

By the Committee on Judiciary and Representatives Bense  
and Feeney

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

1 Project, s. 403.088, F.S., relating to  
2 proceedings regarding permits for certain  
3 facilities in the Everglades Protection Area,  
4 and s. 408.7056, F.S., relating to certain  
5 proposed orders under the Statewide Provider  
6 and Subscriber Assistance Program, to conform  
7 language with respect to expedited hearings;  
8 amending s. 403.973, F.S., which provides for  
9 expedited permitting for certain projects;  
10 revising conditions under which the expedited  
11 hearing provisions of the Administrative  
12 Procedure Act apply to the expedited permitting  
13 process; conforming language; amending s.  
14 120.595, F.S.; providing for award of  
15 attorney's fees and costs to the petitioner  
16 when an agency statement is challenged under  
17 the Administrative Procedure Act as not having  
18 been properly adopted as a rule and the agency  
19 has proceeded to rulemaking; amending s.  
20 373.114, F.S.; providing that water management  
21 district orders resulting from a s. 120.569,  
22 F.S., or s. 120.57, F.S., evidentiary hearing  
23 are not subject to the Land and Water  
24 Adjudicatory Commission's review authority;  
25 amending s. 373.4141, F.S.; providing that an  
26 applicant for a permit for a stormwater  
27 management system, dam, impoundment, or other  
28 work under pt. IV of ch. 373, F.S., may elect  
29 to publish notice of such application;  
30 specifying effect of such publication on the  
31 rights of substantially affected persons to

1           initiate administrative proceedings with  
2           respect to such application; providing  
3           conditions under which approval or denial of an  
4           application by a water management district  
5           governing board is presumed correct in a  
6           subsequent administrative proceeding;  
7           specifying the date by which a final hearing  
8           must be held when a permit application is  
9           challenged and providing that certain  
10          construction activities may be authorized  
11          during the pendency of the administrative  
12          proceeding; amending s. 403.412, F.S.;  
13          providing that a citizen who is not a  
14          substantially affected person may not initiate  
15          certain administrative proceedings under the  
16          Environmental Protection Act of 1971; providing  
17          an effective date.

18  
19 Be It Enacted by the Legislature of the State of Florida:

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21           Section 1. Paragraph (d) of subsection (3) and  
22           paragraph (d) of subsection (4) of section 57.111, Florida  
23           Statutes, are amended to read:

24           57.111 Civil actions and administrative proceedings  
25           initiated by state agencies; attorneys' fees and costs.--

26           (3) As used in this section:

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

28           1.a. A sole proprietor of an unincorporated business,  
29           including a professional practice, whose principal office is  
30           in this state, who is domiciled in this state, and whose  
31           business or professional practice has, at the time the action

1 is initiated by a state agency, not more than 25 full-time  
2 employees or a net worth of not more than ~~\$5~~\$2 million,  
3 including both personal and business investments; or

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

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

16         (4)

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

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

29         2. No award of attorney's fees and costs for an action  
30 initiated by a state agency shall exceed \$75,000~~\$15,000~~.

31

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

3 120.573 Mediation of disputes.--

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

29 (2) Mediation shall be conducted in the following  
30 manner:

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1       (a) Each party shall have all persons necessary, with  
2 complete settlement authority, present at the mediation.

3       (b) Each party shall mediate in good faith.

4       (c) All aspects of the mediation which are not  
5 specifically established by this section must be conducted  
6 according to the Florida Rules for Certified and  
7 Court-Appointed Mediators adopted by the Florida Supreme  
8 Court.

9       (d) If the parties do not settle the case pursuant to  
10 mediation, the last offer of the party subject to agency  
11 action made at mediation shall be recorded by the mediator in  
12 a written report that describes the offer, states the amount  
13 or content of the offer, the date the offer was made in  
14 writing, and the date the offer was rejected. If the matter  
15 subsequently proceeds to hearing under ss. 120.569 and 120.57  
16 and the party subject to agency action prevails and the result  
17 is the same or more favorable than the last offer made by that  
18 party at mediation, then that party is entitled to recover  
19 attorney's fees and costs from the petitioner.

20       Section 3. Section 120.574, Florida Statutes, is  
21 amended to read:

22       120.574 Expedited Summary hearing.--

23       (1)(a) Within 5 business days following the division's  
24 receipt of a petition or request for hearing, the division  
25 shall issue and serve on all original parties an initial order  
26 that assigns the case to a specific administrative law judge  
27 and provides general information regarding practice and  
28 procedure before the division. The initial order shall also  
29 contain a statement advising the original parties ~~addressees~~  
30 that an expedited ~~a summary~~ hearing is available, provided the  
31 affected agency agrees, upon the agreement of all parties

1 ~~under subsection (2)~~and briefly describing the accelerated  
2 ~~expedited~~ time sequences, limited discovery, and final order  
3 provisions of the expedited ~~summary~~ procedure.  
4 (b) Within 15 days after service of the initial order,  
5 any party may file with the division a motion for expedited  
6 ~~summary~~ hearing in accordance with subsection (2). If a  
7 nonagency party files such a motion, and the affected agency  
8 does not file a written objection within 7 days after the  
9 service of that motion, or if the affected agency files such a  
10 motion, and the party who is the subject of the agency action  
11 does not file a written objection within 7 days after the  
12 service of the motion, then the motion shall be granted and an  
13 order shall be entered setting the hearing date, which shall  
14 be held within 30 days from the date the response period to  
15 the motion expires. If the affected agency files such a  
16 motion, and the party who is the subject of the agency action  
17 files a response within 7 days after service of that motion  
18 objecting to the expedited hearing, the administrative law  
19 judge shall, within 5 days from the filing of that response,  
20 enter an order granting the motion for expedited hearing,  
21 unless he or she determines that any of the original parties  
22 will be unduly prejudiced thereby, which hearing shall be held  
23 within 30 days from the date the order granting the expedited  
24 hearing is entered.~~If all original parties agree, in writing,~~  
25 ~~to the summary proceeding, the proceeding shall be conducted~~  
26 ~~within 30 days of the agreement, in accordance with the~~  
27 ~~provisions of subsection (2).~~  
28 (c) Intervenors in the proceeding shall be governed by  
29 the decision of the administrative law judge ~~original parties~~  
30 regarding whether the case will proceed in accordance with the  
31

1 expedited ~~summary~~ hearing process and shall not have standing  
2 to challenge that decision.

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

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

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

10 1. A motion in opposition to the petition.

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

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

18 4. A motion requesting a prehearing conference, or the  
19 administrative law judge may require a prehearing conference,  
20 for the purpose of identifying: the legal and factual issues  
21 to be considered at the final hearing; the names and addresses  
22 of witnesses who may be called to testify at the final  
23 hearing; documentary evidence that will be offered at the  
24 final hearing; the range of penalties that may be imposed upon  
25 final hearing; and any other matter that the administrative  
26 law judge determines would expedite resolution of the  
27 proceeding. The prehearing conference may be held by  
28 telephone conference call.

29 5. During or after any preliminary hearing or  
30 conference, any party or the administrative law judge may  
31 suggest that the case is no longer appropriate for expedited



1 ~~summary~~ disposition. Following any argument requested by the  
2 parties, the administrative law judge may enter an order  
3 referring the case back to the formal adjudicatory process  
4 described in s. 120.57(1), in which event the parties shall  
5 proceed accordingly.

6 (b) Not later than 5 days prior to the final hearing,  
7 the parties shall furnish to each other copies of documentary  
8 evidence and lists of witnesses who may testify at the final  
9 hearing.

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

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

16 1. All notices, pleadings, motions, and intermediate  
17 rulings.

18 2. Evidence received.

19 3. A statement of matters officially recognized.

20 4. Proffers of proof and objections and rulings  
21 thereon.

22 5. Matters placed on the record after an ex parte  
23 communication.

24 6. The written decision of the administrative law  
25 judge presiding at the final hearing.

26 7. The official transcript of the final hearing.

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

31

1 (f) The decision of the administrative law judge shall  
2 be rendered within 30 days after the conclusion of the final  
3 hearing or the filing of the transcript thereof, whichever is  
4 later. The administrative law judge's recommended order  
5 ~~decision, which shall be final agency action subject to~~  
6 ~~judicial review under s. 120.68,~~ shall include the following:

7 1. Findings of fact based exclusively on the evidence  
8 of record and matters officially recognized.

9 2. Conclusions of law.

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

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

13 (g) The parties may file exceptions to the  
14 administrative law judge's recommended order within 10 days  
15 after its issuance. The agency shall issue the final order  
16 within 30 days after the issuance of the administrative law  
17 judge's recommended order.~~For a period of 2 years following~~  
18 ~~October 1, 1996, the division shall maintain a register of the~~  
19 ~~total number of formal proceedings filed with the division~~  
20 ~~under s. 120.57(1).~~

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

23 373.1501 South Florida Water Management District as  
24 local sponsor.--

25 (8) Final agency action with regard to any project  
26 component subject to s. 373.026(8)(b) shall be taken by the  
27 department. Actions taken by the district pursuant to  
28 subsection (5) shall not be considered final agency action.  
29 Any petition for formal proceedings filed pursuant to ss.  
30 120.569 and 120.57 shall require a hearing under the expedited  
31 ~~summary~~ hearing provisions of s. 120.574, which shall be

1 mandatory. The final hearing under this section shall be held  
2 within 30 days after receipt of the petition by the Division  
3 of Administrative Hearings.

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

6 403.088 Water pollution operation permits;  
7 conditions.--

8 (2)

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

26 1. An order authorizing such interim construction,  
27 operation, and maintenance shall be granted if requested by  
28 motion and no party opposes it.

29 2. If a party to the administrative hearing pursuant  
30 to ss. 120.569 and 120.57 opposes the motion, the  
31 administrative law judge shall issue a recommended order

1 granting the motion if the administrative law judge finds  
2 that:

3       a. The facility is likely to receive the permit; and  
4       b. The environment will not be irreparably harmed by  
5 the construction, operation, or maintenance of the facility  
6 pending final agency action on the permit.

7       3. Prior to granting a contested motion for interim  
8 construction, operation, or maintenance of a facility  
9 authorized by s. 373.4592, the administrative law judge shall  
10 conduct a hearing using the expedited ~~summary~~ hearing process  
11 defined in s. 120.574, which shall be mandatory for motions  
12 made pursuant to this paragraph. Notwithstanding the  
13 provisions of s. 120.574(1), expedited ~~summary~~ hearing  
14 proceedings for these facilities shall begin within 30 days of  
15 the motion made by the permittee. Within 15 days of the  
16 conclusion of the expedited ~~summary~~ proceeding, the  
17 administrative law judge shall issue a recommended order  
18 either denying or approving interim construction, operation,  
19 or maintenance of the facility, which shall be submitted to  
20 the secretary who shall within 5 days thereafter, enter an  
21 order granting or denying interim construction operation or  
22 maintenance of the facility. The order shall remain in effect  
23 until final agency action is taken on the permit.

24       Section 6. Subsections (8), (13), and (15) of section  
25 403.973, Florida Statutes, are amended to read:

26       403.973 Expedited permitting; comprehensive plan  
27 amendments.--

28       (8) At the option of the participating local  
29 government, appeals of its final approval for a project may be  
30 pursuant to the expedited ~~summary~~ hearing provisions of s.  
31 120.574, pursuant to subsection (15), or pursuant to other

1 appellate processes available to the local government. The  
2 local government's decision to enter into an expedited ~~a~~  
3 ~~summary~~ hearing must be made as provided in s. 120.574 or in  
4 the memorandum of agreement.

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

11 (15) The expedited hearing process as provided for in  
12 s. 120.574 shall be used with regard to challenges to state  
13 agency action in the expedited permitting process for projects  
14 processed under this section. Notwithstanding s. 120.574, use  
15 of the expedited hearing process does not require consent of  
16 the affected agency or a determination by the administrative  
17 law judge as to its propriety.~~are subject to the summary~~  
18 ~~hearing provisions of s. 120.574, except that the~~  
19 ~~administrative law judge's decision, as provided in s.~~  
20 ~~120.574(2)(f), shall be in the form of a recommended order and~~  
21 ~~shall not constitute the final action of the state agency.~~In  
22 those proceedings where the action of only one agency of the  
23 state is challenged, the agency of the state shall issue the  
24 final order within 10 working days of receipt of the  
25 administrative law judge's recommended order. In those  
26 proceedings where the actions of more than one agency of the  
27 state are challenged, the Governor shall issue the final order  
28 within 10 working days of receipt of the administrative law  
29 judge's recommended order. The participating agencies of the  
30 state may opt at the preliminary hearing conference to allow  
31 the administrative law judge's decision to constitute the

1 final agency action. If a participating local government  
2 agrees to participate in the expedited ~~summary~~ hearing  
3 provisions of s. 120.574 for purposes of review of local  
4 government comprehensive plan amendments, s. 163.3184(9) and  
5 (10) apply.

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

8 408.7056 Statewide Provider and Subscriber Assistance  
9 Program.--

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

18 Section 8. Paragraph (a) of subsection (4) of section  
19 120.595, Florida Statutes, is amended to read:

20 120.595 Attorney's fees.--

21 (4) CHALLENGES TO AGENCY ACTION PURSUANT TO SECTION  
22 120.56(4).--

23 (a) Upon entry of a final order that all or part of an  
24 agency statement violates s. 120.54(1)(a), the administrative  
25 law judge shall award reasonable costs and reasonable  
26 attorney's fees to the petitioner, unless the agency  
27 demonstrates that the statement is required by the Federal  
28 Government to implement or retain a delegated or approved  
29 program or to meet a condition to receipt of federal funds.  
30 Notwithstanding any other provision of law to the contrary, if  
31 a final hearing regarding the agency statement has been

1 scheduled, and a final order has not been entered because the  
2 agency has proceeded to rulemaking or a final order has been  
3 entered in favor of the agency because the agency has  
4 proceeded to rulemaking and has effectively relied upon s.  
5 120.56(4)(e), the administrative law judge shall nevertheless  
6 enter an order awarding the petitioner reasonable attorney's  
7 fees and costs.

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

10           373.114 Land and Water Adjudicatory Commission; review  
11 of district rules and orders; department review of district  
12 rules.--

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

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

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

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

25 (b) Review by the Land and Water Adjudicatory  
26 Commission is appellate in nature and shall be based solely on  
27 the record below. If there was no evidentiary administrative  
28 proceeding below, the facts contained in the proposed agency  
29 action, including any technical staff report, shall be deemed  
30 undisputed. The matter shall be heard by the commission not  
31



1 more than 60 days after receipt of the request for review,  
2 unless waived by the parties.

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

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

29 (e) A request for review under this section shall not  
30 be a precondition to the seeking of judicial review pursuant  
31

1 to s. 120.68 or the seeking of an administrative determination  
2 of rule validity pursuant to s. 120.56.

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

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

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

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

27 Section 10. Section 373.4141, Florida Statutes, is  
28 amended to read:

29 373.4141 Permits; processing.--

30 (1) Within 30 days after receipt of an application for  
31 a permit under this part, the department or the water

1 management district shall review the application and shall  
2 request submittal of all additional information the department  
3 or the water management district is permitted by law to  
4 require. If the applicant believes any request for additional  
5 information is not authorized by law or rule, the applicant  
6 may request a hearing pursuant to s. 120.57. Within 30 days  
7 after receipt of such additional information, the department  
8 or water management district shall review it and may request  
9 only that information needed to clarify such additional  
10 information or to answer new questions raised by or directly  
11 related to such additional information. If the applicant  
12 believes the request of the department or water management  
13 district for such additional information is not authorized by  
14 law or rule, the department or water management district, at  
15 the applicant's request, shall proceed to process the permit  
16 application.

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

21 (3) An applicant may, within 30 days after filing an  
22 application pursuant to this part, publish notice of his or  
23 her application in a newspaper of general circulation in the  
24 county or counties where the activity for which a permit is  
25 requested may take place. The newspaper notice shall be in  
26 accordance with the requirements of chapter 50, and shall set  
27 forth, at a minimum, the name of the applicant; the name and  
28 mailing address of the permitting agency; a brief description  
29 of the activity the applicant is seeking a permit for and the  
30 location of the activity; the location of the application  
31 file; and that, within 21 days after the publication of the

1 newspaper notice, any substantially affected person, pursuant  
2 to ss. 120.569 and 120.57 or s. 403.412(5), must notify the  
3 permitting agency, in writing, of any objections or concerns  
4 with regard to the permit application in order to preserve his  
5 or her right to initiate an administrative proceeding pursuant  
6 to ss. 120.569 and 120.57 or s. 403.412(5). A substantially  
7 affected person who, prior to the publication of the newspaper  
8 notice, notified the permitting agency in writing of his or  
9 her objections or concerns regarding the permit application is  
10 not affected by this subsection. Failure to timely notify the  
11 permitting agency as required by this subsection shall  
12 constitute a waiver of administrative rights under ss.  
13 120.569, 120.57, and 403.412(5), as applicable.

14 (4) When an application reviewed by a water management  
15 district under this part is the subject of a notice of intent  
16 to issue or deny and is approved or denied by a two-thirds  
17 vote of the district's governing board, such approval or  
18 denial by the governing board shall carry a presumption of  
19 correctness in any administrative proceeding pursuant to ss.  
20 120.569 and 120.57. A party opposed to the governing board's  
21 action must overcome this presumption by a preponderance of  
22 the evidence.

23 (5) The Division of Administrative Hearings shall  
24 conduct a final hearing on a permit application under this  
25 part challenged pursuant to ss. 120.569 and 120.57 within 90  
26 days after receipt by the division of the petition or request  
27 for hearing. During the pendency of the administrative  
28 proceeding, the department or the water management district,  
29 as applicable, may authorize construction activities which are  
30 not subject to the allegations contained in the petition or  
31 request for hearing initiating the administrative challenge.

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

3           403.412 Environmental Protection Act.--

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

18           Section 12. This act shall take effect upon becoming a  
19 law.

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