

1 A bill to be entitled
2 An act relating to administrative procedures;
3 amending s. 57.111, F.S.; increasing the
4 limitation on attorney's fees and costs;
5 amending s. 120.569, F.S.; revising
6 requirements for pleadings, motions, and other
7 papers filed under the Administrative Procedure
8 Act; providing for sanctions; amending s.
9 120.595, F.S.; redefining the term "improper
10 purpose" for determining an award of attorney's
11 fees; amending s. 373.114, F.S.; providing that
12 water management district orders resulting from
13 certain evidentiary hearings are not subject to
14 specified review; amending s. 403.412, F.S.;
15 revising requirements for initiating specified
16 proceedings under the Environmental Protection
17 Act; providing an effective date.

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

20
21 Section 1. Paragraph (d) of subsection (4) of section
22 57.111, Florida Statutes, is amended to read:

23 57.111 Civil actions and administrative proceedings
24 initiated by state agencies; attorney's fees and costs.--

25 (4)

26 (d) The court, or the administrative law judge in the
27 case of a proceeding under chapter 120, shall promptly conduct
28 an evidentiary hearing on the application for an award of
29 attorney's fees and shall issue a judgment, or a final order
30 in the case of an administrative law judge. The final order
31 of an administrative law judge is reviewable in accordance

1 with the provisions of s. 120.68. If the court affirms the
2 award of attorney's fees and costs in whole or in part, it
3 may, in its discretion, award additional attorney's fees and
4 costs for the appeal.

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

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

9 Section 2. Paragraph (e) of subsection (2) of section
10 120.569, Florida Statutes, is amended to read:

11 120.569 Decisions which affect substantial
12 interests.--

13 (2)

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

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

30 a. The pleading, written motion, or other paper is not
31 being presented for any improper purpose, such as to harass or

1 to cause unnecessary delay or needless increase in the cost of
2 litigation;

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

8 c. The allegations and other factual contentions have
9 evidentiary support or, if specifically identified, are likely
10 to have evidentiary support after a reasonable opportunity for
11 further investigation or discovery; and

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

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

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

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

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

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

1 ~~impose upon the person who signed it, the represented party,~~
2 ~~or both, an appropriate sanction, which may include an order~~
3 ~~to pay the other party or parties the amount of reasonable~~
4 ~~expenses incurred because of the filing of the pleading,~~
5 ~~motion, or other paper, including a reasonable attorney's fee.~~

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

8 120.595 Attorney's fees.--

9 (1) CHALLENGES TO AGENCY ACTION PURSUANT TO SECTION
10 120.57(1).--

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

27 (e) For the purpose of this subsection:

28 1. "Improper purpose" means participation in a
29 proceeding pursuant to s. 120.57(1) primarily to harass or to
30 cause unnecessary delay or for frivolous purpose or to
31

1 needlessly increase the cost of litigation,licensing,or
2 securing the approval of an activity.

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

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

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

20 373.114 Land and Water Adjudicatory Commission; review
21 of district rules and orders; department review of district
22 rules.--

23 (1) Except as provided in subsection (2), the Governor
24 and Cabinet, sitting as the Land and Water Adjudicatory
25 Commission, have the exclusive authority to review any order
26 or rule of a water management district, other than a rule
27 relating to an internal procedure of the district, an order
28 resulting from an evidentiary hearing held under s. 120.569 or
29 s. 120.57, or a rule that has been adopted after issuance of
30 an order resulting from an evidentiary hearing held under s.
31 120.56, to ensure consistency with the provisions and purposes

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 This paragraph shall not operate to hold that any activity
2 that exceeds these limits is presumed to affect resources of
3 statewide or regional significance. The determination of
4 whether an activity will substantially affect resources of
5 statewide or regional significance shall be made on a
6 case-by-case basis, based upon facts contained in the record
7 below.

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

10 403.412 Environmental Protection Act.--

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

22 (b) Citizen initiation of a proceeding under s.
23 120.569 or s. 120.57 shall not be authorized by paragraph (a),
24 but shall be governed by the provisions of chapter 120.

25 (c) However, a nonprofit corporation or association
26 organized in whole or in part to promote conservation, to
27 protect the environment or other biological values, or to
28 preserve historical sites may petition to initiate a
29 proceeding under s. 120.569 or s. 120.57 with regard to an
30 agency action or a proposed agency action in any
31 administrative, licensing, or other proceedings described in

1 paragraph (a) without demonstrating that its substantial
2 interests have been or will be determined, if:

3 1. Such corporation or association was in existence at
4 least 1 year before the filing of the application to license
5 or permit an activity, conduct, or product which resulted in
6 the agency action or proposed agency action that is the
7 subject of the petition;

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

12 b. At least 25 members of the corporation or
13 association reside or own real property within the same county
14 where the activity, conduct, or product to be permitted or
15 licensed is located; and

16 3. Such corporation or association files a verified
17 pleading asserting that the activity, conduct, or product to
18 be licensed or permitted has or will have the effect of
19 impairing, polluting, or otherwise injuring the air, water, or
20 other natural resources of the state.

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