

By the Council for Competitive Commerce and
Representatives Cantens and Allen

1 A bill to be entitled
2 An act relating to environmental protection;
3 amending s. 373.114, F.S.; providing that
4 certain water management district orders and
5 rules are not subject to specified review;
6 amending s. 403.412, F.S., the "Environmental
7 Protection Act of 1971"; revising requirements
8 for initiating specified proceedings under that
9 act; clarifying provisions relating to award of
10 attorney's fees and requirements that a
11 plaintiff post bond under certain
12 circumstances; providing an effective date.

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

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

18 373.114 Land and Water Adjudicatory Commission; review
19 of district rules and orders; department review of district
20 rules.--

21 (1) Except as provided in subsection (2), the Governor
22 and Cabinet, sitting as the Land and Water Adjudicatory
23 Commission, have the exclusive authority to review any order
24 or rule of a water management district, other than a rule
25 relating to an internal procedure of the district or an order
26 resulting from an evidentiary hearing held under s. 120.569 or
27 s. 120.57 or a rule that has been adopted after issuance of an
28 order resulting from an evidentiary hearing held under s.
29 120.56, to ensure consistency with the provisions and purposes
30 of this chapter. Subsequent to the legislative ratification of
31 the delineation methodology pursuant to s. 373.421(1), this

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

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

1 1. The order is in conflict with statutory
2 requirements; or

3 2. The order is in conflict with the requirements of a
4 duly adopted rule.

5 (b) Review by the Land and Water Adjudicatory
6 Commission is appellate in nature and shall be based solely on
7 the record below. If there was no evidentiary administrative
8 proceeding below, the facts contained in the proposed agency
9 action or proposed water management district action, including
10 any technical staff report, shall be deemed undisputed. The
11 matter shall be heard by the commission not more than 60 days
12 after receipt of the request for review, unless waived by the
13 parties.

14 (c) If the Land and Water Adjudicatory Commission
15 determines that a rule of a water management district is not
16 consistent with the provisions and purposes of this chapter,
17 it may require the water management district to initiate
18 rulemaking proceedings to amend or repeal the rule. If the
19 commission determines that an order is not consistent with the
20 provisions and purposes of this chapter, the commission may
21 rescind or modify the order or remand the proceeding for
22 further action consistent with the order of the Land and Water
23 Adjudicatory Commission only if the commission determines that
24 the activity authorized by the order would substantially
25 affect natural resources of statewide or regional
26 significance. In the case of an order which does not itself
27 substantially affect natural resources of statewide or
28 regional significance, but which raises issues of policy that
29 have regional or statewide significance from the standpoint of
30 agency precedent, the commission may direct the district to
31 initiate rulemaking to amend its rules to assure that future

1 actions are consistent with the provisions and purposes of
2 this chapter without modifying the order.

3 (d) In a review under this section of a construction
4 permit issued pursuant to a conceptual permit under part IV,
5 which conceptual permit is issued after July 1, 1993, a party
6 to the review may not raise an issue which was or could have
7 been raised in a review of the conceptual permit under this
8 section.

9 (e) A request for review under this section shall not
10 be a precondition to the seeking of judicial review pursuant
11 to s. 120.68 or the seeking of an administrative determination
12 of rule validity pursuant to s. 120.56.

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

17 (g) For the purpose of this section, it shall be
18 presumed that activity authorized by an order will not affect
19 resources of statewide or regional significance if the
20 proposed activity:

- 21 1. Occupies an area less than 10 acres in size, and
- 22 2. Does not create impervious surfaces greater than 2
23 acres in size, and
- 24 3. Is not located within 550 feet of the shoreline of
25 a named body of water designated as Outstanding Florida
26 Waters, and
- 27 4. Does not adversely affect threatened or endangered
28 species.

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30 This paragraph shall not operate to hold that any activity
31 that exceeds these limits is presumed to affect resources of

1 statewide or regional significance. The determination of
2 whether an activity will substantially affect resources of
3 statewide or regional significance shall be made on a
4 case-by-case basis, based upon facts contained in the record
5 below.

6 Section 2. Subsections (2) and (5) of section 403.412,
7 Florida Statutes, are amended, and subsection (7) is added to
8 said section, to read:

9 403.412 Environmental Protection Act.--

10 (2)(a) The Department of Legal Affairs, any political
11 subdivision or municipality of the state, or a citizen of the
12 state may maintain an action for injunctive relief against:

13 1. Any governmental agency or authority charged by law
14 with the duty of enforcing laws, rules, and regulations for
15 the protection of the air, water, and other natural resources
16 of the state to compel such governmental authority to enforce
17 such laws, rules, and regulations;

18 2. Any person, natural or corporate, or governmental
19 agency or authority to enjoin such persons, agencies, or
20 authorities from violating any laws, rules, or regulations for
21 the protection of the air, water, and other natural resources
22 of the state.

23 (b) In any suit under paragraph (a), the Department of
24 Legal Affairs may intervene to represent the interests of the
25 state.

26 (c) As a condition precedent to the institution of an
27 action pursuant to paragraph (a), the complaining party shall
28 first file with the governmental agencies or authorities
29 charged by law with the duty of regulating or prohibiting the
30 act or conduct complained of a verified complaint setting
31 forth the facts upon which the complaint is based and the

1 manner in which the complaining party is affected. Upon
2 receipt of a complaint, the governmental agency or authority
3 shall forthwith transmit, by registered or certified mail, a
4 copy of such complaint to those parties charged with violating
5 the laws, rules, and regulations for the protection of the
6 air, water, and other natural resources of the state. The
7 agency receiving such complaint shall have 30 days after the
8 receipt thereof within which to take appropriate action. If
9 such action is not taken within the time prescribed, the
10 complaining party may institute the judicial proceedings
11 authorized in paragraph (a). However, failure to comply with
12 this subsection shall not bar an action for a temporary
13 restraining order to prevent immediate and irreparable harm
14 from the conduct or activity complained of.

15 (d) In any action instituted pursuant to paragraph
16 (a), the court, in the interest of justice, may add as party
17 defendant any governmental agency or authority charged with
18 the duty of enforcing the applicable laws, rules, and
19 regulations for the protection of the air, water, and other
20 natural resources of the state.

21 (e) No action pursuant to this section may be
22 maintained if the person (natural or corporate) or
23 governmental agency or authority charged with pollution,
24 impairment, or destruction of the air, water, or other natural
25 resources of the state is acting or conducting operations
26 pursuant to currently valid permit or certificate covering
27 such operations, issued by the appropriate governmental
28 authorities or agencies, and is complying with the
29 requirements of said permits or certificates.

30 ~~(f) In any action instituted pursuant to this section,~~
31 ~~other than an action involving a state NPDES permit authorized~~

1 ~~under s. 403.0885, the prevailing party or parties shall be~~
2 ~~entitled to costs and attorney's fees. Any award of attorney's~~
3 ~~fees in an action involving such a state NPDES permit shall be~~
4 ~~discretionary with the court. If the court has reasonable~~
5 ~~ground to doubt the solvency of the plaintiff or the~~
6 ~~plaintiff's ability to pay any cost or judgment which might be~~
7 ~~rendered against him or her in an action brought under this~~
8 ~~section, the court may order the plaintiff to post a good and~~
9 ~~sufficient surety bond or cash.~~

10 (5) In any administrative, licensing, or other
11 proceedings authorized by law for the protection of the air,
12 water, or other natural resources of the state from pollution,
13 impairment, or destruction, the Department of Legal Affairs, a
14 political subdivision or municipality of the state, or a
15 citizen of the state shall have standing to intervene as a
16 party on the filing of a verified pleading asserting that the
17 activity, conduct, or product to be licensed or permitted has
18 or will have the effect of impairing, polluting, or otherwise
19 injuring the air, water, or other natural resources of the
20 state. As used in this section, the term "intervene" means to
21 join an ongoing administrative proceeding initiated pursuant
22 to s. 120.569 or s. 120.57; this section does not authorize a
23 citizen to institute, initiate, petition for, or request a
24 proceeding under s. 120.569 or s. 120.57.

25 (7) In any administrative or judicial action
26 instituted under this section, other than an action involving
27 a state NPDES permit authorized under s. 403.0885, the
28 prevailing party or parties are entitled to costs and
29 attorney's fees. Any award of attorney's fees in an action
30 involving such a state NPDES permit is in the discretion of
31 the tribunal. If the tribunal has reasonable grounds to doubt

1 the solvency of the plaintiff or petitioner or the plaintiff's
2 or petitioner's ability to pay any costs or judgment that
3 might be rendered against him or her in any action brought
4 under this section, the tribunal may order the plaintiff or
5 petitioner to post a good and sufficient surety bond or cash.

6 Section 3. This act shall take effect upon becoming a
7 law.

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