

Amendment No. \_\_\_\_ (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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ORIGINAL STAMP BELOW

11 Representative(s) Cantens offered the following:

13 **Amendment**

14 On page 1, line 13 thru page 8 line 26  
15 remove: all of said lines

17 and insert:

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

20 373.114 Land and Water Adjudicatory Commission; review  
21 of district rules and orders; department review of district  
22 rules.--

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

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

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

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

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

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

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

31 (e) A request for review under this section shall not

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1 be a precondition to the seeking of judicial review pursuant  
2 to s. 120.68 or the seeking of an administrative determination  
3 of rule validity pursuant to s. 120.56.

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

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

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

20  
21 This paragraph shall not operate to hold that any activity  
22 that exceeds these limits is presumed to affect resources of  
23 statewide or regional significance. The determination of  
24 whether an activity will substantially affect resources of  
25 statewide or regional significance shall be made on a  
26 case-by-case basis, based upon facts contained in the record  
27 below.

28 Section 2. Subsection (5) of section 403.412, Florida  
29 Statutes, is amended, present subsection (6) is renumbered as  
30 subsection (7), and a new subsection (6) is added to said  
31 section to read:

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1           403.412 Environmental Protection Act.--  
2           (5) In any administrative, licensing, or other  
3 proceedings authorized by law for the protection of the air,  
4 water, or other natural resources of the state from pollution,  
5 impairment, or destruction, the Department of Legal Affairs, a  
6 political subdivision or municipality of the state, or a  
7 citizen of the state shall have standing to intervene as a  
8 party on the filing of a verified pleading asserting that the  
9 activity, conduct, or product to be licensed or permitted has  
10 or will have the effect of impairing, polluting, or otherwise  
11 injuring the air, water, or other natural resources of the  
12 state. As used in this section and as it relates to citizens,  
13 the term "intervene" means to join an ongoing s. 120.569 or s.  
14 120.57 proceeding; this section does not authorize a citizen  
15 to institute, initiate, petition for, or request a proceeding  
16 under s. 120.569 or s. 120.57. Nothing herein limits or  
17 prohibits a citizen whose substantial interests will be  
18 determined or affected by a proposed agency action from  
19 initiating a formal administrative proceeding under s. 120.569  
20 or s. 120.57, and nothing herein limits or prohibits a citizen  
21 from initiating an administrative proceeding under this  
22 subsection if the citizen meets the standing requirements for  
23 judicial review of a case or controversy pursuant to Article  
24 III of the United States Constitution in a matter pertaining  
25 to a federally delegated or approved program. For purposes of  
26 this section, a citizen's substantial interests will be  
27 considered to be determined or affected if the party  
28 demonstrates it may suffer an injury in fact which is of  
29 sufficient immediacy and is of the type and nature intended to  
30 be protected by this chapter. No demonstration of special  
31 injury different in kind from the general public at large is

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1 required. A sufficient demonstration of a substantial interest  
2 may be made by a petitioner who establishes that the proposed  
3 activity, conduct, or product to be licensed or permitted  
4 affects the petitioner's use or enjoyment of air, water, or  
5 natural resources protected by this chapter.

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

16 Section 3. This act shall take effect upon becoming a  
17 law.

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