

STORAGE NAME: h1509.grr

DATE: March 18, 1998

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
GOVERNMENTAL RULES AND REGULATIONS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 1509

RELATING TO: Environmental Protection

SPONSOR(S): Representative Spratt

STATUTE(S) AFFECTED: Chapters 120, 373, and 403, F.S.

COMPANION BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) ENVIRONMENTAL PROTECTION (W/D)
- (2) GOVERNMENTAL RULES AND REGULATIONS
- (3) GENERAL GOVERNMENT APPROPRIATIONS
- (4)
- (5)

I. SUMMARY:

HB 1509 would require persons who file or intend to file objections, raise issues of fact, or allege violations of the provisions of Chapters 373 or 403, F.S. to submit technical or scientific information which supports the objections. Persons who fail to submit the information would be denied standing and may not bring any administrative or judicial action under Chapters 120, 373 or 403, F.S.

The act shall take effect upon becoming law.

Representative Spratt proposes a strike-everything amendment that would substantially alter the bill. Please see the comments section of this document for discussion.

STORAGE NAME: h1509.grr

DATE: March 18, 1998

PAGE 2

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Chapter 120, F.S., the Administrative Procedure Act (APA), provides adjudicatory procedures for a person who seeks redress of an agency decision effecting that person's substantial interests or for those who wish to address an agency action. The type of procedure is predicated upon whether there are disputed issues of material fact or whether a person's substantial interests are affected. The Uniform Rules of Procedure, adopted pursuant to s. 102.54(5), F.S., provide, in part, that certain information must be submitted in the petition. The petitioner must state

- The name, address, and telephone number of the petitioner or the petitioner's representative;
- A statement of when and how the petitioner received notice of the agency decision;
- A statement of all disputed issues of material fact, and when there are none, the petition must so indicate;
- A concise statement of the ultimate facts alleged, as well as the rules and statutes which entitle the petitioner to relief; and
- A demand for relief.

See Rules 28-106.201 and 28-106.301, F.A.C. (1997).

Under the uniform rules, a petitioner is not required to provide any technical or scientific information which supports the petitioner's position on those disputed issues of material fact found in the petition. It is only after the commencement of proceedings, and only where there are disputed issues of material fact, that parties may obtain discovery and that process is governed by Rules 1.280 through 1.400, Florida Rules of Civil Procedure. See rule 28-106.206, F.A.C. (1997). Discovery is the process by which one party can obtain facts and information about the case from the other party in order to assist the party's preparation for litigation. Blacks Law Dictionary 418-9 (5th Ed.).

Chapter 373, F.S. relates to water resources and regulatory actions related to the: establishment of minimum flows and levels; activities of the water management districts; purchase and management of lands; permits for water consumption; production of water; regulation of wells; management and storage of surface waters; and the Everglades restoration.

Chapter 403, F.S., relates to environmental control issues and regulatory actions related to: water resources restoration and preservation; sewage disposal facilities; hazardous waste; injection wells; air emissions; federal permitting delegations; stormwater management; litter; mining; power plant and transmission line siting; resource recovery and management; dredge and fill; drinking water; mitigation; and job siting.

State agencies with oversight responsibilities under Chapters 373 and 403 include: the Department's of Health, Environmental Protection, and Community Affairs. Also affected

are local governments with delegated permitting authority and the water management districts.

B. EFFECT OF PROPOSED CHANGES:

The bill would require any person who files or intends to file any objection, raise any issue of fact, or allege any violation of any provision of Chapters 373 or 403, F.S. to submit technical and scientific information which supports such objection, contention, or allegation. A person who fails to comply with this bill would be denied standing to bring any administrative or judicial action under Chapter 120, F.S. or under any provisions provided by Chapters 373 or 403, F.S.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes, a person challenging an agency action would now have to compile and submit technical and scientific information which supports their position on issues of disputed material fact concurrent with the petition challenging the agency action.

(3) any entitlement to a government service or benefit?

No

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

None

STORAGE NAME: h1509.grr

DATE: March 18, 1998

PAGE 4

(2) what is the cost of such responsibility at the new level/agency?

None

(3) how is the new agency accountable to the people governed?

None

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No

b. Does the bill require or authorize an increase in any fees?

No

c. Does the bill reduce total taxes, both rates and revenues?

No

d. Does the bill reduce total fees, both rates and revenues?

No

e. Does the bill authorize any fee or tax increase by any local government?

No

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No

4. Individual Freedom:

STORAGE NAME: h1509.grr

DATE: March 18, 1998

PAGE 5

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

NA

- (2) Who makes the decisions?

NA

- (3) Are private alternatives permitted?

NA

- (4) Are families required to participate in a program?

NA

- (5) Are families penalized for not participating in a program?

NA

- b. Does the bill directly affect the legal rights and obligations between family members?

No

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

NA

(2) service providers?

NA

(3) government employees/agencies?

NA

D. SECTION-BY-SECTION RESEARCH:

Section 1: Provides that for any person to file or intend to file an objection to violations of Chapter 373 or 403, F.S., that concurrently with such filing they must submit technical or scientific information which supports the filing or they shall lose standing for the purposes of bringing any administrative or judicial action under Chapters 120, 373 or 403, F.S.

Section 2: Provides that the act shall take effect upon becoming law.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None

2. Recurring Effects:

Agencies may also realize some cost savings associated with a decrease in administrative hearings. The additional burden for substantially affected persons is anticipated to decrease the number of challenges.

3. Long Run Effects Other Than Normal Growth:

None

4. Total Revenues and Expenditures:

Unknown

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None

2. Recurring Effects:

As with state agencies, local governments too may realize some cost savings associated with a decrease in administrative hearings.

3. Long Run Effects Other Than Normal Growth:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

The costs to a challenger of agency action on a license or permit may be increased because of the burden of submitting technical and scientific information concurrent with submitting a petition for administrative hearing.

2. Direct Private Sector Benefits:

Indeterminate. Through the anticipated reduction in the number of challenges to agency action in approving a permit or license, a holder of a license or permit may realize a reduction in the costs associated with the application process.

3. Effects on Competition, Private Enterprise and Employment Markets:

None

D. FISCAL COMMENTS:

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the revenue raising authority of counties or municipalities.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the amount of a state tax shared with counties and municipalities.

V. COMMENTS:

This bill was carried over from the 1997 Legislative Session pursuant to House Rule 96. It resided in the Committee on Environmental Protection and was withdrawn from that committee on March 12, 1998.

Representative Spratt proposes a strike-everything amendment that revises particular sections of chapter 120, Florida Statutes, The Administrative Procedure Act (APA).

The proposed amendment would:

Section 1. Amend s. 120.54(5), F.S., to provide additional uniform rules of procedure for filing petitions for formal or informal administrative hearing under s. 120.569, F.S. (decisions which affect substantial interests) or 120.57, F.S. (providing additional procedures for particular cases). In addition to stating particulars about the petitioning party, the petition must provide

- an explanation of how the petitioner's substantial interests are or will be affected by the agency proposed action or action;
- a statement of all material facts disputed by the petitioner or a statement that there are no disputed facts;
- a statement of ultimate facts alleged including the specific facts that the petitioner contends warrant reversal or modification of the agency's action; and
- a statement of relief that states precisely the action petitioner wishes the agency to take with respect to the proposed action.

The bill section would have the practical effect of placing in statute provisions already incorporated in the uniform rules relating to petition requirements, but for those cases filed pursuant to ss. 120.569 or .57, F.S. The section would require a more precise statement of revised agency action by the petitioner in the demand for relief.

Section 2. Amend s. 120.569(2), F.S. to provide additional duties for the agency receiving a petition.

- Creates s. 120.569(2)(c), F.S., that upon receiving the petition, the agency shall conduct a careful review of the petition to determine that the requirements of s. 120.54(5)(b)4, F.S. (discussed above) are met. If, upon this careful review, the agency determines that the petition has not substantially complied with those requirements, the agency shall dismiss the petition without prejudice to the petitioner's filing of a timely amended petition. The agency may dismiss with prejudice where it conclusively appears on the face of the petition that the defect cannot be cured. When dismissing a petition, the agency shall give written notice stating its particular reasons for dismissal and providing, when applicable, a deadline for filing an amended petition.

This section would create a statutory duty for agencies to review petitions for completeness pursuant to the standards to be created in s. 102.54(5)(b)4., F.S. It would also provide a bar to the continued filing a petition if the subsequent amended petitions do not cure the identified defect.

- Creates s. 120.569(2)(d), F.S., that when, in a proceeding where there are disputed issues of material fact conducted under s. 120.57(1), F.S., a dispute of material fact no longer exists, any party may move for the administrative law judge (ALJ) to relinquish jurisdiction back to the agency based on the position that there exists no disputed issues of material fact. In ruling on this motion, the ALJ shall consider the pleadings, depositions, answers to interrogatories, and admissions on file as well as affidavits submitted in support of or in opposition to the motion to relinquish jurisdiction. The order relinquishing jurisdiction need not contain findings of fact, conclusions of law, or a recommended penalty or disposition.

If the motion is ruled upon favorably, the case is then relinquished to the agency and may be heard in an informal hearing under s. 120.57(2), F.S. However, the parties may not raise any issues of disputed fact that could have been raised before the ALJ.

This section provides for a summary proceeding that allows where the ALJ makes a determination that no disputed issues of material fact exist, the case may be returned to the agency for informal hearing for resolution. It would bar the submittal of any additional issues of disputed material fact if such issues were not initially brought before the ALJ.

Section 3. Provides for an effective date of upon becoming law.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VII. SIGNATURES:

COMMITTEE ON ENVIRONMENTAL PROTECTION:

Prepared by:

Legislative Research Director:

Wayne S. Kiger

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