

Amendment No.      (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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Representative(s) Cantens offered the following:

**Amendment to Amendment (354873) (with title amendment)**

On page 1, between lines 17 & 18,

insert:

Section 1. 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 a final order resulting from an evidentiary hearing held under s. 120.569 or s. 120.57 or a rule that has been adopted after issuance of a final order resulting from an evidentiary hearing held under s. 120.56, to ensure consistency with the provisions and purposes of this chapter. Subsequent to the

1 legislative ratification of the delineation methodology  
2 pursuant to s. 373.421(1), this subsection also shall apply to  
3 an order of the department, or a local government exercising  
4 delegated authority, pursuant to ss. 373.403-373.443, except  
5 an order pertaining to activities or operations subject to  
6 conceptual plan approval pursuant to chapter 378 or a final  
7 order resulting from an evidentiary hearing held under s.  
8 120.569 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  
22 accept a request for review initiated by a party below, with  
23 regard to a specific order, three ~~four~~ members of the  
24 commission must determine on the basis of the record below  
25 that the activity authorized by the order would substantially  
26 affect natural resources of statewide or regional  
27 significance. Review of an order may also be accepted if three  
28 ~~four~~ members of the commission determine that the order raises  
29 issues of policy, statutory interpretation, or rule  
30 interpretation that have regional or statewide significance  
31 from the standpoint of agency precedent. The party requesting

1 the commission to review an order must allege with  
2 particularity, and the commission must 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 unless the commission determines that a  
10 remand for a formal evidentiary proceeding is necessary to  
11 develop additional findings of fact. If there is ~~was~~ no  
12 evidentiary administrative proceeding resulting from a remand  
13 or referral for findings of fact by the commission, then  
14 below, the facts contained in the proposed agency action or  
15 proposed water management district action, including any  
16 technical staff report, shall be deemed undisputed. The  
17 matter shall be heard by the commission not more than 60 days  
18 after receipt of the request for review, unless waived by the  
19 parties; provided, however, such time limit shall be tolled by  
20 a referral or remand pursuant to this paragraph. The  
21 commission may refer a request for review to the Division of  
22 Administrative Hearings for the production of findings of  
23 fact, limited to those needed to render the decision  
24 requested, to supplement the record, if a majority of the  
25 commission determines that supplementary findings of fact are  
26 essential to determine the consistency of a rule or order with  
27 the provisions and purposes of this chapter. Alternatively,  
28 the commission may remand the matter to the agency below for  
29 additional findings of fact, limited to those needed to render  
30 the decision requested, to supplement the record, if a  
31 majority of the commission determines that supplementary

1 findings of fact are essential to determine the consistency of  
2 a rule or order with the provisions and purposes of this  
3 chapter. Such proceedings must be conducted and the findings  
4 transmitted to the commission within 90 days of the remand or  
5 referral.

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

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

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

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

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

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

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

29 Section 2. Subsection (5) of section 403.412, Florida  
30 Statutes, is amended, present subsection (6) is renumbered as  
31 subsection (8), and new subsections (6) and (7) are added to

1 said section to read:

2 403.412 Environmental Protection Act.--

3 (5) In any administrative, licensing, or other  
4 proceedings authorized by law for the protection of the air,  
5 water, or other natural resources of the state from pollution,  
6 impairment, or destruction, the Department of Legal Affairs, a  
7 political subdivision or municipality of the state, or a  
8 citizen of the state shall have standing to intervene as a  
9 party on the filing of a verified pleading asserting that the  
10 activity, conduct, or product to be licensed or permitted has  
11 or will have the effect of impairing, polluting, or otherwise  
12 injuring the air, water, or other natural resources of the  
13 state. As used in this section and as it relates to citizens,  
14 the term "intervene" means to join an ongoing s. 120.569 or s.  
15 120.57 proceeding; this section does not authorize a citizen  
16 to institute, initiate, petition for, or request a proceeding  
17 under s. 120.569 or s. 120.57. Nothing herein limits or  
18 prohibits a citizen whose substantial interests will be  
19 determined or affected by a proposed agency action from  
20 initiating a formal administrative proceeding under s. 120.569  
21 or s. 120.57. A citizen's substantial interests will be  
22 considered to be determined or affected if the party  
23 demonstrates it may suffer an injury in fact which is of  
24 sufficient immediacy and is of the type and nature intended to  
25 be protected by this chapter. No demonstration of special  
26 injury different in kind from the general public at large is  
27 required. A sufficient demonstration of a substantial interest  
28 may be made by a petitioner who establishes that the proposed  
29 activity, conduct, or product to be licensed or permitted  
30 affects the petitioner's use or enjoyment of air, water, or  
31 natural resources protected by this chapter.

1           (6) Any Florida corporation not for profit which has  
2 at least 25 current members residing within the county where  
3 the activity is proposed, and which was formed for the purpose  
4 of the protection of the environment, fish and wildlife  
5 resources, and protection of air and water quality, may  
6 initiate a hearing pursuant to s. 120.569 or s. 120.57,  
7 provided that the Florida corporation not for profit was  
8 formed at least one year prior to the date of the filing of  
9 the application for a permit, license, or authorization that  
10 is the subject of the notice of proposed agency action.

11           (7) In a matter pertaining to a federally delegated or  
12 approved program, a citizen of the state may initiate an  
13 administrative proceeding under this subsection if the citizen  
14 meets the standing requirements for judicial review of a case  
15 or controversy pursuant to Article III of the United States  
16 Constitution.

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

20 And the title is amended as follows:

21           On page 100, line 7, of the amendment after the  
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and insert:

          amending s. 373.114, F.S.; providing that  
          certain water management district orders and  
          rules are not subject to specified review;  
          amending s. 403.412, F.S., the "Environmental  
          Protection Act of 1971"; revising requirements  
          for initiating specified proceedings under that  
          act;

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