

Bill No. SB 1896

Amendment No. \_\_\_\_

<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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Senator King moved the following amendment to amendment (920738):

**Senate Amendment (with title amendment)**

On page 16, between lines 13 and 14,

insert:

Section 4. Paragraph (d) of subsection (3) and paragraph (d) of subsection (4) of section 57.111, Florida Statutes, are amended to read:

57.111 Civil actions and administrative proceedings initiated by state agencies; attorneys' fees and costs.--

(3) As used in this section:

(d) The term "small business party" means:

1.a. A sole proprietor of an unincorporated business, including a professional practice, whose principal office is in this state, who is domiciled in this state, and whose business or professional practice has, at the time the action is initiated by a state agency, not more than 25 full-time employees or a net worth of not more than ~~\$5~~\$5 million, including both personal and business investments; or

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1           b. A partnership or corporation, including a  
2 professional practice, which has its principal office in this  
3 state and has at the time the action is initiated by a state  
4 agency not more than 25 full-time employees or a net worth of  
5 not more than ~~\$5~~<sup>\$2</sup> million; or

6           2. Either small business party as defined in  
7 subparagraph 1., without regard to the number of its employees  
8 or its net worth, in any action under s. 72.011 or in any  
9 administrative proceeding under that section to contest the  
10 legality of any assessment of tax imposed for the sale or use  
11 of services as provided in chapter 212, or interest thereon,  
12 or penalty therefor.

13           (4)

14           (d) The court, or the administrative law judge in the  
15 case of a proceeding under chapter 120, shall promptly conduct  
16 an evidentiary hearing on the application for an award of  
17 attorney's fees and shall issue a judgment, or a final order  
18 in the case of an administrative law judge. The final order  
19 of an administrative law judge is reviewable in accordance  
20 with the provisions of s. 120.68. If the court affirms the  
21 award of attorney's fees and costs in whole or in part, it  
22 may, in its discretion, award additional attorney's fees and  
23 costs for the appeal.

24           1. No award of attorney's fees and costs shall be made  
25 in any case in which the state agency was a nominal party.

26           2. No award of attorney's fees and costs for an action  
27 initiated by a state agency shall exceed \$50,000~~\$15,000~~.

28           Section 5. Paragraph (e) of subsection (2) of section  
29 120.569, Florida Statutes, is amended to read:

30           120.569 Decisions which affect substantial  
31 interests.--

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(2)

(e)1. Every pleading, written motion, and other paper filed in a proceeding must be signed by at least one attorney or qualified representative of record in the attorney's or qualified representative's individual name, or, if the party is not represented by an attorney or qualified representative, the pleading, written motion, or other paper must be signed by the party. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney, qualified representative, or party.

2. By presenting a pleading, written motion, or other paper, whether by signing, filing, submitting, or later advocating, an attorney, qualified representative, or unrepresented party is certifying that, to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

a. The pleading, written motion, or other paper is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

b. The claims, defenses, and other legal contentions contained in the pleading, written motion, or other paper are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

c. The allegations and other factual contentions have evidentiary support or, if specifically identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

d. The denials of factual contentions are warranted on

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1 the evidence or, if specifically identified, are reasonably  
2 based on a lack of information or belief.

3 3. If, after notice and a reasonable opportunity to  
4 respond, the presiding officer determines that subparagraph 2.  
5 has been violated, the presiding officer shall impose an  
6 appropriate sanction against the person who signed it, the  
7 represented party, or both, which must include an order to pay  
8 the other party or parties the amount of reasonable expenses  
9 incurred because of the filing of the pleading, motion, or  
10 other paper, including reasonable attorney's fees. However:

11 a. Monetary sanctions may not be awarded against a  
12 represented party for a violation of sub-subparagraph 2.b.

13 b. Monetary sanctions may not be awarded under this  
14 paragraph based on a violation of discovery rules, which are  
15 subject to sanctions under paragraph (f).

16 c. This paragraph does not authorize the award of  
17 sanctions against any person who comments on or objects to a  
18 draft permit during an authorized period for public comment or  
19 at a public hearing.

20 4. Sanctions under this paragraph may be initiated at  
21 any time after the initiation of a proceeding either by motion  
22 or on the presiding officer's own initiative. A motion shall  
23 describe the specific conduct alleged to violate subparagraph  
24 2. The motion shall be served upon the attorney or qualified  
25 representative of a party or an unrepresented party against  
26 whom such sanctions are sought and shall be filed with the  
27 presiding officer. However, such motion shall not be acted  
28 upon by the presiding officer or called up for hearing by the  
29 movant unless, within 14 days after service of the motion, or  
30 such other period as the presiding officer may prescribe, the  
31 challenged paper, claim, defense, contention, allegation, or

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1 denial is not withdrawn or appropriately corrected. A  
2 presiding officer's own initiative to impose sanctions may be  
3 undertaken only after entering an order describing the  
4 specific conduct that appears to violate subparagraph 2. and  
5 directing the attorney or qualified representative of a party  
6 or the unrepresented party to show cause why subparagraph 2.  
7 has not been violated. When imposing sanctions, the presiding  
8 officer shall describe the conduct determined to constitute a  
9 violation of subparagraph 2. and explain the basis for the  
10 sanction imposed.~~All pleadings, motions, or other papers~~  
11 ~~filed in the proceeding must be signed by the party, the~~  
12 ~~party's attorney, or the party's qualified representative. The~~  
13 ~~signature constitutes a certificate that the person has read~~  
14 ~~the pleading, motion, or other paper and that, based upon~~  
15 ~~reasonable inquiry, it is not interposed for any improper~~  
16 ~~purposes, such as to harass or to cause unnecessary delay, or~~  
17 ~~for frivolous purpose or needless increase in the cost of~~  
18 ~~litigation. If a pleading, motion, or other paper is signed in~~  
19 ~~violation of these requirements, the presiding officer shall~~  
20 ~~impose upon the person who signed it, the represented party,~~  
21 ~~or both, an appropriate sanction, which may include an order~~  
22 ~~to pay the other party or parties the amount of reasonable~~  
23 ~~expenses incurred because of the filing of the pleading,~~  
24 ~~motion, or other paper, including a reasonable attorney's fee.~~

25 Section 6. Paragraphs (c) and (e) of subsection (1) of  
26 section 120.595, Florida Statutes, are amended to read:

27 120.595 Attorney's fees.--

28 (1) CHALLENGES TO AGENCY ACTION PURSUANT TO SECTION  
29 120.57(1).--

30 (c) In proceedings pursuant to s. 120.57(1), and upon  
31 motion, the administrative law judge shall determine whether

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1 any party participated in the proceeding for an improper  
2 purpose as defined by this subsection ~~and s. 120.569(2)(e)~~. In  
3 making such determination, the administrative law judge shall  
4 consider whether the nonprevailing adverse party has  
5 participated in two or more other such proceedings involving  
6 the same prevailing party and the same project as an adverse  
7 party and in which such two or more proceedings the  
8 nonprevailing adverse party did not establish either the  
9 factual or legal merits of its position, and shall consider  
10 whether the factual or legal position asserted in the instant  
11 proceeding would have been cognizable in the previous  
12 proceedings. In such event, it shall be rebuttably presumed  
13 that the nonprevailing adverse party participated in the  
14 pending proceeding for an improper purpose.

15 (e) For the purpose of this subsection:

16 1. "Improper purpose" means participation in a  
17 proceeding pursuant to s. 120.57(1) primarily to harass or to  
18 cause unnecessary delay or for frivolous purpose or to  
19 needlessly increase the cost of litigation,licensing,or  
20 securing the approval of an activity.

21 2. "Costs" has the same meaning as the costs allowed  
22 in civil actions in this state as provided in chapter 57.

23 3. "Nonprevailing adverse party" means a party that  
24 has failed to have substantially changed the outcome of the  
25 proposed or final agency action which is the subject of a  
26 proceeding. In the event that a proceeding results in any  
27 substantial modification or condition intended to resolve the  
28 matters raised in a party's petition, it shall be determined  
29 that the party having raised the issue addressed is not a  
30 nonprevailing adverse party. The recommended order shall  
31 state whether the change is substantial for purposes of this

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1 subsection. In no event shall the term "nonprevailing party"  
2 or "prevailing party" be deemed to include any party that has  
3 intervened in a previously existing proceeding to support the  
4 position of an agency.

5 Section 7. Subsection (1) of section 373.114, Florida  
6 Statutes, is amended to read:

7 373.114 Land and Water Adjudicatory Commission; review  
8 of district rules and orders; department review of district  
9 rules.--

10 (1) Except as provided in subsection (2), the Governor  
11 and Cabinet, sitting as the Land and Water Adjudicatory  
12 Commission, have the exclusive authority to review any order  
13 or rule of a water management district, other than a rule  
14 relating to an internal procedure of the district or an order  
15 resulting from an evidentiary hearing held pursuant to s.  
16 120.569 or s. 120.57, to ensure consistency with the  
17 provisions and purposes of this chapter. Subsequent to the  
18 legislative ratification of the delineation methodology  
19 pursuant to s. 373.421(1), this subsection also shall apply to  
20 an order of the department, or a local government exercising  
21 delegated authority, pursuant to ss. 373.403-373.443, except  
22 an order pertaining to activities or operations subject to  
23 conceptual plan approval pursuant to chapter 378 or an order  
24 resulting from an evidentiary hearing held pursuant to s.  
25 120.569 or s. 120.57.

26 (a) Such review may be initiated by the department or  
27 by a party to the proceeding below by filing a request for  
28 review with the Land and Water Adjudicatory Commission and  
29 serving a copy on the department and on any person named in  
30 the rule or order within 20 days after adoption of the rule or  
31 the rendering of the order. For the purposes of this section,

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1 the term "party" means any affected person who submitted oral  
2 or written testimony, sworn or unsworn, of a substantive  
3 nature which stated with particularity objections to or  
4 support for the rule or order that are cognizable within the  
5 scope of the provisions and purposes of this chapter, or any  
6 person who participated as a party in a proceeding challenging  
7 the validity of a rule instituted pursuant to chapter 120. In  
8 order for the commission to accept a request for review  
9 initiated by a party below, with regard to a specific order,  
10 four members of the commission must determine on the basis of  
11 the record below that the activity authorized by the order  
12 would substantially affect natural resources of statewide or  
13 regional significance. Review of an order may also be accepted  
14 if four members of the commission determine that the order  
15 raises issues of policy, statutory interpretation, or rule  
16 interpretation that have regional or statewide significance  
17 from the standpoint of agency precedent. The party requesting  
18 the commission to review an order must allege with  
19 particularity, and the commission must find, that:

- 20 1. The order is in conflict with statutory
- 21 requirements; or
- 22 2. The order is in conflict with the requirements of a
- 23 duly adopted rule.

24 (b) Review by the Land and Water Adjudicatory  
25 Commission is appellate in nature and shall be based solely on  
26 the record below. If there was no evidentiary administrative  
27 proceeding below, the facts contained in the proposed agency  
28 action, including any technical staff report, shall be deemed  
29 undisputed. The matter shall be heard by the commission not  
30 more than 60 days after receipt of the request for review,  
31 unless waived by the parties.



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1           (c) If the Land and Water Adjudicatory Commission  
2 determines that a rule of a water management district is not  
3 consistent with the provisions and purposes of this chapter,  
4 it may require the water management district to initiate  
5 rulemaking proceedings to amend or repeal the rule. If the  
6 commission determines that an order is not consistent with the  
7 provisions and purposes of this chapter, the commission may  
8 rescind or modify the order or remand the proceeding for  
9 further action consistent with the order of the Land and Water  
10 Adjudicatory Commission only if the commission determines that  
11 the activity authorized by the order would substantially  
12 affect natural resources of statewide or regional  
13 significance. In the case of an order which does not itself  
14 substantially affect natural resources of statewide or  
15 regional significance, but which raises issues of policy that  
16 have regional or statewide significance from the standpoint of  
17 agency precedent, the commission may direct the district to  
18 initiate rulemaking to amend its rules to assure that future  
19 actions are consistent with the provisions and purposes of  
20 this chapter without modifying the order.

21           (d) In a review under this section of a construction  
22 permit issued pursuant to a conceptual permit under part IV,  
23 which conceptual permit is issued after July 1, 1993, a party  
24 to the review may not raise an issue which was or could have  
25 been raised in a review of the conceptual permit under this  
26 section.

27           (e) A request for review under this section shall not  
28 be a precondition to the seeking of judicial review pursuant  
29 to s. 120.68 or the seeking of an administrative determination  
30 of rule validity pursuant to s. 120.56.

31           (f) The Florida Land and Water Adjudicatory Commission

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1 may adopt rules to set forth its procedures for reviewing an  
2 order or rule of a water management district consistent with  
3 the provisions of this section.

4 (g) For the purpose of this section, it shall be  
5 presumed that activity authorized by an order will not affect  
6 resources of statewide or regional significance if the  
7 proposed activity:

- 8 1. Occupies an area less than 10 acres in size, and
- 9 2. Does not create impervious surfaces greater than 2  
10 acres in size, and
- 11 3. Is not located within 550 feet of the shoreline of  
12 a named body of water designated as Outstanding Florida  
13 Waters, and
- 14 4. Does not adversely affect threatened or endangered  
15 species.

16  
17 This paragraph shall not operate to hold that any activity  
18 that exceeds these limits is presumed to affect resources of  
19 statewide or regional significance. The determination of  
20 whether an activity will substantially affect resources of  
21 statewide or regional significance shall be made on a  
22 case-by-case basis, based upon facts contained in the record  
23 below.

24 Section 8. Subsection (5) of section 403.412, Florida  
25 Statutes, is amended to read:

26 403.412 Environmental Protection Act.--

27 (5) In any administrative, licensing, or other  
28 proceedings authorized by law for the protection of the air,  
29 water, or other natural resources of the state from pollution,  
30 impairment, or destruction, the Department of Legal Affairs, a  
31 political subdivision or municipality of the state, or a

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1 citizen of the state shall have standing to intervene as a  
2 party on the filing of a verified pleading asserting that the  
3 activity, conduct, or product to be licensed or permitted has  
4 or will have the effect of impairing, polluting, or otherwise  
5 injuring the air, water, or other natural resources of the  
6 state. However, a citizen of this state whose substantial  
7 interests have not been determined by agency action may not  
8 institute, initiate, petition, or request a proceeding  
9 pursuant to s. 120.569 or s. 120.57. This subsection does not  
10 limit the ability of a nonprofit corporation or association,  
11 organized in whole or in part to promote conservation, to  
12 protect the environment or other biological values, or to  
13 preserve historical sites to initiate, petition, or request a  
14 proceeding pursuant to s. 120.569 or s. 120.57 upon asserting  
15 in a verified petition that the activity, conduct, or product  
16 to be licensed or permitted has or will have the effect of  
17 impairing, polluting, or otherwise injuring the air, water, or  
18 other natural resources of the state. The verified petition  
19 must also assert and be subject to subsequent proof, that the  
20 corporation or association itself, or a substantial number of  
21 its members, have substantial interests that will be affected  
22 by the conduct, activity, or product to be licensed or  
23 permitted. Such substantial interests include the use and  
24 enjoyment of the air, water, or other natural resources of the  
25 state that will be affected as a result of the issuance of a  
26 license or permit.

27 Section 9. Paragraph (b) of subsection (1) of section  
28 120.52, Florida Statutes, is amended to read:

29 120.52 Definitions.--As used in this act:

30 (1) "Agency" means:

31 (b) Each:

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- 1           1. State officer and state department, and each
- 2 departmental unit described in s. 20.04.
- 3           2. State authority, including a regional water supply
- 4 authority.
- 5           3. State board.
- 6           4. State commission, including the Commission on
- 7 Ethics and the Fish and Wildlife Conservation Commission when
- 8 acting pursuant to statutory authority derived from the
- 9 Legislature.
- 10          5. Regional planning agency.
- 11          6. Multicounty special district with a majority of its
- 12 governing board comprised of nonelected persons.
- 13          7. Educational units.
- 14          8. Entity described in chapters 163, 373, 380, and 582
- 15 and s. 186.504.

16  
 17 This definition does not include any legal entity or agency  
 18 created in whole or in part pursuant to chapter 361, part II,  
 19 an expressway authority pursuant to chapter 348, any legal or  
 20 administrative entity created by an interlocal agreement  
 21 pursuant to s. 163.01(7), unless any party to such agreement  
 22 is otherwise an agency as defined in this subsection, or any  
 23 multicounty special district with a majority of its governing  
 24 board comprised of elected persons; however, this definition  
 25 shall include a regional water supply authority.

26  
 27 (Redesignate subsequent sections.)

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 30 ===== T I T L E    A M E N D M E N T =====

31 And the title is amended as follows:

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On page 17, line 30,  
insert:  
amending s. 57.111, F.S.; increasing the  
maximum net worth for qualification as a small  
business party under the Florida Equal Access  
to Justice Act; increasing the limitation on  
the amount of attorney's fees and costs that  
may be awarded under the act; amending s.  
120.569, F.S.; revising requirements for  
pleadings, motions, and other papers filed  
under ch. 120, F.S.; providing for sanctions,  
including an award of attorney's fees; amending  
s. 120.595, F.S.; redefining the term "improper  
purpose" for purposes of provisions authorizing  
challenges to agency action; amending s.  
373.114, F.S.; providing that water management  
district orders resulting from certain  
evidentiary hearings are not subject to the  
Land and Water Adjudicatory Commission's review  
authority; amending s. 403.412, F.S.; providing  
that a citizen of this state who is not a  
substantially affected person may not initiate  
certain administrative proceedings under the  
Environmental Protection Act of 1971; amending  
s. 120.52, F.S.; clarifying which governmental  
entities are subject to the Administrative  
Procedure Act;