

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

30
31 Be It Enacted by the Legislature of the State of Florida:

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

3 120.52 Definitions.--As used in this act:

4 (1) "Agency" means:

5 (b) Each~~+~~

6 ~~1. state State~~ officer and state department, and each
7 departmental unit described in s. 20.04, ~~and~~;

8 ~~2. authority Authority,~~ including a regional water
9 supply authority, ~~;~~

10 ~~3. board, Board.~~

11 ~~4. commission Commission,~~ including the Commission on
12 Ethics and the Fish and Wildlife Conservation Commission when
13 acting pursuant to statutory authority derived from the
14 Legislature, ~~;~~

15 ~~5. regional Regional~~ planning agency, ~~;~~

16 ~~6. multicounty Multicounty~~ special district with a
17 majority of its governing board comprised of nonelected
18 persons, ~~;~~

19 ~~7. educational Educational~~ units, ~~and~~;

20 ~~8. those entities Entity~~ described in chapters 163,
21 373, 380, and 582 and s. 186.504.

22 Section 2. Paragraph (b) of subsection (5) of section
23 120.54, Florida Statutes, is amended to read:

24 120.54 Rulemaking.--

25 (5) UNIFORM RULES.--

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

29 1. Uniform rules for the scheduling of public
30 meetings, hearings, and workshops.

31

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

1 3. Uniform rules of procedure for the filing of notice
2 of protests and formal written protests.

3 4. Uniform rules of procedure for the filing of
4 petitions for administrative hearings pursuant to s. 120.569
5 or s. 120.57. Such rules shall require the petition to state
6 ~~include~~:

7 a. The identification of the petitioner.

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

10 c. ~~An explanation of~~ How the petitioner's substantial
11 interests are or will be affected by the action or proposed
12 action.

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

15 e. ~~A statement of~~ The ultimate facts alleged,
16 including a statement of the specific facts the petitioner
17 contends warrant reversal or modification of the agency's
18 proposed action.

19 f. ~~A statement of~~ The specific rules or statutes that
20 the petitioner contends require reversal or modification of
21 the agency's proposed action and to explain how the alleged
22 facts relate to the specific rules or statutes.

23 g. ~~A statement of~~ The relief sought by the petitioner,
24 stating precisely the action petitioner wishes the agency to
25 take with respect to the proposed action.

26 5. Uniform rules of procedure for the filing and
27 prompt disposition of petitions for declaratory statements.

28 6. Provision of a method by which each agency head
29 shall provide a description of the agency's organization and
30 general course of its operations.

31

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

4 Section 3. Paragraph (e) of subsection (2) of section
5 120.569, Florida Statutes, is amended, and paragraph (o) is
6 added to subsection (2) of that section, to read:

7 120.569 Decisions which affect substantial
8 interests.--

9 (2)

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

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

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

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

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

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

13
14 Nothing in this subparagraph shall be construed to prohibit
15 the amendment of a petition during or after discovery.

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

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

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

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

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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

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

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 4. 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

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 5. 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

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

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 6. 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

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 7. 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 8. 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 9. This act shall take effect upon becoming a
31 law.