

Bill No. HB 813, 2nd Eng.

Amendment No. Barcode 923276

<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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Senator King moved the following amendment:

Senate Amendment (with title amendment)

On page 12, between lines 16 and 17,

insert:

Section 9. Subsection (1) of section 373.114, Florida Statutes, is amended to read:

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

(1) Except as provided in subsection (2), the Governor and Cabinet, sitting as the Land and Water Adjudicatory Commission, have the exclusive authority to review any order or rule of a water management district, other than a rule relating to an internal procedure of the district or a final order resulting from an evidentiary hearing held under s. 120.569 or s. 120.57 or a rule that has been adopted after issuance of a final order resulting from an evidentiary hearing held under s. 120.56, to ensure consistency with the provisions and purposes of this chapter. Subsequent to the

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1 legislative ratification of the delineation methodology
2 pursuant to s. 373.421(1), this subsection also shall apply to
3 an order of the department, or a local government exercising
4 delegated authority, pursuant to ss. 373.403-373.443, except
5 an order pertaining to activities or operations subject to
6 conceptual plan approval pursuant to chapter 378 or a final
7 order resulting from an evidentiary hearing held under s.
8 120.569 or s. 120.57.

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

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1 the commission to review an order must allege with
2 particularity, and the commission must find, that:
3 1. The order is in conflict with statutory
4 requirements; or
5 2. The order is in conflict with the requirements of a
6 duly adopted rule.
7 (b) Review by the Land and Water Adjudicatory
8 Commission is appellate in nature and shall be based solely on
9 the record below unless the commission determines that a
10 remand for a formal evidentiary proceeding is necessary to
11 develop additional findings of fact. If there is ~~was~~ no
12 evidentiary administrative proceeding resulting from a remand
13 or referral for findings of fact by the commission, then
14 below, the facts contained in the proposed agency action or
15 proposed water management district action, including any
16 technical staff report, shall be deemed undisputed. The
17 matter shall be heard by the commission not more than 60 days
18 after receipt of the request for review, unless waived by the
19 parties; provided, however, such time limit shall be tolled by
20 a referral or remand pursuant to this paragraph. The
21 commission may refer a request for review to the Division of
22 Administrative Hearings for the production of findings of
23 fact, limited to those needed to render the decision
24 requested, to supplement the record, if a majority of the
25 commission determines that supplementary findings of fact are
26 essential to determine the consistency of a rule or order with
27 the provisions and purposes of this chapter. Alternatively,
28 the commission may remand the matter to the agency below for
29 additional findings of fact, limited to those needed to render
30 the decision requested, to supplement the record, if a
31 majority of the commission determines that supplementary

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1 findings of fact are essential to determine the consistency of
2 a rule or order with the provisions and purposes of this
3 chapter. Such proceedings must be conducted and the findings
4 transmitted to the commission within 90 days of the remand or
5 referral.

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

26 (d) In a review under this section of a construction
27 permit issued pursuant to a conceptual permit under part IV,
28 which conceptual permit is issued after July 1, 1993, a party
29 to the review may not raise an issue which was or could have
30 been raised in a review of the conceptual permit under this
31 section.

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1 (e) A request for review under this section shall not
2 be a precondition to the seeking of judicial review pursuant
3 to s. 120.68 or the seeking of an administrative determination
4 of rule validity pursuant to s. 120.56.

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

9 (g) For the purpose of this section, it shall be
10 presumed that activity authorized by an order will not affect
11 resources of statewide or regional significance if the
12 proposed activity:

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

21
22 This paragraph shall not operate to hold that any activity
23 that exceeds these limits is presumed to affect resources of
24 statewide or regional significance. The determination of
25 whether an activity will substantially affect resources of
26 statewide or regional significance shall be made on a
27 case-by-case basis, based upon facts contained in the record
28 below.

29 Section 10. Subsection (5) of section 403.412, Florida
30 Statutes, is amended, present subsection (6) is renumbered as
31 subsection (8), and new subsections (6) and (7) are added to

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1 said section to read:

2 403.412 Environmental Protection Act.--

3 (5) In any administrative, licensing, or other
4 proceedings authorized by law for the protection of the air,
5 water, or other natural resources of the state from pollution,
6 impairment, or destruction, the Department of Legal Affairs, a
7 political subdivision or municipality of the state, or a
8 citizen of the state shall have standing to intervene as a
9 party on the filing of a verified pleading asserting that the
10 activity, conduct, or product to be licensed or permitted has
11 or will have the effect of impairing, polluting, or otherwise
12 injuring the air, water, or other natural resources of the
13 state. As used in this section and as it relates to citizens,
14 the term "intervene" means to join an ongoing s. 120.569 or s.
15 120.57 proceeding; this section does not authorize a citizen
16 to institute, initiate, petition for, or request a proceeding
17 under s. 120.569 or s. 120.57. Nothing herein limits or
18 prohibits a citizen whose substantial interests will be
19 determined or affected by a proposed agency action from
20 initiating a formal administrative proceeding under s. 120.569
21 or s. 120.57. A citizen's substantial interests will be
22 considered to be determined or affected if the party
23 demonstrates it may suffer an injury in fact which is of
24 sufficient immediacy and is of the type and nature intended to
25 be protected by this chapter. No demonstration of special
26 injury different in kind from the general public at large is
27 required. A sufficient demonstration of a substantial interest
28 may be made by a petitioner who establishes that the proposed
29 activity, conduct, or product to be licensed or permitted
30 affects the petitioner's use or enjoyment of air, water, or
31 natural resources protected by this chapter.

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1 (6) Any Florida corporation not for profit which has
2 at least 25 current members residing within the county where
3 the activity is proposed, and which was formed for the purpose
4 of the protection of the environment, fish and wildlife
5 resources, and protection of air and water quality, may
6 initiate a hearing pursuant to s. 120.569 or s. 120.57,
7 provided that the Florida corporation not for profit was
8 formed at least one year prior to the date of the filing of
9 the application for a permit, license, or authorization that
10 is the subject of the notice of proposed agency action.

11 (7) In a matter pertaining to a federally delegated or
12 approved program, a citizen of the state may initiate an
13 administrative proceeding under this subsection if the citizen
14 meets the standing requirements for judicial review of a case
15 or controversy pursuant to Article III of the United States
16 Constitution.

17
18 (Redesignate subsequent sections.)

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21 ===== T I T L E A M E N D M E N T =====

22 And the title is amended as follows:

23 On page 1, line 31, after the semicolon,
24
25 insert:
26 amending s. 373.114, F.S.; providing that
27 certain water management district orders and
28 rules are not subject to specified review;
29 amending s. 403.412, F.S., the "Environmental
30 Protection Act of 1971"; revising requirements
31 for initiating specified proceedings under that

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