

By the Committee on Judiciary and Senator King

308-1933-01

1 A bill to be entitled
2 An act relating to administrative procedure;
3 amending s. 57.111, F.S.; redefining the term
4 "small business party"; increasing the
5 limitation on attorney's fees and costs;
6 amending s. 120.52, F.S.; redefining the term
7 "agency"; amending s. 120.569, F.S.; revising
8 requirements for pleadings, motions, and other
9 papers filed under the Administrative Procedure
10 Act; providing for sanctions; amending s.
11 120.595, F.S.; redefining the term "improper
12 purpose" for determining an award of attorney's
13 fees; amending s. 373.114, F.S.; providing that
14 water management district orders resulting from
15 certain evidentiary hearings are not subject to
16 specified review; amending s. 403.412, F.S.;
17 restricting persons without substantial
18 interests from initiating specified proceedings
19 under the Environmental Protection Act;
20 providing an effective date.

21
22 Be It Enacted by the Legislature of the State of Florida:
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24 Section 1. Paragraph (d) of subsection (3) and
25 paragraph (d) of subsection (4) of section 57.111, Florida
26 Statutes, are amended to read:

27 57.111 Civil actions and administrative proceedings
28 initiated by state agencies; attorneys' fees and costs.--

29 (3) As used in this section:

30 (d) The term "small business party" means:
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1 1.a. A sole proprietor of an unincorporated business,
2 including a professional practice, whose principal office is
3 in this state, who is domiciled in this state, and whose
4 business or professional practice has, at the time the action
5 is initiated by a state agency, not more than 25 full-time
6 employees or a net worth of not more than \$5~~\$2~~ million,
7 including both personal and business investments; or

8 b. A partnership or corporation, including a
9 professional practice, which has its principal office in this
10 state and has at the time the action is initiated by a state
11 agency not more than 25 full-time employees or a net worth of
12 not more than \$5~~\$2~~ million; or

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

20 (4)

21 (d) The court, or the administrative law judge in the
22 case of a proceeding under chapter 120, shall promptly conduct
23 an evidentiary hearing on the application for an award of
24 attorney's fees and shall issue a judgment, or a final order
25 in the case of an administrative law judge. The final order
26 of an administrative law judge is reviewable in accordance
27 with the provisions of s. 120.68. If the court affirms the
28 award of attorney's fees and costs in whole or in part, it
29 may, in its discretion, award additional attorney's fees and
30 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 (b) of subsection (1) of section
6 120.52, Florida Statutes, is amended to read:

7 120.52 Definitions.--As used in this act:

8 (1) "Agency" means:

9 (b) Each:

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

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

14 3. State board.

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

19 5. Regional planning agency.

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

22 7. Educational units.

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

25
26 This definition does not include any legal entity or agency
27 created in whole or in part pursuant to chapter 361, part II,
28 an expressway authority pursuant to chapter 348, any legal or
29 administrative entity created by an interlocal agreement
30 pursuant to s. 163.01(7), unless any party to such agreement
31 is otherwise an agency as defined in this subsection, or any

1 multicounty special district with a majority of its governing
2 board comprised of elected persons; however, this definition
3 shall include a regional water supply authority.

4 Section 3. Paragraph (e) of subsection (2) of section
5 120.569, Florida Statutes, is amended to read:

6 120.569 Decisions which affect substantial
7 interests.--

8 (2)

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

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

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

29 b. The claims, defenses, and other legal contentions
30 contained in the pleading, written motion, or other paper are
31 warranted by existing law or by a nonfrivolous argument for

1 the extension, modification, or reversal of existing law or
2 the establishment of new law;

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

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

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

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

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

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

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

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

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 5. 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 or an order
22 resulting from an evidentiary hearing held under s. 120.569 or
23 s. 120.57, to ensure consistency with the provisions and
24 purposes of this chapter. Subsequent to the legislative
25 ratification of the delineation methodology pursuant to s.
26 373.421(1), this subsection also shall apply to an order of
27 the department, or a local government exercising delegated
28 authority, pursuant to ss. 373.403-373.443, except an order
29 pertaining to activities or operations subject to conceptual
30 plan approval pursuant to chapter 378 or an order resulting
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1 from an evidentiary hearing held under s. 120.569 or s.
2 120.57.

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 challenging
15 the validity of a rule instituted pursuant to chapter 120. In
16 order for the commission to accept a request for review
17 initiated by a party below, with regard to a specific order,
18 four members of the commission must determine on the basis of
19 the record below that the activity authorized by the order
20 would substantially affect natural resources of statewide or
21 regional significance. Review of an order may also be accepted
22 if four members of the commission determine that the order
23 raises issues of policy, statutory interpretation, or rule
24 interpretation that have regional or statewide significance
25 from the standpoint of agency precedent. The party requesting
26 the commission to review an order must allege with
27 particularity, and the commission must 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.

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

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.

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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.

1 Section 6. Subsection (5) of section 403.412, Florida
2 Statutes, is amended to read:

3 403.412 Environmental Protection Act.--

4 (5) 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. However, a citizen of this state whose substantial
15 interests have not been determined by agency action may not
16 institute, initiate, petition, or request a proceeding under
17 s. 120.569 or s. 120.57. This subsection does not limit the
18 associational standing of a nonprofit corporation or
19 association, organized in whole or in part to promote
20 conservation, to protect the environment or other biological
21 values, or to preserve historical sites where a substantial
22 number, although not necessarily a majority, of its members
23 have their substantial interests determined by the activity,
24 conduct, or product to be permitted or licensed.

25 Section 7. This act shall take effect July 1, 2001.
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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 SB 910

4 Reinstates the existing law in s. 57.111, F.S., to define a
5 small business party as an entity with no more than 25
6 full-time employees and revises the net worth requirement to
7 be no more than \$5 million.

8 Removes the bill's changes to s. 120.569, F.S., pertaining to
9 third party challenges to water resource-related permit
10 applications under part IV of chapter 373.

11 Modifies the bill's changes to s. 120.569, F.S., relating to
12 monetary sanctions for filing documents for improper purposes
13 in chapter 120 proceedings, to:

14 -- Provide that an unsigned paper shall be stricken unless
15 omission of the signature is corrected promptly after
16 being called to the attention of the attorney, qualified
17 representative, or party.

18 -- Provide that presentation of any paper certifies that
19 the allegations and other factual contentions have
20 evidentiary support or, if specifically identified, are
21 likely to have evidentiary support; and

22 -- Clarify that monetary sanctions may not be awarded
23 against a represented party based upon a violation of
24 discovery rules.

25 Removes the bill's changes to s. 120.574, F.S., which would
26 have created an expedited hearing process. Also removes the
27 conforming cross-references in ss. 373.1501 and 403.088, F.S.

28 Removes the bill's changes to s. 120.60, F.S., which would
29 have modified the time frames for agencies to approve license
30 applications.

31 Removes the bill's changes to s. 120.68, F.S., which would
have required nonprevailing third party appellants to pay
costs, damages and attorney's fees

Modifies the bill's changes to subsection (5) of s. 403.412,
F.S., relating to the Environmental Protection Act, to state
that the associational standing 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--is not limited if a
substantial number, although not necessarily a majority, of
its members have their substantial interests determined by the
activity, conduct, or product to be permitted or licensed.

Removes the bill's conforming cross-references to ss. 403.973,
408.7056, 120.57, 120.595, 120.81, 409.2564, 409.913, 501.608,
628.461, 628.4615, 633.161, and 766.207, F.S., which are no
longer necessary due to the changes mentioned above.