

Bill No. CS for SB 1560

Amendment No. Barcode 084968

	CHAMBER ACTION	
<u>Senate</u>		<u>House</u>

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11 Senator Peaden moved the following amendment to amendment
 12 (641374):

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 14 **Senate Amendment (with title amendment)**

15 On page 1, between lines 16 and 17,
 16
 17 insert:

18 Section 1. Paragraph (d) of subsection (3) and
 19 paragraph (d) of subsection (4) of section 57.111, Florida
 20 Statutes, are amended to read:

21 57.111 Civil actions and administrative proceedings
 22 initiated by state agencies; attorneys' fees and costs.--

23 (3) As used in this section:

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

25 1.a. A sole proprietor of an unincorporated business,
 26 including a professional practice, whose principal office is
 27 in this state, who is domiciled in this state, and whose
 28 business or professional practice has, at the time the action
 29 is initiated by a state agency, not more than 25 full-time
 30 employees or a net worth of not more than ~~\$5~~^{\$2} million,
 31 including both personal and business investments; or

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

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

13 (4)

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

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

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

28 Section 2. Paragraph (b) of subsection (1) of section
29 120.52, Florida Statutes, is amended to read:

30 120.52 Definitions.--As used in this act:

31 (1) "Agency" means:

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1 (b) Each:

2 1. State officer and state department, and each
3 departmental unit described in s. 20.04.

4 2. State authority, including a regional water supply
5 authority.

6 3. State board.

7 4. State commission, including the Commission on
8 Ethics and the Fish and Wildlife Conservation Commission when
9 acting pursuant to statutory authority derived from the
10 Legislature.

11 5. Regional planning agency.

12 6. Multicounty special district with a majority of its
13 governing board comprised of nonelected persons.

14 7. Educational units.

15 8. Entity described in chapters 163, 373, 380, and 582
16 and s. 186.504.

17

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

27 Section 3. Paragraph (e) of subsection (2) of section
28 120.569, Florida Statutes, is amended to read:

29 120.569 Decisions which affect substantial
30 interests.--

31 (2)

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

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

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

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

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

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

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1 based on a lack of information or belief.

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

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

12 b. Monetary sanctions may not be awarded under this
13 paragraph based on a violation of discovery rules.

14 c. This paragraph does not authorize the award of
15 sanctions against any person who comments on or objects to a
16 draft permit during an authorized period for public comment or
17 at a public hearing.

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

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

23 Section 4. Paragraphs (c) and (e) of subsection (1) of
24 section 120.595, Florida Statutes, are amended to read:

25 120.595 Attorney's fees.--

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

28 (c) In proceedings pursuant to s. 120.57(1), and upon
29 motion, the administrative law judge shall determine whether
30 any party participated in the proceeding for an improper
31 purpose as defined by this subsection ~~and s. 120.569(2)(e)~~. In

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

13 (e) For the purpose of this subsection:

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

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

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

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1 intervened in a previously existing proceeding to support the
2 position of an agency.

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

5 373.114 Land and Water Adjudicatory Commission; review
6 of district rules and orders; department review of district
7 rules.--

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

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

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

- 18 1. The order is in conflict with statutory
- 19 requirements; or
- 20 2. The order is in conflict with the requirements of a
- 21 duly adopted rule.

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

30 (c) If the Land and Water Adjudicatory Commission
 31 determines that a rule of a water management district is not

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

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

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

29 (f) The Florida Land and Water Adjudicatory Commission
30 may adopt rules to set forth its procedures for reviewing an
31 order or rule of a water management district consistent with

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1 the provisions of this section.

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

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

14
15 This paragraph shall not operate to hold that any activity
16 that exceeds these limits is presumed to affect resources of
17 statewide or regional significance. The determination of
18 whether an activity will substantially affect resources of
19 statewide or regional significance shall be made on a
20 case-by-case basis, based upon facts contained in the record
21 below.

22 Section 6. Subsection (5) of section 403.412, Florida
23 Statutes, is amended to read:

24 403.412 Environmental Protection Act.--

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

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

15
16 (Redesignate subsequent sections.)

17
18
19 ===== T I T L E A M E N D M E N T =====

20 And the title is amended as follows:

21 On page 13, line 12, delete that line

22
23 and insert:

24 An act relating to administrative procedure;
25 amending s. 57.111, F.S.; redefining the term
26 "small business party"; increasing the
27 limitation on attorney's fees and costs;
28 amending s. 120.52, F.S.; redefining the term
29 "agency"; amending s. 120.569, F.S.; revising
30 requirements for pleadings, motions, and other
31 papers filed under the Administrative Procedure

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1 Act; providing for sanctions; amending s.
2 120.595, F.S.; redefining the term "improper
3 purpose" for determining an award of attorney's
4 fees; amending s. 373.114, F.S.; providing that
5 water management district orders resulting from
6 certain evidentiary hearings are not subject to
7 specified review; amending s. 403.412, F.S.;
8 restricting persons without substantial
9 interests from initiating specified proceedings
10 under the Environmental Protection Act;

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