

By Senator Perry

8-00936-17

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1 A bill to be entitled
2 An act relating to administrative proceedings;
3 amending s. 57.111, F.S.; revising legislative
4 findings and purpose; defining terms; requiring an
5 award of attorney fees and costs to be made to a
6 prevailing party in specified administrative
7 proceedings subject to certain requirements; requiring
8 an administrative law judge to conduct an evidentiary
9 hearing and issue a final order on application for
10 such award; providing a limit on an award of attorney
11 fees and costs; amending ss. 379.502 and 403.121,
12 F.S.; conforming cross-references; providing an
13 effective date.

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

16
17 Section 1. Subsection (2) of section 57.111, Florida
18 Statutes, is amended, present paragraphs (b) through (f) of
19 subsection (3) of that section are redesignated as paragraphs
20 (c), (g), (h), (j), and (i), respectively, and new paragraphs
21 (b), (d), (e), and (f) are added to that subsection, present
22 subsection (6) of that section is redesignated as subsection
23 (7), and a new subsection (6) is added to that section, to read:

24 57.111 Civil actions and administrative proceedings
25 initiated by state agencies; attorneys' fees and costs.—

26 (2) (a) The Legislature finds that certain persons may be
27 deterred from seeking review of, or defending against,
28 unreasonable governmental action because of the expense of civil
29 actions and administrative proceedings. Because of the greater

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30 resources of the state, the standard for an award of attorney
31 ~~attorney's~~ fees and costs against the state should be different
32 from the standard for an award against a private litigant.

33 (b) The Legislature further finds that certain persons may
34 be unjustly affected by delay and expense caused by challenges
35 to permits or other orders issued by governmental agencies as
36 initiated through administrative proceedings. Because the
37 financial consequences of delay on projects authorized by
38 permits and orders are much greater than the consequences faced
39 by plaintiffs in such proceedings, the standard for an award of
40 attorney fees and costs should be different from the standard
41 for an award in other proceedings.

42 (c) The purpose of this section is to diminish the
43 deterrent effect of seeking review of, or defending against,
44 governmental action by providing in certain situations an award
45 of attorney ~~attorney's~~ fees and costs against the state and to
46 diminish the imbalance of consequences when seeking review of,
47 or defending against, such challenges in administrative
48 proceedings by providing in certain situations an award of
49 attorney fees and costs against the party that does not prevail.

50 (3) As used in this section:

51 (b) The term "initiated by a party seeking to challenge a
52 permit" means an administrative proceeding filed pursuant to
53 chapter 120 requesting the cancellation or modification of a
54 permit as defined herein.

55 (d) The term "party" means a party to an administrative
56 proceeding pursuant to chapter 120 which has been initiated by a
57 party to cancel or modify a permit as defined herein.

58 (e) The term "permit" means any permit or other official

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59 action of state government having the effect of authorizing the
60 development of land.

61 (f) A party is a "prevailing party" when:

62 1. A final judgment or order has been entered in favor of
63 the party and such judgment or order has not been reversed on
64 appeal or the time for seeking judicial review of the judgment
65 or order has expired;

66 2. A settlement has been obtained by the party which is
67 favorable to the party on the majority of issues that such party
68 raised during the course of the proceeding; or

69 3. The opposing party who initiated the administrative
70 proceeding has sought a voluntary dismissal of its complaint or
71 petition more than 30 days after that party initiated the
72 proceeding.

73 (6) (a) Unless otherwise provided by law, an award of
74 attorney fees and costs shall be made to a prevailing party in
75 any administrative proceeding initiated by a party seeking to
76 cancel or modify a permit as defined herein unless the challenge
77 was substantially justified or special circumstances exist which
78 would make the award unjust.

79 (b)1. To apply for an award under this section, the
80 attorney for the prevailing party must submit an itemized
81 affidavit to the court that first conducted the adversarial
82 proceeding in the underlying action, or by electronic means
83 through the website of the Division of Administrative Hearings,
84 which shall assign an administrative law judge in the case of a
85 proceeding pursuant to chapter 120. The itemized affidavit
86 submitted must reveal the nature and extent of the services the
87 attorney rendered as well as the costs incurred in preparations,

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88 motions, hearings, and appeals in the proceeding.

89 2. The application for an award of attorney fees must be
90 made within 60 days after the date that the party becomes a
91 prevailing party.

92 (c) The administrative law judge shall promptly conduct an
93 evidentiary hearing on the application for an award of attorney
94 fees and shall issue a final order. The final order of an
95 administrative law judge is reviewable in accordance with s.
96 120.68. If a court affirms the award of attorney fees and costs
97 in whole or in part, it may, in its discretion, award additional
98 attorney fees and costs for the appeal.

99 (d) An award of attorney fees and costs under this
100 subsection may not exceed \$50,000.

101 Section 2. Paragraph (f) of subsection (2) of section
102 379.502, Florida Statutes, is amended to read:

103 379.502 Enforcement; procedure; remedies.—The commission
104 has the following judicial and administrative remedies available
105 to it for violations of s. 379.501:

106 (2)

107 (f) In any administrative proceeding brought by the
108 commission, the prevailing party shall recover all costs as
109 provided in ss. 57.041 and 57.071. The costs must be included in
110 the final order. The respondent is the prevailing party when an
111 order is entered awarding no penalties to the commission and the
112 order has not been reversed on appeal or the time for seeking
113 judicial review has expired. The respondent is entitled to an
114 award of attorney ~~attorney's~~ fees if the administrative law
115 judge determines that the notice of violation issued by the
116 commission was not substantially justified as defined in s.

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117 57.111(3) ~~s. 57.111(3)(e)~~. An award of attorney ~~attorney's~~ fees
118 as provided by this subsection may not exceed \$15,000.

119 Section 3. Paragraph (f) of subsection (2) of section
120 403.121, Florida Statutes, is amended to read:

121 403.121 Enforcement; procedure; remedies.—The department
122 shall have the following judicial and administrative remedies
123 available to it for violations of this chapter, as specified in
124 s. 403.161(1).

125 (2) Administrative remedies:

126 (f) In any administrative proceeding brought by the
127 department, the prevailing party shall recover all costs as
128 provided in ss. 57.041 and 57.071. The costs must be included in
129 the final order. The respondent is the prevailing party when an
130 order is entered awarding no penalties to the department and
131 such order has not been reversed on appeal or the time for
132 seeking judicial review has expired. The respondent shall be
133 entitled to an award of attorney ~~attorney's~~ fees if the
134 administrative law judge determines that the notice of violation
135 issued by the department seeking the imposition of
136 administrative penalties was not substantially justified as
137 defined in s. 57.111(3) ~~s. 57.111(3)(e)~~. No award of attorney
138 ~~attorney's~~ fees as provided by this subsection shall exceed
139 \$15,000.

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

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~~ 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)(e) ~~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.

1 A bill to be entitled
 2 An act relating to local regulation preemption;
 3 creating s. 163.20, F.S.; providing definitions;
 4 prohibiting certain local governments from imposing or
 5 adopting certain regulations on businesses,
 6 professions, and occupations after a certain date;
 7 preempting the regulation of businesses, professions,
 8 and occupations to the state; providing exceptions to
 9 such preemption; providing an effective date.

10
 11 Be It Enacted by the Legislature of the State of Florida:

12
 13 Section 1. Section 163.20, Florida Statutes, is created to
 14 read:

15 163.20 Regulation of businesses, professions, and
 16 occupations preempted to the state.-

17 (1) DEFINITIONS.-As used in this section:

18 (a) "Local government" means a county, municipality,
 19 special district, school district, or political subdivision of
 20 the state.

21 (b) "Regulation" means a rule or regulation, license,
 22 permit, or requirement, along with any associated fee.

23 (2) LOCAL GOVERNMENT REGULATION.-On or after July 1, 2017,
 24 a local government may not adopt or impose a new regulation on a
 25 business, profession, or occupation unless the regulation is

26 | expressly authorized by general law.

27 | (3) PREEMPTION OF REGULATION TO THE STATE.-Notwithstanding
 28 | any law to the contrary, this section expressly preempts the
 29 | regulation of businesses, professions, and occupations to the
 30 | state and supersedes any local government regulation of
 31 | businesses, professions, and occupations with the exception of
 32 | the following:

33 | (a) A regulation adopted prior to July 1, 2017, without
 34 | general law authority. Any such regulation expires on July 1,
 35 | 2020.

36 | (b) A regulation expressly authorized by general law.

37 | (4) EXISTING REGULATION LIMIT.-A local government with a
 38 | local regulation concerning a business, profession, or
 39 | occupation that is retained pursuant to paragraph (3) (a) may not
 40 | impose additional regulations on that business, profession, or
 41 | occupation or modify such regulation except to repeal or reduce
 42 | the regulation.

43 | (5) REGULATIONS NOT AUTHORIZED.-Any local regulation of a
 44 | business, profession, or occupation that is not authorized under
 45 | this section or expressly authorized by general law does not
 46 | apply and may not be enforced.

47 | Section 2. This act shall take effect July 1, 2017.