By Senator King

8-207B-01 See HB

A bill to be entitled

An act relating to administrative procedure; amending s. 57.111, F.S.; redefining the term "small business party"; increasing the limitation on attorney's fees and costs; amending s. 120.52, F.S.; redefining the term "agency"; amending s. 120.569, F.S.; revising requirements for pleadings, motions, and other papers filed under the Administrative Procedure Act; providing for sanctions; amending s. 120.574, F.S.; redesignating summary hearings as expedited hearings; providing procedures for expedited hearings; revising the status of an administrative law judge's decision; providing for recommended orders and final orders; amending s. 120.595, F.S.; redefining the term "improper purpose" for determining an award of attorney's fees; amending s. 120.60, F.S.; revising the process for the approval of license applications and license renewals; amending s. 120.68, F.S.; providing for costs, damages, and attorney's fees under certain circumstances; amending s. 373.114, F.S.; providing that water management district orders resulting from certain evidentiary hearings are not subject to specified review; amending ss. 373.1501 and 403.088, F.S.; conforming references; amending s. 403.412, F.S.; restricting persons without substantial interests from initiating specified proceedings under the Environmental Protection Act;

amending s. 403.973, F.S.; conforming references; revising conditions under which expedited hearings apply; amending s. 408.7056, F.S.; conforming references; amending ss. 120.57, 120.595, 120.81, 409.2564, 409.913, 501.608, 628.461, 628.4615, 633.161, and 766.207, F.S.; conforming cross-references; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

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 50 ~~25~~ full-time employees or a net worth of not more than $10~~$2~~ million, including both personal and business investments; or

b. A partnership or corporation, including a professional practice, which has its principal office in this state and has at the time the action is initiated by a state agency not more than 50 ~~25~~ full-time employees or a net worth of not more than $10~~$2~~ million; or

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

(4)

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

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

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

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

120.52 Definitions.--As used in this act:

(1) "Agency" means:

(b) Each:

1. State officer and state department, and each departmental unit described in s. 20.04.

2. State authority, including a regional water supply authority.

3. State board.

4. State commission, including the Commission on Ethics and the Fish and Wildlife Conservation Commission when acting pursuant to statutory authority derived from the Legislature.

5. Regional planning agency.

6. Multicounty special district with a majority of its governing board comprised of nonelected persons.

7. Educational units.

8. Entity described in chapters 163, 373, 380, and 582 and s. 186.504.

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

Section 3. Subsection (2) of section 120.569, Florida Statutes, is amended to read:

120.569 Decisions which affect substantial interests.--

(2)(a) Except for any proceeding conducted as prescribed in s. 120.56, a petition or request for a hearing under this section shall be filed with the agency. If the agency requests an administrative law judge from the division, it shall so notify the division within 15 days after receipt of the petition or request. A request for a hearing shall be

granted or denied within 15 days after receipt. On the request of any agency, the division shall assign an administrative law judge with due regard to the expertise required for the particular matter. The referring agency shall take no further action with respect to a proceeding under s. 120.57(1), except as a party litigant, as long as the division has jurisdiction over the proceeding under s. 120.57(1). Any party may request the disqualification of the administrative law judge by filing an affidavit with the division prior to the taking of evidence at a hearing, stating the grounds with particularity.

(b) All parties shall be afforded an opportunity for a hearing after reasonable notice of not less than 14 days; however, the 14-day notice requirement may be waived with the consent of all parties. The notice shall include:

1. A statement of the time, place, and nature of the hearing.

2. A statement of the legal authority and jurisdiction under which the hearing is to be held.

(c) Unless otherwise provided by law, a petition or request for hearing shall include those items required by the uniform rules adopted pursuant to s. 120.54(5)(b)4. Upon the receipt of a petition or request for hearing, the agency shall carefully review the petition to determine if it contains all of the required information. A petition shall be dismissed if it is not in substantial compliance with these requirements or it has been untimely filed. Dismissal of a petition shall, at least once, be without prejudice to petitioner's filing a timely amended petition curing the defect, unless it conclusively appears from the face of the petition that the defect cannot be cured. The agency shall promptly give written notice to all parties of the action taken on the

petition, shall state with particularity its reasons if the petition is not granted, and shall state the deadline for filing an amended petition if applicable.

(d) The agency may refer a petition to the division for the assignment of an administrative law judge only if the petition is in substantial compliance with the requirements of paragraph (c).

(e) In any proceeding brought by a third party to challenge a permit application brought under part IV of chapter 373, after assignment of such petition to the administrative law judge pursuant to paragraph (d), a respondent may file a motion with the judge to show cause why the permit should not be granted. All issues shall be framed with sufficient particularity and the scope of anticipated evidence to be presented at the final hearing shall be presented. Upon receipt of such motion, the judge shall hold a hearing to determine whether the issues are framed with sufficient particularity and whether the scope of anticipated evidence is sufficient to put the petitioner on notice as to what specific elements of the permit application are at issue under the applicable permitting standards and criteria. The administrative law judge shall strive to narrow the issues and shall enter an order that:

1. Delineates the specific issues sought to be adjudicated based upon the hearing;

2. Determines that the issues are framed with sufficient particularity and that the scope of anticipated evidence is sufficient to put the respondent on notice as to what specific elements of the permit application are at issue under the applicable permitting standards and criteria; or

3. Dismisses the petition if the issues are not framed with sufficient particularity or if the scope of anticipated evidence is not sufficient to put the petitioner on notice as to what specific elements of the permit application are at issue under the applicable permitting standards and criteria.

Dismissal of a petition shall, at least once, be without prejudice to the third party petitioner's filing a timely amended petition curing the defect, unless it conclusively appears in the hearing that the defect cannot be cured.

(f)1. Every pleading, written motion, and other paper filed in a proceeding must be signed by at least one attorney or qualified representative of record in the attorney's or qualified representative's individual name, or, if the party is not represented by an attorney or qualified representative, the pleading, written motion, or other paper must be signed by the party. An unsigned paper shall be stricken unless omission of the signature is corrected within 5 calendar days after being called to the attention of the attorney, qualified representative, or party.

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

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

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

c. The allegations and other factual contentions have evidentiary support after a reasonable opportunity for further investigation or discovery; and

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

3. If, after notice and a reasonable opportunity to respond, the presiding officer determines that subparagraph 2. has been violated, the presiding officer shall impose an appropriate sanction against the person who signed the pleading, written motion, or other paper, the represented party, or both, which must include an order to pay the other party or parties the amount of reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including reasonable attorney's fees. However, this paragraph does not authorize the award of sanctions against any person for the act of commenting on or objecting to a draft permit during an authorized period for public comment or at a public hearing.

4. Sanctions under this paragraph may be initiated at any time after the initiation of a proceeding either by motion or on the presiding officer's own initiative. A motion shall describe the specific conduct alleged in violation of subparagraph 2. The motion shall be served upon the attorney or qualified representative of a party or an unrepresented party against whom such sanctions are sought and shall be

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

(g)~~(f)~~ The presiding officer has the power to swear witnesses and take their testimony under oath, to issue

subpoenas, and to effect discovery on the written request of any party by any means available to the courts and in the manner provided in the Florida Rules of Civil Procedure, including the imposition of sanctions, except contempt. However, no presiding officer has the authority to issue any subpoena or order directing discovery to any member or employee of the Legislature when the subpoena or order commands the production of documents or materials or compels testimony relating to the legislative duties of the member or employee. Any subpoena or order directing discovery directed to a member or an employee of the Legislature shall show on its face that the testimony sought does not relate to legislative duties.

(h)~~(g)~~ Irrelevant, immaterial, or unduly repetitious evidence shall be excluded, but all other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible, whether or not such evidence would be admissible in a trial in the courts of Florida. Any part of the evidence may be received in written form, and all testimony of parties and witnesses shall be made under oath.

(i)~~(h)~~ Documentary evidence may be received in the form of a copy or excerpt. Upon request, parties shall be given an opportunity to compare the copy with the original, if available.

(j)~~(i)~~ When official recognition is requested, the parties shall be notified and given an opportunity to examine and contest the material.

(k)~~(j)~~ A party shall be permitted to conduct cross-examination when testimony is taken or documents are made a part of the record.

(l)~~(k)~~1. Any person subject to a subpoena may, before compliance and on timely petition, request the presiding officer having jurisdiction of the dispute to invalidate the subpoena on the ground that it was not lawfully issued, is unreasonably broad in scope, or requires the production of irrelevant material.

2. A party may seek enforcement of a subpoena, order directing discovery, or order imposing sanctions issued under the authority of this chapter by filing a petition for enforcement in the circuit court of the judicial circuit in which the person failing to comply with the subpoena or order resides. A failure to comply with an order of the court shall result in a finding of contempt of court. However, no person shall be in contempt while a subpoena is being challenged under subparagraph 1. The court may award to the prevailing party all or part of the costs and attorney's fees incurred in obtaining the court order whenever the court determines that such an award should be granted under the Florida Rules of Civil Procedure.

3. Any public employee subpoenaed to appear at an agency proceeding shall be entitled to per diem and travel expenses at the same rate as that provided for state employees under s. 112.061 if travel away from such public employee's headquarters is required. All other witnesses appearing pursuant to a subpoena shall be paid such fees and mileage for their attendance as is provided in civil actions in circuit courts of this state. In the case of a public employee, such expenses shall be processed and paid in the manner provided for agency employee travel expense reimbursement, and in the case of a witness who is not a public employee, payment of such fees and expenses shall accompany the subpoena.

(m)~~(l)~~ Unless the time period is waived or extended with the consent of all parties, the final order in a proceeding which affects substantial interests must be in writing and include findings of fact, if any, and conclusions of law separately stated, and it must be rendered within 90 days:

1. After the hearing is concluded, if conducted by the agency;

2. After a recommended order is submitted to the agency and mailed to all parties, if the hearing is conducted by an administrative law judge; or

3. After the agency has received the written and oral material it has authorized to be submitted, if there has been no hearing.

(n)~~(m)~~ Findings of fact, if set forth in a manner which is no more than mere tracking of the statutory language, must be accompanied by a concise and explicit statement of the underlying facts of record which support the findings.

(o)~~(n)~~ If an agency head finds that an immediate danger to the public health, safety, or welfare requires an immediate final order, it shall recite with particularity the facts underlying such finding in the final order, which shall be appealable or enjoinable from the date rendered.

Section 4. Section 120.574, Florida Statutes, is amended to read:

120.574 Expedited ~~Summary~~ hearing.--

(1)(a) Within 5 business days following the division's receipt of a petition or request for hearing, the division shall issue and serve on all original parties an initial order that assigns the case to a specific administrative law judge and provides general information regarding practice and

procedure before the division. The initial order shall also contain a statement advising the original parties ~~addressees~~ that an expedited ~~a summary~~ hearing is available, if the affected agency agrees, ~~upon the agreement of all parties under subsection (2)~~ and briefly describing the accelerated ~~expedited~~ time sequences, limited discovery, and final order provisions of the expedited ~~summary~~ procedure.

(b) Within 15 days after service of the initial order, any party may file with the division a motion for expedited ~~summary~~ hearing in accordance with subsection (2). If a nonagency party files a motion for an expedited hearing and the affected agency does not file a written objection within 7 days after the service of the motion, or if the affected agency files a motion for an expedited hearing and the original parties do not file a written objection within 7 days after the service of the motion, the motion shall be granted and an order shall be entered setting the hearing date, which must commence within 30 days after the date the response period to the motion expires. If the affected agency files a motion for an expedited hearing and an original party files a response within 7 days after service of that motion objecting to the expedited hearing, the administrative law judge shall, within 5 days after the filing of that response, enter an order granting the motion for expedited hearing unless the administrative law judge finds that any of the original parties will be unduly prejudiced thereby. ~~If all original parties agree, in writing, to the summary proceeding, the proceeding shall be conducted within 30 days of the agreement, in accordance with the provisions of subsection (2).~~

(c) Intervenors in the proceeding shall be governed by the decision of the administrative law judge ~~original parties~~

regarding whether the case will proceed in accordance with the expedited ~~summary~~ hearing process and shall not have standing to challenge that decision.

(d) If a motion for expedited ~~summary~~ hearing is not filed within 15 days after service of the division's initial order, the matter shall proceed in accordance with ss. 120.569 and 120.57.

(2) In any case to which this subsection is applicable, the following procedures apply:

(a) Motions shall be limited to the following:

1. A motion in opposition to the petition.

2. A motion requesting discovery beyond the informal exchange of documents and witness lists described in paragraph (b). Upon a showing of necessity, additional discovery may be permitted in the discretion of the administrative law judge, but only if it can be completed not later than 5 days prior to the final hearing.

3. A motion for continuance of the final hearing date.

4. A motion requesting a prehearing conference, or the administrative law judge may require a prehearing conference, for the purpose of identifying: the legal and factual issues to be considered at the final hearing; the names and addresses of witnesses who may be called to testify at the final hearing; documentary evidence that will be offered at the final hearing; the range of penalties that may be imposed upon final hearing; and any other matter that the administrative law judge determines would expedite resolution of the proceeding. The prehearing conference may be held by telephone conference call.

5. During or after any preliminary hearing or conference, any party or the administrative law judge may

suggest that the case is no longer appropriate for expedited ~~summary~~ disposition. Following any argument requested by the parties, the administrative law judge may enter an order referring the case back to the formal adjudicatory process described in s. 120.57(1), in which event the parties shall proceed accordingly.

(b) Not later than 5 days prior to the final hearing, the parties shall furnish to each other copies of documentary evidence and lists of witnesses who may testify at the final hearing.

(c) All parties shall have an opportunity to respond, to present evidence and argument on all issues involved, to conduct cross-examination and submit rebuttal evidence, and to be represented by counsel or other qualified representative.

(d) The record in a case governed by this subsection shall consist only of:

1. All notices, pleadings, motions, and intermediate rulings.

2. Evidence received.

3. A statement of matters officially recognized.

4. Proffers of proof and objections and rulings thereon.

5. Matters placed on the record after an ex parte communication.

6. The written recommended order ~~decision~~ of the administrative law judge presiding at the final hearing.

7. The official transcript of the final hearing.

(e) The agency shall accurately and completely preserve all testimony in the proceeding and, upon request by any party, shall make a full or partial transcript available at no more than actual cost.

(f) The recommended order ~~decision~~ of the administrative law judge shall be rendered within 30 days after the conclusion of the final hearing or the filing of the transcript thereof, whichever is later. The administrative law judge's recommended order ~~decision, which shall be final agency action subject to judicial review under s. 120.68,~~ shall include the following:

1. Findings of fact based exclusively on the evidence of record and matters officially recognized.

2. Conclusions of law.

3. Imposition of a fine or penalty, if applicable.

4. Any other information required by law or rule to be contained in a final order.

(g) The parties may file exceptions to the administrative law judge's recommended order within 10 days after its issuance, and responses may be filed within 5 days after the exceptions. The agency shall issue the final order within 30 days after the issuance of the administrative law judge's recommended order.

Section 5. Paragraphs (c) and (e) of subsection (1) of section 120.595, Florida Statutes, are amended to read:

120.595 Attorney's fees.--

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

(c) In proceedings pursuant to s. 120.57(1), and upon motion, the administrative law judge shall determine whether any party participated in the proceeding for an improper purpose as defined by this subsection ~~and s. 120.569(2)(e)~~. In making such determination, the administrative law judge shall consider whether the nonprevailing adverse party has participated in two or more other such proceedings involving

the same prevailing party and the same project as an adverse party and in which such two or more proceedings the nonprevailing adverse party did not establish either the factual or legal merits of its position, and shall consider whether the factual or legal position asserted in the instant proceeding would have been cognizable in the previous proceedings. In such event, it shall be rebuttably presumed that the nonprevailing adverse party participated in the pending proceeding for an improper purpose.

(e) For the purpose of this subsection:

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

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

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

Section 6. Subsections (1) and (4) of section 120.60, Florida Statutes, are amended to read:

120.60 Licensing.--

(1) Upon receipt of an application for a license, an agency shall examine the application and, within 30 days after such receipt, notify the applicant of any apparent errors or omissions and request any additional information the agency is permitted by law to require. An agency shall not deny a license for failure to correct an error or omission or to supply additional information unless the agency timely notified the applicant within this 30-day period. An application shall be considered complete upon receipt of all requested information and correction of any error or omission for which the applicant was timely notified or when the time for such notification has expired. Every application for a license shall be approved or denied within 90 days after receipt of a completed application unless a shorter period of time for agency action is provided by law. The 90-day time period shall be tolled by the initiation of a proceeding under ss. 120.569 and 120.57. Any ~~An~~ application for a license that is not ~~must be~~ approved or denied within the 90-day or shorter time period, within 15 days after ~~the~~ conclusion of a public hearing held on the application, or within 45 days after the ~~a~~ recommended order is submitted to the agency and the parties, whichever is latest, is considered approved. Subject to the satisfactory completion of an examination if required as a prerequisite to licensure, the license shall be issued ~~later~~. ~~The agency must approve any application for a license or for an examination required for licensure if the agency has not approved or denied the application within the time periods prescribed by this subsection.~~

(4) When a licensee has made timely and sufficient application for the renewal of a license with reference to any activity of a continuing nature ~~which does not automatically expire by statute~~, the existing license shall not expire until the application for renewal has been finally acted upon by the agency or, in case the application is denied or the terms of the license are limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

Section 7. Subsection (11) is added to section 120.68, Florida Statutes, to read:

120.68 Judicial review.--

(11) In those cases involving judicial review of an agency decision resulting in the issuance of a license or permit, the court shall order any nonprevailing third party appellant to pay costs, damages, and attorney's fees.

Section 8. 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 or an order resulting from an evidentiary hearing held under s. 120.569 or s. 120.57, to ensure consistency with the provisions and purposes of this chapter. Subsequent to the legislative ratification of the delineation methodology pursuant to s. 373.421(1), this subsection also shall apply to an order of

the department, or a local government exercising delegated authority, pursuant to ss. 373.403-373.443, except an order pertaining to activities or operations subject to conceptual plan approval pursuant to chapter 378 or an order resulting from an evidentiary hearing held under s. 120.569 or s. 120.57.

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

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

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

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

(c) If the Land and Water Adjudicatory Commission determines that a rule of a water management district is not consistent with the provisions and purposes of this chapter, it may require the water management district to initiate rulemaking proceedings to amend or repeal the rule. If the commission determines that an order is not consistent with the provisions and purposes of this chapter, the commission may rescind or modify the order or remand the proceeding for further action consistent with the order of the Land and Water Adjudicatory Commission only if the commission determines that the activity authorized by the order would substantially affect natural resources of statewide or regional significance. In the case of an order which does not itself substantially affect natural resources of statewide or regional significance, but which raises issues of policy that have regional or statewide significance from the standpoint of agency precedent, the commission may direct the district to initiate rulemaking to amend its rules to assure that future

actions are consistent with the provisions and purposes of this chapter without modifying the order.

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

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

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

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

1. Occupies an area less than 10 acres in size, and

2. Does not create impervious surfaces greater than 2 acres in size, and

3. Is not located within 550 feet of the shoreline of a named body of water designated as Outstanding Florida Waters, and

4. Does not adversely affect threatened or endangered species.

This paragraph shall not operate to hold that any activity that exceeds these limits is presumed to affect resources of

statewide or regional significance. The determination of whether an activity will substantially affect resources of statewide or regional significance shall be made on a case-by-case basis, based upon facts contained in the record below.

Section 9. Subsection (8) of section 373.1501, Florida Statutes, is amended to read:

373.1501 South Florida Water Management District as local sponsor.--

(8) Final agency action with regard to any project component subject to s. 373.026(8)(b) shall be taken by the department. Actions taken by the district pursuant to subsection (5) shall not be considered final agency action. Any petition for formal proceedings filed pursuant to ss. 120.569 and 120.57 shall require a hearing under the expedited ~~summary~~ hearing provisions of s. 120.574, which shall be mandatory. The final hearing under this section shall be held within 30 days after receipt of the petition by the Division of Administrative Hearings.

Section 10. Paragraph (g) of subsection (2) of section 403.088, Florida Statutes, is amended to read:

403.088 Water pollution operation permits; conditions.--

(2)

(g) The Legislature finds that the restoration of the Everglades Protection Area, including the construction, operation, and maintenance of stormwater treatment areas (STAs), is in the public interest. Accordingly, whenever a facility to be constructed, operated, or maintained in accordance with s. 373.4592 is subjected to permitting requirements pursuant to chapter 373 or this chapter, and the

issuance of the initial permit for a new source, a new discharger, or a recommencing discharger is subjected to a request for hearing pursuant to s. 120.569, the administrative law judge may, upon motion by the permittee, issue a recommended order to the secretary, who, ~~within 5 days,~~ shall issue an order authorizing the interim construction, operation, or ~~and~~ maintenance of the facility if it complies with all uncontested conditions of the proposed permit and all other conditions recommended by the administrative law judge during the period until the final agency action on the permit.

1. An order authorizing such interim construction, operation, or ~~and~~ maintenance shall be granted if requested by motion and no party opposes it.

2. If a party to the administrative hearing pursuant to ss. 120.569 and 120.57 opposes the motion, the administrative law judge shall issue a recommended order granting the motion if the administrative law judge finds that:

a. The facility is likely to receive the permit; and

b. The environment will not be irreparably harmed by the construction, operation, or maintenance of the facility pending final agency action on the permit.

3. Prior to granting a contested motion for interim construction, operation, or maintenance of a facility authorized by s. 373.4592, the administrative law judge shall conduct a hearing using the expedited ~~summary~~ hearing process defined in s. 120.574, which shall be mandatory for motions made pursuant to this paragraph. Notwithstanding the provisions of s. 120.574(1), expedited ~~summary~~ hearing proceedings for these facilities shall begin within 30 days of the motion made by the permittee. Within 15 days after ~~of~~ the

conclusion of the expedited ~~summary~~ proceeding, the administrative law judge shall issue a recommended order either denying or approving interim construction, operation, or maintenance of the facility, which shall be submitted to the secretary, who shall within 5 days thereafter, ~~,~~enter an order granting or denying interim construction, operation, or maintenance of the facility. The order shall remain in effect until final agency action is taken on the permit.

Section 11. 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 institute, initiate, petition, or request a proceeding under s. 120.569 or s. 120.57. This subsection does not limit the ability of a nonprofit corporation or association organized in whole or in part to promote conservation, to protect the environment or other biological values, or to preserve historical sites to initiate, petition, or request a proceeding under s. 120.569 or s. 120.57 upon asserting in a verified petition 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. The verified petition must also assert and be subject to subsequent proof that the corporation or association itself has, or a substantial number of its members have, substantial interests that will be affected by the conduct, activity, or product to be licensed or permitted. Such substantial interests include the use and enjoyment of the air, water, or other natural resources of the state which will be affected as a result of the issuance of a license or permit.

Section 12. Subsections (8), (13), and (15) of section 403.973, Florida Statutes, are amended to read:

403.973 Expedited permitting; comprehensive plan amendments.--

(8) At the option of the participating local government, appeals of its final approval for a project may be pursuant to the expedited ~~summary~~ hearing provisions of s. 120.574, pursuant to subsection (15), or pursuant to other appellate processes available to the local government. The local government's decision to enter into an expedited ~~a~~ ~~summary~~ hearing must be made as provided in s. 120.574 or in the memorandum of agreement.

(13) The applicant, the regional permit action team, and participating local governments may agree to incorporate into a single document the permits, licenses, and approvals that are obtained through the expedited permit process. This consolidated permit is subject to the expedited ~~summary~~ hearing provisions set forth in subsection (15).

(15) The expedited hearing process in s. 120.574 must be used with regard to challenges to state agency action in

the expedited permitting process for projects processed under this section. Notwithstanding s. 120.574, use of the expedited hearing process does not require consent of the affected agency or a determination by the administrative law judge as to its propriety; however, the hearing schedule may be extended by written agreement of all parties ~~are subject to the summary hearing provisions of s. 120.574, except that the administrative law judge's decision, as provided in s. 120.574(2)(f), shall be in the form of a recommended order and shall not constitute the final action of the state agency~~. In those proceedings where the action of only one agency of the state is challenged, the agency of the state shall issue the final order within 10 working days of receipt of the administrative law judge's recommended order. In those proceedings where the actions of more than one agency of the state are challenged, the Governor shall issue the final order within 10 working days of receipt of the administrative law judge's recommended order. The participating agencies of the state may opt at the preliminary hearing conference to allow the administrative law judge's decision to constitute the final agency action. If a participating local government agrees to participate in the expedited ~~summary~~ hearing provisions of s. 120.574 for purposes of review of local government comprehensive plan amendments, s. 163.3184(9) and (10) apply.

Section 13. Subsection (14) of section 408.7056, Florida Statutes, is amended to read:

408.7056 Statewide Provider and Subscriber Assistance Program.--

(14) A proposed order issued by the agency or department which only requires the managed care entity to take

a specific action under subsection (7) is subject to an expedited ~~a summary~~ hearing in accordance with s. 120.574, unless all of the parties agree otherwise. If the managed care entity does not prevail at the hearing, the managed care entity must pay reasonable costs and attorney's fees of the agency or the department incurred in that proceeding.

Section 14. Paragraph (d) of subsection (1) of section 120.57, Florida Statutes, is amended to read:

120.57 Additional procedures for particular cases.--

(1) ADDITIONAL PROCEDURES APPLICABLE TO HEARINGS INVOLVING DISPUTED ISSUES OF MATERIAL FACT.--

(d) Notwithstanding s. 120.569(2)(h)~~(g)~~, similar fact evidence of other violations, wrongs, or acts is admissible when relevant to prove a material fact in issue, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, but it is inadmissible when the evidence is relevant solely to prove bad character or propensity. When the state in an administrative proceeding intends to offer evidence of other acts or offenses under this paragraph, the state shall furnish to the party whose substantial interests are being determined and whose other acts or offenses will be the subject of such evidence, no fewer than 10 days before commencement of the proceeding, a written statement of the acts or offenses it intends to offer, describing them and the evidence the state intends to offer with particularity. Notice is not required for evidence of acts or offenses which is used for impeachment or on rebuttal.

Section 15. Paragraph (c) of subsection (1) of section 120.595, Florida Statutes, is amended to read:

120.595 Attorney's fees.--

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

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

Section 16. Subsection (4) of section 120.81, Florida Statutes, is amended to read:

120.81 Exceptions and special requirements; general areas.--

(4) REGULATION OF PROFESSIONS.--Notwithstanding s. 120.569(2)(h)~~(g)~~, in a proceeding against a licensed professional or in a proceeding for licensure of an applicant for professional licensure which involves allegations of sexual misconduct:

(a) The testimony of the victim of the sexual misconduct need not be corroborated.

(b) Specific instances of prior consensual sexual activity between the victim of the sexual misconduct and any person other than the offender is inadmissible, unless:

1. It is first established to the administrative law judge in a proceeding in camera that the victim of the sexual misconduct is mistaken as to the identity of the perpetrator of the sexual misconduct; or

2. If consent by the victim of the sexual misconduct is at issue and it is first established to the administrative law judge in a proceeding in camera that such evidence tends to establish a pattern of conduct or behavior on the part of such victim which is so similar to the conduct or behavior in the case that it is relevant to the issue of consent.

(c) Reputation evidence relating to the prior sexual conduct of a victim of sexual misconduct is inadmissible.

Section 17. Paragraphs (b) and (c) of subsection (8) of section 409.2564, Florida Statutes, are amended to read:

409.2564 Actions for support.--

(8) The director of the Title IV-D agency, or the director's designee, is authorized to subpoena from any person financial and other information necessary to establish, modify, or enforce a child support order.

(b) Subpoenas issued by this or any other state's Title IV-D agency may be challenged in accordance with s. 120.569(2)(l)~~(k)~~1. While a subpoena is being challenged, the Title IV-D agency may not impose a fine as provided for under paragraph (c) until the challenge is complete and the subpoena has been found to be valid.

(c) The Title IV-D agency is authorized to impose a fine for failure to comply with a subpoena. Failure to comply with the subpoena, or to challenge the subpoena as provided in

paragraph (b), within 15 days after service of the subpoena may result in the agency taking the following actions:

1. Imposition of an administrative fine of not more than $500.

2. Enforcement of the subpoena as provided in s. 120.569(2)(l)~~(k)~~2. When the subpoena is enforced pursuant to s. 120.569(2)(l)~~(k)~~2., the court may award costs and fees to the prevailing party in accordance with that section.

Section 18. Paragraph (d) of subsection (15) of section 409.913, Florida Statutes, is amended to read:

409.913 Oversight of the integrity of the Medicaid program.--The agency shall operate a program to oversee the activities of Florida Medicaid recipients, and providers and their representatives, to ensure that fraudulent and abusive behavior and neglect of recipients occur to the minimum extent possible, and to recover overpayments and impose sanctions as appropriate.

(15) The agency may impose any of the following sanctions on a provider or a person for any of the acts described in subsection (14):

(d) Immediate suspension, if the agency has received information of patient abuse or neglect or of any act prohibited by s. 409.920. Upon suspension, the agency must issue an immediate final order under s. 120.569(2)(o)~~(n)~~.

Section 19. Subsection (3) of section 501.608, Florida Statutes, is amended to read:

501.608 License or affidavit of exemption; occupational license.--

(3) Failure to display a license or a copy of the affidavit of exemption is sufficient grounds for the department to issue an immediate cease and desist order, which

shall act as an immediate final order under s. 120.569(2)(o)~~(n)~~. The order may shall remain in effect until the commercial telephone seller or a person claiming to be exempt shows the authorities that he or she is licensed or exempt. The department may order the business to cease operations and shall order the phones to be shut off. Failure of a salesperson to display a license may result in the salesperson being summarily ordered by the department to leave the office until he or she can produce a license for the department.

Section 20. Paragraph (a) of subsection (5) of section 628.461, Florida Statutes, is amended to read:

628.461 Acquisition of controlling stock.--

(5)(a) The acquisition of voting securities shall be deemed approved unless the department disapproves the proposed acquisition within 90 days after the statement required by subsection (1) has been filed. The department may on its own initiate, or if requested to do so in writing by a substantially affected party shall conduct, a proceeding to consider the appropriateness of the proposed filing. The 90-day time period shall be tolled during the pendency of the proceeding. Any written request for a proceeding must be filed with the department within 10 days of the date notice of the filing is given. During the pendency of the proceeding or review period by the department, any person or affiliated person complying with the filing requirements of this section may proceed and take all steps necessary to conclude the acquisition so long as the acquisition becoming final is conditioned upon obtaining departmental approval. The department shall, however, at any time that it finds an immediate danger to the public health, safety, and welfare of

the domestic policyholders exists, immediately order, pursuant to s. 120.569(2)(o)~~(n)~~, the proposed acquisition temporarily disapproved and any further steps to conclude the acquisition ceased.

Section 21. Paragraph (a) of subsection (6) of section 628.4615, Florida Statutes, is amended to read:

628.4615 Specialty insurers; acquisition of controlling stock, ownership interest, assets, or control; merger or consolidation.--

(6)(a) The acquisition application shall be reviewed in accordance with chapter 120. The department may on its own initiate, or, if requested to do so in writing by a substantially affected person, shall conduct, a proceeding to consider the appropriateness of the proposed filing. Time periods for purposes of chapter 120 shall be tolled during the pendency of the proceeding. Any written request for a proceeding must be filed with the department within 10 days of the date notice of the filing is given. During the pendency of the proceeding or review period by the department, any person or affiliated person complying with the filing requirements of this section may proceed and take all steps necessary to conclude the acquisition so long as the acquisition becoming final is conditioned upon obtaining departmental approval. The department shall, however, at any time it finds an immediate danger to the public health, safety, and welfare of the insureds exists, immediately order, pursuant to s. 120.569(2)(o)~~(n)~~, the proposed acquisition disapproved and any further steps to conclude the acquisition ceased.

Section 22. Paragraph (a) of subsection (2) of section 633.161, Florida Statutes, is amended to read:

633.161 Cease and desist orders; orders to correct hazardous conditions; orders to vacate; violation; penalties.--

(2)(a) If, during the conduct of a firesafety inspection authorized by ss. 633.081 and 633.085, it is determined that a violation described in this section exists which poses an immediate danger to the public health, safety, or welfare, the State Fire Marshal may issue an order to vacate the building in question, which order shall be immediately effective and shall be an immediate final order under s. 120.569(2)(o)~~(n)~~. With respect to a facility under the jurisdiction of a district school board or community college board of trustees, the order to vacate shall be issued jointly by the district superintendent or college president and the State Fire Marshal.

Section 23. Subsection (2) of section 766.207, Florida Statutes, is amended to read:

766.207 Voluntary binding arbitration of medical negligence claims.--

(2) Upon the completion of presuit investigation with preliminary reasonable grounds for a medical negligence claim intact, the parties may elect to have damages determined by an arbitration panel. Such election may be initiated by either party by serving a request for voluntary binding arbitration of damages within 90 days after service of the claimant's notice of intent to initiate litigation upon the defendant. The evidentiary standards for voluntary binding arbitration of medical negligence claims shall be as provided in ss. 120.569(2)(h)~~(g)~~and 120.57(1)(c).

Section 24. This act shall take effect July 1, 2001.

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HOUSE SUMMARY

Redefines the term "small business party" for purposes of the Florida Equal Access to Justice Act. Revises requirements for pleadings, motions, and other papers filed under the Administrative Procedure Act. Redesignates summary hearings as expedited hearings under s. 120.574, F.S., and provides procedures for conducting those hearings. Provides for recommended orders and final orders. Revises standards for awarding attorney's fees. Revises the process for approval of license applications and renewals. Eliminates review of specified water management district orders resulting from certain evidentiary hearings. Restricts persons whose substantial interests have not been determined by agency action from initiating proceedings under the Environmental Protection Act. Revises conditions under which expedited hearings apply.