

Amendment No. 01 (for drafter's use only)

|   | <u>Senate</u> | CHAMBER ACTION | <u>House</u> |
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ORIGINAL STAMP BELOW

11 The Committee on Governmental Rules & Regulations offered the  
12 following:

14 **Amendment (with title amendment)**

15 Remove from the bill: Everything after the enacting clause  
16  
17 and insert in lieu thereof:

18 Section 1. Paragraph (d) of subsection (3) and  
19 paragraph (d) of subsection (4) of section 57.111, Florida  
20 Statutes, are amended to read:

21 57.111 Civil actions and administrative proceedings  
22 initiated by state agencies; attorneys' fees and costs.--

23 (3) As used in this section:

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

25 1.a. A sole proprietor of an unincorporated business,  
26 including a professional practice, whose principal office is  
27 in this state, who is domiciled in this state, and whose  
28 business or professional practice has, at the time the action  
29 is initiated by a state agency, not more than 25 full-time  
30 employees or a net worth of not more than ~~\$5~~<sup>\$2</sup> million,  
31 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~~\$2 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 \$75,000~~\$15,000~~.

28           Section 2. Section 120.573, Florida Statutes, is  
29 amended to read:

30           120.573 Mediation of disputes.--

31           (1) Each announcement of an agency action that affects

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1 substantial interests shall advise whether mediation of the  
2 administrative dispute for the type of agency action announced  
3 is available and that choosing mediation does not affect the  
4 right to an administrative hearing. If the agency and all  
5 parties to the administrative action agree to mediation, in  
6 writing, within 10 days after the time period stated in the  
7 announcement for election of an administrative remedy under  
8 ss. 120.569 and 120.57, the time limitations imposed by ss.  
9 120.569 and 120.57 shall be tolled to allow the agency and  
10 parties to mediate the administrative dispute. The mediation  
11 shall be concluded within 60 days of such agreement unless  
12 otherwise agreed by the parties. The mediation agreement  
13 shall include provisions for mediator selection, the  
14 allocation of costs and fees associated with mediation, and  
15 the mediating parties' understanding regarding the  
16 confidentiality of discussions and documents introduced during  
17 mediation. If mediation results in settlement of the  
18 administrative dispute, the agency shall enter a final order  
19 incorporating the agreement of the parties. If mediation  
20 terminates without settlement of the dispute, the agency shall  
21 notify the parties in writing that the administrative hearing  
22 processes under ss. 120.569 and 120.57 are resumed.

23 (2) Each announcement of an agency action under Parts  
24 II and IV of Chapter 373 and Part VIII of Chapter 403 that  
25 affects substantial interests shall advise whether mediation  
26 of the administrative dispute for the type of agency action  
27 announced is available and that choosing mediation does not  
28 affect the right to an administrative hearing. If the agency  
29 and the party subject to the agency action agree to mediation,  
30 in writing, within 10 days after the time period stated in the  
31 announcement for election of an administrative remedy under

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1 ss. 120.569 and 120.57, the time limitations imposed by ss.  
2 120.569 and 120.57 shall be tolled to allow the agency and all  
3 original parties to mediate the administrative dispute. The  
4 mediation shall be concluded within 60 days of such agreement  
5 unless otherwise agreed by the agency and the party subject to  
6 the agency action. The mediation agreement shall include  
7 provisions for mediator selection, the allocation of costs and  
8 fees associated with mediation, and the mediating parties'  
9 understanding regarding the confidentiality of discussions and  
10 documents introduced during mediation, and may address the  
11 allocation of attorney's fees and costs. If mediation results  
12 in settlement of the administrative dispute, the agency shall  
13 enter a final order incorporating the agreement of the  
14 parties. If mediation terminates without settlement of the  
15 dispute, the agency shall notify the parties in writing that  
16 the administrative hearing processes under ss. 120.569 and  
17 120.57 are resumed.

18 (3) If the parties identified in paragraph (2) do not  
19 settle the case pursuant to mediation, the last offer of each  
20 of the non-agency parties made at mediation shall be recorded  
21 by the mediator in a written report that describes the offer,  
22 states the amount or content of the offer, the date the offer  
23 was made in writing, and the date the offer was rejected. If  
24 the matter subsequently proceeds to hearing under ss. 120.569  
25 and 120.57, the party that prevails in the final order with a  
26 result which is the same or more favorable than the last offer  
27 made by that party at mediation, then the prevailing party is  
28 entitled to recover attorney's fees and costs from the  
29 opposing non-agency party.

30 Section 3. Section 120.574, Florida Statutes, is  
31 amended to read:

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1           120.574 Expedited ~~Summary~~ hearing.--

2           (1)(a) Within 5 business days following the division's  
3 receipt of a petition or request for hearing, the division  
4 shall issue and serve on all original parties an initial order  
5 that assigns the case to a specific administrative law judge  
6 and provides general information regarding practice and  
7 procedure before the division. The initial order shall also  
8 contain a statement advising the original parties addressees  
9 that an expedited ~~a summary~~ hearing is available, provided the  
10 affected agency agrees, upon the agreement of all parties  
11 ~~under subsection (2)~~ and briefly describing the accelerated  
12 ~~expedited~~ time sequences, limited discovery, and final order  
13 provisions of the expedited summary procedure.

14           (b) Within 15 days after service of the initial order,  
15 any party may file with the division a motion for expedited  
16 ~~summary~~ hearing in accordance with subsection (2). If a  
17 non-agency party files such a motion, and the affected agency  
18 does not file a written objection within 7 days after the  
19 service of that motion, or if the affected agency files such a  
20 motion, and the original parties do not file a written  
21 objection within 7 days after the service of the motion, then  
22 the motion shall be granted and an order shall be entered  
23 setting the hearing date, which shall commence within 30 days  
24 from the date the response period to the motion expires. If  
25 the affected agency files such a motion, and an original party  
26 files a response within 7 days after service of that motion  
27 objecting to the expedited hearing, the administrative law  
28 judge shall, within 5 days from the filing of that response,  
29 enter an order granting the motion for expedited hearing,  
30 unless he or she determines that any of the original parties  
31 will be unduly prejudiced thereby, which hearing shall be

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1 commended within 30 days from the date the order granting the  
2 expedited hearing is entered.~~If all original parties agree,~~  
3 ~~in writing, to the summary proceeding, the proceeding shall be~~  
4 ~~conducted within 30 days of the agreement, in accordance with~~  
5 ~~the provisions of subsection (2).~~

6 (c) Intervenors in the proceeding shall be governed by  
7 the decision of the administrative law judge ~~original parties~~  
8 regarding whether the case will proceed in accordance with the  
9 expedited summary hearing process and shall not have standing  
10 to challenge that decision.

11 (d) If a motion for expedited summary hearing is not  
12 filed within 15 days after service of the division's initial  
13 order, the matter shall proceed in accordance with ss. 120.569  
14 and 120.57.

15 (2) In any case to which this subsection is  
16 applicable, the following procedures apply:

17 (a) Motions shall be limited to the following:

18 1. A motion in opposition to the petition.

19 2. A motion requesting discovery beyond the informal  
20 exchange of documents and witness lists described in paragraph  
21 (b). Upon a showing of necessity, additional discovery may be  
22 permitted in the discretion of the administrative law judge,  
23 but only if it can be completed not later than 5 days prior to  
24 the final hearing.

25 3. A motion for continuance of the final hearing date.

26 4. A motion requesting a prehearing conference, or the  
27 administrative law judge may require a prehearing conference,  
28 for the purpose of identifying: the legal and factual issues  
29 to be considered at the final hearing; the names and addresses  
30 of witnesses who may be called to testify at the final  
31 hearing; documentary evidence that will be offered at the

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1 final hearing; the range of penalties that may be imposed upon  
2 final hearing; and any other matter that the administrative  
3 law judge determines would expedite resolution of the  
4 proceeding. The prehearing conference may be held by  
5 telephone conference call.

6 5. During or after any preliminary hearing or  
7 conference, any party or the administrative law judge may  
8 suggest that the case is no longer appropriate for expedited  
9 ~~summary~~ disposition. Following any argument requested by the  
10 parties, the administrative law judge may enter an order  
11 referring the case back to the formal adjudicatory process  
12 described in s. 120.57(1), in which event the parties shall  
13 proceed accordingly.

14 (b) Not later than 5 days prior to the final hearing,  
15 the parties shall furnish to each other copies of documentary  
16 evidence and lists of witnesses who may testify at the final  
17 hearing.

18 (c) All parties shall have an opportunity to respond,  
19 to present evidence and argument on all issues involved, to  
20 conduct cross-examination and submit rebuttal evidence, and to  
21 be represented by counsel or other qualified representative.

22 (d) The record in a case governed by this subsection  
23 shall consist only of:

24 1. All notices, pleadings, motions, and intermediate  
25 rulings.

26 2. Evidence received.

27 3. A statement of matters officially recognized.

28 4. Proffers of proof and objections and rulings  
29 thereon.

30 5. Matters placed on the record after an ex parte  
31 communication.

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1           6. The written decision of the administrative law  
2 judge presiding at the final hearing.

3           7. The official transcript of the final hearing.

4           (e) The agency shall accurately and completely  
5 preserve all testimony in the proceeding and, upon request by  
6 any party, shall make a full or partial transcript available  
7 at no more than actual cost.

8           (f) The decision of the administrative law judge shall  
9 be rendered within 30 days after the conclusion of the final  
10 hearing or the filing of the transcript thereof, whichever is  
11 later. The administrative law judge's recommended order  
12 ~~decision, which shall be final agency action subject to~~  
13 ~~judicial review under s. 120.68,~~ shall include the following:

14           1. Findings of fact based exclusively on the evidence  
15 of record and matters officially recognized.

16           2. Conclusions of law.

17           3. Imposition of a fine or penalty, if applicable.

18           4. Any other information required by law or rule to be  
19 contained in a final order.

20           (g) The parties may file exceptions to the  
21 administrative law judge's recommended order within 10 days  
22 after its issuance and responses may be filed within 5 days of  
23 the exceptions. The agency shall issue the final order within  
24 30 days after the issuance of the administrative law judge's  
25 recommended order. ~~For a period of 2 years following October~~  
26 ~~1, 1996, the division shall maintain a register of the total~~  
27 ~~number of formal proceedings filed with the division under s.~~  
28 ~~120.57(1).~~

29           Section 4. Subsection (8) of section 373.1501, Florida  
30 Statutes, is amended to read:

31           373.1501 South Florida Water Management District as



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1 local sponsor.--

2 (8) Final agency action with regard to any project  
3 component subject to s. 373.026(8)(b) shall be taken by the  
4 department. Actions taken by the district pursuant to  
5 subsection (5) shall not be considered final agency action.  
6 Any petition for formal proceedings filed pursuant to ss.  
7 120.569 and 120.57 shall require a hearing under the expedited  
8 ~~summary~~ hearing provisions of s. 120.574, which shall be  
9 mandatory. The final hearing under this section shall be held  
10 within 30 days after receipt of the petition by the Division  
11 of Administrative Hearings.

12 Section 5. Paragraph (g) of subsection (2) of section  
13 403.088, Florida Statutes, is amended to read:

14 403.088 Water pollution operation permits;  
15 conditions.--

16 (2)

17 (g) The Legislature finds that the restoration of the  
18 Everglades Protection Area, including the construction,  
19 operation, and maintenance of stormwater treatment areas  
20 (STAs) is in the public interest. Accordingly, whenever a  
21 facility to be constructed, operated, or maintained in  
22 accordance with s. 373.4592 is subjected to permitting  
23 requirements pursuant to chapter 373 or this chapter, and the  
24 issuance of the initial permit for a new source, a new  
25 discharger, or a recommencing discharger is subjected to a  
26 request for hearing pursuant to s. 120.569, the administrative  
27 law judge may, upon motion by the permittee, issue a  
28 recommended order to the secretary who, within 5 days, shall  
29 issue an order authorizing the interim construction,  
30 operation, and maintenance of the facility if it complies with  
31 all uncontested conditions of the proposed permit and all

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1 other conditions recommended by the administrative law judge  
2 during the period until the final agency action on the permit.  
3 1. An order authorizing such interim construction,  
4 operation, and maintenance shall be granted if requested by  
5 motion and no party opposes it.  
6 2. If a party to the administrative hearing pursuant  
7 to ss. 120.569 and 120.57 opposes the motion, the  
8 administrative law judge shall issue a recommended order  
9 granting the motion if the administrative law judge finds  
10 that:  
11 a. The facility is likely to receive the permit; and  
12 b. The environment will not be irreparably harmed by  
13 the construction, operation, or maintenance of the facility  
14 pending final agency action on the permit.  
15 3. Prior to granting a contested motion for interim  
16 construction, operation, or maintenance of a facility  
17 authorized by s. 373.4592, the administrative law judge shall  
18 conduct a hearing using the expedited ~~summary~~ hearing process  
19 defined in s. 120.574, which shall be mandatory for motions  
20 made pursuant to this paragraph. Notwithstanding the  
21 provisions of s. 120.574(1), expedited ~~summary~~ hearing  
22 proceedings for these facilities shall begin within 30 days of  
23 the motion made by the permittee. Within 15 days of the  
24 conclusion of the expedited ~~summary~~ proceeding, the  
25 administrative law judge shall issue a recommended order  
26 either denying or approving interim construction, operation,  
27 or maintenance of the facility, which shall be submitted to  
28 the secretary who shall within 5 days thereafter, enter an  
29 order granting or denying interim construction operation or  
30 maintenance of the facility. The order shall remain in effect  
31 until final agency action is taken on the permit.

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1           Section 6. Subsections (8), (13), and (15) of section  
2 403.973, Florida Statutes, are amended to read:

3           403.973 Expedited permitting; comprehensive plan  
4 amendments.--

5           (8) At the option of the participating local  
6 government, appeals of its final approval for a project may be  
7 pursuant to the expedited ~~summary~~ hearing provisions of s.  
8 120.574, pursuant to subsection (15), or pursuant to other  
9 appellate processes available to the local government. The  
10 local government's decision to enter into an expedited a  
11 ~~summary~~ hearing must be made as provided in s. 120.574 or in  
12 the memorandum of agreement.

13           (13) The applicant, the regional permit action team,  
14 and participating local governments may agree to incorporate  
15 into a single document the permits, licenses, and approvals  
16 that are obtained through the expedited permit process. This  
17 consolidated permit is subject to the expedited ~~summary~~  
18 hearing provisions set forth in subsection (15).

19           (15) The expedited hearing process as provided for in  
20 s. 120.574 shall be used with regard to challenges to state  
21 agency action in the expedited permitting process for projects  
22 processed under this section. Notwithstanding s. 120.574, use  
23 of the expedited hearing process does not require consent of  
24 the affected agency or a determination by the administrative  
25 law judge as to its propriety, provided however, the hearing  
26 schedule may be extended by written agreement of all parties.  
27 ~~are subject to the summary hearing provisions of s. 120.574,~~  
28 ~~except that the administrative law judge's decision, as~~  
29 ~~provided in s. 120.574(2)(f), shall be in the form of a~~  
30 ~~recommended order and shall not constitute the final action of~~  
31 ~~the state agency.~~In those proceedings where the action of

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1 only one agency of the state is challenged, the agency of the  
2 state shall issue the final order within 10 working days of  
3 receipt of the administrative law judge's recommended order.  
4 In those proceedings where the actions of more than one agency  
5 of the state are challenged, the Governor shall issue the  
6 final order within 10 working days of receipt of the  
7 administrative law judge's recommended order. The  
8 participating agencies of the state may opt at the preliminary  
9 hearing conference to allow the administrative law judge's  
10 decision to constitute the final agency action. If a  
11 participating local government agrees to participate in the  
12 expedited ~~summary~~ hearing provisions of s. 120.574 for  
13 purposes of review of local government comprehensive plan  
14 amendments, s. 163.3184(9) and (10) apply.

15 Section 7. Subsection (14) of section 408.7056,  
16 Florida Statutes, is amended to read:

17 408.7056 Statewide Provider and Subscriber Assistance  
18 Program.--

19 (14) A proposed order issued by the agency or  
20 department which only requires the managed care entity to take  
21 a specific action under subsection (7) is subject to an  
22 expedited ~~a summary~~ hearing in accordance with s. 120.574,  
23 unless all of the parties agree otherwise. If the managed care  
24 entity does not prevail at the hearing, the managed care  
25 entity must pay reasonable costs and attorney's fees of the  
26 agency or the department incurred in that proceeding.

27 Section 8. Paragraph (a) of subsection (4) of section  
28 120.595, Florida Statutes, is amended to read:

29 120.595 Attorney's fees.--

30 (4) CHALLENGES TO AGENCY ACTION PURSUANT TO SECTION  
31 120.56(4).--

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1           (a) Upon entry of a final order that all or part of an  
2 agency statement violates s. 120.54(1)(a), the administrative  
3 law judge shall award reasonable costs and reasonable  
4 attorney's fees to the petitioner, unless the agency  
5 demonstrates that the statement is required by the Federal  
6 Government to implement or retain a delegated or approved  
7 program or to meet a condition to receipt of federal funds.  
8 Notwithstanding any other provision of law to the contrary, if  
9 the agency statement proceeding is more than 15 days from the  
10 petition being filed and a final order has not been entered  
11 because the agency has proceeded to rulemaking or a final  
12 order has been entered in favor of the agency solely because  
13 the agency has proceeded to rulemaking and has effectively  
14 relied upon s. 120.56(4)(e), the administrative law judge  
15 shall nevertheless enter an order awarding the petitioner  
16 reasonable attorney's fees and costs. Attorney fees and costs  
17 shall not be awarded if the agency prevails that the agency  
18 statement does not violate s. 120.54(1)(a).

19           Section 9. Subsection (1) of section 373.114, Florida  
20 Statutes, is amended to read:

21           373.114 Land and Water Adjudicatory Commission; review  
22 of district rules and orders; department review of district  
23 rules.--

24           (1) Except as provided in subsection (2), the Governor  
25 and Cabinet, sitting as the Land and Water Adjudicatory  
26 Commission, have the exclusive authority to review any order  
27 or rule of a water management district, other than a rule  
28 relating to an internal procedure of the district or an order  
29 resulting from a s. 120.569 or s. 120.57 evidentiary hearing,  
30 to ensure consistency with the provisions and purposes of this  
31 chapter. Subsequent to the legislative ratification of the

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1 delineation methodology pursuant to s. 373.421(1), this  
2 subsection also shall apply to an order of the department, or  
3 a local government exercising delegated authority, pursuant to  
4 ss. 373.403-373.443, except an order pertaining to activities  
5 or operations subject to conceptual plan approval pursuant to  
6 chapter 378.

7           (a) Such review may be initiated by the department or  
8 by a party to the proceeding below by filing a request for  
9 review with the Land and Water Adjudicatory Commission and  
10 serving a copy on the department and on any person named in  
11 the rule or order within 20 days after adoption of the rule or  
12 the rendering of the order. For the purposes of this section,  
13 the term "party" means any affected person who submitted oral  
14 or written testimony, sworn or unsworn, of a substantive  
15 nature which stated with particularity objections to or  
16 support for the rule or order that are cognizable within the  
17 scope of the provisions and purposes of this chapter, or any  
18 person who participated as a party in a proceeding instituted  
19 pursuant to chapter 120. In order for the commission to  
20 accept a request for review initiated by a party below, with  
21 regard to a specific order, four members of the commission  
22 must determine on the basis of the record below that the  
23 activity authorized by the order would substantially affect  
24 natural resources of statewide or regional significance.  
25 Review of an order may also be accepted if four members of the  
26 commission determine that the order raises issues of policy,  
27 statutory interpretation, or rule interpretation that have  
28 regional or statewide significance from the standpoint of  
29 agency precedent. The party requesting the commission to  
30 review an order must allege with particularity, and the  
31 commission must find, that:

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1           1. The order is in conflict with statutory  
2 requirements; or

3           2. The order is in conflict with the requirements of a  
4 duly adopted rule.

5           (b) Review by the Land and Water Adjudicatory  
6 Commission is appellate in nature and shall be based solely on  
7 the record below. If there was no evidentiary administrative  
8 proceeding below, the facts contained in the proposed agency  
9 action, including any technical staff report, shall be deemed  
10 undisputed. The matter shall be heard by the commission not  
11 more than 60 days after receipt of the request for review,  
12 unless waived by the parties.

13           (c) If the Land and Water Adjudicatory Commission  
14 determines that a rule of a water management district is not  
15 consistent with the provisions and purposes of this chapter,  
16 it may require the water management district to initiate  
17 rulemaking proceedings to amend or repeal the rule. If the  
18 commission determines that an order is not consistent with the  
19 provisions and purposes of this chapter, the commission may  
20 rescind or modify the order or remand the proceeding for  
21 further action consistent with the order of the Land and Water  
22 Adjudicatory Commission only if the commission determines that  
23 the activity authorized by the order would substantially  
24 affect natural resources of statewide or regional  
25 significance. In the case of an order which does not itself  
26 substantially affect natural resources of statewide or  
27 regional significance, but which raises issues of policy that  
28 have regional or statewide significance from the standpoint of  
29 agency precedent, the commission may direct the district to  
30 initiate rulemaking to amend its rules to assure that future  
31 actions are consistent with the provisions and purposes of

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1 this chapter without modifying the order.

2 (d) In a review under this section of a construction  
3 permit issued pursuant to a conceptual permit under part IV,  
4 which conceptual permit is issued after July 1, 1993, a party  
5 to the review may not raise an issue which was or could have  
6 been raised in a review of the conceptual permit under this  
7 section.

8 (e) A request for review under this section shall not  
9 be a precondition to the seeking of judicial review pursuant  
10 to s. 120.68 or the seeking of an administrative determination  
11 of rule validity pursuant to s. 120.56.

12 (f) The Florida Land and Water Adjudicatory Commission  
13 may adopt rules to set forth its procedures for reviewing an  
14 order or rule of a water management district consistent with  
15 the provisions of this section.

16 (g) For the purpose of this section, it shall be  
17 presumed that activity authorized by an order will not affect  
18 resources of statewide or regional significance if the  
19 proposed activity:

- 20 1. Occupies an area less than 10 acres in size, and
- 21 2. Does not create impervious surfaces greater than 2  
22 acres in size, and
- 23 3. Is not located within 550 feet of the shoreline of  
24 a named body of water designated as Outstanding Florida  
25 Waters, and
- 26 4. Does not adversely affect threatened or endangered  
27 species.

28  
29 This paragraph shall not operate to hold that any activity  
30 that exceeds these limits is presumed to affect resources of  
31 statewide or regional significance. The determination of



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1 whether an activity will substantially affect resources of  
2 statewide or regional significance shall be made on a  
3 case-by-case basis, based upon facts contained in the record  
4 below.

5 Section 10. Section 373.4141, Florida Statutes, is  
6 amended to read:

7 373.4141 Permits; processing.--

8 (1) Within 30 days after receipt of an application for  
9 a permit under this part, the department or the water  
10 management district shall review the application and shall  
11 request submittal of all additional information the department  
12 or the water management district is permitted by law to  
13 require. If the applicant believes any request for additional  
14 information is not authorized by law or rule, the applicant  
15 may request a hearing pursuant to s. 120.57. Within 30 days  
16 after receipt of such additional information, the department  
17 or water management district shall review it and may request  
18 only that information needed to clarify such additional  
19 information or to answer new questions raised by or directly  
20 related to such additional information. If the applicant  
21 believes the request of the department or water management  
22 district for such additional information is not authorized by  
23 law or rule, the department or water management district, at  
24 the applicant's request, shall proceed to process the permit  
25 application.

26 (2) A permit shall be approved or denied within 90  
27 days after receipt of the original application, the last item  
28 of timely requested additional material, or the applicant's  
29 written request to begin processing the permit application.

30 (3) When the permit application is deemed complete  
31 pursuant to this subsection, or when the applicant declines to

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1 provide additional information and demands that the agency  
2 proceed to process the permit application, the applicant may  
3 elect to publish notice of the application and request that  
4 the department or water management district mail a notice to  
5 all persons having submitted a request for such notices that a  
6 permit is being processed, and may be the subject of final  
7 agency action, and all persons owning property with 500 feet  
8 of the boundary of the proposed project. The department or  
9 district shall maintain a permanent list of persons requesting  
10 such notices, and shall regularly update this list. Once each  
11 year, in a newspaper of general circulation in each county,  
12 the department and respective district shall publish a notice  
13 indicating that persons who wish to be notified of such permit  
14 applications may submit a written request for said notices to  
15 the department or district. Each mailed notice shall include:  
16 (a) A description of the project, permit  
17 identification number, identity of the applicant, and the  
18 water body or wetland area that is impacted by the project.  
19 (b) The number of acres of wetland impacted, if known,  
20 or a statement that wetlands will or will not be impacted, if  
21 the exact acreage is unknown.  
22 (c) Reproduction of a vicinity map showing the  
23 location of the project.  
24 (d) A statement of whether or not the project will  
25 impact the habitat of endangered or threatened species, if  
26 known, or a statement that such impacts have not been  
27 determined if this information is not available.  
28 (4) In order to establish a presumption of eligibility  
29 to seek a formal proceeding pursuant to ss. 120.569 and  
30 120.57, or s. 403.412(5) any substantially affected petitioner  
31 must have submitted written comments, recommendations, or

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1 objections to to the department or district prior to the  
2 decision of the department or district to finalize agency  
3 action, or in the alternative, in the case of a district,  
4 submitted oral comments to the district's governing board.  
5 Failure of any substantially affected petitioner to  
6 participate in agency deliberations by providing written  
7 comments, recommendations, or objections to the department of  
8 district prior to its decision to finalize agency action shall  
9 be considered by the administrative law judge in any  
10 subsequent formal proceeding as evidence that a petitioner is  
11 not a substantially affected party, and the petitioner shall  
12 be deemed to have waived its right to an administrative  
13 hearing unless good cause is presented regarding the lack of  
14 participation.

15 (5) The party who objects to the intended agency  
16 action bears the burden of going forward with the evidence and  
17 the burden of persuasion.

18 (6) The Division of Administrative Hearings shall  
19 conduct a final hearing on a permit application under this  
20 part challenged pursuant to ss. 120.569 and 120.57 within 90  
21 days after receipt by the division of the petition or request  
22 for hearing provided however, the hearing schedule may be  
23 extended by written agreement of all parties. During the  
24 pendency of the administrative proceeding, the department or  
25 the water management district, as applicable, may authorize  
26 construction activities which are not subject to the  
27 allegations contained in the petition or request for hearing  
28 initiating the administrative challenge.

29 Section 11. Subsection (5) of section 403.412, Florida  
30 Statutes, is amended to read:

31 403.412 Environmental Protection Act.--

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1           (5) In any administrative, licensing, or other  
2 proceedings authorized by law for the protection of the air,  
3 water, or other natural resources of the state from pollution,  
4 impairment, or destruction, the Department of Legal Affairs, a  
5 political subdivision or municipality of the state, or a  
6 citizen of the state shall have standing to intervene as a  
7 party on the filing of a verified pleading asserting that the  
8 activity, conduct, or product to be licensed or permitted has  
9 or will have the effect of impairing, polluting, or otherwise  
10 injuring the air, water, or other natural resources of the  
11 state; however, a citizen of the state who is not  
12 substantially affected by the activity, conduct, or product  
13 may not institute, initiate, petition, or request a proceeding  
14 pursuant to s. 120.569 or s. 120.57.

15           Section 12. Paragraph (c) of subsection (1) of section  
16 120.52, Florida Statutes, is amended to read:

17           120.52 Definitions.--As used in this act:

18           (1) "Agency" means:

19           (a) The Governor in the exercise of all executive  
20 powers other than those derived from the constitution.

21           (b) Each:

22           1. State officer and state department, and each  
23 departmental unit described in s. 20.04.

24           2. State authority, including a regional water supply  
25 authority.

26           3. State board.

27           4. State commission, including the Commission on  
28 Ethics and the Fish and Wildlife Conservation Commission when  
29 acting pursuant to statutory authority derived from the  
30 Legislature.

31           5. Regional planning agency.

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1           6. Multicounty special district with a majority of its  
2 governing board comprised of nonelected persons.

3           7. Educational units.

4           8. Entity described in chapters 163, 373, 380, and 582  
5 and s. 186.504.

6           (c) Each other unit of government in the state,  
7 including counties and municipalities and units of local  
8 government having jurisdiction only in one county or part  
9 thereof, to the extent they are expressly made subject to this  
10 act by general or special law or existing judicial decisions.

11  
12 This definition does not include any legal entity or agency  
13 created in whole or in part pursuant to chapter 361, part II,  
14 an expressway authority pursuant to chapter 348, any legal or  
15 administrative entity created by an interlocal agreement  
16 pursuant to s. 163.01(7), unless any party to such agreement  
17 is otherwise an agency as defined in this subsection, or any  
18 multicounty special district with a majority of its governing  
19 board comprised of elected persons; however, this definition  
20 shall include a regional water supply authority.

21           Section 13. This act shall take effect upon becoming a  
22 law.

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

26 And the title is amended as follows:

27           On page 1, through page 3, lines 1-17,  
28 remove from the title of the bill: all of said lines

29  
30 and insert in lieu thereof:

31           An act relating to administrative procedure;

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1           amending s. 57.111, F.S.; increasing the  
2           maximum net worth for qualification as a small  
3           business party under the Florida Equal Access  
4           to Justice Act; increasing the limitation on  
5           the amount of attorney's fees and costs that  
6           may be awarded under the act; amending s.  
7           120.573, F.S., which provides for mediation of  
8           disputes under the Administrative Procedure  
9           Act; revising the parties who must agree to  
10          mediation and to the length of the mediation  
11          period; revising requirements relating to the  
12          mediation agreement; providing requirements for  
13          the conduct of such mediation; providing  
14          conditions under which certain parties are  
15          entitled to recover attorney's fees and costs  
16          after a subsequent hearing; amending s.  
17          120.574, F.S., which provides for summary  
18          hearings under said act; redesignating such  
19          hearings as expedited hearings; revising  
20          conditions under which such hearings may be  
21          held; specifying time periods for filing  
22          objections to a motion for such a hearing;  
23          removing the requirement that the  
24          administrative law judge's decision is final  
25          agency action and providing for a recommended  
26          order and final agency action on that order;  
27          amending s. 373.1501, F.S., relating to  
28          administrative action with respect to project  
29          components of the Central and Southern Florida  
30          Project, s. 403.088, F.S., relating to  
31          proceedings regarding permits for certain

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1 facilities in the Everglades Protection Area,  
2 and s. 408.7056, F.S., relating to certain  
3 proposed orders under the Statewide Provider  
4 and Subscriber Assistance Program, to conform  
5 language with respect to expedited hearings;  
6 amending s. 403.973, F.S., which provides for  
7 expedited permitting for certain projects;  
8 revising conditions under which the expedited  
9 hearing provisions of the Administrative  
10 Procedure Act apply to the expedited permitting  
11 process; conforming language; amending s.  
12 120.595, F.S.; providing for award of  
13 attorney's fees and costs to the petitioner  
14 when an agency statement is challenged under  
15 the Administrative Procedure Act as not having  
16 been properly adopted as a rule and the agency  
17 has proceeded to rulemaking; amending s.  
18 373.114, F.S.; providing that water management  
19 district orders resulting from a s. 120.569,  
20 F.S., or s. 120.57, F.S., evidentiary hearing  
21 are not subject to the Land and Water  
22 Adjudicatory Commission's review authority;  
23 amending s. 373.4141, F.S.; providing that an  
24 applicant for a permit for a stormwater  
25 management system, dam, impoundment, or other  
26 work under pt. IV of ch. 373, F.S., may elect  
27 to publish notice of such application;  
28 specifying effect of such publication on the  
29 rights of substantially affected persons to  
30 initiate administrative proceedings with  
31 respect to such application; providing that the

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1 party opposed to agency action bears the burden  
2 of going forward and persuasion; specifying the  
3 date by which a final hearing must be held when  
4 a permit application is challenged and  
5 providing that certain construction activities  
6 may be authorized during the pendency of the  
7 administrative proceeding; amending s. 403.412,  
8 F.S.; providing that a citizen who is not a  
9 substantially affected person may not initiate  
10 certain administrative proceedings under the  
11 Environmental Protection Act of 1971; amending  
12 s. 120.52, F.S., clarifying which governmental  
13 entities are subject to the administrative  
14 procedure act; providing an effective date.

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