

By the Committee on Judiciary and Senator King

308-2074-00

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; amending s.
16 120.574, F.S., which provides for summary
17 hearings under the act; redesignating such
18 hearings as expedited hearings; revising
19 conditions under which such hearings may be
20 held; specifying time periods for filing
21 objections to a motion for such a hearing;
22 removing the requirement that the
23 administrative law judge's decision is final
24 agency action and providing for a recommended
25 order and final agency action on that order;
26 amending s. 373.1501, F.S., relating to
27 administrative action with respect to project
28 components of the Central and Southern Florida
29 Project; amending s. 403.088, F.S., relating to
30 proceedings regarding permits for certain
31 facilities in the Everglades Protection Area;

1 amending s. 408.7056, F.S., relating to certain
2 proposed orders under the Statewide Provider
3 and Subscriber Assistance Program, to conform
4 language with respect to expedited hearings;
5 amending s. 403.973, F.S., which provides for
6 expedited permitting for certain projects;
7 revising conditions under which the expedited
8 hearing provisions of the Administrative
9 Procedure Act apply to the expedited permitting
10 process; conforming language; amending s.
11 120.542, F.S.; allowing agencies to provide
12 specified relief to persons who are
13 substantially affected by agency rule, rather
14 than to persons who are subject to regulation;
15 amending s. 120.595, F.S.; providing for award
16 of attorney's fees and costs to the petitioner
17 when an agency statement is challenged under
18 the Administrative Procedure Act as not having
19 been properly adopted as a rule and the agency
20 has proceeded to rulemaking; amending s.
21 373.114, F.S.; providing that water management
22 district orders resulting from certain
23 evidentiary hearings are not subject to the
24 Land and Water Adjudicatory Commission's review
25 authority; amending s. 373.4141, F.S.;
26 providing that an applicant for a permit for a
27 stormwater management system, dam, impoundment,
28 or other work under pt. IV of ch. 373, F.S.,
29 may elect to publish notice of such an
30 application; specifying the effect of such
31 publication on the rights of substantially

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

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

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

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

27 (3) As used in this section:

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

29 1.a. A sole proprietor of an unincorporated business,
30 including a professional practice, whose principal office is
31 in this state, who is domiciled in this state, and whose

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

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

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

17 (4)

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

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

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

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 all
9 parties to the administrative action agree to mediation, in
10 writing, within 10 days after the time period stated in the
11 announcement for election of an administrative remedy under
12 ss. 120.569 and 120.57, the time limitations imposed by ss.
13 120.569 and 120.57 shall be tolled to allow the agency and
14 parties to mediate the administrative dispute. The mediation
15 shall be concluded within 60 days of such agreement unless
16 otherwise agreed by the parties. The mediation agreement
17 shall include provisions for mediator selection, the
18 allocation of costs and fees associated with mediation, and
19 the mediating parties' understanding regarding the
20 confidentiality of discussions and documents introduced during
21 mediation. If mediation results in settlement of the
22 administrative dispute, the agency shall enter a final order
23 incorporating the agreement of the parties. If mediation
24 terminates without settlement of the dispute, the agency shall
25 notify the parties in writing that the administrative hearing
26 processes under ss. 120.569 and 120.57 are resumed.

27 (2) Each announcement of an agency action under parts
28 II and IV of chapter 373 and part VIII of chapter 403 which
29 affects substantial interests shall advise whether mediation
30 of the administrative dispute for the type of agency action
31 announced is available and that choosing mediation does not

1 affect the right to an administrative hearing. If the agency
2 and the party subject to the agency action agree to mediation,
3 in writing, within 10 days after the time period stated in the
4 announcement for election of an administrative remedy under
5 ss. 120.569 and 120.57, the time limitations imposed by ss.
6 120.569 and 120.57 shall be tolled to allow the agency and all
7 original parties to mediate the administrative dispute. The
8 mediation shall be concluded within 60 days of such agreement
9 unless otherwise agreed by the agency and the party subject to
10 the agency action. The mediation agreement shall include
11 provisions for mediator selection, the allocation of costs and
12 fees associated with mediation, and the mediating parties'
13 understanding regarding the confidentiality of discussions and
14 documents introduced during mediation and may address the
15 allocation of attorney's fees and costs. If mediation results
16 in settlement of the administrative dispute, the agency shall
17 enter a final order incorporating the agreement of the
18 parties. If mediation terminates without settlement of the
19 dispute, the agency shall notify the parties in writing that
20 the administrative hearing processes under ss. 120.569 and
21 120.57 are resumed.

22 Section 3. Section 120.574, Florida Statutes, is
23 amended to read:

24 120.574 Expedited ~~Summary~~ hearing.--

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

1 that an expedited ~~a summary~~ hearing is available, if the
2 affected agency agrees, upon the agreement of all parties
3 ~~under subsection (2)~~ and briefly describing the accelerated
4 ~~expedited~~ time sequences, limited discovery, and final order
5 provisions of the expedited summary procedure.

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

29 (c) Intervenors in the proceeding shall be governed by
30 the decision of the administrative law judge ~~original parties~~
31 regarding whether the case will proceed in accordance with the

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 and responses may be filed within 5 days of
16 the exceptions. The agency shall issue the final order within
17 30 days after the issuance of the administrative law judge's
18 recommended order. ~~For a period of 2 years following October~~
19 ~~1, 1996, the division shall maintain a register of the total~~
20 ~~number of formal proceedings filed with the division under s.~~
21 ~~120.57(1).~~

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

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

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

1 ~~summary~~ hearing provisions of s. 120.574, which shall be
2 mandatory. The final hearing under this section shall be held
3 within 30 days after receipt of the petition by the Division
4 of Administrative Hearings.

5 Section 5. Paragraph (g) of subsection (2) of section
6 403.088, Florida Statutes, is amended to read:

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

9 (2)

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

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

30 2. If a party to the administrative hearing pursuant
31 to ss. 120.569 and 120.57 opposes the motion, the

1 administrative law judge shall issue a recommended order
2 granting the motion if the administrative law judge finds
3 that:

4 a. The facility is likely to receive the permit; and

5 b. The environment will not be irreparably harmed by
6 the construction, operation, or maintenance of the facility
7 pending final agency action on the permit.

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

25 Section 6. Subsections (8), (13), and (15) of section
26 403.973, Florida Statutes, are amended to read:

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

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

1 120.574, pursuant to subsection (15), or pursuant to other
2 appellate processes available to the local government. The
3 local government's decision to enter into an expedited a
4 ~~summary~~ hearing must be made as provided in s. 120.574 or in
5 the memorandum of agreement.

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

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

1 participating agencies of the state may opt at the preliminary
2 hearing conference to allow the administrative law judge's
3 decision to constitute the final agency action. If a
4 participating local government agrees to participate in the
5 expedited ~~summary~~ hearing provisions of s. 120.574 for
6 purposes of review of local government comprehensive plan
7 amendments, s. 163.3184(9) and (10) apply.

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

10 408.7056 Statewide Provider and Subscriber Assistance
11 Program.--

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

20 Section 8. Subsections (1) and (5) of section 120.542,
21 Florida Statutes, are amended to read:

22 120.542 Variances and waivers.--

23 (1) Strict application of uniformly applicable rule
24 requirements can lead to unreasonable, unfair, and unintended
25 results in particular instances. The Legislature finds that it
26 is appropriate in such cases to adopt a procedure for agencies
27 to provide relief to persons who are substantially affected by
28 an agency rule ~~subject to regulation~~. A public employee is not
29 a person who is substantially affected by agency rule ~~subject~~
30 ~~to regulation~~ under this section for the purpose of
31 petitioning for a variance or waiver to a rule that affects

1 that public employee in his or her capacity as a public
2 employee. Agencies are authorized to grant variances and
3 waivers to requirements of their rules consistent with this
4 section and with rules adopted under the authority of this
5 section. An agency may limit the duration of any grant of a
6 variance or waiver or otherwise impose conditions on the grant
7 only to the extent necessary for the purpose of the underlying
8 statute to be achieved. This section does not authorize
9 agencies to grant variances or waivers to statutes or to rules
10 required by the Federal Government for the agency's
11 implementation or retention of any federally approved or
12 delegated program, except as allowed by the program or when
13 the variance or waiver is also approved by the appropriate
14 agency of the Federal Government. This section is
15 supplemental to, and does not abrogate, the variance and
16 waiver provisions in any other statute.

17 (5) A person who is substantially affected ~~subject to~~
18 ~~regulation~~ by an agency rule may file a petition with that
19 agency, with a copy to the committee, requesting a variance or
20 waiver from the agency's rule. In addition to any
21 requirements mandated by the uniform rules, each petition
22 shall specify:

23 (a) The rule from which a variance or waiver is
24 requested.

25 (b) The type of action requested.

26 (c) The specific facts that would justify a waiver or
27 variance for the petitioner.

28 (d) The reason why the variance or the waiver
29 requested would serve the purposes of the underlying statute.

30 Section 9. Paragraph (a) of subsection (4) of section
31 120.595, Florida Statutes, is amended to read:

1 120.595 Attorney's fees.--

2 (4) CHALLENGES TO AGENCY ACTION PURSUANT TO SECTION
3 120.56(4).--

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

23 Section 10. Subsection (1) of section 373.114, Florida
24 Statutes, is amended to read:

25 373.114 Land and Water Adjudicatory Commission; review
26 of district rules and orders; department review of district
27 rules.--

28 (1) Except as provided in subsection (2), the Governor
29 and Cabinet, sitting as the Land and Water Adjudicatory
30 Commission, have the exclusive authority to review any order
31 or rule of a water management district, other than a rule

1 relating to an internal procedure of the district or an order
2 resulting from a s. 120.69 or s. 120.57 evidentiary hearing,
3 to ensure consistency with the provisions and purposes of this
4 chapter. Subsequent to the legislative ratification of the
5 delineation methodology pursuant to s. 373.421(1), this
6 subsection also shall apply to an order of the department, or
7 a local government exercising delegated authority, pursuant to
8 ss. 373.403-373.443, except an order pertaining to activities
9 or operations subject to conceptual plan approval pursuant to
10 chapter 378.

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

1 regional or statewide significance from the standpoint of
2 agency precedent. The party requesting the commission to
3 review an order must allege with particularity, and the
4 commission must find, that:

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

7 2. The order is in conflict with the requirements of a
8 duly adopted rule.

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

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

1 have regional or statewide significance from the standpoint of
2 agency precedent, the commission may direct the district to
3 initiate rulemaking to amend its rules to assure that future
4 actions are consistent with the provisions and purposes of
5 this chapter without modifying the order.

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

12 (e) A request for review under this section shall not
13 be a precondition to the seeking of judicial review pursuant
14 to s. 120.68 or the seeking of an administrative determination
15 of rule validity pursuant to s. 120.56.

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

20 (g) For the purpose of this section, it shall be
21 presumed that activity authorized by an order will not affect
22 resources of statewide or regional significance if the
23 proposed activity:

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

1
2 This paragraph shall not operate to hold that any activity
3 that exceeds these limits is presumed to affect resources of
4 statewide or regional significance. The determination of
5 whether an activity will substantially affect resources of
6 statewide or regional significance shall be made on a
7 case-by-case basis, based upon facts contained in the record
8 below.

9 Section 11. Section 373.4141, Florida Statutes, is
10 amended to read:

11 373.4141 Permits; processing.--

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

30 (2) A permit shall be approved or denied within 90
31 days after receipt of the original application, the last item

1 of timely requested additional material, or the applicant's
2 written request to begin processing the permit application.

3 (3) When the permit application is deemed complete
4 pursuant to this subsection, or when the applicant declines to
5 provide additional information and demands that the agency
6 proceed to process the permit application, the applicant may
7 elect to publish notice of the application and request that
8 the department or water management district mail a notice to
9 every person who has submitted a request for such notice that
10 a permit is being processed, and may be the subject of final
11 agency action, and all persons owning property within 500 feet
12 of the boundary of the proposed project. The department or
13 district shall maintain a permanent list of persons requesting
14 such notices, and shall regularly update this list. Once each
15 year, in a newspaper of general circulation in each county,
16 the department and respective district shall publish a notice
17 indicating that persons who wish to be notified of such permit
18 applications may submit a written request for such notices to
19 the department or district. Each mailed notice shall include:

20 (a) A description of the project, permit
21 identification number, identity of the applicant, and the
22 water body or wetland area that is impacted by the project.

23 (b) The number of acres of wetland impacted, if known,
24 or a statement that wetlands will or will not be impacted, if
25 the exact acreage is unknown.

26 (c) Reproduction of a vicinity map showing the
27 location of the project.

28 (d) A statement of whether or not the project will
29 impact the habitat of endangered or threatened species, if
30 known, or a statement that such impacts have not been
31 determined if this information is not available.

1 (4) In order to establish a presumption of eligibility
2 to seek a formal proceeding pursuant to ss. 120.569 and
3 120.57, or s. 403.412(5), any substantially affected
4 petitioner must have submitted written comments,
5 recommendations, or objections to the department or district
6 prior to the decision of the department or district to
7 finalize agency action or, in the alternative, in the case of
8 a district, submitted oral comments to the district's
9 governing board. Failure of any substantially affected
10 petitioner to participate in agency deliberations by providing
11 written comments, recommendations, or objections to the
12 department or district prior to its decision to finalize
13 agency action shall be considered by the administrative law
14 judge in any subsequent formal proceeding as evidence that a
15 petitioner is not a substantially affected party, and the
16 petitioner shall be deemed to have waived its right to an
17 administrative hearing unless good cause is presented
18 regarding the lack of participation.

19 (5) The party who objects to the intended agency
20 action bears the burden of going forward with the evidence and
21 the burden of persuasion.

22 (6) The Division of Administrative Hearings shall
23 conduct a final hearing on a permit application under this
24 part challenged pursuant to ss. 120.569 and 120.57 within 90
25 days after receipt by the division of the petition or request
26 for hearing; however, the hearing schedule may be extended by
27 written agreement of all parties. During the pendency of the
28 administrative proceeding, the department or the water
29 management district, as applicable, may authorize construction
30 activities that are not subject to the allegations contained
31

1 in the petition or request for hearing initiating the
2 administrative challenge.

3 Section 12. Subsection (5) of section 403.412, Florida
4 Statutes, is amended to read:

5 403.412 Environmental Protection Act.--

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

20 Section 13. Paragraphs (b) and (c) of subsection (1)
21 of section 120.52, Florida Statutes, are amended to read:

22 120.52 Definitions.--As used in this act:

23 (1)

24 (b) Each:

25 1. State officer and state department, and each
26 departmental unit described in s. 20.04.

27 2. State authority, including a regional water supply
28 authority.

29 3. State board.

30 4. State commission, including the Commission on
31 Ethics and the Fish and Wildlife Conservation Commission when

1 acting pursuant to statutory authority derived from the
2 Legislature.

3 5. Regional planning agency.

4 6. Multicounty special district with a majority of its
5 governing board comprised of nonelected persons.

6 7. Educational units.

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

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

22 Section 14. This act shall take effect upon becoming a
23 law.

1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 SB 2556

4 Revises the mediation provisions to expressly apply to agency
5 action under parts II and IV of chapter 373, F.S., and part
6 VIII of chapter 403, F.S, and removes the provision which
potentially subjects a party to attorney's fees and costs when
there is no settlement at mediation.

7 Revises the expedited hearing provisions to provide that,
8 after the parties file exceptions to the administrative law
9 judge's recommended order, the parties may file responses to
the exceptions within 5 days of filing of the exceptions.

10 Revises the expedited hearing provisions pertaining to
11 expedited permitting in comprehensive plan amendments to
provide that the hearing schedule may be extended by written
agreement of all parties.

12 Adds a new section to the bill which amends s. 120.542, F.S.,
13 pertaining to variances and waivers from rule requirements.
14 Changes the standing requirement so that persons seeking
variances or waivers must be persons substantially affected by
an agency rule.

15 Reviews the attorney's fees provision for challenges to agency
16 action pursuant to s. 120.56(4), F.S., to provide that one of
17 the situations where attorney's fees shall be awarded to the
18 petitioner is when an agency publishes a rule more than 15
days after the date the petition is filed and a final order
has not been entered because the agency has proceeded to
rulemaking.

19 Adds a new subsection to the bill which amends s. 373.114,
20 F.S., pertaining to the Land and Water Adjudicatory
Commission, which is comprised of the Governor and Cabinet.
21 The amendment provides that the Commission does not have
22 authority to review orders of water management districts which
result from an evidentiary proceeding under ss. 120.69 or
120.57, F.S.

23 Substantially revises the provisions pertaining to the
24 processing of permits by water management districts under s.
373.4141, F.S., in the following manner:

25 -- After the application for the permit is deemed complete
26 or the applicant declines to provide additional
27 information, the applicant may publish notice of the
28 application and request the department or water
29 management district to mail a notice to every person who
has requested such notice, and may be subject to the
final agency action, and all property owners within 500
feet of the proposed project.

30 -- The department or district shall maintain a permanent
31 list of persons requesting notices. The department and
respective district shall publish once each year, in a
newspaper of general circulation in each county, a
notice indicating that persons may be placed on the list

1 for receiving notice of permit applications. The notice
2 mailed to persons on the list must include certain
prescribed information.

3 -- Creates a presumption that a petitioner is not a
4 substantially affected party and has waived its right to
an administrative hearing if the petitioner has not
5 submitted written comments, recommendations, or
objections prior to the decision to finalize agency
6 action.

7 -- Removes the provision that applications approved or
8 denied by a two-thirds vote carry a presumption of
correctness in any proceeding pursuant to ss. 120.569 or
120.57, F.S.

9 -- Amends the provision requiring final hearings to be held
10 within 90 days of the request for a final hearing to
provide that the hearing schedule may be extended if
11 agreed to in writing by the parties.

12 Adds a new section to the bill, which amends s. 403.412(5),
F.S., to provide that residents who are not substantially
13 affected by the activity impairing, polluting, or otherwise
injuring the air, water, or other natural resource may not
14 institute, initiate, petition, or request a proceeding
pursuant to ss. 120.569, or 120.57, F.S.

15 Adds a new section to the bill which amends s. 120.52, F.S.,
16 to clarify that the definition of agency means each state
authority, state board, state commission, or any unit of local
17 government having jurisdiction only in one county or part
thereof to the extent it is expressly made subject to ch. 120,
18 F.S., by general or special law or existing judicial
decisions.

19
20
21
22
23
24
25
26
27
28
29
30
31