

HD-05

Bill No. CS/CS/HB 2023

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

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

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Representative(s) Bense offered the following:

Amendment (with title amendment)

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

Section 1. 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
b. A partnership or corporation, including a

1 professional practice, which has its principal office in this
2 state and has at the time the action is initiated by a state
3 agency not more than 25 full-time employees or a net worth of
4 not more than ~~\$5~~^{\$2} million; or

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

12 (4)

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

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

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

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

29 120.569 Decisions which affect substantial
30 interests.--

31 (2)

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

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

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

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

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

30 d. The denials of factual contentions are warranted on
31 the evidence or, if specifically identified, are reasonably

1 based on a lack of information or belief.
2 3. If, after notice and a reasonable opportunity to
3 respond, the presiding officer determines that subparagraph 2.
4 has been violated, the presiding officer shall impose an
5 appropriate sanction against the person who signed it, the
6 represented party, or both, which must include an order to pay
7 the other party or parties the amount of reasonable expenses
8 incurred because of the filing of the pleading, motion, or
9 other paper, including reasonable attorney's fees. However:
10 a. Monetary sanctions may not be awarded against a
11 represented party for a violation of sub-subparagraph 2.b.
12 b. Monetary sanctions may not be awarded under this
13 paragraph based on a violation of discovery rules, which are
14 subject to sanctions under paragraph (f).
15 c. This paragraph does not authorize the award of
16 sanctions against any person who comments on or objects to a
17 draft permit during an authorized period for public comment or
18 at a public hearing.
19 4. Sanctions under this paragraph may be initiated at
20 any time after the initiation of a proceeding either by motion
21 or on the presiding officer's own initiative. A motion shall
22 describe the specific conduct alleged to violate subparagraph
23 2. The motion shall be served upon the attorney or qualified
24 representative of a party or an unrepresented party against
25 whom such sanctions are sought and shall be filed with the
26 presiding officer. However, such motion shall not be acted
27 upon by the presiding officer or called up for hearing by the
28 movant unless, within 14 days after service of the motion, or
29 such other period as the presiding officer may prescribe, the
30 challenged paper, claim, defense, contention, allegation, or
31 denial is not withdrawn or appropriately corrected. A

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

24 Section 3. Paragraphs (c) and (e) of subsection (1) of
25 section 120.595, Florida Statutes, are amended to read:

26 120.595 Attorney's fees.--

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

29 (c) In proceedings pursuant to s. 120.57(1), and upon
30 motion, the administrative law judge shall determine whether
31 any party participated in the proceeding for an improper

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

14 (e) For the purpose of this subsection:

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

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

22 3. "Nonprevailing adverse party" means a party that
23 has failed to have substantially changed the outcome of the
24 proposed or final agency action which is the subject of a
25 proceeding. In the event that a proceeding results in any
26 substantial modification or condition intended to resolve the
27 matters raised in a party's petition, it shall be determined
28 that the party having raised the issue addressed is not a
29 nonprevailing adverse party. The recommended order shall
30 state whether the change is substantial for purposes of this
31 subsection. In no event shall the term "nonprevailing party"

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1 or "prevailing party" be deemed to include any party that has
2 intervened in a previously existing proceeding to support the
3 position of an agency.

4 Section 4. Subsection (1) of section 373.114, Florida
5 Statutes, is amended to read:

6 373.114 Land and Water Adjudicatory Commission; review
7 of district rules and orders; department review of district
8 rules.--

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

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

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

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

21 2. The order is in conflict with the requirements of a
22 duly adopted rule.

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

31 (c) If the Land and Water Adjudicatory Commission

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

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

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

30 (f) The Florida Land and Water Adjudicatory Commission
31 may adopt rules to set forth its procedures for reviewing an

1 order or rule of a water management district consistent with
2 the provisions of this section.

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

- 7 1. Occupies an area less than 10 acres in size, and
- 8 2. Does not create impervious surfaces greater than 2
9 acres in size, and

10 3. Is not located within 550 feet of the shoreline of
11 a named body of water designated as Outstanding Florida
12 Waters, and

13 4. Does not adversely affect threatened or endangered
14 species.

15
16 This paragraph shall not operate to hold that any activity
17 that exceeds these limits is presumed to affect resources of
18 statewide or regional significance. The determination of
19 whether an activity will substantially affect resources of
20 statewide or regional significance shall be made on a
21 case-by-case basis, based upon facts contained in the record
22 below.

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

25 403.412 Environmental Protection Act.--

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

1 party on the filing of a verified pleading asserting that the
 2 activity, conduct, or product to be licensed or permitted has
 3 or will have the effect of impairing, polluting, or otherwise
 4 injuring the air, water, or other natural resources of the
 5 state. However, a citizen of this state whose substantial
 6 interests have not been determined by agency action may not
 7 institute, initiate, petition, or request a proceeding
 8 pursuant to s. 120.569 or s. 120.57. This subsection does not
 9 limit the associational standing of a nonprofit corporation or
 10 association, organized in whole or in part to promote
 11 conservation, to protect the environment or other biological
 12 values or to preserve historical sites where a substantial
 13 number, although not necessarily a majority, of its members
 14 have their substantial interests determined by the activity,
 15 conduct, or product to be permitted or licensed.

16 Section 6. Paragraph (b) of subsection (1) of section
 17 120.52, Florida Statutes, is amended to read:

18 120.52 Definitions.--As used in this act:

- 19 (1) "Agency" means:
- 20 (b) Each:
 - 21 1. State officer and state department, and each
 - 22 departmental unit described in s. 20.04.
 - 23 2. State authority, including a regional water supply
 - 24 authority.
 - 25 3. State board.
 - 26 4. State commission, including the Commission on
 - 27 Ethics and the Fish and Wildlife Conservation Commission when
 - 28 acting pursuant to statutory authority derived from the
 - 29 Legislature.
 - 30 5. Regional planning agency.
 - 31 6. Multicounty special district with a majority of its

1 governing board comprised of nonelected persons.

2 7. Educational units.

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

5
6 This definition does not include any legal entity or agency
7 created in whole or in part pursuant to chapter 361, part II,
8 an expressway authority pursuant to chapter 348, any legal or
9 administrative entity created by an interlocal agreement
10 pursuant to s. 163.01(7), unless any party to such agreement
11 is otherwise an agency as defined in this subsection, or any
12 multicounty special district with a majority of its governing
13 board comprised of elected persons; however, this definition
14 shall include a regional water supply authority.

15 Section 7. This act shall take effect upon becoming a
16 law.

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

20 And the title is amended as follows:

21 Delete everything before the enacting clause

22
23 and insert:

24 A bill to be entitled
25 An act relating to administrative procedure;
26 amending s. 57.111, F.S.; increasing the
27 maximum net worth for qualification as a small
28 business party under the Florida Equal Access
29 to Justice Act; increasing the limitation on
30 the amount of attorney's fees and costs that
31 may be awarded under the act; amending s.

1 120.569, F.S.; revising requirements for
2 pleadings, motions, and other papers filed
3 under ch. 120, F.S.; providing for sanctions,
4 including an award of attorney's fees; amending
5 s. 120.595, F.S.; redefining the term "improper
6 purpose" for purposes of provisions authorizing
7 challenges to agency action; amending s.
8 373.114, F.S.; providing that water management
9 district orders resulting from certain
10 evidentiary hearings are not subject to the
11 Land and Water Adjudicatory Commission's review
12 authority; amending s. 403.412, F.S.; providing
13 that a citizen of this state who is not a
14 substantially affected person may not initiate
15 certain administrative proceedings under the
16 Environmental Protection Act of 1971; amending
17 s. 120.52, F.S.; clarifying which governmental
18 entities are subject to the Administrative
19 Procedure Act; providing an effective date.

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