

## Committee Substitute for Senate Bill No. 24-A

An act relating to mitigation funding for transportation projects; amending s. 373.4137, F.S.; deleting provisions directing that certain funds of the Department of Transportation be used for invasive plant control, SWIM projects, or other water resource projects; providing an effective date.

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

Section 1. Paragraph (c) of subsection (3) and paragraph (c) of subsection (4) of section 373.4137, Florida Statutes, are amended to read:

373.4137 Mitigation requirements for specified transportation projects.—

(3)

(c) Except for current mitigation projects in the monitoring and maintenance phase and except as allowed by paragraph (d), the water management districts may request a transfer of funds from an escrow account no sooner than 30 days prior to the date the funds are needed to pay for activities associated with development or implementation of the approved mitigation plan described in subsection (4) for the current fiscal year, including, but not limited to, design, engineering, production, and staff support. Actual conceptual plan preparation costs incurred before plan approval may be submitted to the Department of Transportation or the appropriate transportation authority each year with the plan. The conceptual plan preparation costs of each water management district will be paid from mitigation funds associated with the environmental impact inventory for the current year. The amount transferred to the escrow accounts each year by the Department of Transportation and participating transportation authorities established pursuant to chapter 348 or chapter 349 shall correspond to a cost per acre of \$75,000 multiplied by the projected acres of impact identified in the environmental impact inventory described in subsection (2). However, the \$75,000 cost per acre does not constitute an admission against interest by the state or its subdivisions nor is the cost admissible as evidence of full compensation for any property acquired by eminent domain or through inverse condemnation. Each July 1, the cost per acre shall be adjusted by the percentage change in the average of the Consumer Price Index issued by the United States Department of Labor for the most recent 12-month period ending September 30, compared to the base year average, which is the average for the 12-month period ending September 30, 1996. Each quarter, the projected acreage of impact shall be reconciled with the acreage of impact of projects as permitted, including permit modifications, pursuant to this part and s. 404 of the Clean Water Act, 33 U.S.C. s. 1344. The subject year's transfer of funds shall be adjusted accordingly to reflect the acreage of impacts as permitted. The Department of Transportation and participating transportation authorities established pursuant to chapter 348 or chapter 349 are authorized to transfer such funds from the escrow accounts to

the water management districts to carry out the mitigation programs. For a mitigation project that is in the maintenance and monitoring phase, the water management district may request and receive a one-time payment based on the project's expected future maintenance and monitoring costs. Upon disbursement of the final maintenance and monitoring payment, the escrow account for the project established by the Department of Transportation or the participating transportation authority may be closed. Any interest earned on these disbursed funds shall remain with the water management district and must be used as authorized under this section paragraph (4)(c).

(4) Prior to March 1 of each year, each water management district, in consultation with the Department of Environmental Protection, the United States Army Corps of Engineers, the Department of Transportation, transportation authorities established pursuant to chapter 348 or chapter 349, and other appropriate federal, state, and local governments, and other interested parties, including entities operating mitigation banks, shall develop a plan for the primary purpose of complying with the mitigation requirements adopted pursuant to this part and 33 U.S.C. s. 1344. In developing such plans, the districts shall utilize sound ecosystem management practices to address significant water resource needs and shall focus on activities of the Department of Environmental Protection and the water management districts, such as surface water improvement and management (SWIM) projects and lands identified for potential acquisition for preservation, restoration or enhancement, and the control of invasive and exotic plants in wetlands and other surface waters, to the extent that such activities comply with the mitigation requirements adopted under this part and 33 U.S.C. s. 1344. In determining the activities to be included in such plans, the districts shall also consider the purchase of credits from public or private mitigation banks permitted under s. 373.4136 and associated federal authorization and shall include such purchase as a part of the mitigation plan when such purchase would offset the impact of the transportation project, provide equal benefits to the water resources than other mitigation options being considered, and provide the most cost-effective mitigation option. The mitigation plan shall be submitted to the water management district governing board, or its designee, for review and approval. At least 14 days prior to approval, the water management district shall provide a copy of the draft mitigation plan to any person who has requested a copy.

~~(c) Surface water improvement and management or invasive plant control projects undertaken using the \$12 million advance transferred from the Department of Transportation to the Department of Environmental Protection in fiscal year 1996-1997 which meet the requirements for mitigation under this part and 33 U.S.C. s. 1344 shall remain available for mitigation until the \$12 million is fully credited. When these projects are used as mitigation, the \$12 million advance shall be reduced by \$75,000 per acre of impact mitigated. To the extent the cost of developing and implementing the mitigation plans is less than the funds placed in the escrow account pursuant to subsection (3), the difference shall be retained by the Department of Transportation and credited towards the \$12 million advance until the Department of Transportation is fully refunded for this advance funding. After the \$12 million advance funding is fully credited, any funds not directed to~~

~~implement the mitigation plan should, to the greatest extent possible, be directed to fund invasive plant control within wetlands and other surface waters, SWIM projects, or other water resource projects approved by the governing board of the water management district which may be appropriate to offset environmental impacts of future transportation projects. The water management districts may request these funds upon submittal of the final invoice for each road project.~~

Section 2. This act shall take effect upon becoming a law.

Approved by the Governor January 27, 2009.

Filed in Office Secretary of State January 27, 2009.