

hbd-05

Bill No. CS/HBs 1617 & 1487, 1st Eng.

Amendment No. \_\_\_\_ (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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Representative(s) Bennett offered the following:

**Amendment (with title amendment)**

On page 167, between lines 23 and 24, of the bill

insert:

Section 49. Subsection (5) of section 403.412, Florida Statutes, is amended to read:

403.412 Environmental Protection Act.--

(5) In any administrative, licensing, or other proceedings authorized by law for the protection of the air, water, or other natural resources of the state from pollution, impairment, or destruction, the Department of Legal Affairs, a political subdivision or municipality of the state, or a citizen of the state shall have standing to intervene as a party on the filing of a verified pleading asserting that the activity, conduct, or product to be licensed or permitted has or will have the effect of impairing, polluting, or otherwise injuring the air, water, or other natural resources of the state. However, a citizen of this state whose substantial interests have not been determined by agency action may not

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1 institute, initiate, petition, or request a proceeding under  
2 s. 120.569 or s. 120.57. This subsection does not limit the  
3 ability of a nonprofit corporation or association organized in  
4 whole or in part to promote conservation, to protect the  
5 environment or other biological values, or to preserve  
6 historical sites to initiate, petition, or request a  
7 proceeding under s. 120.569 or s. 120.57 upon asserting in a  
8 verified petition that the activity, conduct, or product to be  
9 licensed or permitted has or will have the effect of  
10 impairing, polluting, or otherwise injuring the air, water, or  
11 other natural resources of the state. The verified petition  
12 must also assert and be subject to subsequent proof that the  
13 corporation or association itself has, or a substantial number  
14 of its members have, substantial interests that will be  
15 affected by the conduct, activity, or product to be licensed  
16 or permitted. Such substantial interests include the use and  
17 enjoyment of the air, water, or other natural resources of the  
18 state which will be affected as a result of the issuance of a  
19 license or permit.

20 Section 50. Subsection (1) of section 373.114, Florida  
21 Statutes, is amended to read:

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

25 (1) Except as provided in subsection (2), the Governor  
26 and Cabinet, sitting as the Land and Water Adjudicatory  
27 Commission, have the exclusive authority to review any order  
28 or rule of a water management district, other than a rule  
29 relating to an internal procedure of the district, an order  
30 resulting from an evidentiary hearing held under s. 120.569 or  
31 s. 120.57, or a rule that has been adopted after issuance of

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1 an order resulting from an evidentiary hearing held under s.  
2 120.56, to ensure consistency with the provisions and purposes  
3 of this chapter. Subsequent to the legislative ratification of  
4 the delineation methodology pursuant to s. 373.421(1), this  
5 subsection also shall apply to an order of the department, or  
6 a local government exercising delegated authority, pursuant to  
7 ss. 373.403-373.443, except an order pertaining to activities  
8 or operations subject to conceptual plan approval pursuant to  
9 chapter 378 or an order resulting from an evidentiary hearing  
10 held under s. 120.569 or s. 120.57.

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

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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

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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.

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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.

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11 ===== T I T L E A M E N D M E N T =====

12 And the title is amended as follows:

13 On page 12, line 3, after the semicolon

14

15 insert:

16 amending s. 403.412, F.S.; clarifying  
17 substantial interest provisions relating to  
18 proceedings under the Environmental Protection  
19 Act; providing for standing; amending s.  
20 373.114, F.S., relating to appeals to the Land  
21 and Water Adjudicatory Commission; providing  
22 exceptions for orders resulting from  
23 evidentiary hearings;

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