

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/CS/SB 2556

SPONSOR: Judiciary Committee and Senator King

SUBJECT: Administrative Procedure

DATE: April 27, 2000 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Forgas</u>	<u>Johnson</u>	<u>JU</u>	<u>Favorable/CS</u>
2.	<u>White</u>	<u>Wilson</u>	<u>GO</u>	<u>Favorable/CS</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

## I. Summary:

The committee substitute modifies various provisions of law relating to administrative procedure. The bill:

- ▶ modifies the Equal Access to Justice Act to increase the net worth amounts for small business parties and increases the amount of attorney's fees that may be awarded under s. 57.111, F.S., from \$15,000 to \$50,000;
- ▶ requires expenses and attorneys' fees to be paid in certain circumstances where a party files documents in an administrative proceeding for an improper purpose;
- ▶ removes authority from the Land and Water Adjudicatory Commission to review orders resulting pursuant to ss. 120.569 and 120.57, F.S., evidentiary hearings;
- ▶ modifies s. 403.412(5), F.S., to provide that a citizen whose substantial interests have not been determined by agency action may not institute, initiate, petition, or request proceedings pursuant to ss. 120.569 or 120.57, F.S.; and
- ▶ clarifies the definition of agency in s. 120.52, F.S.

The bill shall be effective upon becoming law.

This bill substantially amends the following sections of the Florida Statutes: 57.111, 120.52, 120.569, 120.595, 373.114, and 403.412.

## II. Present Situation:

### Equal Access to Justice Act

Section 57.111, F.S., provides for the award of attorney's fees and costs to prevailing small business parties in ch. 120, F.S., administrative proceedings which are initiated by a state agency, except where the agency was substantially justified or special circumstances existed to make the award unjust. A small business party is currently defined in relevant part as:

- ▶ A sole proprietor of an unincorporated business, including a professional practice, whose principal office is in this state, who is domiciled in this state, and whose business or professional practice has, at the time the action is initiated by a state agency, not more than 25 full-time employees or a net worth of not more than \$2 million, including both personal and business investments; or
- ▶ A partnership or corporation, including a professional practice, which has its principle office in this state and has at the time the action is initiated by a state agency not more than 25 full-time employees or a net worth of not more than \$2 million. *See* s. 57.111(3)(d), F.S.

The Act limits the award of attorney's fees for a prevailing party in an action initiated by a state agency to \$15,000. s. 57.111(4)(d)2., F.S.

### **Documents Filed for Improper Purposes**

Pursuant to s. 120.569(2)(e)<sup>1</sup>, F.S., all pleadings, motions, or other papers filed in the proceeding must be signed by the party, the party's attorney, or the party's qualified representative. The signature certifies that the person has read the document and that it is not filed for any improper purposes, such as to harass or cause unnecessary delay, or for a frivolous purpose or needless increase in the cost of litigation. If a document is signed in violation of these requirements, the presiding officer must impose upon the person who signed it, the represented party, or both, an appropriate sanction, which may include an order to pay the other party the reasonable expenses and attorneys' fee incurred due to improper filing.

### **Land and Water Adjudicatory Commission**

Under s. 373.114, F.S., the Governor and the Cabinet sit as the Land and Water Adjudicatory Commission. With certain exceptions, the Commission has the exclusive authority to review any order or rule of a water management district to ensure consistency with the provisions and purposes of ch. 373, F.S., which pertains to water resources. Review by the commission may be initiated by the department or by a party. A "party" means any affected person who submitted testimony of a substantive nature which stated in particularity objections to or support for the rule or order, or any person who participated as a party in a proceeding instituted pursuant to ch. 120, F.S.

### **Environmental Protection Act**

The Environmental Protection Act of 1971 is contained in s. 403.412, F.S. Basically, the act provides that the Department of Legal Affairs, any political subdivision or municipality of the

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<sup>1</sup>This section applies to proceedings in which the substantial interests of a party are determined by an agency, unless the parties are proceeding under ss. 120.573 or 120.574, F.S.

state, or a citizen of the state may maintain an action for injunctive relief against the appropriate governmental authority to compel enforcement of the laws, rules and regulations for the protection of the air, water, and other natural resources of the state. The act also allows maintenance of an action against any person, corporation, or governmental agency or authority to enjoin such persons, agencies or authorities from violating laws, rules, and regulations which protect the air, water, and other natural resources.

Additionally, in any administrative, licensing, or other proceeding authorized by law for the protection of the air, water, or other natural resources of the state, a resident of Florida has standing, pursuant to s. 403.412(5), F.S., to intervene as a party on the filing of a verified pleading asserting that the activity, conduct, or product to be licensed or permitted has or will have the effect of impairing, polluting, or otherwise injuring the air, water, or other natural resource of the state.

### **III. Effect of Proposed Changes:**

#### **Equal Access to Justice Act**

The bill amends s. 57.111, F.S., to change the net worth definition of a “small business party” that may be entitled to an award of attorney’s fees from \$2 million to \$5 million and to increase the award of attorney’s fees under that section from \$15,000 to \$50,000.

#### **Definition of State Agency under Chapter 120**

The bill clarifies the definition of state agency in s. 120.52(1), F.S., to provide that only state authorities, state boards and state commissions are subject to ch. 120, F.S.

#### **Papers Filed for Improper Purposes**

The bill amends s. 120.569(2)(e), F.S., to provide that all pleadings, written motions, or other papers filed in a proceeding must be signed by at least one attorney, qualified representative of record, or the party. Unsigned documents will be stricken unless the deficiency is corrected upon notice.

In subparagraph (2)(e)2., the bill provides that the presentation of a pleading, written motion, or other paper by an attorney, qualified representative, or party in any manner constitutes certification that to the best of the person’s knowledge that the: (a) document is not presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase in the cost of litigation; (b) claims, defenses, and other legal contentions contained in the document are warranted by law, or by a nonfrivolous argument for extension, modification, or reversal of existing law; (c) allegations and factual contentions have evidentiary support, or are likely to after further investigation or discovery; and (d) the denials of factual contentions are warranted on the evidence, or are reasonably based on a lack of information or belief.

If the presiding officer, after notice and an opportunity to respond, finds that a person has violated subparagraph (2)(e)2., the officer must impose sanctions against the signator, the represented

party, or both. The sanctions must include an order to pay the other party's expenses and attorneys' fees due to the violation with enumerated exceptions.

These sanctions may be initiated on motion or on the presiding officer's own initiative. A motion shall not be acted upon by a presiding officer for at least 14 days. During this period, the party may correct or withdraw the paper. If the presiding officer determines to impose sanction on his or her own initiative, the officer must first enter an order to show cause.

### **Land and Water Adjudicatory Commission**

The bill removes authority from the Governor and Cabinet, sitting as the Land and Water Adjudicatory Commission, to review orders of water management districts resulting from ss. 120.569 or 120.57, F.S., evidentiary hearings. Furthermore, the bill limits who may initiate review by the commission. Currently, a person who participated as a party in a ch. 120, F.S., proceeding may initiate review; however, under the bill, only a person who participated as a party in a ch. 120, F.S., proceeding challenging the validity of a rule may initiate review.

### **Environmental Protection Act**

The bill amends s. 403.412(5), F.S., to provide that citizens whose substantial interests have not been determined by agency action may not institute, initiate, petition, or request proceedings pursuant to ss. 120.569 or 120.57, F.S. The bill further provides that this limitation does not limit associational standing for nonprofit corporations or associations if: (a) organized in whole or part to promote conservation, to protect the environment or other biological values or to preserve historical sites; and (b) a substantial number of its members, though not necessarily a majority, have their substantial interests determined by the activity, conduct, or product to be permitted or licensed. These amendments do not affect a resident's ability to intervene.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

None.

### **B. Public Records/Open Meetings Issues:**

None.

### **C. Trust Funds Restrictions:**

None.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

Opponents of the bill contend that the changes to s. 403.412(5), F.S., will essentially prohibit regular citizens and environmental groups from challenging projects that may be harmful to the environment as, most often, they will not qualify under the bill's standing requirement of being "substantially affected" by the project. However, proponents of the bill claim that these citizens and environmental groups may still intervene in the proceedings pursuant to s. 403.412(5), F.S., as well as file actions in circuit court to enjoin the projects.

Furthermore, due to the bill's amendments to s. 57.11, F.S., the "Equal Access to Justice Act," a greater number of small businesses will be subject to the act as the net worth limitation of \$2 million is raised to \$5 million. Moreover, the amount of attorneys' fees awarded under the act will be higher because the attorneys' fees award limit is increased from \$15,000 to \$50,000. Accordingly, these amendments will result in private attorneys receiving greater fees.

**C. Government Sector Impact:**

The bill's amendments increase the number of small businesses which may receive attorneys' fees under the "Equal Access to Justice Act," in addition to also increasing the maximum amount of attorneys' fees that may have to be paid by a state agency from \$15,000 to \$50,000. Accordingly, there will be an indeterminate increase in such costs to state agencies pursuant to the bill.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

In section 5., the bill provides that a nonprofit corporation or association may bring a challenge to a permit under s. 403.412(5), F.S., if it meets several criterion, including that "a substantial number, although not necessarily a majority, of its members have their substantial interests determined by the activity, conduct, or product to be permitted or licensed." What a "substantial number" means is unclear, and this lack of clarity will no doubt generate litigation.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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