

Bill No. CS for CS for SB 2120

Amendment No. Barcode 165262

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

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Senator Pruitt moved the following amendment to amendment (945142):

Senate Amendment (with title amendment)

On page 28, between lines 23 and 24,

insert:

Section 25. Subsection (1) of section 373.114, Florida Statutes, is amended to read:

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

(1) Except as provided in subsection (2), the Governor and Cabinet, sitting as the Land and Water Adjudicatory Commission, have the exclusive authority to review any order or rule of a water management district, other than a rule relating to an internal procedure of the district, an order resulting from an evidentiary hearing held under s. 120.569 or s. 120.57, or a rule that has been adopted after issuance of an order resulting from an evidentiary hearing held under s. 120.56, to ensure consistency with the provisions and purposes

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

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

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1 review an order must allege with particularity, and the
2 commission must find, that:

3 1. The order is in conflict with statutory
4 requirements; or

5 2. The order is in conflict with the requirements of a
6 duly adopted rule.

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

15 (c) If the Land and Water Adjudicatory Commission
16 determines that a rule of a water management district is not
17 consistent with the provisions and purposes of this chapter,
18 it may require the water management district to initiate
19 rulemaking proceedings to amend or repeal the rule. If the
20 commission determines that an order is not consistent with the
21 provisions and purposes of this chapter, the commission may
22 rescind or modify the order or remand the proceeding for
23 further action consistent with the order of the Land and Water
24 Adjudicatory Commission only if the commission determines that
25 the activity authorized by the order would substantially
26 affect natural resources of statewide or regional
27 significance. In the case of an order which does not itself
28 substantially affect natural resources of statewide or
29 regional significance, but which raises issues of policy that
30 have regional or statewide significance from the standpoint of
31 agency precedent, the commission may direct the district to

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1 initiate rulemaking to amend its rules to assure that future
2 actions are consistent with the provisions and purposes of
3 this chapter without modifying the order.

4 (d) In a review under this section of a construction
5 permit issued pursuant to a conceptual permit under part IV,
6 which conceptual permit is issued after July 1, 1993, a party
7 to the review may not raise an issue which was or could have
8 been raised in a review of the conceptual permit under this
9 section.

10 (e) A request for review under this section shall not
11 be a precondition to the seeking of judicial review pursuant
12 to s. 120.68 or the seeking of an administrative determination
13 of rule validity pursuant to s. 120.56.

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

18 (g) For the purpose of this section, it shall be
19 presumed that activity authorized by an order will not affect
20 resources of statewide or regional significance if the
21 proposed activity:

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

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31 This paragraph shall not operate to hold that any activity

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1 that exceeds these limits is presumed to affect resources of
2 statewide or regional significance. The determination of
3 whether an activity will substantially affect resources of
4 statewide or regional significance shall be made on a
5 case-by-case basis, based upon facts contained in the record
6 below.

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8 (Redesignate subsequent sections.)

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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 32, line 10, following the semicolon

14

15 insert:

16 amending s. 373.114, F.S.; revising provisions
17 relating to review of water management district
18 rules and orders;

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