

By Senator King

8-189B-02

1 A bill to be entitled
2 An act relating to environmental protection;
3 amending s. 373.114, F.S.; providing that water
4 management district orders resulting from
5 certain evidentiary hearings are not subject to
6 specified review; amending s. 403.412, F.S.,
7 the "Environmental Protection Act of 1971";
8 revising requirements for initiating specified
9 proceedings under that act; providing an
10 effective date.

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

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14 Section 1. Subsection (1) of section 373.114, Florida
15 Statutes, is amended to read:

16 373.114 Land and Water Adjudicatory Commission; review
17 of district rules and orders; department review of district
18 rules.--

19 (1) Except as provided in subsection (2), the Governor
20 and Cabinet, sitting as the Land and Water Adjudicatory
21 Commission, have the exclusive authority to review any order
22 or rule of a water management district, other than a rule
23 relating to an internal procedure of the district or an order
24 resulting from an evidentiary hearing held under s. 120.569 or
25 s. 120.57 or a rule that has been adopted after issuance of an
26 order resulting from an evidentiary hearing held under s.
27 120.56, to ensure consistency with the provisions and purposes
28 of this chapter. Subsequent to the legislative ratification of
29 the delineation methodology pursuant to s. 373.421(1), this
30 subsection also shall apply to an order of the department, or
31 a local government exercising delegated authority, pursuant to

1 ss. 373.403-373.443, except an order pertaining to activities
2 or operations subject to conceptual plan approval pursuant to
3 chapter 378 or an order resulting from an evidentiary hearing
4 held under s. 120.569 or s. 120.57.

5 (a) Such review may be initiated by the department or
6 by a party to the proceeding below by filing a request for
7 review with the Land and Water Adjudicatory Commission and
8 serving a copy on the department and on any person named in
9 the rule or order within 20 days after adoption of the rule or
10 the rendering of the order. For the purposes of this section,
11 the term "party" means any affected person who submitted oral
12 or written testimony, sworn or unsworn, of a substantive
13 nature which stated with particularity objections to or
14 support for the rule or order that are cognizable within the
15 scope of the provisions and purposes of this chapter, ~~or any~~
16 ~~person who participated as a party in a proceeding instituted~~
17 ~~pursuant to chapter 120.~~ In order for the commission to
18 accept a request for review initiated by a party below, with
19 regard to a specific order, four members of the commission
20 must determine on the basis of the record below that the
21 activity authorized by the order would substantially affect
22 natural resources of statewide or regional significance.
23 Review of an order may also be accepted if four members of the
24 commission determine that the order raises issues of policy,
25 statutory interpretation, or rule interpretation that have
26 regional or statewide significance from the standpoint of
27 agency precedent. The party requesting the commission to
28 review an order must allege with particularity, and the
29 commission must find, that:

30 1. The order is in conflict with statutory
31 requirements; or

1 2. The order is in conflict with the requirements of a
2 duly adopted rule.

3 (b) Review by the Land and Water Adjudicatory
4 Commission is appellate in nature and shall be based solely on
5 the record below. If there was no evidentiary administrative
6 proceeding below, the facts contained in the proposed agency
7 action, including any technical staff report, shall be deemed
8 undisputed. The matter shall be heard by the commission not
9 more than 60 days after receipt of the request for review,
10 unless waived by the parties.

11 (c) If the Land and Water Adjudicatory Commission
12 determines that a rule of a water management district is not
13 consistent with the provisions and purposes of this chapter,
14 it may require the water management district to initiate
15 rulemaking proceedings to amend or repeal the rule. If the
16 commission determines that an order is not consistent with the
17 provisions and purposes of this chapter, the commission may
18 rescind or modify the order or remand the proceeding for
19 further action consistent with the order of the Land and Water
20 Adjudicatory Commission only if the commission determines that
21 the activity authorized by the order would substantially
22 affect natural resources of statewide or regional
23 significance. In the case of an order which does not itself
24 substantially affect natural resources of statewide or
25 regional significance, but which raises issues of policy that
26 have regional or statewide significance from the standpoint of
27 agency precedent, the commission may direct the district to
28 initiate rulemaking to amend its rules to assure that future
29 actions are consistent with the provisions and purposes of
30 this chapter without modifying the order.

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1 (d) In a review under this section of a construction
2 permit issued pursuant to a conceptual permit under part IV,
3 which conceptual permit is issued after July 1, 1993, a party
4 to the review may not raise an issue which was or could have
5 been raised in a review of the conceptual permit under this
6 section.

7 (e) A request for review under this section shall not
8 be a precondition to the seeking of judicial review pursuant
9 to s. 120.68 or the seeking of an administrative determination
10 of rule validity pursuant to s. 120.56.

11 (f) The Florida Land and Water Adjudicatory Commission
12 may adopt rules to set forth its procedures for reviewing an
13 order or rule of a water management district consistent with
14 the provisions of this section.

15 (g) For the purpose of this section, it shall be
16 presumed that activity authorized by an order will not affect
17 resources of statewide or regional significance if the
18 proposed activity:

- 19 1. Occupies an area less than 10 acres in size, and
- 20 2. Does not create impervious surfaces greater than 2
21 acres in size, and
- 22 3. Is not located within 550 feet of the shoreline of
23 a named body of water designated as Outstanding Florida
24 Waters, and
- 25 4. Does not adversely affect threatened or endangered
26 species.

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28 This paragraph shall not operate to hold that any activity
29 that exceeds these limits is presumed to affect resources of
30 statewide or regional significance. The determination of
31 whether an activity will substantially affect resources of

1 statewide or regional significance shall be made on a
2 case-by-case basis, based upon facts contained in the record
3 below.

4 Section 2. Subsections (2) and (5) of section 403.412,
5 Florida Statutes, are amended, and subsection (7) is added to
6 that section, to read:

7 403.412 Environmental Protection Act.--

8 (2)(a) The Department of Legal Affairs, any political
9 subdivision or municipality of the state, or a citizen of the
10 state may maintain an action for injunctive relief against:

11 1. Any governmental agency or authority charged by law
12 with the duty of enforcing laws, rules, and regulations for
13 the protection of the air, water, and other natural resources
14 of the state to compel such governmental authority to enforce
15 such laws, rules, and regulations;

16 2. Any person, natural or corporate, or governmental
17 agency or authority to enjoin such persons, agencies, or
18 authorities from violating any laws, rules, or regulations for
19 the protection of the air, water, and other natural resources
20 of the state.

21 (b) In any suit under paragraph (a), the Department of
22 Legal Affairs may intervene to represent the interests of the
23 state.

24 (c) As a condition precedent to the institution of an
25 action pursuant to paragraph (a), the complaining party shall
26 first file with the governmental agencies or authorities
27 charged by law with the duty of regulating or prohibiting the
28 act or conduct complained of a verified complaint setting
29 forth the facts upon which the complaint is based and the
30 manner in which the complaining party is affected. Upon
31 receipt of a complaint, the governmental agency or authority

1 shall forthwith transmit, by registered or certified mail, a
2 copy of such complaint to those parties charged with violating
3 the laws, rules, and regulations for the protection of the
4 air, water, and other natural resources of the state. The
5 agency receiving such complaint shall have 30 days after the
6 receipt thereof within which to take appropriate action. If
7 such action is not taken within the time prescribed, the
8 complaining party may institute the judicial proceedings
9 authorized in paragraph (a). However, failure to comply with
10 this subsection shall not bar an action for a temporary
11 restraining order to prevent immediate and irreparable harm
12 from the conduct or activity complained of.

13 (d) In any action instituted pursuant to paragraph
14 (a), the court, in the interest of justice, may add as party
15 defendant any governmental agency or authority charged with
16 the duty of enforcing the applicable laws, rules, and
17 regulations for the protection of the air, water, and other
18 natural resources of the state.

19 (e) No action pursuant to this section may be
20 maintained if the person (natural or corporate) or
21 governmental agency or authority charged with pollution,
22 impairment, or destruction of the air, water, or other natural
23 resources of the state is acting or conducting operations
24 pursuant to currently valid permit or certificate covering
25 such operations, issued by the appropriate governmental
26 authorities or agencies, and is complying with the
27 requirements of said permits or certificates.

28 ~~(f) In any action instituted pursuant to this section,~~
29 ~~other than an action involving a state NPDES permit authorized~~
30 ~~under s. 403.0885, the prevailing party or parties shall be~~
31 ~~entitled to costs and attorney's fees. Any award of attorney's~~

1 ~~fees in an action involving such a state NPDES permit shall be~~
2 ~~discretionary with the court. If the court has reasonable~~
3 ~~ground to doubt the solvency of the plaintiff or the~~
4 ~~plaintiff's ability to pay any cost or judgment which might be~~
5 ~~rendered against him or her in an action brought under this~~
6 ~~section, the court may order the plaintiff to post a good and~~
7 ~~sufficient surety bond or cash.~~

8 (5) In any administrative, licensing, or other
9 proceedings authorized by law for the protection of the air,
10 water, or other natural resources of the state from pollution,
11 impairment, or destruction, the Department of Legal Affairs, a
12 political subdivision or municipality of the state, or a
13 citizen of the state shall have standing to intervene as a
14 party on the filing of a verified pleading asserting that the
15 activity, conduct, or product to be licensed or permitted has
16 or will have the effect of impairing, polluting, or otherwise
17 injuring the air, water, or other natural resources of the
18 state. As used in this section, the term "intervene" means to
19 join an ongoing proceeding; this section does not authorize a
20 citizen to institute, initiate, petition for, or request a
21 proceeding under s. 120.569 or s. 120.57.

22 (7) In any administrative or judicial action
23 instituted under this section, other than an action involving
24 a state NPDES permit authorized under s. 403.0885, the
25 prevailing party or parties are entitled to costs and
26 attorney's fees. Any award of attorney's fees in an action
27 involving such a state NPDES permit is in the discretion of
28 the tribunal. If the tribunal has reasonable grounds to doubt
29 the solvency of the plaintiff or petitioner or the plaintiff's
30 or petitioner's ability to pay any costs or judgment that
31 might be rendered against him or her in any action brought

1 under this section, the tribunal may order the plaintiff or
2 petitioner to post a good and sufficient surety bond or cash.

3 Section 3. This act shall take effect July 1, 2002.

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6 SENATE SUMMARY

7 Provides that a water management district order resulting
8 from an evidentiary hearing held under s. 120.569, F.S.,
9 or s. 120.57, F.S., is not subject to review by the Land
10 and Water Adjudicatory Commission, nor is a rule adopted
11 after issuance of an order resulting from an evidentiary
12 hearing held under s. 120.56, F.S., subject to such
13 review. Revises requirements for initiating specified
14 proceedings under s. 403.412, F.S., the "Environmental
15 Protection Act of 1971."
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