

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; providing an effective date.

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

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

15 373.114 Land and Water Adjudicatory Commission; review
16 of district rules and orders; department review of district
17 rules.--

18 (1) Except as provided in subsection (2), the Governor
19 and Cabinet, sitting as the Land and Water Adjudicatory
20 Commission, have the exclusive authority to review any order
21 or rule of a water management district, other than a rule
22 relating to an internal procedure of the district or a final
23 order resulting from an evidentiary hearing held under s.
24 120.569 or s. 120.57 or a rule that has been adopted after
25 issuance of a final order resulting from an evidentiary
26 hearing held under s. 120.56, to ensure consistency with the
27 provisions and purposes of this chapter. Subsequent to the
28 legislative ratification of the delineation methodology
29 pursuant to s. 373.421(1), this subsection also shall apply to
30 an order of the department, or a local government exercising
31 delegated authority, pursuant to ss. 373.403-373.443, except

1 an order pertaining to activities or operations subject to
2 conceptual plan approval pursuant to chapter 378 or a final
3 order resulting from an evidentiary hearing held under s.
4 120.569 or s. 120.57.

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

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

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

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

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1 transmitted to the commission within 90 days of the remand or
2 referral.

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

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

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

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

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

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

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

27 Section 2. Subsection (5) of section 403.412, Florida
28 Statutes, is amended, present subsection (6) is renumbered as
29 subsection (8), and new subsections (6) and (7) are added to
30 said section to read:

31 403.412 Environmental Protection Act.--

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

30 (6) Any Florida corporation not for profit which has
31 at least 25 current members residing within the county where

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

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

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