

By the Committee on Natural Resources; and Senator King

312-2258A-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. Subsection (5) of section 403.412, Florida  
5 Statutes, is amended to read:

6 403.412 Environmental Protection Act.--

7 (5) In any administrative, licensing, or other  
8 proceedings authorized by law for the protection of the air,  
9 water, or other natural resources of the state from pollution,  
10 impairment, or destruction, the Department of Legal Affairs, a  
11 political subdivision or municipality of the state, or a  
12 citizen of the state shall have standing to intervene as a  
13 party on the filing of a verified pleading asserting that the  
14 activity, conduct, or product to be licensed or permitted has  
15 or will have the effect of impairing, polluting, or otherwise  
16 injuring the air, water, or other natural resources of the  
17 state. As used in this section and as it relates to citizens,  
18 the term "intervene" means to join an ongoing proceeding; this  
19 section does not authorize a citizen to institute, initiate,  
20 petition for, or request a proceeding under s. 120.569 or s.  
21 120.57. Nothing in this subsection limits or prohibits a  
22 citizen whose substantial interests will be determined or  
23 affected by a proposed agency action from initiating a formal  
24 administrative proceeding under s. 120.569 or s. 120.57, or  
25 from initiating an administrative proceeding if the citizen  
26 meets the standing requirements for judicial review of a case  
27 or controversy pursuant to Article III of the United States  
28 Constitution in a matter pertaining to a federally delegated  
29 or approved program. For purposes of this subsection, a  
30 citizen's substantial interests will be considered to be  
31 determined or affected if the party demonstrates that it may

1 suffer an injury in fact which is of sufficient immediacy and  
2 is of the type and nature intended to be protected by this  
3 chapter. A sufficient demonstration of a substantial interest  
4 may be made by a petitioner that establishes that the proposed  
5 activity, conduct, or product to be licensed or permitted  
6 affects the petitioner's use or enjoyment of air, water, or  
7 natural resources protected by this chapter. Any nonprofit  
8 corporation or association that has at least 25 current  
9 members residing within the county where the activity is  
10 proposed and that was formed for the purpose of the protection  
11 of the environment, fish and wildlife resources, and  
12 protection of air and water quality may initiate a hearing  
13 pursuant to s. 120.569 or s. 120.57, provided that the  
14 nonprofit corporation or association was formed at least 1  
15 year prior to the date of the filing of the application for a  
16 permit, license, or authorization that is the subject of the  
17 notice of proposed agency action. Existence of the required  
18 number of members of the organization may be established  
19 through the submission of an affidavit, current membership  
20 list, or corporate or organizational business records,  
21 including the names and addresses of the 25 current members.  
22 No demonstration of special injury different in kind from the  
23 general public is required.

24           Section 3. This act shall take effect upon becoming a  
25 law.

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1                   STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
2                   COMMITTEE SUBSTITUTE FOR  
3                   Senate Bill 270

4     The committee substitute (CS) does not restrict the Department  
5     of Legal Affairs, a political subdivision, or municipality  
6     from initiating a proceeding under s. 120.569, F.S., or s.  
7     120.57, F.S.; the restriction to intervention only applies to  
8     citizens.

9     The CS now provides that s. 403.412(5), F.S., does not limit  
10    or prohibit a citizen whose substantial interests will be  
11    determined or affected by a proposed agency action from  
12    initiating a formal administrative proceeding under s.  
13    120.569, F.S., or s. 120.57, F.S., or from initiating an  
14    administrative proceeding if the citizen meets the standing  
15    requirements for judicial review of a case or controversy  
16    pursuant to Article III of the United States Constitution in a  
17    matter pertaining to a federally delegated or approved  
18    program. For purposes of subsection (5), a citizen's  
19    substantial interests will be considered to be determined or  
20    affected if the party demonstrates that it may suffer an  
21    injury in fact which is of sufficient immediacy and is of the  
22    type and nature intended to be protected by ch. 403, F.S. A  
23    sufficient demonstration of a substantial interest may be made  
24    by a petitioner that establishes that the proposed activity,  
25    conduct, or product to be licensed or permitted affects the  
26    petitioner's use or enjoyment of air, water, or natural  
27    resources protected by ch. 403, F.S.

28    In addition, the CS permits any nonprofit corporation or  
29    association that has at least 25 current members residing  
30    within the county where an activity is proposed and that was  
31    formed for the purpose of the protection of the environment,  
32    fish and wildlife resources, and protection of air and water  
33    quality to initiate a hearing pursuant to s. 120.569, F.S., or  
34    s. 120.57, F.S., provided that the nonprofit corporation or  
35    association was formed at least one year prior to the date of  
36    the filing of the application for a permit, license, or  
37    authorization that is the subject of the notice of proposed  
38    agency action. Existence of the required number of members of  
39    the organization may be established through the submission of  
40    an affidavit, current membership list, or corporate or  
41    organizational business records, including the names and  
42    addresses of the 25 current members. No demonstration of  
43    special injury different in kind from the general public is  
44    required.

45    Subsection (7), authorizing the award of attorneys fees and  
46    costs in administrative actions, has been deleted.

47    The effective date has been changed to upon becoming law.