

1                                   A bill to be entitled  
 2           An act relating to the Florida Equal Access to Justice  
 3           Act; amending s. 57.111, F.S.; creating and revising  
 4           definitions; revising terminology; providing  
 5           legislative intent concerning certain persons who may  
 6           be unjustly affected by delay and expense caused by  
 7           challenges to permits or other orders issued by  
 8           government agencies initiated through administrative  
 9           proceedings; providing for an award of attorney fees  
 10          and costs to a prevailing party in an administrative  
 11          proceeding initiated by a party seeking to challenge a  
 12          permit in certain circumstances; providing procedures  
 13          for applying for such award; limiting such award;  
 14          amending ss. 379.502, and 403.121, F.S.; conforming  
 15          provisions to changes made by the act; providing an  
 16          effective date.

17  
 18   Be It Enacted by the Legislature of the State of Florida:

19  
 20           Section 1. Section 57.111, Florida Statutes, is amended to  
 21   read:  
 22           57.111 Civil actions and administrative proceedings  
 23   initiated by state agencies and administrative proceedings  
 24   initiated to challenge permits and orders issued by state  
 25   agencies; attorney ~~attorneys~~<sup>1</sup> fees and costs.—

26 (1) This section may be cited as the "Florida Equal Access  
27 to Justice Act."

28 (2) The Legislature finds that certain persons may be  
29 deterred from seeking review of, or defending against,  
30 unreasonable governmental action because of the expense of civil  
31 actions and administrative proceedings. Because of the greater  
32 resources of the state, the standard for an award of attorney  
33 ~~attorney's~~ fees and costs against the state should be different  
34 from the standard for an award against a private litigant. The  
35 purpose of this section is to diminish the deterrent effect of  
36 seeking review of, or defending against, governmental action by  
37 providing in certain situations an award of attorney ~~attorney's~~  
38 fees and costs against the state.

39 (3) As used in this section, the term:

40 (a) ~~The term~~ "Attorney ~~attorney's~~ fees and costs" means  
41 the reasonable and necessary attorney ~~attorney's~~ fees and costs  
42 incurred for all preparations, motions, hearings, trials, and  
43 appeals in a proceeding.

44 (b) "Division" means the Division of Administrative  
45 Hearings within the Department of Management Services.

46 (c) "Initiated by a party seeking to challenge a permit"  
47 means an administrative proceeding filed pursuant to chapter 120  
48 requesting the cancellation or modification of a permit as  
49 defined herein.

50 (d) ~~(b)~~ ~~The term~~ "Initiated by a state agency" means that

51 | the state agency:

52 |       1. Filed the first pleading in any state or federal court  
53 | in this state;

54 |       2. Filed a request for an administrative hearing pursuant  
55 | to chapter 120; or

56 |       3. Was required by law or rule to advise a small business  
57 | party of a clear point of entry after some recognizable event in  
58 | the investigatory or other free-form proceeding of the agency.

59 |       (e) "Party" means a party to an administrative proceeding  
60 | pursuant to chapter 120 that has been initiated by a party to  
61 | cancel or modify a permit as defined in this subsection.

62 |       (f) "Permit" means any permit or other official action of  
63 | state government having the effect of permitting the development  
64 | of land.

65 |       (g) "Prevailing party" is a party when:

66 |       1. A final judgment or order has been entered in favor of  
67 | the party and such judgment or order has not been reversed on  
68 | appeal or the time for seeking judicial review of the judgment  
69 | or order has expired;

70 |       2. A settlement has been obtained by the party which is  
71 | favorable to the party on the majority of issues which such  
72 | party raised during the course of the proceeding; or

73 |       3. The party initiating the administrative proceeding has  
74 | sought a voluntary dismissal of its complaint or petition more  
75 | than 30 days after that party initiated the proceeding.

76        (h)(c) ~~A small business party is a~~ "Prevailing small  
77 business party" means a small business party when:

78            1. A final judgment or order has been entered in favor of  
79 the small business party and such judgment or order has not been  
80 reversed on appeal or the time for seeking judicial review of  
81 the judgment or order has expired;

82            2. A settlement has been obtained by the small business  
83 party which is favorable to the small business party on the  
84 majority of issues which such party raised during the course of  
85 the proceeding; or

86            3. The state agency has sought a voluntary dismissal of  
87 its complaint.

88        (i)(d) ~~The term~~ "Small business party" means:

89            1.a. A sole proprietor of an unincorporated business,  
90 including a professional practice, whose principal office is in  
91 this state, who is domiciled in this state, and whose business  
92 or professional practice has, at the time the action is  
93 initiated by a state agency, not more than 25 full-time  
94 employees or a net worth of not more than \$2 million, including  
95 both personal and business investments;

96            b. A partnership or corporation, including a professional  
97 practice, which has its principal office in this state and has  
98 at the time the action is initiated by a state agency not more  
99 than 25 full-time employees or a net worth of not more than \$2  
100 million; or

101 c. An individual whose net worth did not exceed \$2 million  
102 at the time the action is initiated by a state agency when the  
103 action is brought against that individual's license to engage in  
104 the practice or operation of a business, profession, or trade;  
105 or

106 2. Any small business party as defined in subparagraph 1.,  
107 without regard to the number of its employees or its net worth,  
108 in any action under s. 72.011 or in any administrative  
109 proceeding under that section to contest the legality of any  
110 assessment of tax imposed for the sale or use of services as  
111 provided in chapter 212, or interest thereon, or penalty  
112 therefor.

113 (j)(e) ~~A proceeding is~~ "Substantially justified" when  
114 applied to a proceeding means ~~if~~ it had a reasonable basis in  
115 law and fact at the time it was initiated by a state agency.

116 (k)(f) ~~The term~~ "State agency" has the meaning described  
117 in s. 120.52(1).

118 (4) (a) Unless otherwise provided by law, an award of  
119 attorney ~~attorney's~~ fees and costs shall be made to a prevailing  
120 small business party in any adjudicatory proceeding or  
121 administrative proceeding pursuant to chapter 120 initiated by a  
122 state agency, unless the actions of the agency were  
123 substantially justified or special circumstances exist which  
124 would make the award unjust.

125 (b)1. To apply for an award under this subsection ~~section~~,

126 the attorney for the prevailing small business party must submit  
127 an itemized affidavit to the court which first conducted the  
128 adversarial proceeding in the underlying action, or by  
129 electronic means through the division's website to the division  
130 ~~of Administrative Hearings~~ which shall assign an administrative  
131 law judge, in the case of a proceeding pursuant to chapter 120,  
132 which affidavit shall reveal the nature and extent of the  
133 services rendered by the attorney as well as the costs incurred  
134 in preparations, motions, hearings, and appeals in the  
135 proceeding.

136 2. The application for an award of attorney ~~attorney's~~  
137 fees must be made within 60 days after the date that the small  
138 business party becomes a prevailing small business party.

139 (c) The state agency may oppose the application for the  
140 award of attorney ~~attorney's~~ fees and costs by affidavit.

141 (d) The court, or the administrative law judge in the case  
142 of a proceeding under chapter 120, shall promptly conduct an  
143 evidentiary hearing on the application for an award of attorney  
144 ~~attorney's~~ fees and shall issue a judgment, or a final order in  
145 the case of an administrative law judge. The final order of an  
146 administrative law judge is reviewable in accordance with ~~the~~  
147 ~~provisions of~~ s. 120.68. If the court affirms the award of  
148 attorney ~~attorney's~~ fees and costs in whole or in part, it may,  
149 in its discretion, award additional attorney ~~attorney's~~ fees and  
150 costs for the appeal.

151 1. No award of attorney ~~attorney's~~ fees and costs shall be  
152 made in any case in which the state agency was a nominal party.

153 2. No award of attorney ~~attorney's~~ fees and costs for an  
154 action initiated by a state agency shall exceed \$50,000.

155 ~~(e)~~ (5) If the state agency fails to tender payment of the  
156 award of attorney ~~attorney's~~ fees and costs within 30 days after  
157 the date that the order or judgment becomes final, the  
158 prevailing small business party may petition the circuit court  
159 where the subject matter of the underlying action arose for  
160 enforcement of the award by writ of mandamus, including  
161 additional attorney ~~attorney's~~ fees and costs incurred for  
162 issuance of the writ.

163 (5) (a) The Legislature also finds that certain persons may  
164 be unjustly affected by the delay and expense caused by  
165 challenges to permits or other orders issued by government  
166 agencies initiated through administrative proceedings. Because  
167 the financial consequences of the delay on projects authorized  
168 by permits and other orders are much greater than the  
169 consequences faced by plaintiffs in such proceedings, the  
170 standard for an award of attorney fees and costs in an  
171 administrative proceeding should be different from the standard  
172 for an award in other proceedings. The purpose of this  
173 subsection is to diminish the imbalance of consequences when  
174 seeking review of, or defending against, such challenges in  
175 administrative proceedings and to provide an award of attorney

176 fees and costs against the nonprevailing party.

177 (b) Unless otherwise provided by law, an award of attorney  
178 fees and costs shall be made to a prevailing party in any  
179 administrative proceeding initiated by a party seeking to  
180 challenge a permit unless the challenge was substantially  
181 justified or special circumstances exist which would make the  
182 award unjust.

183 1.a. To apply for an award under this section, the  
184 attorney for the prevailing party must submit an itemized  
185 affidavit to the court that first conducted the adversarial  
186 proceeding in the underlying action, or to the division by  
187 electronic means through the division's website. The affidavit  
188 shall reveal the nature and extent of the services rendered by  
189 the attorney as well as the costs incurred in preparations,  
190 motions, hearings, and appeals in the proceeding. In the case of  
191 a proceeding pursuant to chapter 120, the division shall assign  
192 an administrative law judge.

193 b. The application for an award of attorney fees must be  
194 made within 60 days after the date the party becomes a  
195 prevailing party.

196 2. The administrative law judge shall promptly conduct an  
197 evidentiary hearing on the application for an award of attorney  
198 fees and shall issue a final order. The final order of an  
199 administrative law judge is reviewable in accordance with s.  
200 120.68. If a court affirms the award of attorney fees and costs



201 in whole or in part, it may, in its discretion, award additional  
202 attorney fees and costs for the appeal.

203 3. No award of attorney fees and costs under this  
204 subsection shall exceed \$50,000.

205 (6) This section does not apply to any proceeding  
206 involving the establishment of a rate or rule or to any action  
207 sounding in tort.

208 Section 2. Paragraph (f) of subsection (2) of section  
209 379.502, Florida Statutes, is amended to read:

210 379.502 Enforcement; procedure; remedies.—The commission  
211 has the following judicial and administrative remedies available  
212 to it for violations of s. 379.501:

213 (2)

214 (f) In any administrative proceeding brought by the  
215 commission, the prevailing party shall recover all costs as  
216 provided in ss. 57.041 and 57.071. The costs must be included in  
217 the final order. The respondent is the prevailing party when an  
218 order is entered awarding no penalties to the commission and the  
219 order has not been reversed on appeal or the time for seeking  
220 judicial review has expired. The respondent is entitled to an  
221 award of attorney's fees if the administrative law judge  
222 determines that the notice of violation issued by the commission  
223 was not substantially justified as defined in s. 57.111(3)(j)  
224 ~~57.111(3)(e)~~. An award of attorney's fees as provided by this  
225 subsection may not exceed \$15,000.

226 Section 3. Paragraph (f) of subsection (2) of section  
227 403.121, Florida Statutes, is amended to read:

228 403.121 Enforcement; procedure; remedies.—The department  
229 shall have the following judicial and administrative remedies  
230 available to it for violations of this chapter, as specified in  
231 s. 403.161(1).

232 (2) Administrative remedies:

233 (f) In any administrative proceeding brought by the  
234 department, the prevailing party shall recover all costs as  
235 provided in ss. 57.041 and 57.071. The costs must be included in  
236 the final order. The respondent is the prevailing party when an  
237 order is entered awarding no penalties to the department and  
238 such order has not been reversed on appeal or the time for  
239 seeking judicial review has expired. The respondent shall be  
240 entitled to an award of attorney's fees if the administrative  
241 law judge determines that the notice of violation issued by the  
242 department seeking the imposition of administrative penalties  
243 was not substantially justified as defined in s. 57.111(3)(j)  
244 ~~57.111(3)(e)~~. No award of attorney's fees as provided by this  
245 subsection shall exceed \$15,000.

246 Section 4. This act shall take effect July 1, 2017.