

**STORAGE NAME:** h2023s2.gg

**DATE:** April 20, 2000

**HOUSE OF REPRESENTATIVES  
AS FURTHER REVISED BY THE COMMITTEE ON  
GENERAL GOVERNMENT APPROPRIATIONS  
ANALYSIS**

**BILL #:** CS/CS/HB 2023

**RELATING TO:** Administrative Procedure

**SPONSOR(S):** Committee on General Government Appropriations (FRC); Committee on  
Judiciary (CJC) and Rep. Bense

**TIED BILL(S):** None

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

- (1) JUDICIARY YEAS 6 NAYS 2
  - (2) GOVERNMENTAL RULES AND REGULATIONS YEAS 7 NAYS 1
  - (3) GENERAL GOVERNMENT APPROPRIATIONS YEAS 6 NAYS 2
  - (4)
  - (5)
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**I. SUMMARY:**

CS/CS/HB 2023 modifies various provisions of the Administrative Procedure Act relating to expedited hearings and attorney's fees. It also clarifies the expedited hearing processes for certain environmental permit applications under Chapters 373 and 403, F.S. Among other modifications, the bill:

- Modifies the Equal Access to Justice Act to increase the net worth amounts for small business parties from \$2 million to \$5 million and increases the amount of attorney's fees that may be awarded under the Act from \$15,000 to \$50,000.
- Gives an administrative law judge recommended order authority instead of final authority for all expedited hearings under s. 120.574, F.S.
- Allows for expedited hearings under the expedited comprehensive plan permit process of s. 403.973, F.S., without consent of the affected agency or a determination of the appropriateness of an expedited hearing by an administrative law judge.
- Allows an award of attorney's fees and costs under s. 120.595, F.S., to the petitioner regarding agency statements if the agency has proceeded to rulemaking.
- Creates a notice and waiver of administrative rights mechanism for permits under s. 373.4141, F.S., and provides for a hearing within 90 days of a petition for hearing under that section.
- Removes the authority of the Land and Water Adjudicatory Commission to review orders arising from evidentiary hearings conducted pursuant to ss. 120.569 and 120.57, F.S.
- Eliminates standing for residents under the Environmental Protection Act of 1971 who are not substantially affected by the activity, conduct, or product to be licensed or permitted
- Revises s. 120.52, F.S., related to definition of authority, board, commission, and units of governments.

The bill appears not to have a significant fiscal impact on state or local government, and shall be effective on becoming law.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |                              |                             |   |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u>         | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u>             | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

B. PRESENT SITUATION:

**Equal Access to Justice Act**

Section 57.111, F.S., provides for the award of attorney's fees and costs to prevailing small business parties in actions initiated by state agencies. A small business party is currently defined in relevant part as:

- A sole proprietor of an unincorporated business, including a professional practice, whose principal offices 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 \$2 million, including both personal and business investments; or
- A partnership or corporation, including a professional practice, which has its principle office in this state and 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 \$2 million. See s. 57.111(3)(d), F.S.

The Act limits the award of attorney's fees for a prevailing party in an action initiated by a state agency to \$15,000. See s. 57.111(4)(d)2., F.S.

**Mediation under Chapter 120, F.S.**

Section 120.573, F.S., provides for the mediation of administrative disputes. This section allows the agency and all parties to the litigation to agree to mediation, and in such cases tolls the time limits provided by ss. 120.569 and 120.57, F.S., to allow for the mediation. The mediation must be conducted within 60 days of the parties' agreement to mediate. The mediation agreement must include provisions for mediator selection, the allocation of costs and fees associated with mediation, and the mediating parties' understanding regarding the confidentiality of discussions and documents introduced during mediation. If the mediation results in settlement of the administrative dispute, the agency enters a final order incorporating the agreement of the parties. If the mediation terminates without settlement of the dispute, the agency shall notify the parties in writing that the administrative hearing processes under ss. 120.569 and 120.547, F.S., are resumed.

**Summary Hearing under Chapter 120, F.S.**

Section 120.574, F.S., provides for a summary hearing process for administrative actions. The Division of Administrative Hearings must provide the original parties with an initial order within 5 days of the filing of the petition for hearing. That order shall contain a statement advising the addressees that a summary hearing is available. Within 15 days after service of the initial order, any party may file with the division a motion for summary hearing in accordance with s. 120.574(2), F.S. If all original parties agree, in writing, to the summary proceeding, it shall be conducted within 30 days of the agreement. Intervenors are subject to the decision of the original parties as to whether the case will proceed under the summary hearing provisions and shall not have standing to challenge the decision. If a motion for summary hearing is not filed within 15 days after service of the initial order, the case shall proceed in accordance with the formal hearing provisions of ss. 120.569 and 120.57, F.S.

The summary hearing limits the types of motions and the scope of the record of the hearing. Within 30 days of the conclusion of the summary hearing, the administrative law judge shall enter a final order in the matter, which is final agency action for purposes of Chapter 120, F.S., and is appealable to a district court of appeal as provided in s. 120.68, F.S.

### **Expedited Permitting Process**

Section 403.973, F.S., provides for an expedited permit process for certain economic development projects. Section 403.973(15), F.S., provides that challenges of state agency action under the expedited permit process are subject to the summary hearing provisions of s. 120.574, F.S., except that the decision of the administrative law judge shall be in the form of a recommended order and not a final order subject to appeal under s. 120.68, F.S., unless the affected agencies agree at the preliminary hearing conference to allow the judge's decision to constitute final agency action. In cases where a single agency is affected, the agency shall render its final order in the matter within 10 working days of the receipt of the recommended order. In those proceedings where the actions of more than one agency are challenged, the Governor shall issue the final order within 10 working days of receipt of the recommended order.

### **Challenges to Agency Action Pursuant to s. 120.56(4), F.S.**

Section 120.56(4), F.S., provides for challenges of agency statements defined as administrative rules. A substantially affected person must show that the statement constitutes a rule that the agency has not adopted as required by the general rulemaking provisions of s. 120.54(1), F.S. In such cases, and upon the entry of a final order that all or part of the agency statement violates s. 120.54(1), F.S., the petitioner is entitled to an award of reasonable attorney's fees and costs unless the agency demonstrates that the statement is required by the federal government to implement or retain a delegated or approved program or to meet a condition to receipt of federal funds. See s. 120.595(4), F.S.

### **Permit Processing under Chapter 373, F.S.**

Section 373.4141, F.S., regulates the permitting process for stormwater management systems, dams, impoundments, or other works under Part IV of Chapter 373, F.S. Under that section, within 30 days after receipt of an application for a permit, the Department of Environmental Protection or the water management district shall review the application and shall request submission of all additional information the department or the water management district is permitted by law to require. If the applicant believes any request for additional information is not authorized by law or rule, the applicant may request a hearing pursuant to s. 120.57, F.S. Within 30 days after receipt of such additional information, the department or water management district shall review it and may request only that information needed to clarify

such additional information or to answer new questions raised by or directly related to such additional information. If the applicant believes the request of the department or water management district for such additional information is not authorized by law or rule, the department or water management district, at the applicant's request, shall proceed to process the permit application. This section also requires that a permit must be approved or denied within 90 days after receipt of the original application, the last item of timely requested additional material, or the applicant's written request to begin processing the permit application.

### **Land and Water Adjudicatory Commission**

Section 373.114(1), F.S., provides that the Governor and Cabinet, sitting as the Land and Water adjudicatory Commission, have the exclusive authority to review any order or rule of a water management district, other than a rule of internal procedure of the district, to ensure consistency with the provisions and purposes of Chapter 373, F.S. The law allows the Commission to review orders of the Department of Environmental Protection and local governments exercising delegated authority, pursuant to ss. 373.403-.443, F.S., with certain exceptions.

### **Citizen Standing under the Environmental Protection Act of 1971**

Section 403.412, F.S., confers standing rights on citizens of this state in administrative, licensing, or other proceedings authorized by law for the protection of the air, water, or other natural resources of the state from pollution, impairment, or destruction. A citizen may intervene as a party on the filing of a verified pleading asserting that the activity, conduct, or product to be licensed or permitted has or will have the effect of impairing, polluting, or otherwise injuring the air, water, or other natural resources or the state.

## **C. EFFECT OF PROPOSED CHANGES:**

### **Equal Access to Justice Act**

CS/CS/HB 2023 amends s. 57.111, F.S., to change the net worth definition of a "small business party" that may be titled to an award of attorney's fees from \$2 million to \$5 million and to increase the award of attorney's fees under that section from \$15,000 to \$75,000. This change is designed to update the net worth and attorney's fees provisions in light of inflation and changes in the economy.

### **Summary Hearings under Chapter 120, F.S.**

The bill reclassifies the summary hearing under s. 120.574, F.S., as an "expedited" hearing. It requires the initial order to advise the original parties to the litigation that an expedited hearing is available, provided that the affected agency agrees, and defines the accelerated nature of the expedited procedure. The bill additionally provides that any party may file a motion for expedited hearing. Under the bill, if a nonagency party files such a motion, and the affected agency does not file a written objection within 7 days after service of such a motion, or if the affected agency files such a motion, and the original parties do not file a written objection within 7 days after service of the motion, the motion shall be granted and an order entered setting a hearing date, which shall commence within 30 days of the date the response period to the motion expires. If an affected agency files such a motion, and the original party files a response within 7 days after service of the motion objecting to the expedited hearing, the administrative law judge shall, within 5 days from the filing of that response, enter and order granting the motion for expedited hearing, unless he or she determines that any of the

original parties will be unduly prejudiced thereby, which hearing shall be commenced within 30 days from the date the order granting the expedited hearing is entered.

The bill also requires that intervenors to the litigation be governed by the decision of the administrative law judge, instead of the original parties, with respect to whether the case will proceed on an expedited basis.

Finally, the bill confers on the administrative law judge recommended order authority instead of final order authority, and allows parties to file exceptions to the recommended order within 10 days of the issuance of the recommended order and allows responses to the exceptions to be filed within 5 days after the exceptions are filed. The agency shall issue a final order in the case within 30 days of the issuance of the recommended order.

### **Expedited Hearing Process for Water Pollution Operation Permit**

The bill provides that the expedited hearing process under s. 120.574, F.S., shall apply to challenges of state agency action in the expedited permitting process for projects processed under s. 403.088, F.S. It also provides that, notwithstanding the provisions of s. 120.574, F.S., the use of the expedited hearing does *not* require consent of the affected agency or a determination by the administrative law judge as to its propriety; however, allows the hearing schedule to be extended by written agreement of all parties.

### **Challenges to Agency Action Pursuant to s. 120.56(4), F.S.**

The bill requires an administrative law judge to award the petitioner reasonable attorney's fees and costs under s. 120.595(4), F.S., if, notwithstanding any other provisions law, an agency files with the Secretary of State a notice of rule development less than 10 days prior to the final hearing and a final hearing regarding an agency's statement has been scheduled, and a final order has not been entered because the agency has proceeded to rulemaking or a final order has been entered in favor of the agency because the agency has proceeded to rulemaking and has effectively relied upon s. 120.56(4)(e), F.S. Provides that the fees and costs cannot be awarded if the agency prevails that the statement does not violate s. 120.54(1)(a), F.S.

### **Permit Processing under Chapter 373, F.S.**

This bill allows an applicant to publish notice of the application and request that the department or water management district mail a notice to certain persons and property owners; Requires the department or district to maintain and update a permanent list of persons requesting such notice; Requires the department or district to annually publish, in a newspaper of general circulation in each county, a notice indicating that persons who wish to be notified of such permit applications may submit a written request for such notices to the department or district; Requires notice to include specific data.

The bill requires that in order to seek a formal proceeding pursuant to ss. 120.569 and 120.57, F.S., or s. 403.412(5), F.S., any party whose substantial interests have been determined must have submitted written comments, recommendation, or objections to the department or district prior to the decision of the department or district to grant or deny the permit or, in the alternative, in the case of a district, submitted oral comments to the district's governing board; Provides that failure of any party whose substantial interest have been determined to participate in agency deliberation shall be considered by the administrative law judge in any subsequent proceeding as evidence that a petitioner is not a party whose substantial interests are determined, and the petitioner shall be deemed to have waived its right to an administrative hearing unless good cause is presented regarding the lack of participation; Requires that the

party who objection to the intended agency action bears the burden of going forward with the evidence and the burden of persuasion.

This bill requires the Division of Administration Hearings to conduct a final hearing on a permit application under s. 373.4141, F.S., challenged pursuant to ss. 120.569 and 120.57, F. S., within 90 days after receipt by the division of the petition or request for hearing; Allows the hearing schedule to be extended by written agreement of all parties; Provides that during the pendency of the administrative proceeding, the department or the water management district, as applicable, may authorize construction activities that are not subject to the allegations contained in the petition or request for hearing initiating the administrative challenge.

### **Review by Land and Water Adjudicatory Commission**

The bill exempts from review by the Governor and Cabinet, sitting as the Land and Water Adjudicatory Commission, any order resulting from a s. 120.569, F.S., or s. 129.57, F.S., evidentiary hearing.

### **Standing to Initiate Administrative Litigation**

The bill amends the Environmental Protection Act of 1971, s. 403.412, F.S., to prohibit a resident of the state who is not substantially affected by the activity, conduct, or product that is to be licensed or permitted from instituting, initiating, petitioning, or requesting a administrative proceeding pursuant to s. 120.569 or s. 120.57, F.S.

### **Conforming Amendments**

The bill amends ss. 373.1501, 403.088, 403.973, and 408.7056, F.S., to conform the use of the term “expedited” with respect to hearings under s. 120.574, F.S.

#### **D. SECTION-BY-SECTION ANALYSIS:**

**Section 1** amends s. 57.111, F.S., to change the net worth definition of a “small business party” that may be entitled to seek attorney’s fees from \$2 million to \$5 million and to increase the award of attorney’s fees under that section from \$15,000 to \$50,000.

**Section 2** amends s. 120.574, F.S., to reclassify the summary hearing as an “expedited” hearing. Requires the initial order to advise the original parties to the litigation that an expedited hearing is available, provided that the affected agency agrees, and defining the accelerated nature of the expedited procedure. Provides that any party may file a motion for expedited hearing; provides that if a nonagency party files such a motion, and the affected agency does not file a written objection within 7 days after service of such a motion, or if the affected agency files such a motion, and the original parties do not file a written objection within 7 days after the service of the motion, the motion shall be granted and an order entered setting a hearing date, which shall commence within 30 days of the date the response period to the motion expires. Provides that if an affected agency files such a motion, and the original party files a response within 7 days after service of the motion objecting to the expedited hearing, the administrative law judge shall, within 5 days from the filing of that response, enter an order granting the motion for expedited hearing, unless he or she determines that any of the original parties will be unduly prejudiced thereby, which hearing shall be commenced within 30 days from the date the order granting the expedited hearing is entered. Provides that intervenors to the litigation shall be governed by the decision of the administrative law judge with respect to whether the case will proceed on an expedited basis. Provides conforming amendments adopting the term “expedited” in lieu of “summary.” Confers on the administrative

law judge recommended order authority instead of final order authority; provides that the parties may file exceptions to the recommended order within 10 days of the issuance of the recommended order and responses may be filed within 5 days after the exceptions and requires the agency to issue a final order in the case within 30 days of the issuance of the recommended order.

**Section 3** amends s. 373.1501, F.S., to conform the use of the term “expedited” with respect to hearings under s. 120.574, F.S.

**Section 4** amends s. 403.088, F.S., to conform the use of the term “expedited” with respect to hearings under s. 120.574, F.S.

**Section 5** amends s. 403.973, F.S., to conform the use of the term “expedited” with respect to s. 120.574, F.S., hearings. Provides that the expedited hearing process under s. 120.574, F.S., shall apply to challenges of state agency action in the expedited permitting process for projects processed under s. 403.088, F.S. Provides that, notwithstanding the provisions of s. 120.574, F.S., the use of the expedited hearing does not require consent of the affected agency or a determination by the administrative law judge as to its propriety; Provides for hearing schedule extension by written agreement of all parties.

**Section 6** amends s. 408.7056, F.S., to conform the use of the term “expedited” with respect to hearings under s. 120.574, F.S.

**Section 7** amends s. 120.542, F.S., to allow agencies to provide relief to persons whose substantial interests are determined by an agency rule; provides for the exclusion of public employees.

**Section 8** amends s. 120.595, F.S., to provide that an administrative law judge shall award the petitioner reasonable attorney’s fees and costs, if, notwithstanding any other provision of law, an agency files with the Secretary of State a notice of rule development less than 10 days prior to the final hearing and a final hearing regarding an agency’s statement has been scheduled, and a final order has not been entered because the agency has proceeded to rulemaking or a final order has been entered in favor of the agency because the agency has proceeded to rulemaking and has effectively relied upon s. 120.56(4)(e), F.S. Provides that the fees and costs cannot be awarded if the agency prevails that the agency statement does not violate s. 120.54(1)(a).

**Section 9** amends s. 373.114, F.S., to exempt from review by the Governor and Cabinet, sitting as the Land and Water Adjudicatory Commission, any order resulting from a s. 120.569, F.S., or a s. 129.57, F.S., evidentiary hearing; Adds clarity to type of proceeding; Removes constraints on facts contained in the proposed agency action.

**Section 10** amends s. 373.4141, F.S., to allow an applicant to publish notice of the application and request that the department or water management district mail a notice to certain persons and property owners; Requires the department or district to maintain and update a permanent list of persons requesting such notice; Requires the department or district to annually publish, in a newspaper of general circulation in each county, a notice indicating that persons who wish to be notified of such permit applications may submit a written request for such notices to the department or district; Requires notice to include specific data; Requires that in order to seek a formal proceeding pursuant to ss. 120.569 and 120.57, F.S., or s. 403.412(5), F.S., any party whose substantial interests have been determined must have submitted written comments, recommendation, or objections to the department or district prior to the decision of the department or district to grant or deny the permit or, in the alternative, in the case of a district,

submitted oral comments to the district's governing board; Provides that failure of any party whose substantial interest have been determined to participate in agency deliberation shall be considered by the administrative law judge in any subsequent proceeding as evidence that a petitioner is not a party whose substantial interests are determined, and the petitioner shall be deemed to have waived its right to an administrative hearing unless good cause is presented regarding the lack of participation; Requires that the party who objection to the intended agency action bears the burden of going forward with the evidence and the burden of persuasion; Provides that the Division of Administration Hearings shall conduct a final hearing on a permit application under s. 373.4141, F.S., challenged pursuant to ss. 120.569 and 120.57, F.S., within 90 days after receipt by the division of the petition or request for hearing; Allows the hearing schedule to be extended by written agreement of all parties. Provides that during the pendency of the administrative proceeding, the department or the water management district, as applicable, may authorize construction activities that are not subject to the allegations contained in the petition or request for hearing initiating the administrative challenge.

**Section 11** amends s. 403.412, F.S., to prohibit a resident of the state who is not substantially affected by the activity, conduct, or product to be licensed or permitted may not institute, initiate, petition, or request a proceeding pursuant to s. 120.569, F.S., or s. 120.57, F.S.

**Section 12** amends s. 120.52, F.S., to define "authority" as State authority, "board" as State board, "commission" as State commission, and "other units of government in the state" to include, in addition to counties and municipalities, units of local government having jurisdiction only in one county or part thereof.

**Section 13** provides that the bill shall become effective on becoming law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A



C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

N/A

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require a city or county to spend funds or to take any action requiring the expenditure of any funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the revenue raising authority of any city or county.

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

The bill does not reduce the amount of state tax shared with any city or county.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

**Comments of the Committee on Judiciary**

The bill will speed up the administrative hearing process in expedited permitting cases under Chapter 403, F.S., without the consent of the affected agency. This may place an administrative burden on the agencies in question, who may not be prepared to litigate a case on an expedited basis.

The bill also requires the Division of Administrative Hearings to accelerate certain hearings under s. 120.574, F.S., and Chapter 373, F.S. By requiring a hearing within 30 or 90 days of the request for hearing, the bill may have an effect on the docket schedule at DOAH. As of this date, the Division has not indicated whether this requirement will have an adverse effect however.

The bill will eliminate a citizen's right to participate in an administrative hearing on a permit or license under the Environmental Protection Act. It is not clear whether the elimination of this

broad right will lessen the ability of citizen “watchdog” groups to participate in these matters, either independently or on behalf of a substantially affected person who cannot otherwise raise relevant claims.

The bill may also have a chilling effect on the number of administrative mediation that are initiated because of the quasi “offer of judgment” provisions contained in section 2. By making a record of the last offer of the party subject to the agency and allowing that record to be admitted into evidence at a formal administrative hearing, the bill may dissuade agencies from offering or consenting to mediation. Ordinarily, in civil mediation, the entire record of the proceedings, including all settlement offers, are confidential and not subject to admission at trial. In addition, the “offer of judgment” language may make determining who “prevails” difficult, in that the determination will not always relate to money damages. An offer at mediation regarding an emissions permit and a subsequent final determination at hearing may be hard to reconcile for purposes of determining who has “prevailed,” and the difference between a final offer and the outcome of the hearing may be a matter of degree, begging the question whether the bill will incentivize parties to enter into mediation.

#### **Comments of the Committee on Governmental Rules and Regulations:**

Prior to the April 5th, 2000, meeting of the Committee on Governmental Rules and Regulations, Representative Bense chaired a workshop to discuss the provisions of the bill. Representatives of environmental, planning, business and industry associations attended as well as staff of the committees on Judiciary and Governmental Rules and Regulations. The amended strike-everything amendment, described below, incorporates suggestions of the workshop participants.

The strike-everything amendment provides for special requirements for challenges to permits issued under ch. 373, F.S. The 1996 revisions to the APA moved statute sections, directing special requirements of the Division of Administrative Hearings (DOAH) when conducting proceedings under ch. 120, into two sections to address exceptions and special requirements for agencies (s. 120.80, F.S.) or general areas (s. 120.81, F.S.).

#### **VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:**

The Committee on Governmental Rules and Regulations, at its meeting on April 5, 2000, adopted a strike-everything amendment and one amendment to the amendment. The amendment to the amendment clarified the definition of agency found in s. 120.52(2), F.S., to make clear that it is state agencies that are subject to the APA and that other public entities, including those units of government having jurisdiction only in one county or part thereof, are only subject to the APA when expressly made so by special act, general law, or judicial decision.

The strike-everything amendment substantially modified the following provisions of CS/HB 2023:

- Mediation. CS/HB 2023 provided additional requirements for mediation under s. 120.573, F.S. The strike-everything amendment provides instead for a specific mediation process in the event of administrative challenge for certain actions under Chs. 373 and 403, F.S. Each announcement of agency action under Parts II and IV of Ch. 373 and Part VIII of Ch. 403, F.S., that affects substantial interests shall advise whether mediation is available and that choosing mediation does not affect the right to an administrative hearing. If the agency and the party subject to administrative action agree to mediate within 10 days of the period stated in the announcement for election of an administrative remedy under Ch. 120, F.S., then the time limitations imposed within ch. 120, are tolled. All parties (petitioner, agency, and party subject to agency action) to the administrative action are to participate in the mediation. The

amendment directs that mediation should conclude within 60 days unless otherwise agreed to by the agency and the party subject to the agency action. In the event that the parties do not settle at mediation, the mediator is to record in a report to the ALJ the final offers of all parties, except the agency, as well as certain other information relating to the final offers. The party that prevails in the agency's final order with a result that is the same or more favorable than the last offer made at mediation shall be entitled to recover attorney's fees and costs from the opposing non-agency party.

- Expedited Hearing. CS/HB 2023 changed the summary hearing provisions, s. 120.574, F.S., to an expedited hearing process to accelerate the administrative hearing schedule. The strike-everything amendment now provides that it is the original parties and not the party subject to the agency action that must decide to object to the motion for expedited hearing. Additionally, the hearing is to commence within 30 days of the administrative law judge's (ALJ) order setting a hearing date as opposed to the hearing will be held within 30 days of the ALJ entering the order, as it is currently found in CS/HB 2023. Finally, provision is made to allow for the filing of exceptions to the ALJ's recommended order entered in an expedited hearing within 5 days of the filing of the ALJ's recommended order.

The strike-everything amendment also provides that the expedited hearing under s. 403.088(15), F.S., may be extended by written agreement of all parties.

- Awarding of Attorney's Fees under s. 120.595, F.S. The strike-everything amendment provides that if the agency moves to rulemaking not more than 15 days from the filing of the petition, and a final order has not been entered because the agency has proceeded to rulemaking or a final order has been entered in favor of the agency because the agency has proceeded to rulemaking and has effectively relied upon s. 120.56(4)(e), F.S., then the ALJ shall enter an order awarding attorney's fees and costs.
- Permit Processing under Ch. 373, F.S. The strike-everything amendment provides that the trigger for filing objections to a permit application is the time when the application is deemed complete. The amendment also provides that the agency shall maintain a listing of those parties interested in receiving notification of the completion of permit applications, describes the requirements of the notice, and provides that the party objecting the proposed agency action has the burden of going forward with the evidence and the burden of persuasion. The amendment directs that a substantially affected petitioner must submit written comments, recommendations, or objections of the agency prior to the final agency action to establish eligibility to proceed to formal administrative challenge under Ch. 120, F.S. Failure of a substantially affected person to submit a statement prior to the final agency action is to be considered by the ALJ as evidence as that the substantially affected person, as a petitioner, is not a substantially affected party, and the petitioner is deemed to have waived the right to seek an administrative hearing unless good cause is shown.

On April 18, 2000, the Committee on General Government Appropriations adopted a strike-everything substitute amendment to the traveling strike-everything amendment and adopted a committee substitute for CS/HB 2023. The major changes to the committee substitute include:

- Removes the language to limit the decision on whether to mediate a dispute to the agency and the party subject to the agency, instead of all parties to the administrative action and removes other language to change the mediation process;
- Changes the "party who is the subject of the agency actions" to "original parties" and provides that parties may file responses after the exceptions to the recommended order;

- Provides for hearing schedule extension by written agreement of all parties;
- Allows agencies to provide relief to persons whose substantial interest are determined by an agency rule, providing exclusion of public employees;
- Further defines provisions for awarding attorney's fees and costs;
- Clarifies type of proceeding to mean rule challenge proceeding and removes constraints on facts contained in the proposed agency action;
- Changes the process required to allow an applicant to publish notice of application and requires the department or district to process notice, maintain and update mailing list, and annually publish notice listing;
- Provides requirements for party seeking a formal proceeding pursuant to ss.120.569 and 120.57, or s. 403.412(5), F.S. and provides result of failure to comply;
- Amends s. 120.52, F.S., to define "authority" as State authority, "board" as State Board, "commission" as State commission, and "units of government in the state" to include in addition to counties and municipalities, units of local government having jurisdiction only in one county or part thereof.

VII. SIGNATURES:

COMMITTEE ON JUDICIARY:

Prepared by:

Michael W. Carlson, J.D.

Staff Director:

P.K. Jameson, J.D.

AS REVISED BY THE COMMITTEE ON GOVERNMENTAL RULES AND REGULATIONS:

Prepared by:

David M. Greenbaum

Staff Director:

David M. Greenbaum

AS FURTHER REVISED BY THE COMMITTEE ON GENERAL GOVERNMENT APPROPRIATIONS:

Prepared by:

Marsha M. Belcher

Staff Director:

Cynthia P. Kelly