

Amendment No. ____ (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
1		.	
2		.	
3		.	
4		.	

ORIGINAL STAMP BELOW

11 Representative(s) Spratt offered the following:

Amendment (with title amendment)

14 Remove everything after the enacting clause

16 and insert:

17 Section 1. Paragraph (d) of subsection (4) of section
18 57.111, Florida Statutes, is amended to read:

19 57.111 Civil actions and administrative proceedings
20 initiated by state agencies; attorneys' fees and costs.--

21 (4)

22 (d) The court, or the administrative law judge in the
23 case of a proceeding under chapter 120, shall promptly conduct
24 an evidentiary hearing on the application for an award of
25 attorney's fees and shall issue a judgment, or a final order
26 in the case of an administrative law judge. The final order
27 of an administrative law judge is reviewable in accordance
28 with the provisions of s. 120.68. If the court affirms the
29 award of attorney's fees and costs in whole or in part, it
30 may, in its discretion, award additional attorney's fees and
31 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 (5) of section
6 120.54, Florida Statutes, is amended to read:

7 120.54 Rulemaking.--

8 (5) UNIFORM RULES.--

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

12 1. Uniform rules for the scheduling of public
13 meetings, hearings, and workshops.

14 2. Uniform rules for use by each state agency that
15 provide procedures for conducting public meetings, hearings,
16 and workshops, and for taking evidence, testimony, and
17 argument at such public meetings, hearings, and workshops, in
18 person and by means of communications media technology. The
19 rules shall provide that all evidence, testimony, and argument
20 presented shall be afforded equal consideration, regardless of
21 the method of communication. If a public meeting, hearing, or
22 workshop is to be conducted by means of communications media
23 technology, or if attendance may be provided by such means,
24 the notice shall so state. The notice for public meetings,
25 hearings, and workshops utilizing communications media
26 technology shall state how persons interested in attending may
27 do so and shall name locations, if any, where communications
28 media technology facilities will be available. Nothing in this
29 paragraph shall be construed to diminish the right to inspect
30 public records under chapter 119. Limiting points of access to
31 public meetings, hearings, and workshops subject to the

Amendment No. ____ (for drafter's use only)

1 provisions of s. 286.011 to places not normally open to the
2 public shall be presumed to violate the right of access of the
3 public, and any official action taken under such circumstances
4 is void and of no effect. Other laws relating to public
5 meetings, hearings, and workshops, including penal and
6 remedial provisions, shall apply to public meetings, hearings,
7 and workshops conducted by means of communications media
8 technology, and shall be liberally construed in their
9 application to such public meetings, hearings, and workshops.
10 As used in this subparagraph, "communications media
11 technology" means the electronic transmission of printed
12 matter, audio, full-motion video, freeze-frame video,
13 compressed video, and digital video by any method available.

14 3. Uniform rules of procedure for the filing of notice
15 of protests and formal written protests.

16 4. Uniform rules of procedure for the filing of
17 petitions for administrative hearings pursuant to s. 120.569
18 or s. 120.57. Such rules shall include:

19 a. The identification of the petitioner.

20 b. ~~A statement of~~ When and how the petitioner received
21 notice of the agency's action or proposed action.

22 c. ~~An explanation of~~ How the petitioner's substantial
23 interests are or will be affected by the action or proposed
24 action.

25 d. ~~A statement of~~ All material facts disputed by the
26 petitioner or a statement that there are no disputed facts.

27 e. ~~A statement of~~ The ultimate facts alleged,
28 including a statement of the specific facts the petitioner
29 contends warrant reversal or modification of the agency's
30 proposed action.

31 f. ~~A statement of~~ The specific rules or statutes that

Amendment No. ____ (for drafter's use only)

1 the petitioner contends require reversal or modification of
2 the agency's proposed action and a statement explaining how
3 the alleged facts relate to the specific rules or statutes.

4 g. ~~A statement of~~ The relief sought by the petitioner,
5 stating precisely the action petitioner wishes the agency to
6 take with respect to the proposed action.

7 5. Uniform rules of procedure for the filing and
8 prompt disposition of petitions for declaratory statements.

9 6. Provision of a method by which each agency head
10 shall provide a description of the agency's organization and
11 general course of its operations.

12 7. Uniform rules establishing procedures for granting
13 or denying petitions for variances and waivers pursuant to s.
14 120.542.

15 Section 3. Paragraph (e) of subsection (2) of section
16 120.569, Florida Statutes, is amended, and paragraph (o) is
17 added to subsection (2) of that section, to read:

18 120.569 Decisions which affect substantial
19 interests.--

20 (2)

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

31 2. By presenting a pleading, written motion, including

Amendment No. ____ (for drafter's use only)

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

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

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

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

20 d. The denials of factual contentions are warranted on
21 the evidence or, if specifically identified, are reasonably
22 based on lack of information or belief.

23
24 Nothing in this subparagraph shall be construed to prohibit
25 the amendment of a petition during or after discovery.

26 3. If, after notice and reasonable opportunity to
27 respond, the presiding officer determines that subparagraph 2.
28 has been violated, the presiding officer may impose an
29 appropriate sanction against the person who signed it, the
30 represented party, or both, which may include an order to pay
31 the other party or parties the amount of reasonable expenses

Amendment No. ____ (for drafter's use only)

1 incurred because of the filing of the pleading, motion, or
2 other paper, including reasonable attorney's fees. However:

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

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

7 c. Monetary sanctions imposed shall be limited to what
8 is sufficient to deter repetition of such conduct or
9 comparable conduct by others similarly situated.

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

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

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

Amendment No. ____ (for drafter's use only)

1 shall file a copy of the motion and its written objection with
2 the presiding officer within 14 days after service of the
3 motion. After 21 days following service of the motion, the
4 moving party may file the motion if the party against whom
5 such sanctions are sought has not filed a copy of the motion
6 and its written objection with the presiding officer within 14
7 days after service of the motion or withdrawn or corrected the
8 challenged paper, claim, defense, contention, allegation, or
9 denial. Upon the filing of the motion and any timely
10 opposition or response, the presiding officer shall
11 immediately rule on the matter or set the matter for hearing,
12 if the presiding officer considers a hearing warranted based
13 on the filed motion and any objection or response. A presiding
14 officer's own initiative to impose sanctions may be undertaken
15 only after entering an order describing the specific conduct
16 that appears to violate subparagraph 2. and directing the
17 attorney or qualified representative of a party or the
18 unrepresented party to show cause why subparagraph 2. has not
19 been violated. When imposing sanctions, the presiding officer
20 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~~

Amendment No. ____ (for drafter's use only)

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

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

17 120.57 Additional procedures for particular cases.--

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

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

Amendment No. ____ (for drafter's use only)

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

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

21 Section 5. Paragraphs (c) and (e) of subsection (1)
22 and subsection (5) of section 120.595, Florida Statutes, are
23 amended to read:

24 120.595 Attorney's fees.--

25 (1) CHALLENGES TO AGENCY ACTION PURSUANT TO SECTION
26 120.57(1).--

27 (c) In proceedings pursuant to s. 120.57(1), and upon
28 motion, the administrative law judge shall determine whether
29 any party participated in the proceeding for an improper
30 purpose as defined by this subsection ~~and s. 120.569(2)(e)~~. In
31 making such determination, the administrative law judge shall

Amendment No. ____ (for drafter's use only)

1 consider whether the nonprevailing adverse party has
2 participated in two or more other such proceedings involving
3 the same prevailing party and the same project as an adverse
4 party and in which such two or more proceedings the
5 nonprevailing adverse party did not establish either the
6 factual or legal merits of its position, and shall consider
7 whether the factual or legal position asserted in the instant
8 proceeding would have been cognizable in the previous
9 proceedings. In such event, it shall be rebuttably presumed
10 that the nonprevailing adverse party participated in the
11 pending proceeding for an improper purpose.

12 (e) For the purpose of this subsection:

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

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

20 3. "Nonprevailing adverse party" means a party that
21 has failed to have substantially changed the outcome of the
22 proposed or final agency action which is the subject of a
23 proceeding. In the event that a proceeding results in any
24 substantial modification or condition intended to resolve the
25 matters raised in a party's petition, it shall be determined
26 that the party having raised the issue addressed is not a
27 nonprevailing adverse party. The recommended order shall
28 state whether the change is substantial for purposes of this
29 subsection. In no event shall the term "nonprevailing party"
30 or "prevailing party" be deemed to include any party that has
31 intervened in a previously existing proceeding to support the

Amendment No. ____ (for drafter's use only)

1 position of an agency.

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

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

21 120.60 Licensing.--

22 (1) Upon receipt of an application for a license, an
23 agency shall examine the application and, within 30 days after
24 such receipt, notify the applicant of any apparent errors or
25 omissions and request any additional information the agency is
26 permitted by law to require. An agency shall not deny a
27 license for failure to correct an error or omission or to
28 supply additional information unless the agency timely
29 notified the applicant within this 30-day period. An
30 application shall be considered complete upon receipt of all
31 requested information and correction of any error or omission

Amendment No. ____ (for drafter's use only)

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

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

25 120.68 Judicial review.--

26 (9) No petition challenging an agency rule as an
27 invalid exercise of delegated legislative authority shall be
28 instituted pursuant to this section, except to review an order
29 entered pursuant to a proceeding under s. 120.56 or an
30 agency's findings of immediate danger, necessity, and
31 procedural fairness prerequisite to the adoption of an

Amendment No. ____ (for drafter's use only)

1 emergency rule pursuant to s. 120.54(4), unless the sole issue
2 presented by the petition is the constitutionality of a rule
3 and there are no disputed issues of fact.

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

8 Section 9. This act shall take effect upon becoming a
9 law.

10

11

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

13 And the title is amended as follows:

14 On page 1, lines 3-19,
15 remove: all of said lines

16

17 and insert:

18 An act relating to administrative procedures;
19 amending s. 57.111, F.S.; increasing the
20 limitation on an award of attorney's fees and
21 costs in an action initiated by a state agency;
22 amending s. 120.54, F.S.; revising the Uniform
23 Rules of Procedure; amending s. 120.569, F.S.;
24 revising requirements for pleadings, motions,
25 and other papers filed under the Administrative
26 Procedure Act; providing for sanctions for
27 noncompliance with those requirements;
28 requiring administrative law judge to enter
29 scheduling orders under specified
30 circumstances; amending s. 120.57, F.S.;
31 revising provisions relating to motions to

Amendment No. ____ (for drafter's use only)

1 relinquish jurisdiction; prohibiting agencies
2 from granting exceptions to a recommended order
3 under specified circumstances; amending s.
4 120.595, F.S.; redefining the term "improper
5 purpose" for determining an award of attorney's
6 fees; specifying grounds for the award of
7 attorney's fees and costs of an appeal;
8 amending s. 120.60, F.S.; revising provisions
9 relating to applications for licenses; amending
10 s. 120.68, F.S.; prescribing exceptions to the
11 prohibition against petitions challenging rules
12 as an invalid exercise of delegated legislative
13 authority; providing legislative intent;
14 providing an effective date.

15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31