

By the Committees on Governmental Oversight and Productivity;  
Judiciary; and Senator King

302-2231-00

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           120.569, F.S.; revising requirements for  
10          pleadings, motions, and other papers filed  
11          under ch. 120, F.S.; providing for sanctions,  
12          including an award of attorney's fees; amending  
13          s. 120.595, F.S.; redefining the term "improper  
14          purpose" for purposes of provisions authorizing  
15          challenges to agency action; amending s.  
16          373.114, F.S.; providing that water management  
17          district orders resulting from certain  
18          evidentiary hearings are not subject to the  
19          Land and Water Adjudicatory Commission's review  
20          authority; amending s. 403.412, F.S.; providing  
21          that a resident of this state who is not a  
22          substantially affected person may not initiate  
23          certain administrative proceedings under the  
24          Environmental Protection Act of 1971; amending  
25          s. 120.52, F.S.; clarifying which governmental  
26          entities are subject to the Administrative  
27          Procedure Act; providing an effective date.  
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29   Be It Enacted by the Legislature of the State of Florida:  
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1           Section 1. Paragraph (d) of subsection (3) and  
2 paragraph (d) of subsection (4) of section 57.111, Florida  
3 Statutes, are amended to read:

4           57.111 Civil actions and administrative proceedings  
5 initiated by state agencies; attorneys' fees and costs.--

6           (3) As used in this section:

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

8           1.a. A sole proprietor of an unincorporated business,  
9 including a professional practice, whose principal office is  
10 in this state, who is domiciled in this state, and whose  
11 business or professional practice has, at the time the action  
12 is initiated by a state agency, not more than 25 full-time  
13 employees or a net worth of not more than ~~\$5~~\$5 million,  
14 including both personal and business investments; or

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

20           2. Either small business party as defined in  
21 subparagraph 1., without regard to the number of its employees  
22 or its net worth, in any action under s. 72.011 or in any  
23 administrative proceeding under that section to contest the  
24 legality of any assessment of tax imposed for the sale or use  
25 of services as provided in chapter 212, or interest thereon,  
26 or penalty therefor.

27           (4)

28           (d) The court, or the administrative law judge in the  
29 case of a proceeding under chapter 120, shall promptly conduct  
30 an evidentiary hearing on the application for an award of  
31 attorney's fees and shall issue a judgment, or a final order

1 in the case of an administrative law judge. The final order  
2 of an administrative law judge is reviewable in accordance  
3 with the provisions of s. 120.68. If the court affirms the  
4 award of attorney's fees and costs in whole or in part, it  
5 may, in its discretion, award additional attorney's fees and  
6 costs for the appeal.

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

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

11 Section 2. Paragraph (e) of subsection (2) of section  
12 120.569, Florida Statutes, is amended to read:

13 120.569 Decisions which affect substantial  
14 interests.--

15 (2)

16 (e)1. Every pleading, written motion, and other paper  
17 filed in a proceeding must be signed by at least one attorney  
18 or qualified representative of record in the attorney's or  
19 qualified representative's individual name, or, if the party  
20 is not represented by an attorney or qualified representative,  
21 the pleading, written motion, or other paper must be signed by  
22 the party. An unsigned paper shall be stricken unless omission  
23 of the signature is corrected promptly after being called to  
24 the attention of the attorney, qualified representative, or  
25 party.

26 2. By presenting a pleading, written motion, or other  
27 paper, whether by signing, filing, submitting, or later  
28 advocating, an attorney, qualified representative, or  
29 unrepresented party is certifying that, to the best of the  
30 person's knowledge, information, and belief, formed after an  
31 inquiry reasonable under the circumstances:

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

5           b. The claims, defenses, and other legal contentions  
6 contained in the pleading, written motion, or other paper are  
7 warranted by existing law or by a nonfrivolous argument for  
8 the extension, modification, or reversal of existing law or  
9 the establishment of new law;

10           c. The allegations and other factual contentions have  
11 evidentiary support or, if specifically identified, are likely  
12 to have evidentiary support after a reasonable opportunity for  
13 further investigation or discovery; and

14           d. The denials of factual contentions are warranted on  
15 the evidence or, if specifically identified, are reasonably  
16 based on a lack of information or belief.

17           3. If, after notice and a reasonable opportunity to  
18 respond, the presiding officer determines that subparagraph 2.  
19 has been violated, the presiding officer shall impose an  
20 appropriate sanction against the person who signed it, the  
21 represented party, or both, which must include an order to pay  
22 the other party or parties the amount of reasonable expenses  
23 incurred because of the filing of the pleading, motion, or  
24 other paper, including reasonable attorney's fees. However:

25           a. Monetary sanctions may not be awarded against a  
26 represented party for a violation of sub-subparagraph 2.b.

27           b. Monetary sanctions may not be awarded under this  
28 paragraph based on a violation of discovery rules, which are  
29 subject to sanctions under paragraph (f).

30           c. This paragraph does not authorize the award of  
31 sanctions against any person who comments on or objects to a

1 draft permit during an authorized period for public comment or  
2 at a public hearing.~~All pleadings, motions, or other papers~~  
3 ~~filed in the proceeding must be signed by the party, the~~  
4 ~~party's attorney, or the party's qualified representative. The~~  
5 ~~signature constitutes a certificate that the person has read~~  
6 ~~the pleading, motion, or other paper and that, based upon~~  
7 ~~reasonable inquiry, it is not interposed for any improper~~  
8 ~~purposes, such as to harass or to cause unnecessary delay, or~~  
9 ~~for frivolous purpose or needless increase in the cost of~~  
10 ~~litigation. If a pleading, motion, or other paper is signed in~~  
11 ~~violation of these requirements, the presiding officer shall~~  
12 ~~impose upon the person who signed it, the represented party,~~  
13 ~~or both, an appropriate sanction, which may include an order~~  
14 ~~to pay the other party or parties the amount of reasonable~~  
15 ~~expenses incurred because of the filing of the pleading,~~  
16 ~~motion, or other paper, including a reasonable attorney's fee.~~

17 4. Sanctions under this paragraph may be initiated at  
18 any time after the initiation of a proceeding either by motion  
19 or on the presiding officer's own initiative. A motion shall  
20 describe the specific conduct alleged to violate subparagraph  
21 2. The motion shall be served upon the attorney or qualified  
22 representative of a party or an unrepresented party against  
23 whom such sanctions are sought and shall be filed with the  
24 presiding officer. However, such motion shall not be acted  
25 upon by the presiding officer or called up for hearing by the  
26 movant unless, within 14 days after service of the motion or  
27 such other period as the presiding officer may prescribe, the  
28 challenged paper, claim, defense, contention, allegation, or  
29 denial is not withdrawn or appropriately corrected. A  
30 presiding officer's own initiative to impose sanctions may be  
31 undertaken only after entering an order describing the

1 specific conduct that appears to violate subparagraph 2. and  
2 directing the attorney or qualified representative of a party  
3 or the unrepresented party to show cause why subparagraph 2.  
4 has not been violated. When imposing sanctions, the presiding  
5 officer shall describe the conduct determined to constitute a  
6 violation of subparagraph 2. and explain the basis for the  
7 sanction imposed.

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

10 120.595 Attorney's fees.--

11 (1) CHALLENGES TO AGENCY ACTION PURSUANT TO SECTION  
12 120.57(1).--

13 (c) In proceedings pursuant to s. 120.57(1), and upon  
14 motion, the administrative law judge shall determine whether  
15 any party participated in the proceeding for an improper  
16 purpose as defined by this subsection ~~and s. 120.569(2)(e)~~. In  
17 making such determination, the administrative law judge shall  
18 consider whether the nonprevailing adverse party has  
19 participated in two or more other such proceedings involving  
20 the same prevailing party and the same project as an adverse  
21 party and in which such two or more proceedings the  
22 nonprevailing adverse party did not establish either the  
23 factual or legal merits of its position, and shall consider  
24 whether the factual or legal position asserted in the instant  
25 proceeding would have been cognizable in the previous  
26 proceedings. In such event, it shall be rebuttably presumed  
27 that the nonprevailing adverse party participated in the  
28 pending proceeding for an improper purpose.

29 (e) For the purpose of this subsection:

30 1. "Improper purpose" means participation in a  
31 proceeding pursuant to s. 120.57(1) primarily to harass or to

1 cause unnecessary delay or for frivolous purpose or to  
2 needlessly increase the cost of litigation,licensing,or  
3 securing the approval of an activity.

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

6 3. "Nonprevailing adverse party" means a party that  
7 has failed to have substantially changed the outcome of the  
8 proposed or final agency action which is the subject of a  
9 proceeding. In the event that a proceeding results in any  
10 substantial modification or condition intended to resolve the  
11 matters raised in a party's petition, it shall be determined  
12 that the party having raised the issue addressed is not a  
13 nonprevailing adverse party. The recommended order shall  
14 state whether the change is substantial for purposes of this  
15 subsection. In no event shall the term "nonprevailing party"  
16 or "prevailing party" be deemed to include any party that has  
17 intervened in a previously existing proceeding to support the  
18 position of an agency.

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

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

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

1 legislative ratification of the delineation methodology  
2 pursuant to s. 373.421(1), this subsection also shall apply to  
3 an order of the department, or a local government exercising  
4 delegated authority, pursuant to ss. 373.403-373.443, except  
5 an order pertaining to activities or operations subject to  
6 conceptual plan approval pursuant to chapter 378 or an order  
7 resulting from an evidentiary hearing held pursuant to s.  
8 120.569 or s. 120.57.

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



1 the commission to review an order must allege with  
2 particularity, and the commission must find, that:

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

5 2. The order is in conflict with the requirements of a  
6 duly adopted rule.

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

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

1 initiate rulemaking to amend its rules to assure that future  
2 actions are consistent with the provisions and purposes of  
3 this chapter without modifying the order.

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

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

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

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

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

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

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

10 403.412 Environmental Protection Act.--

11 (5) In any administrative, licensing, or other  
12 proceedings authorized by law for the protection of the air,  
13 water, or other natural resources of the state from pollution,  
14 impairment, or destruction, the Department of Legal Affairs, a  
15 political subdivision or municipality of the state, or a  
16 citizen of the state shall have standing to intervene as a  
17 party on the filing of a verified pleading asserting that the  
18 activity, conduct, or product to be licensed or permitted has  
19 or will have the effect of impairing, polluting, or otherwise  
20 injuring the air, water, or other natural resources of the  
21 state. However, a citizen of this state whose substantial  
22 interests have not been determined by agency action may not  
23 institute, initiate, petition, or request a proceeding  
24 pursuant to s. 120.569 or s. 120.57. This subsection does not  
25 limit the associational standing of a nonprofit corporation or  
26 association, organized in whole or in part to promote  
27 conservation, to protect the environment or other biological  
28 values or to preserve historical sites where a substantial  
29 number, although not necessarily a majority, of its members  
30 have their substantial interests determined by the activity,  
31 conduct, or product to be permitted or licensed.

1           Section 6. Paragraph (b) of subsection (1) of section  
2 120.52, Florida Statutes, is amended to read:

3           120.52 Definitions.--As used in this act:

4           (1) "Agency" means:

5           (b) Each:

6           1. State officer and state department, and each  
7 departmental unit described in s. 20.04.

8           2. State authority, including a regional water supply  
9 authority.

10          3. State board.

11          4. State commission, including the Commission on  
12 Ethics and the Fish and Wildlife Conservation Commission when  
13 acting pursuant to statutory authority derived from the  
14 Legislature.

15          5. Regional planning agency.

16          6. Multicounty special district with a majority of its  
17 governing board comprised of nonelected persons.

18          7. Educational units.

19          8. Entity described in chapters 163, 373, 380, and 582  
20 and s. 186.504.

21  
22 This definition does not include any legal entity or agency  
23 created in whole or in part pursuant to chapter 361, part II,  
24 an expressway authority pursuant to chapter 348, any legal or  
25 administrative entity created by an interlocal agreement  
26 pursuant to s. 163.01(7), unless any party to such agreement  
27 is otherwise an agency as defined in this subsection, or any  
28 multicounty special district with a majority of its governing  
29 board comprised of elected persons; however, this definition  
30 shall include a regional water supply authority.

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1           Section 7. This act shall take effect upon becoming a  
2 law.

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4                   STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
5                   COMMITTEE SUBSTITUTE FOR  
6                   CS for SB 2556

7 Reduces increase of s. 57.111 attorneys' fees from \$75,000 to  
8 \$50,000.

9 Deletes provisions of bill modifying ss. 120.542, 120.573,  
10 120.574, 373.1501, 373.4141, 403.088, 403.973, and 408.7056,  
11 F.S.

12 Deletes provision of bill requiring attorneys' fees in rule  
13 challenges.

14 Provides that a citizen whose substantial interests have not  
15 been determined by agency action may not initiate permit  
16 challenges.

17 Amends s. 120.569, F.S., to require attorneys' fees and  
18 expenses to be paid under certain circumstances when documents  
19 are filed for improper purposes.  
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