

750-118AX-37

Bill No. CS/HB 1763

Amendment No. (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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3		.	
4		.	

ORIGINAL STAMP BELOW

Representative(s) Bennett offered the following:

Amendment to Amendment (375131) (with title amendment)

On page 11, between lines 22 & 23, of the amendment

insert:

Section 7. 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 8. 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 1, of the amendment
14 remove: all of said line

15

16 and insert:

17 An act relating to environmental protection;
18 creating s. 120.551, F.S.; directing the
19 Department of Environmental Protection and the
20 State Technology Office to establish a pilot
21 project to test the cost-effectiveness of
22 publication of notices on the Internet in lieu
23 of publication in the Florida Administrative
24 Weekly; directing the Department of State to
25 publish notice of the pilot project; requiring
26 the Department of Environmental Protection, the
27 State Technology Office, and the Department of
28 State to submit a joint report on the
29 cost-effectiveness of publication of such
30 notices on the Internet; defining the term
31 "information technology"; amending s. 287.012,

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1 F.S.; defining "invitation to negotiate" and
2 "request for a quote"; amending s. 287.042,
3 F.S.; providing challenge procedure; adding
4 responses and quotes to category of items to
5 which procedures are developed; tasking
6 Department of Management Services with
7 developing procedures to be used by agencies
8 for issuing invitations and requests;
9 identifying methods for securing bids,
10 responses, quotes, and proposals revising
11 language with respect to the Department of
12 Management Services; providing that the
13 department, in consultation with the State
14 Technology Office, shall prescribe procedures
15 for procuring information technology; directing
16 the office to assess the technological needs of
17 certain agencies; amending s. 287.057, F.S.;
18 providing for the role of the State Technology
19 Office in developing a program for on-line
20 procurement of commodities and contractual
21 services; authorizing the office to collect
22 certain fees; providing for the deposit of such
23 fees; directing the office to establish state
24 strategic information technology alliances for
25 the acquisition and use of information
26 technology; providing for the duties of such
27 alliances; providing for rules; providing for
28 agency use of invitations to negotiate;
29 amending s. 287.0731, F.S.; conforming
30 provisions to changes made by the act; amending
31 s. 288.109, F.S.; substituting State Technology

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1 Office for Department of Management Services;
2 providing for establishment and maintenance of
3 a One-Stop Permitting System; amending s.
4 403.412, F.S.; clarifying substantial interest
5 provisions relating to proceedings under the
6 Environmental Protection Act; providing for
7 standing; amending s. 373.114, F.S., relating
8 to appeals to the Land and Water Adjudicatory
9 Commission; providing exceptions for orders
10 resulting from evidentiary hearings; providing
11 an effective date.

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