

Bill No. CS for SB 910

Amendment No.      Barcode 330674

<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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11 Senator King moved the following amendment:

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13 **Senate Amendment (with title amendment)**

14 Delete everything after the enacting clause

16 and insert:

17 Section 1. Paragraph (d) of subsection (4) of section  
18 57.111, Florida Statutes, is amended to read:

19 57.111 Civil actions and administrative proceedings  
20 initiated by state agencies; attorneys' fees and costs.--

21 (4)

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

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

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

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

7           120.569 Decisions which affect substantial  
8 interests.--

9           (2)

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

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

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

30          b. The claims, defenses, and other legal contentions  
31 contained in the pleading, written motion, or other paper are

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1 warranted by existing law or by a nonfrivolous argument for  
2 the extension, modification, or reversal of existing law or  
3 the establishment of new law;

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

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

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

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

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

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

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

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

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

3           120.595 Attorney's fees.--

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

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

22           (e) For the purpose of this subsection:

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

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

30           3. "Nonprevailing adverse party" means a party that  
31 has failed to have substantially changed the outcome of the

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

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

14 373.114 Land and Water Adjudicatory Commission; review  
15 of district rules and orders; department review of district  
16 rules.--

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

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1 chapter 378 or an order resulting from an evidentiary hearing  
2 held under s. 120.569 or s. 120.57.

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

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

30 2. The order is in conflict with the requirements of a  
31 duly adopted rule.

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

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

29           (d) In a review under this section of a construction  
30 permit issued pursuant to a conceptual permit under part IV,  
31 which conceptual permit is issued after July 1, 1993, a party



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1 to the review may not raise an issue which was or could have  
2 been raised in a review of the conceptual permit under this  
3 section.

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

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

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

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

24  
25 This paragraph shall not operate to hold that any activity  
26 that exceeds these limits is presumed to affect resources of  
27 statewide or regional significance. The determination of  
28 whether an activity will substantially affect resources of  
29 statewide or regional significance shall be made on a  
30 case-by-case basis, based upon facts contained in the record  
31 below.

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

3           403.412 Environmental Protection Act.--

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

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

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

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

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

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

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

14           Section 6. This act shall take effect July 1, 2001.

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

18 And the title is amended as follows:

19           Delete everything before the enacting clause

20  
21 and insert:

22                   A bill to be entitled

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

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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; providing an effective date.