

By Senator Burgess

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1 A bill to be entitled
2 An act relating to environmental management; amending
3 s. 120.595, F.S.; providing that the prevailing party
4 in certain actions against the Department of
5 Environmental Protection or a water management
6 district is entitled to reasonable costs and attorney
7 fees; amending s. 373.4131, F.S.; requiring that
8 nonindustrial stormwater management systems be
9 designed with side slopes that meet certain minimum
10 design requirements; providing an exception;
11 superseding certain side slope rules; amending s.
12 376.313, F.S.; revising construction relating to
13 causes of action for damages to real or personal
14 property directly resulting from certain discharges or
15 other conditions of pollution; providing legislative
16 intent; requiring the department and water management
17 districts to conduct holistic reviews of their
18 respective agency's costal permitting processes and
19 permit programs; providing the scope and purpose of
20 the reviews; requiring the department and water
21 management districts to submit reports of their
22 findings and proposed solutions to the Governor and
23 the Legislature by a specified date; providing an
24 effective date.

25
26 Be It Enacted by the Legislature of the State of Florida:
27

28 Section 1. Present paragraph (e) of subsection (1) of
29 section 120.595, Florida Statutes, is redesignated as paragraph

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30 (f), a new paragraph (e) is added to that subsection, and
31 subsections (2) and (3) and paragraph (d) of subsection (4) of
32 that section are amended, to read:

33 120.595 Attorney's fees.—

34 (1) CHALLENGES TO AGENCY ACTION PURSUANT TO SECTION
35 120.57(1).—

36 (e) Notwithstanding paragraph (b), the prevailing party in
37 a challenge filed against a Department of Environmental
38 Protection or water management district authorization issued
39 pursuant to chapter 403 or chapter 373, respectively, is
40 entitled to recover reasonable costs and attorney fees in
41 challenging or defending such authorization.

42 (2) CHALLENGES TO PROPOSED AGENCY RULES PURSUANT TO SECTION
43 120.56(2).—If the appellate court or administrative law judge
44 declares a proposed rule or portion of a proposed rule invalid
45 pursuant to s. 120.56(2), a judgment or order shall be rendered
46 against the agency for reasonable costs and reasonable
47 attorney's fees, unless the agency demonstrates that its actions
48 were substantially justified or special circumstances exist
49 which would make the award unjust. An agency's actions are
50 "substantially justified" if there was a reasonable basis in law
51 and fact at the time the actions were taken by the agency. If
52 the agency prevails in the proceedings, the appellate court or
53 administrative law judge shall award reasonable costs and
54 reasonable attorney's fees against a party if the appellate
55 court or administrative law judge determines that a party
56 participated in the proceedings for an improper purpose as
57 defined by paragraph (1) (f). ~~An paragraph (1) (e). No~~ award of
58 attorney's fees as provided by this subsection may not shall

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59 exceed \$50,000.

60 (3) CHALLENGES TO EXISTING AGENCY RULES PURSUANT TO
61 SECTION 120.56(3) AND (5).—If the appellate court or
62 administrative law judge declares a rule or portion of a rule
63 invalid pursuant to s. 120.56(3) or (5), a judgment or order
64 shall be rendered against the agency for reasonable costs and
65 reasonable attorney's fees, unless the agency demonstrates that
66 its actions were substantially justified or special
67 circumstances exist which would make the award unjust. An
68 agency's actions are "substantially justified" if there was a
69 reasonable basis in law and fact at the time the actions were
70 taken by the agency. If the agency prevails in the proceedings,
71 the appellate court or administrative law judge shall award
72 reasonable costs and reasonable attorney's fees against a party
73 if the appellate court or administrative law judge determines
74 that a party participated in the proceedings for an improper
75 purpose as defined by paragraph (1) (f). ~~An paragraph (1) (e)~~. No
76 award of attorney's fees as provided by this subsection may not
77 ~~shall~~ exceed \$50,000.

78 (4) CHALLENGES TO AGENCY ACTION PURSUANT TO SECTION
79 120.56(4).—

80 (d) If the agency prevails in the proceedings, the
81 appellate court or administrative law judge shall award
82 reasonable costs and attorney's fees against a party if the
83 appellate court or administrative law judge determines that the
84 party participated in the proceedings for an improper purpose as
85 defined in paragraph (1) (f) ~~paragraph (1) (e)~~ or that the party
86 or the party's attorney knew or should have known that a claim
87 was not supported by the material facts necessary to establish

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88 the claim or would not be supported by the application of then-
89 existing law to those material facts.

90 Section 2. Subsection (7) is added to section 373.4131,
91 Florida Statutes, to read:

92 373.4131 Statewide environmental resource permitting
93 rules.—

94 (7) A nonindustrial stormwater management system, in or
95 adjacent to residential or urban areas, side slope must be
96 designed, except as provided in paragraph (a), with a
97 horizontal-to-vertical ratio no steeper than 4:1 to a depth of
98 at least 2 feet below the control elevation and must be
99 stabilized with vegetation to prevent erosion and provide for
100 pollutant removal.

101 (a) A nonindustrial stormwater management system side slope
102 in or adjacent to residential or urban areas may be designed
103 with a steeper than 4:1 horizontal-to-vertical ratio if the
104 slope incorporates adequate temporary and permanent erosion and
105 sediment control best management practices. For purposes of
106 public safety, a system designed or authorized to be steeper
107 than 4:1 must be fenced sufficiently to prevent accidental
108 incursion into the system.

109 (b) All side slope rules adopted by the department, water
110 management districts, or delegated local programs under this
111 part as of July 1, 2024, are superseded by this subsection and
112 may be repealed without further rulemaking pursuant to s. 120.54
113 by publication of a notice of repeal in the Florida
114 Administrative Register and subsequent filing of a list of the
115 rules repealed with the Department of State.

116 Section 3. Subsection (3) of section 376.313, Florida

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117 Statutes, is amended to read:

118 376.313 Nonexclusiveness of remedies and individual cause
119 of action for damages under ss. 376.30-376.317.—

120 (3) Except as provided in s. 376.3078(3) and (11), ~~nothing~~
121 ~~contained in~~ ss. 376.30-376.317 do not prohibit a ~~prohibits any~~
122 person from bringing a cause of action in a court of competent
123 jurisdiction for all damages to real or personal property
124 directly resulting from a discharge or other condition of
125 pollution covered by ss. 376.30-376.317 and which was not
126 authorized by any government approval or permit issued pursuant
127 to chapter 373, chapter 376, or chapter 403. ~~Nothing in~~ This
128 chapter does not shall prohibit or diminish a party's right to
129 contribution from other parties jointly or severally liable for
130 a prohibited discharge of pollutants or hazardous substances or
131 other pollution conditions. Except as otherwise provided in
132 subsection (4) or subsection (5), in any such suit, it is not
133 necessary for such person to plead or prove negligence in any
134 form or manner. Such person need only plead and prove the fact
135 of the prohibited discharge or other pollutive condition and
136 that it has occurred. The only strict-liability exception
137 defenses to such cause of action are shall be those specified in
138 s. 376.308 or s. 376.82.

139 Section 4. Holistic review of coastal permitting processes
140 and other programs.—

141 (1) The Legislature intends to do all of the following:

142 (a) Build a more resilient and responsive government
143 infrastructure to allow for quick recovery after natural
144 disasters, including hurricanes and tropical storms.

145 (b) Promote efficiency in state government across all

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146 branches, agencies, and other governmental entities and identify
147 any area of improvement within each entity which allows for a
148 quick and effective delivery of services.

149 (c) Seek out ways to improve the state's administrative
150 procedures in relevant fields to build a streamlined permitting
151 process that withstands disruptions caused by natural disasters,
152 including hurricanes and tropical storms.

153 (2) The Department of Environmental Protection and each
154 water management district shall conduct a holistic review of
155 their respective agency's current coastal permitting processes
156 and other permit programs. The review must, at a minimum,
157 include coastal construction control line permits; joint coastal
158 permits; environmental resource permits; state-administered
159 section 404 permits consistent with the terms of the United
160 States Environmental Protection Agency's approval; and
161 permitting processes related to water supply infrastructure,
162 wastewater infrastructure, and onsite sewage treatment and
163 disposal systems.

164 (3) The purpose of the reviews required under subsection
165 (2) is to identify areas of improvement and to increase
166 efficiency within each process and program. Factors that must be
167 considered in the review include all of the following:

168 (a) The requirements to obtain a permit.

169 (b) Time periods for review, including those of commenting
170 agencies, and approval of a permit application.

171 (c) Areas for improved efficiency and decision-point
172 consolidation within a single project's purpose.

173 (d) Areas of duplication across one or more permit
174 programs.

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175 (e) The methods of requesting a permit.

176 (f) Potential modifications to memoranda of agreements
177 between the state and the Federal Government governing delegated
178 or approved federal permitting programs, which modifications
179 would improve the efficiency and predictability of the program's
180 administration, including allowing consistent administration of
181 a permit by a state or federal entity over the lifetime of a
182 permitted project.

183 (g) Any other factors that may increase the efficiency of a
184 permitting process and may allow for improved storm recovery.

185 (4) By December 31, 2024, the department and each water
186 management district shall provide their findings and proposed
187 solutions in a report to the Governor, the President of the
188 Senate, and the Speaker of the House of Representatives.

189 Section 5. This act shall take effect July 1, 2024.