

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

1 Be It Enacted by the Legislature of the State of Florida:

2

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

5 57.111 Civil actions and administrative proceedings  
6 initiated by state agencies; attorneys' fees and costs.--

7 (4)

8 (d) The court, or the administrative law judge in the  
9 case of a proceeding under chapter 120, shall promptly conduct  
10 an evidentiary hearing on the application for an award of  
11 attorney's fees and shall issue a judgment, or a final order  
12 in the case of an administrative law judge. The final order  
13 of an administrative law judge is reviewable in accordance  
14 with the provisions of s. 120.68. If the court affirms the  
15 award of attorney's fees and costs in whole or in part, it  
16 may, in its discretion, award additional attorney's fees and  
17 costs for the appeal.

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

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

22 Section 2. Paragraph (b) of subsection (1) of section  
23 120.52, Florida Statutes, is amended to read:

24 120.52 Definitions.--As used in this act:

25 (1) "Agency" means:

26 (b) Each~~+~~

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

29 ~~2. authority~~ Authority, including a regional water  
30 supply authority,~~.~~

31 ~~3. board,~~ Board~~.~~

1           ~~4. commission~~ Commission, including the Commission on  
2 Ethics and the Fish and Wildlife Conservation Commission when  
3 acting pursuant to statutory authority derived from the  
4 Legislature,~~,-~~

5           ~~5. regional~~ Regional planning agency,~~,-~~

6           ~~6. multicounty~~ Multicounty special district with a  
7 majority of its governing board comprised of nonelected  
8 persons,~~,-~~

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

10           ~~8. those entities~~ Entity described in chapters 163,  
11 373, 380, and 582 and s. 186.504.

12           Section 3. Paragraph (b) of subsection (5) of section  
13 120.54, Florida Statutes, is amended to read:

14           120.54 Rulemaking.--

15           (5) UNIFORM RULES.--

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

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

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

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

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

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

- 27 a. The identification of the petitioner.  
28 b. ~~A statement of~~ When and how the petitioner received  
29 notice of the agency's action or proposed action.  
30  
31

1           c. ~~An explanation of~~ How the petitioner's substantial  
2 interests are or will be affected by the action or proposed  
3 action.

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

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

10           f. ~~A statement of~~ The specific rules or statutes that  
11 the petitioner contends require reversal or modification of  
12 the agency's proposed action and to explain how the alleged  
13 facts relate to the specific rules or statutes.

14           g. ~~A statement of~~ The relief sought by the petitioner,  
15 stating precisely the action petitioner wishes the agency to  
16 take with respect to the proposed action.

17           5. Uniform rules of procedure for the filing and  
18 prompt disposition of petitions for declaratory statements.

19           6. Provision of a method by which each agency head  
20 shall provide a description of the agency's organization and  
21 general course of its operations.

22           7. Uniform rules establishing procedures for granting  
23 or denying petitions for variances and waivers pursuant to s.  
24 120.542.

25           Section 4. Paragraph (e) of subsection (2) of section  
26 120.569, Florida Statutes, is amended, and paragraph (o) is  
27 added to subsection (2) of that section, to read:

28           120.569 Decisions which affect substantial  
29 interests.--

30           (2)

31

1           (e)1. Every pleading, written motion, and other paper  
2 filed in a proceeding must be signed by at least one attorney  
3 or qualified representative of record in the attorney's or  
4 qualified representative's individual name, or, if the party  
5 is not represented by an attorney or qualified representative,  
6 the pleading, written motion, or other paper must be signed by  
7 the party. An unsigned paper shall be stricken unless omission  
8 of the signature is corrected promptly after being called to  
9 the attention of the attorney, qualified representative, or  
10 party.

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

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

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

27           c. The allegations and other factual contentions have  
28 evidentiary support or, if specifically identified, are likely  
29 to have evidentiary support after a reasonable opportunity for  
30 further investigation or discovery; and

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1 d. The denials of factual contentions are warranted on  
2 the evidence or, if specifically identified, are reasonably  
3 based on lack of information or belief.

4  
5 Nothing in this subparagraph shall be construed to prohibit  
6 the amendment of a petition during or after discovery.

7 3. If, after notice and reasonable opportunity to  
8 respond, the presiding officer determines that subparagraph 2.  
9 has been violated, the presiding officer may impose an  
10 appropriate sanction against the person who signed it, the  
11 represented party, or both, which may include an order to pay  
12 the other party or parties the amount of reasonable expenses  
13 incurred because of the filing of the pleading, motion, or  
14 other paper, including reasonable attorney's fees. However:

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

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

19 c. Monetary sanctions imposed shall be limited to what  
20 is sufficient to deter repetition of such conduct or  
21 comparable conduct by others similarly situated.

22 d. An agency may indemnify its attorney for sanctions  
23 imposed on the attorney if the conduct giving rise to the  
24 sanction was taken within the scope of employment and the  
25 indemnification is in the interest of the agency.

26 e. This paragraph does not authorize the award of  
27 sanctions for the submission of written comments or objections  
28 during an authorized period for public comment or at a public  
29 meeting, including, but not limited to, submissions of  
30 comments or objections regarding draft permits.

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



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

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

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

30 120.57 Additional procedures for particular cases.--  
31

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 (k) The presiding officer shall complete and submit to  
23 the agency and all parties a recommended order consisting of  
24 findings of fact, conclusions of law, and recommended  
25 disposition or penalty, if applicable, and any other  
26 information required by law to be contained in the final  
27 order. All proceedings conducted pursuant to this subsection  
28 shall be de novo. The agency shall allow each party 15 days in  
29 which to submit written exceptions to the recommended order.  
30 An agency shall not grant an exception that does not clearly  
31 identify the disputed portion of the recommended order by page

1 number and paragraph, does not identify the legal basis for  
2 the exception, or does not include appropriate and specific  
3 citations to the record.

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

7 120.595 Attorney's fees.--

8 (1) CHALLENGES TO AGENCY ACTION PURSUANT TO SECTION  
9 120.57(1).--

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

26 (e) For the purpose of this subsection:

27 1. "Improper purpose" means participation in a  
28 proceeding pursuant to s. 120.57(1) primarily to harass or to  
29 cause unnecessary delay or for frivolous purpose or to  
30 needlessly increase the cost of litigation, licensing, or  
31 securing the approval of an activity.

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

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

16           (5) APPEALS.--When there is an appeal, the court in  
17 its discretion may award reasonable attorney's fees and  
18 reasonable costs to the prevailing party if the court finds  
19 that the appeal was frivolous, meritless, or an abuse of the  
20 appellate process, or that the agency action which  
21 precipitated the appeal was a gross abuse of the agency's  
22 discretion. Upon review of agency action that precipitates an  
23 appeal, if the court finds that the agency improperly rejected  
24 or modified findings of fact in a recommended order, the court  
25 shall award reasonable attorney's fees and reasonable costs to  
26 a prevailing appellant for the administrative proceeding and  
27 the appellate proceeding. If the court finds that the agency  
28 improperly rejected or modified a conclusion of law or an  
29 interpretation of an administrative rule over which it does  
30 not have substantive jurisdiction, the court may award  
31

1 reasonable attorney's fees and reasonable costs of the appeal  
2 to the prevailing appellant.

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

5 120.60 Licensing.--

6 (1) Upon receipt of an application for a license, an  
7 agency shall examine the application and, within 30 days after  
8 such receipt, notify the applicant of any apparent errors or  
9 omissions and request any additional information the agency is  
10 permitted by law to require. An agency shall not deny a  
11 license for failure to correct an error or omission or to  
12 supply additional information unless the agency timely  
13 notified the applicant within this 30-day period. An  
14 application shall be considered complete upon receipt of all  
15 requested information and correction of any error or omission  
16 for which the applicant was timely notified or when the time  
17 for such notification has expired. Every application for a  
18 license shall be approved or denied within 90 days after  
19 receipt of a completed application unless a shorter period of  
20 time for agency action is provided by law. The 90-day time  
21 period shall be tolled by the initiation of a proceeding under  
22 ss. 120.569 and 120.57. Any ~~An~~ application for a license that  
23 is not ~~must be~~ approved or denied within the 90-day or shorter  
24 time period, within 15 days after ~~the~~ conclusion of a public  
25 hearing held on the application, or within 45 days after a  
26 recommended order is submitted to the agency and the parties,  
27 whichever action and timeframe is latest and applicable, is  
28 considered approved unless the recommended order recommends  
29 that the agency deny the license. Subject to the satisfactory  
30 completion of an examination if required as a prerequisite to  
31 licensure, any license that is considered approved shall be

1 issued and may include such reasonable conditions as are  
2 authorized by law later. ~~The agency must approve any~~  
3 ~~application for a license or for an examination required for~~  
4 ~~licensure if the agency has not approved or denied the~~  
5 ~~application within the time periods prescribed by this~~  
6 ~~subsection.~~

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

9 120.68 Judicial review.--

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

19 Section 9. It is the intent of the Legislature that  
20 this act shall not affect the outcome of litigation styled  
21 Pinecrest Lakes, Inc. v. Shidel, 795 So. 2d 191 (Fla. 4th DCA  
22 2001).

23 Section 10. This act shall take effect upon becoming a  
24 law.