access to property within the state park
7 system; amending s. 373.4137, F.S.; providing
8 legislative intent that mitigation be implemented in a
9 manner that promotes efficiency, timeliness, and cost-
10 effectiveness in project delivery; revising the
11 criteria of the environmental impact inventory;
12 revising the criteria for mitigation of projected
13 impacts identified in the environmental impact
14 inventory; requiring the Department of Transportation
15 to include funding for environmental mitigation for
16 its projects in its work program; revising the process
17 and criteria for the payment by the department or
18 participating transportation authorities of mitigation
19 implemented by water management districts or the
20 Department of Environmental Projection; revising the
21 requirements for the payment to a water management
22 district or the Department of Environmental Protection
23 of the costs of mitigation planning and implementation
24 of the mitigation required by a permit; revising the
25 payment criteria for preparing and implementing
26 mitigation plans adopted by water management districts
27 for transportation impacts based on the environmental
28 impact inventory; adding federal requirements for the
29 development of a mitigation plan; providing for

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30 transportation projects in the environmental
31 mitigation plan for which mitigation has not been
32 specified; revising a water management district's
33 responsibilities relating to a mitigation plan;
34 amending s. 373.618, F.S.; revising the outdoor
35 advertisement exemption criteria for a public
36 information system; providing an effective date.

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

39
40 Section 1. Section 335.06, Florida Statutes, is amended to
41 read:

42 335.06 Access roads to the state park system.—A ~~Any~~ road
43 that ~~which~~ provides access to property within the state park
44 system must ~~shall~~ be maintained by the department if the road is
45 a part of the State Highway System and may be improved and
46 maintained by the department if the road is part of a county
47 road system or city street system. If the department does not
48 maintain a county or city road that is a part of the county road
49 system or the city street system and that provides access to the
50 state park system, the road must ~~or shall~~ be maintained by the
51 appropriate county or municipality ~~if the road is a part of the~~
52 ~~county road system or the city street system.~~

53 Section 2. Section 373.4137, Florida Statutes, is amended
54 to read:

55 373.4137 Mitigation requirements for specified
56 transportation projects.—

57 (1) The Legislature finds that environmental mitigation for
58 the impact of transportation projects proposed by the Department

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59 of Transportation or a transportation authority established
60 pursuant to chapter 348 or chapter 349 can be more effectively
61 achieved by regional, long-range mitigation planning rather than
62 on a project-by-project basis. It is the intent of the
63 Legislature that mitigation to offset the adverse effects of
64 these transportation projects be funded by the Department of
65 Transportation and be carried out by the use of mitigation banks
66 and any other mitigation options that satisfy state and federal
67 requirements in an efficient, timely, and cost-effective manner.

68 (2) Environmental impact inventories for transportation
69 projects proposed by the Department of Transportation or a
70 transportation authority established pursuant to chapter 348 or
71 chapter 349 shall be developed as follows:

72 (a) By July 1 of each year, the Department of
73 Transportation, or a transportation authority established
74 pursuant to chapter 348 or chapter 349 which chooses to
75 participate in the program, shall submit to the water management
76 districts a list of its projects in the adopted work program and
77 an environmental impact inventory of habitat impacts and the
78 proposed amount of mitigation needed to offset impacts as
79 described in paragraph (b). The environmental impact inventory
80 must be based on habitats addressed in the rules adopted
81 pursuant to this part, ~~and~~ s. 404 of the Clean Water Act, 33
82 U.S.C. s. 1344, and which may be impacted by the Department of
83 Transportation ~~its~~ plan of construction for transportation
84 projects in the next 3 years of the tentative work program. The
85 Department of Transportation or a transportation authority
86 established pursuant to chapter 348 or chapter 349 may also
87 include in its environmental impact inventory the habitat

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88 impacts and the proposed amount of mitigation needed for ~~of~~ any
89 future transportation project. The Department of Transportation
90 and each transportation authority established pursuant to
91 chapter 348 or chapter 349 may fund any mitigation activities
92 for future projects using current year funds.

93 (b) The environmental impact inventory must ~~shall~~ include a
94 description of ~~these~~ habitat impacts, including ~~their~~ location,
95 acreage, and type; the proposed amount of mitigation needed
96 based on the functional loss as determined through the Uniform
97 Mitigation Assessment Method adopted in rule 62-345, F.A.C.,
98 which will identify the potential number of mitigation credits
99 needed for the impacted site, and the identification of the
100 proposed mitigation option, such as permitted mitigation banks,
101 mitigation implemented by the water management district, or
102 other approved options that satisfy state and federal
103 requirements; state water quality classification of impacted
104 wetlands and other surface waters; any other state or regional
105 designations for these habitats; and a list of threatened
106 species, endangered species, and species of special concern
107 affected by the proposed project.

108 (3) (a) To mitigate ~~fund development and implementation of~~
109 ~~the mitigation plan for the~~ projected impacts identified in the
110 environmental impact inventory described in subsection (2), the
111 Department of Transportation may purchase credits for current
112 and future use directly from a mitigation bank as described in
113 subsection (4); mitigate through the water management districts;
114 mitigate through the Department of Environmental Protection for
115 mitigation on state lands; or conduct its own mitigation. In
116 evaluating its mitigation options, the Department of

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117 Transportation shall consider efficiency, timeliness, and cost-
118 effectiveness. The proposed mitigation option shall be
119 identified in the inventory. Funding of ~~shall identify funds~~
120 ~~quarterly in an escrow account within the State Transportation~~
121 ~~Trust Fund for the environmental mitigation phase of~~ for the
122 Department of Transportation projects shall be included in
123 budgeted by the department's work program developed pursuant to
124 s. 339.135 Department of Transportation for the current fiscal
125 year. The escrow account shall be maintained by the Department
126 of Transportation for the benefit of the water management
127 districts. Any interest earnings from the escrow account shall
128 remain with the Department of Transportation.

129 (b) Each transportation authority established pursuant to
130 chapter 348 or chapter 349 that chooses to participate in this
131 program shall create an escrow account within its financial
132 structure and deposit funds in the account to pay for the
133 environmental mitigation phase of projects budgeted for the
134 current fiscal year. The escrow account shall be maintained by
135 the authority for the benefit of the water management districts.
136 Any interest earnings from the escrow account must ~~shall~~ remain
137 with the authority.

138 (c) The Department of Transportation or the participating
139 transportation authorities established pursuant to chapter 348
140 or chapter 349 shall pay annually an amount established in
141 paragraph (d) for mitigation implemented by the water management
142 district or the Department of Environmental Protection, as
143 appropriate. ~~Except for current mitigation projects in the~~
144 ~~monitoring and maintenance phase and except as allowed by~~
145 ~~paragraph (d),~~ The water management districts, or the Department

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146 of Environmental Protection for approved mitigation on its land,
147 may request payment ~~a transfer of funds from an escrow account~~
148 ~~no sooner than 30 days before the date the funds are needed to~~
149 ~~pay for activities associated with development or implementation~~
150 of mitigation meeting the requirements pursuant to this part, 33
151 U.S.C. s. 1344, and 33 C.F.R. s. 332, in the approved mitigation
152 plan described in subsection (4) for the current fiscal year,
153 ~~including, but not limited to, design, engineering, production,~~
154 ~~and staff support. Actual conceptual plan preparation costs~~
155 ~~incurred before plan approval may be submitted to the Department~~
156 ~~of Transportation or the appropriate transportation authority~~
157 ~~each year with the plan. The conceptual plan preparation costs~~
158 ~~of each water management district will be paid from mitigation~~
159 ~~funds associated with the environmental impact inventory for the~~
160 ~~current year. The amount transferred to the escrow accounts each~~
161 ~~year by the Department of Transportation and participating~~
162 ~~transportation authorities established pursuant to chapter 348~~
163 ~~or chapter 349 shall correspond to a cost per acre of \$75,000~~
164 ~~multiplied by the projected acres of impact identified in the~~
165 ~~environmental impact inventory described in subsection (2).~~
166 ~~However, the \$75,000 cost per acre does not constitute an~~
167 ~~admission against interest by the state or its subdivisions and~~
168 ~~is not admissible as evidence of full compensation for any~~
169 ~~property acquired by eminent domain or through inverse~~
170 ~~condemnation. Each July 1, the cost per acre shall be adjusted~~
171 ~~by the percentage change in the average of the Consumer Price~~
172 ~~Index issued by the United States Department of Labor for the~~
173 ~~most recent 12-month period ending September 30, compared to the~~
174 ~~base year average, which is the average for the 12-month period~~

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175 ~~ending September 30, 1996.~~ Each quarter, the projected amount of
176 mitigation shown on the water management district mitigation
177 plan must ~~acreage of impact shall~~ be reconciled with the actual
178 amount of mitigation needed for ~~acreage of impact of~~ projects as
179 permitted, including permit modifications, pursuant to this part
180 and s. 404 of the Clean Water Act, 33 U.S.C. s. 1344. The
181 subject year's transfer of funds shall be adjusted ~~accordingly~~
182 to reflect the mitigation ~~acreage of impacts~~ as permitted. The
183 Department of Transportation and participating transportation
184 authorities established pursuant to chapter 348 or chapter 349
185 are authorized to transfer such funds ~~from the escrow accounts~~
186 to the water management districts or the Department of
187 Environmental Protection, as appropriate, to carry out ~~the~~
188 mitigation for the subject year ~~programs~~. Environmental
189 mitigation funds that are identified for mitigation implemented
190 by a ~~or maintained in an escrow account for the benefit of a~~
191 water management district or the Department of Environmental
192 Protection may be reassigned ~~released~~ if the associated
193 transportation project is excluded in whole or in part from the
194 water management district mitigation plan, or if the mitigation
195 will no longer be implemented by the Department of Environmental
196 Protection on state lands. ~~For a mitigation project that is in~~
197 ~~the maintenance and monitoring phase, the water management~~
198 ~~district may request and receive a one-time payment based on the~~
199 ~~project's expected future maintenance and monitoring costs.~~ Upon
200 final disbursement of the final maintenance and monitoring
201 payment for mitigation of a transportation project as permitted,
202 the obligation of the Department of Transportation or the
203 participating transportation authority is satisfied, and the

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204 water management district or the Department of Environmental
205 Protection, as appropriate, will have continuing responsibility
206 for the mitigation project, ~~the escrow account for the project~~
207 ~~established by the Department of Transportation or the~~
208 ~~participating transportation authority may be closed. Any~~
209 ~~interest earned on these disbursed funds shall remain with the~~
210 ~~water management district and must be used as authorized under~~
211 ~~this section.~~

212 (d) Beginning with the environmental impact inventory to be
213 submitted July 1, 2013, and the related approved mitigation
214 plan, the ~~in the 2005-2006 fiscal year, each water management~~
215 ~~district or the Department of Environmental Protection, as~~
216 appropriate, shall be paid for the costs associated to plan and
217 implement the mitigation required by a permit which are based on
218 the cost of a mitigation credit that is established by this
219 section ~~a lump-sum amount of \$75,000 per acre, adjusted as~~
220 ~~provided under paragraph (c), for federally funded~~
221 ~~transportation projects that are included on the environmental~~
222 ~~impact inventory and that have an approved mitigation plan.~~
223 ~~Beginning in the 2009-2010 fiscal year, each water management~~
224 ~~district shall be paid a lump-sum amount of \$75,000 per acre,~~
225 ~~adjusted as provided under paragraph (c), for federally funded~~
226 ~~and nonfederally funded transportation projects that have an~~
227 ~~approved mitigation plan. Each water management district or the~~
228 Department of Environmental Protection, as appropriate, may be
229 paid a lump-sum amount, based on the cost per mitigation credit,
230 for a federally funded or nonfederally funded transportation
231 project that is in the Department of Transportation work
232 program; is permitted; and for which mitigation meeting the

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233 requirements pursuant to this part, 33 U.S.C. s. 1344, and 33
234 C.F.R. s. 332, will be implemented within the current fiscal
235 year. For purposes of this section, the cost of a ~~All~~ mitigation
236 credit for each mitigation project as established by the water
237 management district or the Department of Environmental
238 Protection, as appropriate, may include ~~costs, including,~~ but is
239 not limited to, the costs of preparing conceptual plans and the
240 costs of land acquisition, design, construction, staff support,
241 future maintenance, ~~and~~ monitoring of the mitigation site, and
242 other costs necessary to meet requirements pursuant to 33 U.S.C.
243 s. 1344 and 33 C.F.R. s. 332. If the water management district
244 includes the purchase of mitigation bank credits as part of the
245 mitigation plan, the cost must be based on the cost per credit
246 as established by the mitigation bank ~~mitigated acres shall be~~
247 funded through these lump-sum amounts.

248 (e) For purposes of preparing and implementing the
249 mitigation plans to be adopted by the water management districts
250 before March 1, 2013, for transportation impacts based on the
251 environmental impact inventory of July 1, 2012, the funds
252 identified in the Department of Transportation's work program or
253 participating transportation authorities' escrow accounts must
254 correspond to a cost per acre of \$75,000 multiplied by the
255 projected acres of impact as identified in the environmental
256 impact inventory. The cost per acre shall be adjusted by the
257 percentage change in the average of the Consumer Price Index
258 issued by the United States Department of Labor for the most
259 recent 12-month period ending September 30, compared to the base
260 year average, which is the average for the 12-month period
261 ending September 30, 1996. Payment as provided under this

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262 paragraph is limited to those mitigation activities that are
263 identified in the first year of the 2013 mitigation plan and for
264 which the transportation project is permitted and is in the
265 Department of Transportation's adopted work program, or the
266 equivalent for a transportation authority. When implementing the
267 mitigation activities necessary to offset the permitted
268 transportation impacts as provided in the approved mitigation
269 plan, the water management district shall maintain records of
270 the costs incurred in implementing the mitigation. The costs
271 must include, but are not limited to, conceptual planning, land
272 acquisition, design, construction, staff support, long-term
273 maintenance and monitoring of the mitigation site, and other
274 costs necessary to meet the requirements of 33 U.S.C. s. 1344
275 and 33 C.F.R. s. 332. To the extent moneys paid to a water
276 management district by the Department of Transportation or a
277 participating transportation authority exceed the amount spent
278 by the water management district in implementing the mitigation
279 to offset the permitted transportation impacts, the funds shall
280 be refunded to the Department of Transportation or the
281 participating transportation authority. This paragraph expires
282 June 30, 2014.

283 (4) Before March 1 of each year, each water management
284 district, in consultation with the Department of Environmental
285 Protection, the United States Army Corps of Engineers, the
286 Department of Transportation, participating transportation
287 authorities established pursuant to chapter 348 or chapter 349,
288 and other appropriate federal, state, and local governments, and
289 other interested parties, including entities operating
290 mitigation banks, shall develop a plan for the primary purpose

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291 of complying with the mitigation requirements adopted pursuant
292 to this part, ~~and~~ 33 U.S.C. s. 1344, and 33 C.F.R. s. 332. In
293 developing such plans, the districts shall use sound ecosystem
294 management practices to address significant water resource needs
295 and shall consider ~~focus on~~ activities of the Department of
296 Environmental Protection and the water management districts,
297 such as surface water improvement and management (SWIM) projects
298 and lands identified for potential acquisition for preservation,
299 restoration, or enhancement, and the control of invasive and
300 exotic plants in wetlands and other surface waters, to the
301 extent that the activities comply with the mitigation
302 requirements adopted under this part, ~~and~~ 33 U.S.C. s. 1344, and
303 33 C.F.R. s. 332. For transportation projects in the
304 environmental impact inventory for which mitigation has not been
305 specified, the mitigation plan must identify the site where the
306 water management district will mitigate for the transportation
307 project, the scope of the mitigation activities at each
308 mitigation site, and the functional gain at each mitigation site
309 as determined through the uniform mitigation assessment method
310 pursuant to rule 62-345, F.A.C.; must describe how the
311 mitigation offsets the impacts of each transportation project as
312 permitted; must set a schedule for the mitigation activities;
313 and must specify the cost per mitigation credit as established
314 in (3) (d). The water management districts shall maintain records
315 of payments received and costs incurred for implementing
316 mitigation activities to offset impacts of permitted
317 transportation projects. To the extent moneys paid to a water
318 management district by the Department of Transportation or a
319 participating transportation authority exceed the amount spent

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320 by the water management districts in implementing the mitigation
321 to offset the permitted transportation impacts, the funds shall
322 be refunded to the Department of Transportation or the
323 participating transportation authority ~~In determining the~~
324 ~~activities to be included in the plans, the districts shall~~
325 ~~consider the purchase of credits from public or private~~
326 ~~mitigation banks permitted under s. 373.4136 and associated~~
327 ~~federal authorization and shall include the purchase as a part~~
328 ~~of the mitigation plan when the purchase would offset the impact~~
329 ~~of the transportation project, provide equal benefits to the~~
330 ~~water resources than other mitigation options being considered,~~
331 ~~and provide the most cost-effective mitigation option. The~~
332 ~~mitigation plan shall be submitted to the water management~~
333 ~~district governing board, or its designee, for review and~~
334 ~~approval. At least 14 days before approval by the governing~~
335 board, the water management district shall provide a copy of the
336 draft mitigation plan to the Department of Environmental
337 Protection and any person who has requested a copy. After the
338 governing board approves the mitigation plan, the plan must be
339 submitted to the department for approval. The plan may not be
340 implemented until it is submitted to and approved, in part or in
341 its entirety, by the department ~~Department of Environmental~~
342 ~~Protection.~~

343 ~~(a) For each transportation project with a funding request~~
344 ~~for the next fiscal year, the mitigation plan must include a~~
345 ~~brief explanation of why a mitigation bank was or was not chosen~~
346 ~~as a mitigation option, including an estimation of identifiable~~
347 ~~costs of the mitigation bank and nonbank options and other~~
348 ~~factors such as time saved, liability for success of the~~

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349 mitigation, and long-term maintenance.

350 (a)-(b) Specific projects may be excluded from the
351 mitigation plan, in whole or in part, and are not subject to
352 this section upon the election of the Department of
353 Transportation, a transportation authority if applicable, or the
354 appropriate water management district. The Department of
355 Transportation or a participating transportation authority may
356 not exclude a transportation project from the mitigation plan if
357 mitigation is scheduled for implementation by the water
358 management district in the current fiscal year, except if the
359 transportation project is removed from the Department of
360 Transportation work program or transportation authority funding
361 plan. If a project is removed, costs expended by the water
362 management districts before removal are eligible for
363 reimbursement by the Department of Transportation or the
364 participating transportation authority.

365 (b)-(e) When determining which projects to include in or
366 exclude from the mitigation plan, the Department of
367 Transportation shall investigate using credits from a permitted
368 mitigation bank before those projects are submitted for
369 inclusion in the plan. The investigation shall consider the cost
370 cost-effectiveness of mitigation bank credits, including, but
371 not limited to, factors such as timeliness ~~time saved~~, transfer
372 of liability for success of the mitigation, and long-term
373 maintenance, and meeting the requirements of 33 C.F.R. s. 332.
374 The Department of Transportation shall exclude a project from
375 the mitigation plan if the investigation undertaken pursuant to
376 this paragraph results in the conclusion that the use of credits
377 from a permitted mitigation bank promotes efficiency, timeliness

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378 in project delivery, and cost-effectiveness.

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

395 (6) The water management district mitigation plans shall be
396 updated annually to reflect the most current Department of
397 Transportation work program and project list of a transportation
398 authority established pursuant to chapter 348 or chapter 349, if
399 applicable, and may be amended throughout the year to anticipate
400 schedule changes or additional projects which may arise. Before
401 amending the mitigation plan to include new projects,
402 consideration shall be given to mitigation banks and other
403 available mitigation options. Each update and amendment of the
404 mitigation plan shall be submitted to the governing board of the
405 water management district or its designee for approval. However,
406 the ~~such~~ approval is ~~shall~~ not be applicable to a deviation as

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407 described in subsection (5).

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

420 (8) This section may ~~shall~~ not be construed to eliminate
421 the need for the Department of Transportation or a
422 transportation authority established pursuant to chapter 348 or
423 chapter 349 to comply with the requirement to implement
424 practicable design modifications, including realignment of
425 transportation projects, to reduce or eliminate the impacts of
426 its transportation projects on wetlands and other surface waters
427 as required by rules adopted pursuant to this part, or to
428 diminish the authority under this part to regulate other
429 impacts, including water quantity or water quality impacts, or
430 impacts regulated under this part that are not identified in the
431 environmental impact inventory described in subsection (2).

432 ~~(9) The process for environmental mitigation for the impact~~
433 ~~of transportation projects under this section shall be available~~
434 ~~to an expressway, bridge, or transportation authority~~
435 ~~established under chapter 348 or chapter 349. Use of this~~

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436 ~~process may be initiated by an authority depositing the~~
437 ~~requisite funds into an escrow account set up by the authority~~
438 ~~and filing an environmental impact inventory with the~~
439 ~~appropriate water management district. An authority that~~
440 ~~initiates the environmental mitigation process established by~~
441 ~~this section shall comply with subsection (6) by timely~~
442 ~~providing the appropriate water management district with the~~
443 ~~requisite work program information. A water management district~~
444 ~~may draw down funds from the escrow account as provided in this~~
445 ~~section.~~

446 Section 3. Section 373.618, Florida Statutes, is amended to
447 read:

448 373.618 Public service warnings, alerts, and
449 announcements.—The Legislature believes it is in the public
450 interest that each ~~all~~ water management district ~~districts~~
451 created pursuant to s. 373.069 own, acquire, develop, construct,
452 operate, and manage public information systems. Public
453 information systems may be located on property owned by the
454 water management district, upon terms and conditions approved by
455 the water management district, and must display messages to the
456 general public concerning water management services, activities,
457 events, and sponsors, as well as other public service
458 announcements, including watering restrictions, severe weather
459 reports, amber alerts, and other essential information needed by
460 the public. Local government review or approval is not required
461 for a public information system owned or hereafter acquired,
462 developed, or constructed by the water management district on
463 its own property. A public information system is exempt from the
464 requirements of chapter 479; however, a public information

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465 system that is subject to the Highway Beautification Act of 1965
466 must be approved by the Department of Transportation and the
467 Federal Highway Administration if required by federal law and
468 federal regulation under the agreement between the state and the
469 United States Department of Transportation, and federal
470 regulations enforced by the Department of Transportation under
471 s. 479.02(1). Water management district funds may not be used to
472 pay the cost to acquire, develop, construct, operate, or manage
473 a public information system. Any necessary funds for a public
474 information system shall be paid for and collected from private
475 sponsors who may display commercial messages.

476 Section 4. This act shall take effect July 1, 2013.