

Amendment No. (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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ORIGINAL STAMP BELOW

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Representative(s) Spratt offered the following:

Amendment (with title amendment)

On page 8 of the bill, between lines 21 & 22,

insert:

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

~~2. authority~~ Authority, including a regional water supply authority, ~~-~~

~~3. board,~~ Board.

~~4. commission~~ 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~~ Regional planning agency, ~~-~~

1 ~~6. multicounty~~ ~~Multicounty~~ special district with a
2 majority of its governing board comprised of nonelected
3 persons,~~-~~

4 ~~7. educational~~ ~~Educational~~ units, ~~and-~~

5 ~~8. those entities~~ ~~Entity~~ described in chapters 163,
6 373, 380, and 582 and s. 186.504.

7 Section 2. Paragraph (b) of subsection (5) of section
8 120.54, Florida Statutes, is amended to read:

9 120.54 Rulemaking.--

10 (5) UNIFORM RULES.--

11 (b) The uniform rules of procedure adopted by the
12 commission pursuant to this subsection shall include, but are
13 not ~~be~~ limited to:

14 1. Uniform rules for the scheduling of public
15 meetings, hearings, and workshops.

16 2. Uniform rules for use by each state agency that
17 provide procedures for conducting public meetings, hearings,
18 and workshops, and for taking evidence, testimony, and
19 argument at such public meetings, hearings, and workshops, in
20 person and by means of communications media technology. The
21 rules shall provide that all evidence, testimony, and argument
22 presented shall be afforded equal consideration, regardless of
23 the method of communication. If a public meeting, hearing, or
24 workshop is to be conducted by means of communications media
25 technology, or if attendance may be provided by such means,
26 the notice shall so state. The notice for public meetings,
27 hearings, and workshops utilizing communications media
28 technology shall state how persons interested in attending may
29 do so and shall name locations, if any, where communications
30 media technology facilities will be available. Nothing in this
31 paragraph shall be construed to diminish the right to inspect

1 public records under chapter 119. Limiting points of access to
2 public meetings, hearings, and workshops subject to the
3 provisions of s. 286.011 to places not normally open to the
4 public shall be presumed to violate the right of access of the
5 public, and any official action taken under such circumstances
6 is void and of no effect. Other laws relating to public
7 meetings, hearings, and workshops, including penal and
8 remedial provisions, shall apply to public meetings, hearings,
9 and workshops conducted by means of communications media
10 technology, and shall be liberally construed in their
11 application to such public meetings, hearings, and workshops.

12 As used in this subparagraph, "communications media
13 technology" means the electronic transmission of printed
14 matter, audio, full-motion video, freeze-frame video,
15 compressed video, and digital video by any method available.

16 3. Uniform rules of procedure for the filing of notice
17 of protests and formal written protests.

18 4. Uniform rules of procedure for the filing of
19 petitions for administrative hearings pursuant to s. 120.569
20 or s. 120.57. Such rules shall require the petition to state
21 include:

- 22 a. The identification of the petitioner.
23 b. ~~A statement of~~ When and how the petitioner received
24 notice of the agency's action or proposed action.
25 c. ~~An explanation of~~ How the petitioner's substantial
26 interests are or will be affected by the action or proposed
27 action.
28 d. ~~A statement of~~ All material facts disputed by the
29 petitioner or a statement that there are no disputed facts.
30 e. ~~A statement of~~ The ultimate facts alleged,
31 including a statement of the specific facts the petitioner

1 contends warrant reversal or modification of the agency's
2 proposed action.

3 f. ~~A statement of~~ The specific rules or statutes that
4 the petitioner contends require reversal or modification of
5 the agency's proposed action and to explain how the alleged
6 facts relate to the specific rules or statutes.

7 g. ~~A statement of~~ The relief sought by the petitioner,
8 stating precisely the action petitioner wishes the agency to
9 take with respect to the proposed action.

10 5. Uniform rules of procedure for the filing and
11 prompt disposition of petitions for declaratory statements.

12 6. Provision of a method by which each agency head
13 shall provide a description of the agency's organization and
14 general course of its operations.

15 7. Uniform rules establishing procedures for granting
16 or denying petitions for variances and waivers pursuant to s.
17 120.542.

18 Section 3. Paragraph (e) of subsection (2) of section
19 120.569, Florida Statutes, is amended, and paragraph (o) is
20 added to subsection (2) of that section, to read:

21 120.569 Decisions which affect substantial
22 interests.--

23 (2)

24 (e)1. Every pleading, written motion, and other paper
25 filed in a proceeding must be signed by at least one attorney
26 or qualified representative of record in the attorney's or
27 qualified representative's individual name, or, if the party
28 is not represented by an attorney or qualified representative,
29 the pleading, written motion, or other paper must be signed by
30 the party. An unsigned paper shall be stricken unless omission
31 of the signature is corrected promptly after being called to

1 the attention of the attorney, qualified representative, or
2 party.

3 2. By presenting a pleading, written motion, including
4 a motion filed under subparagraph 4., or other paper, whether
5 by signing, filing, submitting, or later advocating, an
6 attorney, qualified representative, or unrepresented party is
7 certifying that, to the best of the person's knowledge,
8 information, and belief, formed after an inquiry reasonable
9 under the circumstances:

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

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

19 c. The allegations and other factual contentions have
20 evidentiary support or, if specifically identified, are likely
21 to have evidentiary support after a reasonable opportunity for
22 further investigation or discovery; and

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

26
27 Nothing in this subparagraph shall be construed to prohibit
28 the amendment of a petition during or after discovery.

29 3. If, after notice and reasonable opportunity to
30 respond, the presiding officer determines that subparagraph 2.
31 has been violated, the presiding officer may impose an

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

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

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

10 c. Monetary sanctions imposed shall be limited to what
11 is sufficient to deter repetition of such conduct or
12 comparable conduct by others similarly situated.

13 d. An agency may indemnify its attorney for sanctions
14 imposed on the attorney if the conduct giving rise to the
15 sanction was taken within the scope of employment and the
16 indemnification is in the interest of the agency.

17 e. This paragraph does not authorize the award of
18 sanctions for the submission of written comments or objections
19 during an authorized period for public comment or at a public
20 meeting, including, but not limited to, submissions of
21 comments or objections regarding draft permits.

22 4. Sanctions under this paragraph may be initiated at
23 any time after the initiation of a proceeding either by motion
24 or on the presiding officer's own initiative. A motion shall
25 describe the specific conduct alleged to violate subparagraph
26 2. The motion shall be served upon the attorney or qualified
27 representative of a party or an unrepresented party against
28 whom such sanctions are sought, but shall not be filed with or
29 presented to the presiding officer unless, within 21 days
30 after service of the motion, the challenged paper, claim,
31 defense, contention, allegation, or denial is not withdrawn or

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1 appropriately corrected. If a party elects to oppose a motion
2 rather than withdrawing or correcting the challenged paper,
3 claim, defense, contention, allegation, or denial that party
4 shall file a copy of the motion and its written objection with
5 the presiding officer within 14 days after service of the
6 motion. After 21 days following service of the motion, the
7 moving party may file the motion if the party against whom
8 such sanctions are sought has not filed a copy of the motion
9 and its written objection with the presiding officer within 14
10 days after service of the motion or withdrawn or corrected the
11 challenged paper, claim, defense, contention, allegation, or
12 denial. Upon the filing of the motion and any timely
13 opposition or response, the presiding officer shall
14 immediately rule on the matter or set the matter for hearing,
15 if the presiding officer considers a hearing warranted based
16 on the filed motion and any objection or response. A presiding
17 officer's own initiative to impose sanctions may be undertaken
18 only after entering an order describing the specific conduct
19 that appears to violate subparagraph 2. and directing the
20 attorney or qualified representative of a party or the
21 unrepresented party to show cause why subparagraph 2. has not
22 been violated. When imposing sanctions, the presiding officer
23 shall describe the conduct determined to constitute a
24 violation of subparagraph 2. and explain the basis for the
25 sanction imposed.~~All pleadings, motions, or other papers~~
26 ~~filed in the proceeding must be signed by the party, the~~
27 ~~party's attorney, or the party's qualified representative. The~~
28 ~~signature constitutes a certificate that the person has read~~
29 ~~the pleading, motion, or other paper and that, based upon~~
30 ~~reasonable inquiry, it is not interposed for any improper~~
31 ~~purposes, such as to harass or to cause unnecessary delay, or~~

1 ~~for frivolous purpose or needless increase in the cost of~~
2 ~~litigation. If a pleading, motion, or other paper is signed in~~
3 ~~violation of these requirements, the presiding officer shall~~
4 ~~impose upon the person who signed it, the represented party,~~
5 ~~or both, an appropriate sanction, which may include an order~~
6 ~~to pay the other party or parties the amount of reasonable~~
7 ~~expenses incurred because of the filing of the pleading,~~
8 ~~motion, or other paper, including a reasonable attorney's fee.~~

9 (o) On request of any party, the administrative law
10 judge shall enter an initial scheduling order to facilitate
11 the just, speedy, and inexpensive determination of the
12 proceeding. The initial scheduling order shall establish a
13 discovery period, including a deadline by which all discovery
14 shall be completed, and the date by which the parties shall
15 identify expert witnesses and their opinions. The initial
16 scheduling order also may require the parties to meet and file
17 a joint report by a date certain.

18 Section 4. Paragraphs (i) and (k) of subsection (1) of
19 section 120.57, Florida Statutes, are amended to read:

20 120.57 Additional procedures for particular cases.--

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

23 (i) When, in any proceeding conducted pursuant to this
24 subsection, a dispute of material fact no longer exists, any
25 party may move the administrative law judge to relinquish
26 jurisdiction to the agency. An order relinquishing
27 jurisdiction shall be rendered if the administrative law judge
28 determines from ~~In ruling on such a motion, the administrative~~
29 ~~law judge may consider~~ the pleadings, depositions, answers to
30 interrogatories, and admissions on file, together with
31 supporting and opposing affidavits, if any, that no genuine

1 issue as to any material fact exists. If the administrative
2 law judge enters an order relinquishing jurisdiction, the
3 agency may promptly conduct a proceeding pursuant to
4 subsection (2), if appropriate, but the parties may not raise
5 any issues of disputed fact that could have been raised before
6 the administrative law judge. An order entered by an
7 administrative law judge relinquishing jurisdiction to the
8 agency based upon a determination that no genuine dispute of
9 material fact exists, need not contain findings of fact,
10 conclusions of law, or a recommended disposition or penalty.

11 (k) The presiding officer shall complete and submit to
12 the agency and all parties a recommended order consisting of
13 findings of fact, conclusions of law, and recommended
14 disposition or penalty, if applicable, and any other
15 information required by law to be contained in the final
16 order. All proceedings conducted pursuant to this subsection
17 shall be de novo. The agency shall allow each party 15 days in
18 which to submit written exceptions to the recommended order.
19 An agency shall not grant an exception that does not clearly
20 identify the disputed portion of the recommended order by page
21 number and paragraph, does not identify the legal basis for
22 the exception, or does not include appropriate and specific
23 citations to the record.

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

27 120.595 Attorney's fees.--

28 (1) CHALLENGES TO AGENCY ACTION PURSUANT TO SECTION
29 120.57(1).--

30 (c) In proceedings pursuant to s. 120.57(1), and upon
31 motion, the administrative law judge shall determine whether

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

15 (e) For the purpose of this subsection:

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

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

23 3. "Nonprevailing adverse party" means a party that
24 has failed to have substantially changed the outcome of the
25 proposed or final agency action which is the subject of a
26 proceeding. In the event that a proceeding results in any
27 substantial modification or condition intended to resolve the
28 matters raised in a party's petition, it shall be determined
29 that the party having raised the issue addressed is not a
30 nonprevailing adverse party. The recommended order shall
31 state whether the change is substantial for purposes of this

1 subsection. In no event shall the term "nonprevailing party"
2 or "prevailing party" be deemed to include any party that has
3 intervened in a previously existing proceeding to support the
4 position of an agency.

5 (5) APPEALS.--When there is an appeal, the court in
6 its discretion may award reasonable attorney's fees and
7 reasonable costs to the prevailing party if the court finds
8 that the appeal was frivolous, meritless, or an abuse of the
9 appellate process, or that the agency action which
10 precipitated the appeal was a gross abuse of the agency's
11 discretion. Upon review of agency action that precipitates an
12 appeal, if the court finds that the agency improperly rejected
13 or modified findings of fact in a recommended order, the court
14 shall award reasonable attorney's fees and reasonable costs to
15 a prevailing appellant for the administrative proceeding and
16 the appellate proceeding. If the court finds that the agency
17 improperly rejected or modified a conclusion of law or an
18 interpretation of an administrative rule over which it does
19 not have substantive jurisdiction, the court may award
20 reasonable attorney's fees and reasonable costs of the appeal
21 to the prevailing appellant.

22 Section 6. Subsection (1) of section 120.60, Florida
23 Statutes, is amended to read:

24 120.60 Licensing.--

25 (1) Upon receipt of an application for a license, an
26 agency shall examine the application and, within 30 days after
27 such receipt, notify the applicant of any apparent errors or
28 omissions and request any additional information the agency is
29 permitted by law to require. An agency shall not deny a
30 license for failure to correct an error or omission or to
31 supply additional information unless the agency timely

1 notified the applicant within this 30-day period. An
2 application shall be considered complete upon receipt of all
3 requested information and correction of any error or omission
4 for which the applicant was timely notified or when the time
5 for such notification has expired. Every application for a
6 license shall be approved or denied within 90 days after
7 receipt of a completed application unless a shorter period of
8 time for agency action is provided by law. The 90-day time
9 period shall be tolled by the initiation of a proceeding under
10 ss. 120.569 and 120.57. Any An application for a license that
11 is not must be approved or denied within the 90-day or shorter
12 time period, within 15 days after ~~the~~ conclusion of a public
13 hearing held on the application, or within 45 days after a
14 recommended order is submitted to the agency and the parties,
15 whichever action and timeframe is latest and applicable, is
16 considered approved unless the recommended order recommends
17 that the agency deny the license. Subject to the satisfactory
18 completion of an examination if required as a prerequisite to
19 licensure, any license that is considered approved shall be
20 issued and may include such reasonable conditions as are
21 authorized by law later. ~~The agency must approve any~~
22 ~~application for a license or for an examination required for~~
23 ~~licensure if the agency has not approved or denied the~~
24 ~~application within the time periods prescribed by this~~
25 ~~subsection.~~

26 Section 7. Subsection (9) of section 120.68, Florida
27 Statutes, is amended to read:

28 120.68 Judicial review.--

29 (9) No petition challenging an agency rule as an
30 invalid exercise of delegated legislative authority shall be
31 instituted pursuant to this section, except to review an order

1 entered pursuant to a proceeding under s. 120.56 or an
2 agency's findings of immediate danger, necessity, and
3 procedural fairness prerequisite to the adoption of an
4 emergency rule pursuant to s. 120.54(4), unless the sole issue
5 presented by the petition is the constitutionality of a rule
6 and there are no disputed issues of fact.

7 Section 8. It is the intent of the Legislature that
8 this act shall not affect the outcome of litigation styled
9 Pinecrest Lakes, Inc. v. Shidel, 795 So. 2d 191 (Fla. 4th DCA
10 2001).

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

14 And the title is amended as follows:

15 On page 1, between lines 2 & 3,

17 insert:

18 s. 120.52, F.S.; revising sentence structure
19 and capitalization; amending s. 120.54, F.S.;
20 revising the Uniform Rules of Procedure;
21 amending s. 120.569, F.S.; revising
22 requirements for pleadings, motions, and other
23 papers filed under the Administrative Procedure
24 Act; providing for sanctions for noncompliance
25 with those requirements; requiring
26 administrative law judge to enter scheduling
27 orders under specified circumstances; amending
28 s. 120.57, F.S.; revising provisions relating
29 to motions to relinquish jurisdiction;
30 prohibiting agencies from granting exceptions
31 to a recommended order under specified

1 circumstances; amending s. 120.595, F.S.;

2 redefining the term "improper purpose" for

3 determining an award of attorney's fees;

4 specifying grounds for the award of attorney's

5 fees and costs of an appeal; amending s.

6 120.60, F.S.; revising provisions relating to

7 applications for licenses; amending s. 120.68,

8 F.S.; prescribing exceptions to the prohibition

9 against petitions challenging rules as an

10 invalid exercise of delegated legislative

11 authority; providing legislative intent;

12 amending

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