

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)**

Remove everything after the enacting clause

and insert:

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

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

(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.

Amendment No. \_\_\_\_ (for drafter's use only)

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

12          ~~2. authority~~ ~~Authority~~, including a regional water  
13 supply authority, ~~and~~

14          ~~3. board,~~ ~~Board.~~

15          ~~4. commission~~ ~~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, ~~and~~

19          ~~5. regional~~ ~~Regional~~ planning agency, ~~and~~

20          ~~6. multicounty~~ ~~Multicounty~~ special district with a  
21 majority of its governing board comprised of nonelected  
22 persons, ~~and~~

23          ~~7. educational~~ ~~Educational~~ units, ~~and~~

24          ~~8. those entities~~ ~~Entity~~ described in chapters 163,  
25 373, 380, and 582 and s. 186.504.

26           Section 3. Paragraph (b) of subsection (5) of section  
27 120.54, Florida Statutes, is amended to read:

28           120.54 Rulemaking.--

29           (5) UNIFORM RULES.--

30           (b) The uniform rules of procedure adopted by the  
31 commission pursuant to this subsection shall include, but are

Amendment No. \_\_\_\_ (for drafter's use only)

1 not ~~be~~ limited to:

2 1. Uniform rules for the scheduling of public  
3 meetings, hearings, and workshops.

4 2. Uniform rules for use by each state agency that  
5 provide procedures for conducting public meetings, hearings,  
6 and workshops, and for taking evidence, testimony, and  
7 argument at such public meetings, hearings, and workshops, in  
8 person and by means of communications media technology. The  
9 rules shall provide that all evidence, testimony, and argument  
10 presented shall be afforded equal consideration, regardless of  
11 the method of communication. If a public meeting, hearing, or  
12 workshop is to be conducted by means of communications media  
13 technology, or if attendance may be provided by such means,  
14 the notice shall so state. The notice for public meetings,  
15 hearings, and workshops utilizing communications media  
16 technology shall state how persons interested in attending may  
17 do so and shall name locations, if any, where communications  
18 media technology facilities will be available. Nothing in this  
19 paragraph shall be construed to diminish the right to inspect  
20 public records under chapter 119. Limiting points of access to  
21 public meetings, hearings, and workshops subject to the  
22 provisions of s. 286.011 to places not normally open to the  
23 public shall be presumed to violate the right of access of the  
24 public, and any official action taken under such circumstances  
25 is void and of no effect. Other laws relating to public  
26 meetings, hearings, and workshops, including penal and  
27 remedial provisions, shall apply to public meetings, hearings,  
28 and workshops conducted by means of communications media  
29 technology, and shall be liberally construed in their  
30 application to such public meetings, hearings, and workshops.  
31 As used in this subparagraph, "communications media

Amendment No. \_\_\_\_ (for drafter's use only)

- 1 technology" means the electronic transmission of printed  
2 matter, audio, full-motion video, freeze-frame video,  
3 compressed video, and digital video by any method available.
- 4 3. Uniform rules of procedure for the filing of notice  
5 of protests and formal written protests.
- 6 4. Uniform rules of procedure for the filing of  
7 petitions for administrative hearings pursuant to s. 120.569  
8 or s. 120.57. Such rules shall require the petition to state  
9 include:
- 10 a. The identification of the petitioner.
- 11 b. ~~A statement of~~ When and how the petitioner received  
12 notice of the agency's action or proposed action.
- 13 c. ~~An explanation of~~ How the petitioner's substantial  
14 interests are or will be affected by the action or proposed  
15 action.
- 16 d. ~~A statement of~~ All material facts disputed by the  
17 petitioner or a statement that there are no disputed facts.
- 18 e. ~~A statement of~~ The ultimate facts alleged,  
19 including a statement of the specific facts the petitioner  
20 contends warrant reversal or modification of the agency's  
21 proposed action.
- 22 f. ~~A statement of~~ The specific rules or statutes that  
23 the petitioner contends require reversal or modification of  
24 the agency's proposed action and to explain how the alleged  
25 facts relate to the specific rules or statutes.
- 26 g. ~~A statement of~~ The relief sought by the petitioner,  
27 stating precisely the action petitioner wishes the agency to  
28 take with respect to the proposed action.
- 29 5. Uniform rules of procedure for the filing and  
30 prompt disposition of petitions for declaratory statements.
- 31 6. Provision of a method by which each agency head

Amendment No. \_\_\_\_ (for drafter's use only)

1 shall provide a description of the agency's organization and  
2 general course of its operations.

3 7. Uniform rules establishing procedures for granting  
4 or denying petitions for variances and waivers pursuant to s.  
5 120.542.

6 Section 4. Paragraph (e) of subsection (2) of section  
7 120.569, Florida Statutes, is amended, and paragraph (o) is  
8 added to subsection (2) of that section, to read:

9 120.569 Decisions which affect substantial  
10 interests.--

11 (2)

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

22 2. By presenting a pleading, written motion, including  
23 a motion filed under subparagraph 4., or other paper, whether  
24 by signing, filing, submitting, or later advocating, an  
25 attorney, qualified representative, or unrepresented party is  
26 certifying that, to the best of the person's knowledge,  
27 information, and belief, formed after an inquiry reasonable  
28 under the circumstances:

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

Amendment No. \_\_\_\_ (for drafter's use only)

1 litigation;

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

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

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

14  
15 Nothing in this subparagraph shall be construed to prohibit  
16 the amendment of a petition during or after discovery.

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

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

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

29 c. Monetary sanctions imposed shall be limited to what  
30 is sufficient to deter repetition of such conduct or  
31 comparable conduct by others similarly situated.

Amendment No. \_\_\_\_ (for drafter's use only)

1           d. An agency may indemnify its attorney for sanctions  
2 imposed on the attorney if the conduct giving rise to the  
3 sanction was taken within the scope of employment and the  
4 indemnification is in the interest of the agency.

5           e. This paragraph does not authorize the award of  
6 sanctions for the submission of written comments or objections  
7 during an authorized period for public comment or at a public  
8 meeting, including, but not limited to, submissions of  
9 comments or objections regarding draft permits.

10           4. Sanctions under this paragraph may be initiated at  
11 any time after the initiation of a proceeding either by motion  
12 or on the presiding officer's own initiative. A motion shall  
13 describe the specific conduct alleged to violate subparagraph  
14 2. The motion shall be served upon the attorney or qualified  
15 representative of a party or an unrepresented party against  
16 whom such sanctions are sought, but shall not be filed with or  
17 presented to the presiding officer unless, within 21 days  
18 after service of the motion, the challenged paper, claim,  
19 defense, contention, allegation, or denial is not withdrawn or  
20 appropriately corrected. If a party elects to oppose a motion  
21 rather than withdrawing or correcting the challenged paper,  
22 claim, defense, contention, allegation, or denial that party  
23 shall file a copy of the motion and its written objection with  
24 the presiding officer within 14 days after service of the  
25 motion. After 21 days following service of the motion, the  
26 moving party may file the motion if the party against whom  
27 such sanctions are sought has not filed a copy of the motion  
28 and its written objection with the presiding officer within 14  
29 days after service of the motion or withdrawn or corrected the  
30 challenged paper, claim, defense, contention, allegation, or  
31 denial. Upon the filing of the motion and any timely

Amendment No. \_\_\_\_ (for drafter's use only)

1 opposition or response, the presiding officer shall  
2 immediately rule on the matter or set the matter for hearing,  
3 if the presiding officer considers a hearing warranted based  
4 on the filed motion and any objection or response. A presiding  
5 officer's own initiative to impose sanctions may be undertaken  
6 only after entering an order describing the specific conduct  
7 that appears to violate subparagraph 2. and directing the  
8 attorney or qualified representative of a party or the  
9 unrepresented party to show cause why subparagraph 2. has not  
10 been violated. When imposing sanctions, the presiding officer  
11 shall describe the conduct determined to constitute a  
12 violation of subparagraph 2. and explain the basis for the  
13 sanction imposed.~~All pleadings, motions, or other papers~~  
14 ~~filed in the proceeding must be signed by the party, the~~  
15 ~~party's attorney, or the party's qualified representative. The~~  
16 ~~signature constitutes a certificate that the person has read~~  
17 ~~the pleading, motion, or other paper and that, based upon~~  
18 ~~reasonable inquiry, it is not interposed for any improper~~  
19 ~~purposes, such as to harass or to cause unnecessary delay, or~~  
20 ~~for frivolous purpose or needless increase in the cost of~~  
21 ~~litigation. If a pleading, motion, or other paper is signed in~~  
22 ~~violation of these requirements, the presiding officer shall~~  
23 ~~impose upon the person who signed it, the represented party,~~  
24 ~~or both, an appropriate sanction, which may include an order~~  
25 ~~to pay the other party or parties the amount of reasonable~~  
26 ~~expenses incurred because of the filing of the pleading,~~  
27 ~~motion, or other paper, including a reasonable attorney's fee.~~  
28 (o) On request of any party, the administrative law  
29 judge shall enter an initial scheduling order to facilitate  
30 the just, speedy, and inexpensive determination of the  
31 proceeding. The initial scheduling order shall establish a



Amendment No. \_\_\_\_ (for drafter's use only)

1 discovery period, including a deadline by which all discovery  
2 shall be completed, and the date by which the parties shall  
3 identify expert witnesses and their opinions. The initial  
4 scheduling order also may require the parties to meet and file  
5 a joint report by a date certain.

6 Section 5. Paragraphs (i) and (k) of subsection (1) of  
7 section 120.57, Florida Statutes, are amended to read:

8 120.57 Additional procedures for particular cases.--

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

11 (i) When, in any proceeding conducted pursuant to this  
12 subsection, a dispute of material fact no longer exists, any  
13 party may move the administrative law judge to relinquish  
14 jurisdiction to the agency. An order relinquishing  
15 jurisdiction shall be rendered if the administrative law judge  
16 determines from ~~In ruling on such a motion, the administrative~~  
17 law judge may consider the pleadings, depositions, answers to  
18 interrogatories, and admissions on file, together with  
19 supporting and opposing affidavits, if any, that no genuine  
20 issue as to any material fact exists. If the administrative  
21 law judge enters an order relinquishing jurisdiction, the  
22 agency may promptly conduct a proceeding pursuant to  
23 subsection (2), if appropriate, but the parties may not raise  
24 any issues of disputed fact that could have been raised before  
25 the administrative law judge. An order entered by an  
26 administrative law judge relinquishing jurisdiction to the  
27 agency based upon a determination that no genuine dispute of  
28 material fact exists, need not contain findings of fact,  
29 conclusions of law, or a recommended disposition or penalty.

30 (k) The presiding officer shall complete and submit to  
31 the agency and all parties a recommended order consisting of

Amendment No. \_\_\_\_ (for drafter's use only)

1 findings of fact, conclusions of law, and recommended  
2 disposition or penalty, if applicable, and any other  
3 information required by law to be contained in the final  
4 order. All proceedings conducted pursuant to this subsection  
5 shall be de novo. The agency shall allow each party 15 days in  
6 which to submit written exceptions to the recommended order.  
7 An agency shall not grant an exception that does not clearly  
8 identify the disputed portion of the recommended order by page  
9 number and paragraph, does not identify the legal basis for  
10 the exception, or does not include appropriate and specific  
11 citations to the record.

12 Section 6. Paragraphs (c) and (e) of subsection (1)  
13 and subsection (5) of section 120.595, Florida Statutes, are  
14 amended to read:

15 120.595 Attorney's fees.--

16 (1) CHALLENGES TO AGENCY ACTION PURSUANT TO SECTION  
17 120.57(1).--

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

Amendment No. \_\_\_\_ (for drafter's use only)

1 that the nonprevailing adverse party participated in the  
2 pending proceeding for an improper purpose.

3 (e) For the purpose of this subsection:

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

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

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

24 (5) APPEALS.--When there is an appeal, the court in  
25 its discretion may award reasonable attorney's fees and  
26 reasonable costs to the prevailing party if the court finds  
27 that the appeal was frivolous, meritless, or an abuse of the  
28 appellate process, or that the agency action which  
29 precipitated the appeal was a gross abuse of the agency's  
30 discretion. Upon review of agency action that precipitates an  
31 appeal, if the court finds that the agency improperly rejected

Amendment No. \_\_\_\_ (for drafter's use only)

1 or modified findings of fact in a recommended order, the court  
2 shall award reasonable attorney's fees and reasonable costs to  
3 a prevailing appellant for the administrative proceeding and  
4 the appellate proceeding. If the court finds that the agency  
5 improperly rejected or modified a conclusion of law or an  
6 interpretation of an administrative rule over which it does  
7 not have substantive jurisdiction, the court may award  
8 reasonable attorney's fees and reasonable costs of the appeal  
9 to the prevailing appellant.

10 Section 7. Subsection (1) of section 120.60, Florida  
11 Statutes, is amended to read:

12 120.60 Licensing.--

13 (1) Upon receipt of an application for a license, an  
14 agency shall examine the application and, within 30 days after  
15 such receipt, notify the applicant of any apparent errors or  
16 omissions and request any additional information the agency is  
17 permitted by law to require. An agency shall not deny a  
18 license for failure to correct an error or omission or to  
19 supply additional information unless the agency timely  
20 notified the applicant within this 30-day period. An  
21 application shall be considered complete upon receipt of all  
22 requested information and correction of any error or omission  
23 for which the applicant was timely notified or when the time  
24 for such notification has expired. Every application for a  
25 license shall be approved or denied within 90 days after  
26 receipt of a completed application unless a shorter period of  
27 time for agency action is provided by law. The 90-day time  
28 period shall be tolled by the initiation of a proceeding under  
29 ss. 120.569 and 120.57. Any An application for a license that  
30 is not ~~must be~~ approved or denied within the 90-day or shorter  
31 time period, within 15 days after ~~the~~ conclusion of a public

Amendment No. \_\_\_\_ (for drafter's use only)

1 hearing held on the application, or within 45 days after a  
2 recommended order is submitted to the agency and the parties,  
3 whichever action and timeframe is latest and applicable, is  
4 considered approved unless the recommended order recommends  
5 that the agency deny the license. Subject to the satisfactory  
6 completion of an examination if required as a prerequisite to  
7 licensure, any license that is considered approved shall be  
8 issued and may include such reasonable conditions as are  
9 authorized by law later. ~~The agency must approve any~~  
10 ~~application for a license or for an examination required for~~  
11 ~~licensure if the agency has not approved or denied the~~  
12 ~~application within the time periods prescribed by this~~  
13 ~~subsection.~~

14 Section 8. Subsection (9) of section 120.68, Florida  
15 Statutes, is amended to read:

16 120.68 Judicial review.--

17 (9) No petition challenging an agency rule as an  
18 invalid exercise of delegated legislative authority shall be  
19 instituted pursuant to this section, except to review an order  
20 entered pursuant to a proceeding under s. 120.56 or an  
21 agency's findings of immediate danger, necessity, and  
22 procedural fairness prerequisite to the adoption of an  
23 emergency rule pursuant to s. 120.54(4), unless the sole issue  
24 presented by the petition is the constitutionality of a rule  
25 and there are no disputed issues of fact.

26 Section 9. It is the intent of the Legislature that  
27 this act shall not affect the outcome of litigation styled  
28 Pinecrest Lakes, Inc. v. Shidel, 795 So. 2d 191 (Fla. 4th DCA  
29 2001).

30 Section 10. This act shall take effect upon becoming a  
31 law.

Amendment No. \_\_\_\_ (for drafter's use only)

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

2 And the title is amended as follows:

3           On page 1, lines 3 through 19,  
4 remove: all of said lines

5

6 and insert:

7           amending s. 57.111, F.S.; increasing the  
8           limitation on an award of attorney's fees and  
9           costs in an action initiated by a state agency;  
10          amending s. 120.52, F.S.; revising sentence  
11          structure and capitalization; amending s.  
12          120.54, F.S.; revising the Uniform Rules of  
13          Procedure; amending s. 120.569, F.S.; revising  
14          requirements for pleadings, motions, and other  
15          papers filed under the Administrative Procedure  
16          Act; providing for sanctions for noncompliance  
17          with those requirements; requiring  
18          administrative law judge to enter scheduling  
19          orders under specified circumstances; amending  
20          s. 120.57, F.S.; revising provisions relating  
21          to motions to relinquish jurisdiction;  
22          prohibiting agencies from granting exceptions  
23          to a recommended order under specified  
24          circumstances; amending s. 120.595, F.S.;  
25          redefining the term "improper purpose" for  
26          determining an award of attorney's fees;  
27          specifying grounds for the award of attorney's  
28          fees and costs of an appeal; amending s.  
29          120.60, F.S.; revising provisions relating to  
30          applications for licenses; amending s. 120.68,  
31          F.S.; prescribing exceptions to the prohibition

Amendment No. \_\_\_\_ (for drafter's use only)

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against petitions challenging rules as an  
invalid exercise of delegated legislative  
authority; providing legislative intent;  
providing an effective date.