

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 **Substitute Amendment for Amendment (443087)**

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 final
28 order resulting from an evidentiary hearing held under s.
29 120.569 or s. 120.57 or a rule that has been adopted after
30 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 final
8 order resulting from an evidentiary hearing held under s.
9 120.569 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; provided, however, such time limit shall be tolled by
21 a referral or remand pursuant to this paragraph. The
22 commission may refer a request for review to the Division of
23 Administrative Hearings for the production of findings of
24 fact, limited to those needed to render the decision
25 requested, to supplement the record, if a majority of the
26 commission determines that supplementary findings of fact are
27 essential to determine the consistency of a rule or order with
28 the provisions and purposes of this chapter. Alternatively,
29 the commission may remand the matter to the agency below for
30 additional findings of fact, limited to those needed to render
31 the decision requested, to supplement the record, if a

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

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

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

1 section.

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

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

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

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

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

30 Section 2. Subsection (5) of section 403.412, Florida
31 Statutes, is amended, present subsection (6) is renumbered as

1 subsection (8), and new subsections (6) and (7) are added to
2 said section to read:

3 403.412 Environmental Protection Act.--

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

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1 natural resources protected by this chapter.

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

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

18 Section 3. This act shall take effect upon becoming a
19 law.

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