

Bill No. SB 1738

Amendment No. ____ Barcode 863454

<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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11 Senator King moved the following amendment to amendment
 12 (345644):

13
 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 (4) of section
 19 57.111, Florida Statutes, is amended to read:

20 57.111 Civil actions and administrative proceedings
 21 initiated by state agencies; attorneys' fees and costs.--

22 (4)

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

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1 costs for the appeal.

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

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

6 Section 2. Paragraph (e) of subsection (2) of section
7 120.569, Florida Statutes, is amended to read:

8 120.569 Decisions which affect substantial
9 interests.--

10 (2)

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

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

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

31 b. The claims, defenses, and other legal contentions

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1 contained in the pleading, written motion, or other paper are
2 warranted by existing law or by a nonfrivolous argument for
3 the extension, modification, or reversal of existing law or
4 the establishment of new law;

5 c. The allegations and other factual contentions have
6 evidentiary support or, if specifically identified, are likely
7 to have evidentiary support after a reasonable opportunity for
8 further investigation or discovery; and

9 d. The denials of factual contentions are warranted on
10 the evidence or, if specifically identified, are reasonably
11 based on a lack of information or belief.

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

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

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

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

28 4. Sanctions under this paragraph may be initiated at
29 any time after the initiation of a proceeding either by motion
30 or on the presiding officer's own initiative. A motion shall
31 describe the specific conduct alleged to violate subparagraph

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1 2. The motion shall be served upon the attorney or qualified
2 representative of a party or an unrepresented party against
3 whom such sanctions are sought and shall be filed with the
4 presiding officer. However, such motion shall not be acted
5 upon by the presiding officer or called up for hearing by the
6 movant unless, within 14 days after service of the motion or
7 such other period as the presiding officer may prescribe, the
8 challenged paper, claim, defense, contention, allegation, or
9 denial is not withdrawn or appropriately corrected. A
10 presiding officer's own initiative to impose sanctions may be
11 undertaken only after entering an order describing the
12 specific conduct that appears to violate subparagraph 2. and
13 directing the attorney or qualified representative of a party
14 or the unrepresented party to show cause why subparagraph 2.
15 has not been violated. When imposing sanctions, the presiding
16 officer shall describe the conduct determined to constitute a
17 violation of subparagraph 2. and explain the basis for the
18 sanction imposed.~~All pleadings, motions, or other papers~~
19 ~~filed in the proceeding must be signed by the party, the~~
20 ~~party's attorney, or the party's qualified representative. The~~
21 ~~signature constitutes a certificate that the person has read~~
22 ~~the pleading, motion, or other paper and that, based upon~~
23 ~~reasonable inquiry, it is not interposed for any improper~~
24 ~~purposes, such as to harass or to cause unnecessary delay, or~~
25 ~~for frivolous purpose or needless increase in the cost of~~
26 ~~litigation. If a pleading, motion, or other paper is signed in~~
27 ~~violation of these requirements, the presiding officer shall~~
28 ~~impose upon the person who signed it, the represented party,~~
29 ~~or both, an appropriate sanction, which may include an order~~
30 ~~to pay the other party or parties the amount of reasonable~~
31 ~~expenses incurred because of the filing of the pleading,~~

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1 ~~motion, or other paper, including a reasonable attorney's fee.~~

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

4 120.595 Attorney's fees.--

5 (1) CHALLENGES TO AGENCY ACTION PURSUANT TO SECTION
6 120.57(1).--

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

23 (e) For the purpose of this subsection:

24 1. "Improper purpose" means participation in a
25 proceeding pursuant to s. 120.57(1) primarily to harass or to
26 cause unnecessary delay or for frivolous purpose or to
27 needlessly increase the cost of litigation,licensing,or
28 securing the approval of an activity.

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

31 3. "Nonprevailing adverse party" means a party that

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

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

15 373.114 Land and Water Adjudicatory Commission; review
16 of district rules and orders; department review of district
17 rules.--

18 (1) Except as provided in subsection (2), the Governor
19 and Cabinet, sitting as the Land and Water Adjudicatory
20 Commission, have the exclusive authority to review any order
21 or rule of a water management district, other than a rule
22 relating to an internal procedure of the district, an order
23 resulting from an evidentiary hearing held under s. 120.569 or
24 s. 120.57, or a rule that has been adopted after issuance of
25 an order resulting from an evidentiary hearing held under s.
26 120.56, to ensure consistency with the provisions and purposes
27 of this chapter. Subsequent to the legislative ratification of
28 the delineation methodology pursuant to s. 373.421(1), this
29 subsection also shall apply to an order of the department, or
30 a local government exercising delegated authority, pursuant to
31 ss. 373.403-373.443, except an order pertaining to activities

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1 or operations subject to conceptual plan approval pursuant to
2 chapter 378 or an order resulting from an evidentiary hearing
3 held under s. 120.569 or s. 120.57.

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

29 1. The order is in conflict with statutory
30 requirements; or

31 2. The order is in conflict with the requirements of a

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1 duly adopted rule.

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

10 (c) If the Land and Water Adjudicatory Commission
11 determines that a rule of a water management district is not
12 consistent with the provisions and purposes of this chapter,
13 it may require the water management district to initiate
14 rulemaking proceedings to amend or repeal the rule. If the
15 commission determines that an order is not consistent with the
16 provisions and purposes of this chapter, the commission may
17 rescind or modify the order or remand the proceeding for
18 further action consistent with the order of the Land and Water
19 Adjudicatory Commission only if the commission determines that
20 the activity authorized by the order would substantially
21 affect natural resources of statewide or regional
22 significance. In the case of an order which does not itself
23 substantially affect natural resources of statewide or
24 regional significance, but which raises issues of policy that
25 have regional or statewide significance from the standpoint of
26 agency precedent, the commission may direct the district to
27 initiate rulemaking to amend its rules to assure that future
28 actions are consistent with the provisions and purposes of
29 this chapter without modifying the order.

30 (d) In a review under this section of a construction
31 permit issued pursuant to a conceptual permit under part IV,

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1 which conceptual permit is issued after July 1, 1993, a party
2 to the review may not raise an issue which was or could have
3 been raised in a review of the conceptual permit under this
4 section.

5 (e) A request for review under this section shall not
6 be a precondition to the seeking of judicial review pursuant
7 to s. 120.68 or the seeking of an administrative determination
8 of rule validity pursuant to s. 120.56.

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

13 (g) For the purpose of this section, it shall be
14 presumed that activity authorized by an order will not affect
15 resources of statewide or regional significance if the
16 proposed activity:

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

25
26 This paragraph shall not operate to hold that any activity
27 that exceeds these limits is presumed to affect resources of
28 statewide or regional significance. The determination of
29 whether an activity will substantially affect resources of
30 statewide or regional significance shall be made on a
31 case-by-case basis, based upon facts contained in the record

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1 below.

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

4 403.412 Environmental Protection Act.--

5 (5)(a) In any administrative, licensing, or other
6 proceedings authorized by law for the protection of the air,
7 water, or other natural resources of the state from pollution,
8 impairment, or destruction, the Department of Legal Affairs, a
9 political subdivision or municipality of the state, or a
10 citizen of the state shall have standing to intervene as a
11 party on the filing of a verified pleading asserting that the
12 activity, conduct, or product to be licensed or permitted has
13 or will have the effect of impairing, polluting, or otherwise
14 injuring the air, water, or other natural resources of the
15 state.

16 (b) Initiation of a proceeding under s. 120.569 or s.
17 120.57 shall not be authorized by paragraph (a), but shall be
18 governed by the provisions of chapter 120.

19 (c) However, a nonprofit corporation or association
20 organized in whole or in part to promote conservation, to
21 protect the environment or other biological values, or to
22 preserve historical sites may petition to initiate a
23 proceeding under s. 120.569 or s. 120.57 with regard to an
24 agency action or a proposed agency action in any
25 administrative, licensing, or other proceedings described in
26 paragraph (a) without demonstrating that its substantial
27 interests have been or will be determined, if:

28 1. Such corporation or association was in existence at
29 least 1 year before the filing of the application to license
30 or permit an activity, conduct, or product which resulted in
31 the agency action or proposed agency action that is the

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1 subject of the petition;

2 2.a. Such corporation or association has an office for
3 the transaction of its customary business or owns real
4 property, within the same county where the activity, conduct,
5 or product to be permitted or licensed is located, or

6 b. At least 25 members of the corporation or
7 association reside or own real property within the same county
8 where the activity, conduct, or product to be permitted or
9 licensed is located; and

10 3. Such corporation or association files a verified
11 pleading asserting that the activity, conduct, or product to
12 be licensed or permitted has or will have the effect of
13 impairing, polluting, or otherwise injuring the air, water, or
14 other natural resources of the state.

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 24, line 7, delete that line

22

23 and insert:

24 An act relating to state government procedures;
25 amending s. 57.111, F.S.; increasing the
26 limitation on attorney's fees and costs;
27 amending s. 120.569, F.S.; revising
28 requirements for pleadings, motions, and other
29 papers filed under the Administrative Procedure
30 Act; providing for sanctions; amending s.
31 120.595, F.S.; redefining the term "improper

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purpose" for determining an award of attorney's fees; amending s. 373.114, F.S.; providing that water management district orders resulting from certain evidentiary hearings are not subject to specified review; amending s. 403.412, F.S.; revising requirements for initiating specified proceedings under the Environmental Protection Act;