

Amendment No. 9

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

1 Committee/Subcommittee hearing PCB: Transportation & Highway
2 Safety Subcommittee
3 Representative Nuñez offered the following:

Amendment (with title amendment)

6 Remove lines 1301-1686 and insert:

7 Section 25. Section 373.4137, Florida Statutes, is amended
8 to read:

9 373.4137 Mitigation requirements for specified
10 transportation projects.—

11 (1) The Legislature finds that environmental mitigation
12 for the impact of transportation projects proposed by the
13 Department of Transportation or a transportation authority
14 established pursuant to chapter 348 or chapter 349 can be more
15 effectively achieved by regional, long-range mitigation planning
16 rather than on a project-by-project basis. It is the intent of
17 the Legislature that mitigation to offset the adverse effects of
18 these transportation projects be funded by the Department of
19 Transportation and be carried out by the use of mitigation banks

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20 and any other mitigation options that satisfy state and federal
21 requirements in a manner that promotes efficiency, timeliness in
22 project delivery, and cost-effectiveness.

23 (2) Environmental impact inventories for transportation
24 projects proposed by the Department of Transportation or a
25 transportation authority established pursuant to chapter 348 or
26 chapter 349 shall be developed as follows:

27 (a) By July 1 of each year, the Department of
28 Transportation, or a transportation authority established
29 pursuant to chapter 348 or chapter 349 which chooses to
30 participate in the program, shall submit to the water management
31 districts a list of its projects in the adopted work program and
32 an environmental impact inventory of ~~habitats~~ impacts and the
33 anticipated amount of mitigation needed to offset impacts.

34 ~~addressed in~~ The environmental impact inventory shall be based
35 on the rules adopted pursuant to this part, and s. 404 of the
36 Clean Water Act, 33 U.S.C. s. 1344, and the Department of
37 Transportation's ~~which may be impacted by its~~ plan of
38 construction for transportation projects in the next 3 years of
39 the tentative work program. The Department of Transportation or
40 a transportation authority established pursuant to chapter 348
41 or chapter 349 may also include in its environmental impact
42 inventory the habitat impacts and anticipated amount of
43 mitigation needed for ~~of~~ any future transportation project. The
44 Department of Transportation and each transportation authority
45 established pursuant to chapter 348 or chapter 349 may fund any
46 mitigation activities for future projects using current year
47 funds.

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

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

73 (3) (a) ~~To fund development and implementation of the~~
74 ~~mitigation plan for the projected impacts~~ implement the
75 mitigation option identified in the environmental impact

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76 inventory ~~described in subsection (2)~~, the Department of
77 Transportation may purchase credits for current and future use
78 directly from a mitigation bank; purchase mitigation services
79 through the water management districts; purchase mitigation
80 services from the Department of Environmental Protection for
81 mitigation on state lands; conduct its own mitigation; or
82 purchase other mitigation services which meet state and federal
83 requirements. Funding for the identified mitigation option as
84 described in the environmental impact inventory shall be
85 included in shall identify funds quarterly in an escrow account
86 within the State Transportation Trust Fund for the environmental
87 mitigation phase of projects budgeted by the Department of
88 Transportation's work program developed pursuant to s. 339.135
89 Transportation for the current fiscal year. The escrow account
90 shall be maintained by the Department of Transportation for the
91 benefit of the water management districts. Any interest earnings
92 from the escrow account shall remain with the Department of
93 Transportation.

94 (b) Each transportation authority established pursuant to
95 chapter 348 or chapter 349 that chooses to participate in this
96 program shall create an escrow account within its financial
97 structure and deposit funds in the account to pay for the
98 environmental mitigation phase of projects budgeted for the
99 current fiscal year. The escrow account shall be maintained by
100 the authority for the benefit of the water management districts.
101 Any interest earnings from the escrow account shall remain with
102 the authority.

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103 (c) For mitigation implemented by the water management
104 district or the Department of Environmental Protection, as
105 appropriate, the amount paid each year shall be based on
106 mitigation services provided by the water management districts
107 or Department of Environmental Protection pursuant to an
108 approved water management district mitigation plan, as described
109 in subsection (4). ~~Except for current mitigation projects in the~~
110 ~~monitoring and maintenance phase and except as allowed by~~
111 ~~paragraph (d),~~ The water management districts or the Department
112 of Environmental Protection, as appropriate, may request payment
113 ~~a transfer of funds from an escrow account~~ no sooner than 30
114 days before the date the funds are needed to pay for activities
115 associated with development or implementation of permitted
116 mitigation meeting the requirements pursuant to this part, 33
117 U.S.C. s. 1344 and 33 C.F.R. 332, in the approved mitigation
118 plan described in subsection (4) for the current fiscal year,
119 ~~including, but not limited to, design, engineering, production,~~
120 ~~and staff support. Actual conceptual plan preparation costs~~
121 ~~incurred before plan approval may be submitted to the Department~~
122 ~~of Transportation or the appropriate transportation authority~~
123 ~~each year with the plan. The conceptual plan preparation costs~~
124 ~~of each water management district will be paid from mitigation~~
125 ~~funds associated with the environmental impact inventory for the~~
126 ~~current year. The amount transferred to the escrow accounts~~
127 programmed each year by the Department of Transportation and
128 participating transportation authorities established pursuant to
129 chapter 348 or chapter 349 shall correspond to an estimated a
130 cost per credit ~~aere~~ of \$150,000 ~~\$75,000~~ multiplied by the

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131 | projected number of credits ~~acres of impact~~ identified in the
132 | environmental impact inventory described in subsection (2). This
133 | estimated cost per credit will be adjusted every two years by
134 | the Department of Transportation based on the average cost per
135 | UMAM credit paid through this section ~~However, the \$75,000 cost~~
136 | ~~per acre does not constitute an admission against interest by~~
137 | ~~the state or its subdivisions and is not admissible as evidence~~
138 | ~~of full compensation for any property acquired by eminent domain~~
139 | ~~or through inverse condemnation. Each July 1, the cost per acre~~
140 | ~~shall be adjusted by the percentage change in the average of the~~
141 | ~~Consumer Price Index issued by the United States Department of~~
142 | ~~Labor for the most recent 12-month period ending September 30,~~
143 | ~~compared to the base year average, which is the average for the~~
144 | ~~12-month period ending September 30, 1996. Each quarter, the~~
145 | projected amount of mitigation ~~acreage of impact~~ shall be
146 | reconciled with the actual amount of mitigation needed for
147 | ~~acreage of impact of projects as permitted, including permit~~
148 | ~~modifications, pursuant to this part and s. 404 of the Clean~~
149 | ~~Water Act, 33 U.S.C. s. 1344. The subject year's programming~~
150 | ~~transfer of funds shall be adjusted accordingly to reflect the~~
151 | mitigation ~~acreage of impacts~~ as permitted. If the water
152 | management district excludes a project from an approved
153 | mitigation plan, cannot timely permit a mitigation site or if
154 | the proposed mitigation does not meet state and federal
155 | requirements, the Department of Transportation may use the
156 | associated funds for the purchase of mitigation bank credits or
157 | any other mitigation option that satisfies state and federal
158 | requirements ~~The Department of Transportation and participating~~

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159 ~~transportation authorities established pursuant to chapter 348~~
160 ~~or chapter 349 are authorized to transfer such funds from the~~
161 ~~escrow accounts to the water management districts to carry out~~
162 ~~the mitigation programs. Environmental mitigation funds that are~~
163 ~~identified for or maintained in an escrow account for the~~
164 ~~benefit of a water management district may be released if the~~
165 ~~associated transportation project is excluded in whole or part~~
166 ~~from the mitigation plan. For a mitigation project that is in~~
167 ~~the maintenance and monitoring phase, the water management~~
168 ~~district may request and receive a one-time payment based on the~~
169 ~~project's expected future maintenance and monitoring costs. Upon~~
170 ~~final disbursement of the final maintenance and monitoring~~
171 ~~payment for mitigation of a transportation project as permitted,~~
172 ~~the obligation of the Department of Transportation or the~~
173 ~~participating transportation authority is satisfied and the~~
174 ~~water management district or the Department of Environmental~~
175 ~~Protection, as appropriate, will have continuing responsibility~~
176 ~~for the mitigation project, the escrow account for the project~~
177 ~~established by the Department of Transportation or the~~
178 ~~participating transportation authority may be closed. Any~~
179 ~~interest earned on these disbursed funds shall remain with the~~
180 ~~water management district and must be used as authorized under~~
181 ~~this section.~~

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

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187 and implementing the mitigation sites, including planning,
188 design, construction, maintenance and monitoring, and other
189 costs necessary to meet requirements pursuant to this section,
190 33 U.S.C. s. 1344, and 33 C.F.R. 332.

191 When the water management district identifies the use of
192 mitigation bank credits as part of the mitigation plan, the
193 water management district must exclude that purchase from the
194 mitigation plan and the Department of Transportation must
195 purchase the identified mitigation bank credits.

196 (e) For purposes of preparing and implementing the
197 mitigation plans to be adopted by the water management districts
198 by March 1, 2013, for transportation impacts based on the July
199 1, 2012, environmental impact inventory, the funds identified in
200 the Department of Transportation's work program or participating
201 transportation authorities' escrow accounts shall correspond to
202 a cost per acre of \$75,000 multiplied by the projected acres of
203 impact as identified in the environmental impact inventory. The
204 cost per acre shall be adjusted by the percentage change in the
205 average of the Consumer Price Index issued by the United States
206 Department of Labor for the most recent 12-month period ending
207 September 30, compared to the base year average, which is the
208 average for the 12-month period ending September 30, 1996.

209 Payment as provided under this paragraph is limited to those
210 mitigation activities which are identified in the first year of
211 the 2013 mitigation plan and for which the transportation
212 project is permitted and is in the Department of
213 Transportation's adopted work program, or equivalent for a
214 transportation authority. When implementing the mitigation

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215 activities necessary to offset the permitted transportation
216 impacts as provided in the approved mitigation plan, the water
217 management district shall maintain records of the costs incurred
218 in implementing the mitigation. These costs shall include, but
219 not be limited to, conceptual planning, land acquisition,
220 design, construction, staff support, long-term maintenance and
221 monitoring of the mitigation site, and other costs necessary to
222 meet the requirements of 33 U.S.C. s. 1344, and 33 C.F.R. 332.
223 To the extent monies paid to a water management district by the
224 Department of Transportation or a participating transportation
225 authority exceed the amount expended by the water management
226 districts in implementing the mitigation to offset the permitted
227 transportation impacts, these funds shall be refunded to the
228 Department of Transportation or participating transportation
229 authority. This paragraph expires June 30, 2014 ~~a lump-sum~~
230 ~~amount of \$75,000 per acre, adjusted as provided under paragraph~~
231 ~~(c), for federally funded transportation projects that are~~
232 ~~included on the environmental impact inventory and that have an~~
233 ~~approved mitigation plan. Beginning in the 2009-2010 fiscal~~
234 ~~year, each water management district shall be paid a lump-sum~~
235 ~~amount of \$75,000 per acre, adjusted as provided under paragraph~~
236 ~~(c), for federally funded and nonfederally funded transportation~~
237 ~~projects that have an approved mitigation plan. All mitigation~~
238 ~~costs, including, but not limited to, the costs of preparing~~
239 ~~conceptual plans and the costs of design, construction, staff~~
240 ~~support, future maintenance, and monitoring the mitigated acres~~
241 ~~shall be funded through these lump-sum amounts.~~

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242 (4) Before March 1 of each year, each water management
243 district, in consultation with the Department of Environmental
244 Protection, the United States Army Corps of Engineers, the
245 Department of Transportation, participating transportation
246 authorities established pursuant to chapter 348 or chapter 349,
247 and other appropriate federal, state, and local governments, and
248 other interested parties, including entities operating
249 mitigation banks, shall develop a plan for the primary purpose
250 of complying with the mitigation requirements adopted pursuant
251 to this part, ~~and~~ 33 U.S.C. s. 1344, and 33 C.F.R. 332. In
252 developing such plans, the districts shall use sound ecosystem
253 management practices to address significant water resource needs
254 and consider ~~shall focus on~~ activities of the Department of
255 Environmental Protection and the water management districts,
256 such as surface water improvement and management (SWIM) projects
257 and lands identified for potential acquisition for preservation,
258 restoration, or enhancement, and the control of invasive and
259 exotic plants in wetlands and other surface waters, to the
260 extent that the activities comply with the mitigation
261 requirements adopted under this part, ~~and~~ 33 U.S.C. s. 1344, and
262 33 C.F.R. 332. For transportation projects in the environmental
263 impact inventory for which a water management district is
264 implementing mitigation, the mitigation plan shall identify the
265 site where the water management district will mitigate for the
266 transportation project, the scope of the mitigation activities
267 at each mitigation site, the Functional Gain at each mitigation
268 site as determined through the UMAM per Chapter 62-345, Florida
269 Administrative Code, describe how the mitigation offsets the

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270 impacts of each transportation project as permitted, and a
271 schedule for the mitigation activities. The water management
272 districts shall maintain records of costs incurred and payments
273 received for implementing mitigation activities to offset
274 impacts of permitted transportation projects. Records shall
275 include, but not be limited to, conceptual planning, land
276 acquisition, design, construction, staff support, long-term
277 maintenance and monitoring of the mitigation site, and other
278 costs necessary to meet the requirements of 33 U.S.C. s. 1344,
279 and 33 C.F.R. 332. To the extent monies paid to a water
280 management district by the Department of Transportation or a
281 participating transportation authority exceed the amount
282 expended by the water management districts in implementing the
283 mitigation to offset the permitted transportation impacts, these
284 funds shall be refunded to the Department of Transportation or
285 participating transportation authority ~~In determining the~~
286 ~~activities to be included in the plans, the districts shall~~
287 ~~consider the purchase of credits from public or private~~
288 ~~mitigation banks permitted under s. 373.4136 and associated~~
289 ~~federal authorization and shall include the purchase as a part~~
290 ~~of the mitigation plan when the purchase would offset the impact~~
291 ~~of the transportation project, provide equal benefits to the~~
292 ~~water resources than other mitigation options being considered,~~
293 ~~and provide the most cost-effective mitigation option. The~~
294 mitigation plan shall be submitted to the water management
295 district governing board, or its designee, for review and
296 approval. At least 14 days before approval by the governing
297 board, the water management district shall provide a copy of the

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298 draft mitigation plan to the Department of Environmental
299 Protection and any person who has requested a copy. Subsequent
300 to governing board approval, the mitigation plan must be
301 submitted to the Department of Environmental Protection for
302 approval. The plan may not be implemented until it is submitted
303 to and approved, in part or in its entirety, by the Department
304 of Environmental Protection.

305 ~~(a) For each transportation project with a funding request~~
306 ~~for the next fiscal year, the mitigation plan must include a~~
307 ~~brief explanation of why a mitigation bank was or was not chosen~~
308 ~~as a mitigation option, including an estimation of identifiable~~
309 ~~costs of the mitigation bank and nonbank options and other~~
310 ~~factors such as time saved, liability for success of the~~
311 ~~mitigation, and long-term maintenance.~~

312 (a)(b) Specific projects may be excluded from the
313 mitigation plan, in whole or in part, and are not subject to
314 this section upon the election of the Department of
315 Transportation, a transportation authority if applicable, or the
316 appropriate water management district. Neither the Department of
317 Transportation nor a participating transportation authority
318 shall exclude a transportation project from the mitigation plan
319 when mitigation is scheduled for implementation by the water
320 management district in the current fiscal year, except when the
321 transportation project is removed from the Department of
322 Transportation's work program or transportation authority
323 funding plan, the mitigation cannot be timely permitted or the
324 proposed mitigation does not meet state and federal
325 requirements. If a project is removed from the Work Program or

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326 the mitigation plan, costs expended by the water management
327 districts prior to removal are eligible for reimbursement by the
328 Department of Transportation or participating transportation
329 authority.

330 (b)-(e) When determining which projects to include in or
331 exclude from the mitigation plan, the Department of
332 Transportation shall investigate using credits from a permitted
333 mitigation bank before those projects are submitted for
334 inclusion in a water management district ~~the plan.~~ The
335 Department of Transportation shall exclude a project from the
336 mitigation plan when the investigation undertaken pursuant to
337 this paragraph results in the conclusion that the use of credits
338 from a permitted mitigation bank promotes efficiency, timeliness
339 in project delivery, cost-effectiveness and transfers
340 responsibility for success and long-term maintenance ~~The~~
341 ~~investigation shall consider the cost-effectiveness of~~
342 ~~mitigation bank credits, including, but not limited to, factors~~
343 ~~such as time saved, transfer of liability for success of the~~
344 ~~mitigation, and long-term maintenance.~~

345 (5) The water management district shall ensure that
346 mitigation requirements pursuant to 33 U.S.C. s. 1344 and 33
347 C.F.R. 332 are met for the impacts identified in the
348 environmental impact inventory described in subsection (2), by
349 implementation of the approved mitigation plan described in
350 subsection (4) to the extent funding is provided by the
351 Department of Transportation, or a transportation authority
352 established pursuant to chapter 348 or chapter 349, if
353 applicable. In developing and implementing the mitigation plan,

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354 the water management district shall comply with federal
355 permitting requirements pursuant to 33 U.S.C. s. 1344 and 33
356 C.F.R. 332. During the federal permitting process, the water
357 management district may deviate from the approved mitigation
358 plan in order to comply with federal permitting requirements
359 upon notice and coordination with the Department of
360 Transportation or participating transportation authority.

361 (6) The water management district mitigation plans shall
362 be updated annually to reflect the most current Department of
363 Transportation work program and project list of a transportation
364 authority established pursuant to chapter 348 or chapter 349, if
365 applicable, and may be amended throughout the year to anticipate
366 schedule changes or additional projects which may arise. Before
367 an amendment of the mitigation plan to include new projects, the
368 Department of Transportation shall consider mitigation banks and
369 other available mitigation options that meet state and federal
370 requirements. Each update and amendment of the mitigation plan
371 shall be submitted to the governing board of the water
372 management district or its designee for approval. However, such
373 approval shall not be applicable to a deviation as described in
374 subsection (5).

375 (7) Upon approval by the governing board of the water
376 management district and the Department of Environmental
377 Protection ~~or its designee~~, the mitigation plan shall be deemed
378 to satisfy the mitigation requirements under this part for
379 impacts specifically identified in the environmental impact
380 inventory described in subsection (2) and any other mitigation
381 requirements imposed by local, regional, and state agencies for

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382 these same impacts. The approval of the governing board of the
383 water management district and the Department of Environmental
384 Protection ~~or its designee~~ shall authorize the activities
385 proposed in the mitigation plan, and no other state, regional,
386 or local permit or approval shall be necessary.

387 (8) This section shall not be construed to eliminate the
388 need for the Department of Transportation or a transportation
389 authority established pursuant to chapter 348 or chapter 349 to
390 comply with the requirement to implement practicable design
391 modifications, including realignment of transportation projects,
392 to reduce or eliminate the impacts of its transportation
393 projects on wetlands and other surface waters as required by
394 rules adopted pursuant to this part, or to diminish the
395 authority under this part to regulate other impacts, including
396 water quantity or water quality impacts, or impacts regulated
397 under this part that are not identified in the environmental
398 impact inventory described in subsection (2).

399 ~~(9) The process for environmental mitigation for the~~
400 ~~impact of transportation projects under this section shall be~~
401 ~~available to an expressway, bridge, or transportation authority~~
402 ~~established under chapter 348 or chapter 349. Use of this~~
403 ~~process may be initiated by an authority depositing the~~
404 ~~requisite funds into an escrow account set up by the authority~~
405 ~~and filing an environmental impact inventory with the~~
406 ~~appropriate water management district. An authority that~~
407 ~~initiates the environmental mitigation process established by~~
408 ~~this section shall comply with subsection (6) by timely~~
409 ~~providing the appropriate water management district with the~~

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410 ~~requisite work program information. A water management district~~
411 ~~may draw down funds from the escrow account as provided in this~~
412 ~~section.~~

413 Section 26. Subsections (13) through (15) are added to
414 section 373.406, Florida Statutes, to read:

415 373.406 Exemptions.—The following exemptions shall apply:

416 (13) Nothing in this part, or in any rule, regulation, or
417 order adopted pursuant to this part, applies to construction,
418 operation, maintenance, or alteration of any wholly owned,
419 manmade ponds constructed entirely in uplands or drainage
420 ditches constructed in uplands, except for the discharge of
421 dredged or fill material into waters of the United States,
422 including wetlands, subject to federal jurisdiction under
423 section 404 of the Clean Water Act, 33 U.S.C. s. 1344.

424 (14) Nothing in this part, or in any rule, regulation, or
425 order adopted pursuant to this part, may require a permit for
426 activities affecting wetlands created solely by the unreasonable
427 and negligent flooding or interference with the natural flow of
428 surface water caused by an adjoining landowner, except for the
429 discharge of dredged or fill material into waters of the United
430 States, including wetlands, subject to federal jurisdiction
431 under section 404 of the Clean Water Act, 33 U.S.C. s. 1344.

432

433

434 **T I T L E A M E N D M E N T**

435 Remove lines 154-170 and insert:

436 s. 373.4137, F.S.; revising mitigation requirements

437 for transportation projects to include mitigation

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438 options that meet state and federal requirements;
439 providing for the use of the Uniform Mitigation
440 Assessment Method to determine the amount of
441 mitigation needed for transportation projects rather
442 than impact acres; creates subsection (2)(c) requiring
443 consideration of mitigation banks in the Department of
444 Transportation inventories before transportation
445 projects can be submitted for inclusion in a water
446 management district mitigation plan; reaffirming the
447 Department of Transportation's ability to purchase
448 directly from mitigation banks; removing requirement
449 for the Department of Transportation to establish an
450 escrow account and replacing it with the
451 identification of mitigation funds in the Work
452 Program; removing impact acre cost as the basis for
453 mitigation payments; clarifying continuing
454 responsibility for mitigation projects; creates
455 subsection (3)(e) providing transition provisions for
456 the March 1, 2013 water management district mitigation
457 plans; clarifying the requirements for water
458 management district mitigation plans; providing for
459 the exclusion of projects from a mitigation plan upon
460 the election of one or more agencies; and deleting
461 subsection (9); s. 373.406, F.S.; exempting specified
462 ponds, ditches, and wetlands from surface water
463 management and storage requirements; providing