

By the Committee on Governmental Oversight and Productivity;
and Senator Pruitt

302-2250-02

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; providing for sanctions for

11 noncompliance with those requirements;

12 requiring administrative law judge to enter

13 scheduling orders under specified

14 circumstances; amending s. 120.57, F.S.;

15 revising provisions relating to motions to

16 relinquish jurisdiction; prohibiting agencies

17 from granting exceptions to a recommended order

18 under specified circumstances; amending s.

19 120.595, F.S.; redefining the term "improper

20 purpose" for determining an award of attorney's

21 fees; specifying grounds for the award of

22 attorney's fees and costs of an appeal;

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

24 relating to applications for licenses; amending

25 s. 120.68, F.S.; prescribing exceptions to the

26 prohibition against petitions challenging rules

27 as an invalid exercise of delegated legislative

28 authority; providing legislative intent;

29 providing an effective date.

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

1 Section 1. Paragraph (d) of subsection (4) of section
2 57.111, Florida Statutes, is amended to read:

3 57.111 Civil actions and administrative proceedings
4 initiated by state agencies; attorneys' fees and costs.--

5 (4)

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

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

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

20 Section 2. Paragraph (b) of subsection (5) of section
21 120.54, Florida Statutes, is amended to read:

22 120.54 Rulemaking.--

23 (5) UNIFORM RULES.--

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

27 1. Uniform rules for the scheduling of public
28 meetings, hearings, and workshops.

29 2. Uniform rules for use by each state agency that
30 provide procedures for conducting public meetings, hearings,
31 and workshops, and for taking evidence, testimony, and

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

29 3. Uniform rules of procedure for the filing of notice
30 of protests and formal written protests.

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1 4. Uniform rules of procedure for the filing of
2 petitions for administrative hearings pursuant to s. 120.569
3 or s. 120.57. Such rules shall include:

4 a. The identification of the petitioner.

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

7 c. ~~An explanation of~~ How the petitioner's substantial
8 interests are or will be affected by the action or proposed
9 action.

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

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

16 f. ~~A statement of~~ The specific rules or statutes that
17 the petitioner contends require reversal or modification of
18 the agency's proposed action and a statement explaining how
19 the alleged facts relate to the specific rules or statutes.

20 g. ~~A statement of~~ The relief sought by the petitioner,
21 stating precisely the action petitioner wishes the agency to
22 take with respect to the proposed action.

23 5. Uniform rules of procedure for the filing and
24 prompt disposition of petitions for declaratory statements.

25 6. Provision of a method by which each agency head
26 shall provide a description of the agency's organization and
27 general course of its operations.

28 7. Uniform rules establishing procedures for granting
29 or denying petitions for variances and waivers pursuant to s.
30 120.542.

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

4 120.569 Decisions which affect substantial
5 interests.--

6 (2)

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

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

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

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

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

7 d. The denials of factual contentions are warranted on
8 the evidence or, if specifically identified, are reasonably
9 based on lack of information or belief.

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11 Nothing in this subparagraph shall be construed to prohibit
12 the amendment of a petition during or after discovery.

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

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

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

25 c. Monetary sanctions imposed shall be limited to what
26 is sufficient to deter repetition of such conduct or
27 comparable conduct by others similarly situated.

28 d. An agency may indemnify its attorney for sanctions
29 imposed on the attorney if the conduct giving rise to the
30 sanction was taken within the scope of employment and the
31 indemnification is in the interest of the agency.

1 e. This paragraph does not authorize the award of
2 sanctions for the submission of written comments or objections
3 during an authorized period for public comment or at a public
4 meeting, including, but not limited to, submissions of
5 comments or objections regarding draft permits.

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

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

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

3 Section 4. Paragraphs (i) and (k) of subsection (1) of
4 section 120.57, Florida Statutes, are amended to read:

5 120.57 Additional procedures for particular cases.--

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

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

27 (k) The presiding officer shall complete and submit to
28 the agency and all parties a recommended order consisting of
29 findings of fact, conclusions of law, and recommended
30 disposition or penalty, if applicable, and any other
31 information required by law to be contained in the final

1 order. All proceedings conducted pursuant to this subsection
2 shall be de novo. The agency shall allow each party 15 days in
3 which to submit written exceptions to the recommended order.
4 An agency shall not grant an exception that does not clearly
5 identify the disputed portion of the recommended order by page
6 number and paragraph, does not identify the legal basis for
7 the exception, or does not include appropriate and specific
8 citations to the record.

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

12 120.595 Attorney's fees.--

13 (1) CHALLENGES TO AGENCY ACTION PURSUANT TO SECTION
14 120.57(1).--

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

31 (e) For the purpose of this subsection:

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

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

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

21 (5) APPEALS.--When there is an appeal, the court in
22 its discretion may award reasonable attorney's fees and
23 reasonable costs to the prevailing party if the court finds
24 that the appeal was frivolous, meritless, or an abuse of the
25 appellate process, or that the agency action which
26 precipitated the appeal was a gross abuse of the agency's
27 discretion. Upon review of agency action that precipitates an
28 appeal, if the court finds that the agency improperly rejected
29 or modified findings of fact in a recommended order, the court
30 shall award reasonable attorney's fees and reasonable costs to
31 a prevailing appellant for the administrative proceeding and

1 the appellate proceeding. If the court finds that the agency
2 improperly rejected or modified a conclusion of law or an
3 interpretation of an administrative rule over which it does
4 not have substantive jurisdiction, the court may award
5 reasonable attorney's fees and reasonable costs of the appeal
6 to the prevailing appellant.

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

9 120.60 Licensing.--

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

1 considered approved unless the recommended order recommends
2 that the agency deny the license. Subject to the satisfactory
3 completion of an examination if required as a prerequisite to
4 licensure, any license that is considered approved shall be
5 issued and may include such reasonable conditions as are
6 authorized by law later. ~~The agency must approve any~~
7 ~~application for a license or for an examination required for~~
8 ~~licensure if the agency has not approved or denied the~~
9 ~~application within the time periods prescribed by this~~
10 ~~subsection.~~

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

13 120.68 Judicial review.--

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

23 Section 8. It is the intent of the Legislature that
24 this act shall not affect the outcome of litigation styled
25 Pinecrest Lakes, Inc. v. Shidel, 795 So. 2d 191 (Fla. 4th DCA
26 2001).

27 Section 9. This act shall take effect upon becoming a
28 law.

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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
SB 280

Deletes bill's requirement that rules require petition to state certain things "with particularity." Requires that petition include a statement of how the alleged facts relate to the rules or statutes cited as requiring reversal or modification. Provides that monetary sanctions shall be limited to that necessary to deter repetition. Provides that an agency may indemnify an attorney against sanctions. Requires a motion for sanctions to initially be served on the opposing party. Requires that party be given an opportunity to cure the alleged violation. Provides that an agency may not grant exceptions in specified circumstances. Permits attorney's fee awards when agencies improperly reject or modify law or rules not within their jurisdiction. Reiterates that judicial review is available for certain agency findings pertaining to emergency rule making. Provides a statement of legislative intent.