

By the Council for Smarter Government and Representatives
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1 A bill to be entitled
 2 An act relating to administrative procedures;
 3 amending s. 57.111, F.S.; increasing the cap on
 4 an award of attorney's fees and costs in an
 5 action initiated by a state agency; amending s.
 6 120.54, F.S.; revising language with respect to
 7 the Uniform Rules of Procedure; amending s.
 8 120.569, F.S.; revising requirements for
 9 pleadings, motions, and other papers filed
 10 under the Administrative Procedure Act;
 11 amending s. 120.57, F.S.; revising provisions
 12 relating to motions to relinquish jurisdiction;
 13 amending s. 120.595, F.S.; redefining the term
 14 "improper purpose" for determining an award of
 15 attorney's fees; amending s. 120.60, F.S.;
 16 revising provisions relating to applications
 17 for licenses; amending s. 120.68, F.S.;
 18 revising provisions relating to judicial
 19 review; providing an effective date.

20
 21 Be It Enacted by the Legislature of the State of Florida:

22
 23 Section 1. Paragraph (d) of subsection (4) of section
 24 57.111, Florida Statutes, is amended to read:

25 57.111 Civil actions and administrative proceedings
 26 initiated by state agencies; attorneys' fees and costs.--

27 (4)

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

1 in the case of an administrative law judge. The final order
2 of an administrative law judge is reviewable in accordance
3 with the provisions of s. 120.68. If the court affirms the
4 award of attorney's fees and costs in whole or in part, it
5 may, in its discretion, award additional attorney's fees and
6 costs for the appeal.

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

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

11 Section 2. Paragraph (b) of subsection (5) of section
12 120.54, Florida Statutes, is amended to read:

13 120.54 Rulemaking.--

14 (5) UNIFORM RULES.--

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

18 1. Uniform rules for the scheduling of public
19 meetings, hearings, and workshops.

20 2. Uniform rules for use by each state agency that
21 provide procedures for conducting public meetings, hearings,
22 and workshops, and for taking evidence, testimony, and
23 argument at such public meetings, hearings, and workshops, in
24 person and by means of communications media technology. The
25 rules shall provide that all evidence, testimony, and argument
26 presented shall be afforded equal consideration, regardless of
27 the method of communication. If a public meeting, hearing, or
28 workshop is to be conducted by means of communications media
29 technology, or if attendance may be provided by such means,
30 the notice shall so state. The notice for public meetings,
31 hearings, and workshops utilizing communications media

1 technology shall state how persons interested in attending may
2 do so and shall name locations, if any, where communications
3 media technology facilities will be available. Nothing in this
4 paragraph shall be construed to diminish the right to inspect
5 public records under chapter 119. Limiting points of access to
6 public meetings, hearings, and workshops subject to the
7 provisions of s. 286.011 to places not normally open to the
8 public shall be presumed to violate the right of access of the
9 public, and any official action taken under such circumstances
10 is void and of no effect. Other laws relating to public
11 meetings, hearings, and workshops, including penal and
12 remedial provisions, shall apply to public meetings, hearings,
13 and workshops conducted by means of communications media
14 technology, and shall be liberally construed in their
15 application to such public meetings, hearings, and workshops.
16 As used in this subparagraph, "communications media
17 technology" means the electronic transmission of printed
18 matter, audio, full-motion video, freeze-frame video,
19 compressed video, and digital video by any method available.

20 3. Uniform rules of procedure for the filing of notice
21 of protests and formal written protests.

22 4. Uniform rules of procedure for the filing of
23 petitions for administrative hearings pursuant to s. 120.569
24 or s. 120.57. Such rules shall require the petition to state
25 with particularity include:

- 26 a. The identification of the petitioner.
27 b. ~~A statement of~~ When and how the petitioner received
28 notice of the agency's action or proposed action.
29 c. ~~An explanation of~~ How the petitioner's substantial
30 interests are or will be affected by the action or proposed
31 action.

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

3 e. ~~A statement of~~ The ultimate facts alleged,
4 including a statement of the specific facts the petitioner
5 contends warrant reversal or modification of the agency's
6 proposed action.

7 f. ~~A statement of~~ The specific rules or statutes, and
8 to relate the alleged facts to the laws the petitioner
9 contends require reversal or modification of the agency's
10 proposed action.

11 g. ~~A statement of~~ The relief sought by the petitioner,
12 stating precisely the action petitioner wishes the agency to
13 take with respect to the proposed action.

14 5. Uniform rules of procedure for the filing and
15 prompt disposition of petitions for declaratory statements.

16 6. Provision of a method by which each agency head
17 shall provide a description of the agency's organization and
18 general course of its operations.

19 7. Uniform rules establishing procedures for granting
20 or denying petitions for variances and waivers pursuant to s.
21 120.542.

22 Section 3. Paragraph (e) of subsection (2) of section
23 120.569, Florida Statutes, is amended, and paragraph (o) is
24 added to subsection (2) of said section, to read:

25 120.569 Decisions which affect substantial
26 interests.--

27 (2)

28 (e)1. Every pleading, written motion, and other paper
29 filed in a proceeding must be signed by at least one attorney
30 or qualified representative of record in the attorney's or
31 qualified representative's individual name, or, if the party

1 is not represented by an attorney or qualified representative,
2 the pleading, written motion, or other paper must be signed by
3 the party. An unsigned paper shall be stricken unless omission
4 of the signature is corrected promptly after being called to
5 the attention of the attorney, qualified representative, or
6 party.

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

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

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

23 c. The allegations and other factual contentions have
24 evidentiary support or, if specifically identified, are likely
25 to have evidentiary support after a reasonable opportunity for
26 further investigation or discovery; and

27 d. The denials of factual contentions are warranted on
28 the evidence or, if specifically identified, are reasonably
29 based on lack of information or belief.

30 3. If, after notice and reasonable opportunity to
31 respond, the presiding officer determines that subparagraph 2.

1 has been violated, the presiding officer may impose an
2 appropriate sanction against the person who signed it, the
3 represented party, or both, which may include an order to pay
4 the other party or parties the amount of reasonable expenses
5 incurred because of the filing of the pleading, motion, or
6 other paper, including reasonable attorney's fees. However:
7 a. Monetary sanctions may not be awarded against a
8 represented party for a violation of sub-subparagraph 2.b.
9 b. Monetary sanctions may not be awarded under this
10 paragraph based on a violation of discovery rules.
11 c. This paragraph does not authorize the award of
12 sanctions against any person who simply comments on or objects
13 to a draft permit during an authorized period for public
14 comment or at a public meeting on the draft permit.
15 4. Sanctions under this paragraph may be initiated at
16 any time after the initiation of a proceeding either by motion
17 or on the presiding officer's own initiative. A motion shall
18 describe the specific conduct alleged to violate subparagraph
19 2. The motion shall be served upon the attorney or qualified
20 representative of a party or an unrepresented party against
21 whom such sanctions are sought and shall be filed with the
22 presiding officer. However, such motion shall not be acted
23 upon by the presiding officer or called up for hearing by the
24 movant unless, within 21 days after service of the motion or
25 such other period as the presiding officer may prescribe, the
26 challenged paper, claim, defense, contention, allegation, or
27 denial is not withdrawn or appropriately corrected. A
28 presiding officer's own initiative to impose sanctions may be
29 undertaken only after entering an order describing the
30 specific conduct that appears to violate subparagraph 2. and
31 directing the attorney or qualified representative of a party

1 or the unrepresented party to show cause why subparagraph 2.
2 has not been violated. When imposing sanctions, the presiding
3 officer shall describe the conduct determined to constitute a
4 violation of subparagraph 2. and explain the basis for the
5 sanction imposed.~~All pleadings, motions, or other papers~~
6 ~~filed in the proceeding must be signed by the party, the~~
7 ~~party's attorney, or the party's qualified representative. The~~
8 ~~signature constitutes a certificate that the person has read~~
9 ~~the pleading, motion, or other paper and that, based upon~~
10 ~~reasonable inquiry, it is not interposed for any improper~~
11 ~~purposes, such as to harass or to cause unnecessary delay, or~~
12 ~~for frivolous purpose or needless increase in the cost of~~
13 ~~litigation. If a pleading, motion, or other paper is signed in~~
14 ~~violation of these requirements, the presiding officer shall~~
15 ~~impose upon the person who signed it, the represented party,~~
16 ~~or both, an appropriate sanction, which may include an order~~
17 ~~to pay the other party or parties the amount of reasonable~~
18 ~~expenses incurred because of the filing of the pleading,~~
19 ~~motion, or other paper, including a reasonable attorney's fee.~~

20 (o) On request of any party, the administrative law
21 judge shall enter an initial scheduling order to facilitate
22 the just, speedy, and inexpensive determination of the
23 proceeding. The initial scheduling order shall establish a
24 discovery period, including a deadline by which all discovery
25 shall be completed, and the date by which the parties shall
26 identify expert witnesses and their opinions. The initial
27 scheduling order also may require the parties to meet and file
28 a joint report by a date certain.

29 Section 4. Paragraph (i) of subsection (1) of section
30 120.57, Florida Statutes, is amended to read:

31 120.57 Additional procedures for particular cases.--

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

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

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

25 120.595 Attorney's fees.--

26 (1) CHALLENGES TO AGENCY ACTION PURSUANT TO SECTION
27 120.57(1).--

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

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

13 (e) For the purpose of this subsection:

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

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

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

1 intervened in a previously existing proceeding to support the
2 position of an agency.

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

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

20 120.60 Licensing.--

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

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

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

22 120.68 Judicial review.--

23 (9) No petition challenging an agency rule as an
24 invalid exercise of delegated legislative authority shall be
25 instituted pursuant to this section, except to review an order
26 entered pursuant to a proceeding under s. 120.56, or an
27 emergency rule adopted pursuant to s. 120.54(4), unless the
28 sole issue presented by the petition is the constitutionality
29 of a rule and there are no disputed issues of fact.

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