

Bill No. SB 1738

Amendment No.      Barcode 604388

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

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Senator Peaden moved the following amendment:

**Senate Amendment (with title amendment)**

On page 1, line 20,

insert:

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

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

(3) As used in this section:

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

1.a. A sole proprietor of an unincorporated business, including a professional practice, whose principal office is in this state, who is domiciled in this state, and whose business or professional practice has, at the time the action is initiated by a state agency, not more than 25 full-time employees or a net worth of not more than ~~\$5~~<sup>\$2</sup> million,

b. A partnership or corporation, including a

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1 professional practice, which has its principal office in this  
 2 state and has at the time the action is initiated by a state  
 3 agency not more than 25 full-time employees or a net worth of  
 4 not more than ~~\$5~~<sup>\$2</sup> million; or

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

12           (4)

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

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

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

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

29           120.52 Definitions.--As used in this act:

30           (1) "Agency" means:

31           (b) Each:

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- 1           1. State officer and state department, and each
- 2 departmental unit described in s. 20.04.
- 3           2. State authority, including a regional water supply
- 4 authority.
- 5           3. State board.
- 6           4. State commission, including the Commission on
- 7 Ethics and the Fish and Wildlife Conservation Commission when
- 8 acting pursuant to statutory authority derived from the
- 9 Legislature.
- 10          5. Regional planning agency.
- 11          6. Multicounty special district with a majority of its
- 12 governing board comprised of nonelected persons.
- 13          7. Educational units.
- 14          8. Entity described in chapters 163, 373, 380, and 582
- 15 and s. 186.504.

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

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

28           120.569 Decisions which affect substantial  
29 interests.--

30           (2)

31           (e)1. Every pleading, written motion, and other paper

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

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

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

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

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

29 d. The denials of factual contentions are warranted on  
 30 the evidence or, if specifically identified, are reasonably  
 31 based on a lack of information or belief.

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

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

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

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

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

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

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

24 120.595 Attorney's fees.--

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

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

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

12 (e) For the purpose of this subsection:

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

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

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

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1 position of an agency.

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

4 373.114 Land and Water Adjudicatory Commission; review  
5 of district rules and orders; department review of district  
6 rules.--

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

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



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

17 1. The order is in conflict with statutory  
18 requirements; or

19 2. The order is in conflict with the requirements of a  
20 duly adopted rule.

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

29 (c) If the Land and Water Adjudicatory Commission  
30 determines that a rule of a water management district is not  
31 consistent with the provisions and purposes of this chapter,

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

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

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

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

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

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

13  
14 This paragraph shall not operate to hold that any activity  
15 that exceeds these limits is presumed to affect resources of  
16 statewide or regional significance. The determination of  
17 whether an activity will substantially affect resources of  
18 statewide or regional significance shall be made on a  
19 case-by-case basis, based upon facts contained in the record  
20 below.

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

23 403.412 Environmental Protection Act.--

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

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

14  
15 (Redesignate subsequent sections.)

16  
17

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

19 And the title is amended as follows:

20 On page 1, line 2, delete that line

21

22 and insert:

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

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