

By Senator Pruitt

27-325-02

See HB

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. 120.54, F.S.; revising the Uniform

7           Rules of Procedure; amending s. 120.569, F.S.;

8           revising requirements for pleadings, motions,

9           and other papers filed under the Administrative

10          Procedure Act; amending s. 120.57, F.S.;

11          revising provisions relating to motions to

12          relinquish jurisdiction; amending s. 120.595,

13          F.S.; redefining the term "improper purpose"

14          for determining an award of attorney's fees;

15          amending s. 120.60, F.S.; revising provisions

16          relating to applications for licenses;

17          providing an effective date.

18

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

20

21           Section 1. Paragraph (d) of subsection (4) of section

22 57.111, Florida Statutes, is amended to read:

23           57.111 Civil actions and administrative proceedings

24 initiated by state agencies; attorneys' fees and costs.--

25           (4)

26           (d) The court, or the administrative law judge in the

27 case of a proceeding under chapter 120, shall promptly conduct

28 an evidentiary hearing on the application for an award of

29 attorney's fees and shall issue a judgment, or a final order

30 in the case of an administrative law judge. The final order

31 of an administrative law judge is reviewable in accordance

1 with the provisions of s. 120.68. If the court affirms the  
2 award of attorney's fees and costs in whole or in part, it  
3 may, in its discretion, award additional attorney's fees and  
4 costs for the appeal.

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

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

9 Section 2. Paragraph (b) of subsection (5) of section  
10 120.54, Florida Statutes, is amended to read:

11 120.54 Rulemaking.--

12 (5) UNIFORM RULES.--

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

16 1. Uniform rules for the scheduling of public  
17 meetings, hearings, and workshops.

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

1 media technology facilities will be available. Nothing in this  
2 paragraph shall be construed to diminish the right to inspect  
3 public records under chapter 119. Limiting points of access to  
4 public meetings, hearings, and workshops subject to the  
5 provisions of s. 286.011 to places not normally open to the  
6 public shall be presumed to violate the right of access of the  
7 public, and any official action taken under such circumstances  
8 is void and of no effect. Other laws relating to public  
9 meetings, hearings, and workshops, including penal and  
10 remedial provisions, shall apply to public meetings, hearings,  
11 and workshops conducted by means of communications media  
12 technology, and shall be liberally construed in their  
13 application to such public meetings, hearings, and workshops.

14 As used in this subparagraph, "communications media  
15 technology" means the electronic transmission of printed  
16 matter, audio, full-motion video, freeze-frame video,  
17 compressed video, and digital video by any method available.

18 3. Uniform rules of procedure for the filing of notice  
19 of protests and formal written protests.

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

- 24 a. The identification of the petitioner.  
25 b. ~~A statement of~~ When and how the petitioner received  
26 notice of the agency's action or proposed action.  
27 c. ~~An explanation of~~ How the petitioner's substantial  
28 interests are or will be affected by the action or proposed  
29 action.  
30 d. ~~A statement of~~ All material facts disputed by the  
31 petitioner or a statement that there are no disputed facts.

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

5           f. ~~A statement of~~ The specific rules or statutes,  
6 including a reference to the specific section, subsection,  
7 paragraph, or subparagraph, as appropriate, which the  
8 petitioner contends require reversal or modification of the  
9 agency's proposed action.

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

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

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

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

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

24           120.569 Decisions which affect substantial  
25 interests.--

26           (2)

27           (e)1. Every pleading, written motion, and other paper  
28 filed in a proceeding must be signed by at least one attorney  
29 or qualified representative of record in the attorney's or  
30 qualified representative's individual name, or, if the party  
31 is not represented by an attorney or qualified representative,

1 the pleading, written motion, or other paper must be signed by  
2 the party. An unsigned paper shall be stricken unless omission  
3 of the signature is corrected promptly after being called to  
4 the attention of the attorney, qualified representative, or  
5 party.

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

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

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

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

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

28 3. If, after notice and reasonable opportunity to  
29 respond, the presiding officer determines that subparagraph 2.  
30 has been violated, the presiding officer may impose an  
31 appropriate sanction against the person who signed it, the

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

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

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

27 Section 4. Paragraph (i) of subsection (1) of section  
28 120.57, Florida Statutes, is amended to read:

29 120.57 Additional procedures for particular cases.--

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

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

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

22           120.595 Attorney's fees.--

23           (1) CHALLENGES TO AGENCY ACTION PURSUANT TO SECTION  
24 120.57(1).--

25           (c) In proceedings pursuant to s. 120.57(1), and upon  
26 motion, the administrative law judge shall determine whether  
27 any party participated in the proceeding for an improper  
28 purpose as defined by this subsection ~~and s. 120.569(2)(e)~~. In  
29 making such determination, the administrative law judge shall  
30 consider whether the nonprevailing adverse party has  
31 participated in two or more other such proceedings involving



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

10 (e) For the purpose of this subsection:

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

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

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

31

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

3           120.60 Licensing.--

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

1           Section 7. This act shall take effect upon becoming a  
2 law.

3  
4           \*\*\*\*\*

5                               LEGISLATIVE SUMMARY

- 6       Revises provisions of law governing administrative  
7       procedures to:
- 8       1. Increase the limitation on an award of  
9       attorney's fees and costs in an action initiated by a  
10      state agency to \$50,000.
  - 11      2. Revise the Uniform Rules of Procedure.
  - 12      3. Revise requirements for pleadings, motions, and  
13      other papers filed under the Administrative Procedure  
14      Act.
  - 15      4. Revise provisions relating to motions to  
16      relinquish jurisdiction.
  - 17      5. Redefine the term "improper purpose" for  
18      determining an award of attorney's fees.
  - 19      6. Revise provisions relating to applications for  
20      licenses.

21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31