

A bill to be entitled

An act relating to administrative procedures; amending s. 120.595, F.S.; requiring that a final order in specified administrative proceedings award all reasonable costs and attorney fees to a prevailing party under certain circumstances; revising the criteria used by an administrative law judge to determine whether a party participated in a proceeding for an improper purpose; authorizing the recovery of reasonable attorney fees and costs incurred by a prevailing party in litigating entitlement to or quantification of underlying attorney fees and costs; removing certain limitations on such attorney fees and costs; providing an effective date.

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

Section 1. Subsection (1) of section 120.595, Florida Statutes, is amended, and subsection (7) is added to that section, to read:

120.595 Attorney ~~Attorney's~~ fees and costs.—

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

(a) ~~The provisions of~~ This subsection is ~~are~~ supplemental to, and does ~~do~~ not abrogate, other provisions allowing the award of fees or costs in administrative proceedings.

27 (b) The final order in a proceeding conducted pursuant to
 28 s. 120.57(1) shall award all reasonable costs and all a
 29 reasonable attorney fees ~~attorney's fee~~ to the prevailing party
 30 only if ~~where~~ the administrative law judge determines that the
 31 nonprevailing adverse party has been determined by the
 32 administrative law judge to have participated in the proceeding
 33 for an improper purpose.

34 (c) In proceedings conducted pursuant to s. 120.57(1), it
 35 shall be rebuttably presumed that a nonprevailing adverse party
 36 participated in the current proceeding for an improper purpose
 37 if the administrative law judge determines that:

38 1. The nonprevailing adverse party participated in another
 39 such proceeding involving the same prevailing party and project
 40 as an adverse party in which the nonprevailing adverse party did
 41 not establish either the factual or legal merits of its
 42 position.

43 2. The factual or legal position asserted in the current
 44 proceeding would have been cognizable in the previous proceeding
 45 and upon motion, the administrative law judge shall determine
 46 whether any party participated in the proceeding for an improper
 47 purpose as defined by this subsection. In making such
 48 determination, the administrative law judge shall consider
 49 whether the nonprevailing adverse party has participated in two
 50 or more other such proceedings involving the same prevailing
 51 party and the same project as an adverse party and in which such
 52 two or more proceedings the nonprevailing adverse party did not

53 ~~establish either the factual or legal merits of its position,~~
54 ~~and shall consider whether the factual or legal position~~
55 ~~asserted in the instant proceeding would have been cognizable in~~
56 ~~the previous proceedings. In such event, it shall be rebuttably~~
57 ~~presumed that the nonprevailing adverse party participated in~~
58 ~~the pending proceeding for an improper purpose.~~

59 (d) In a ~~any~~ proceeding in which the administrative law
60 judge determines that a party participated in the proceeding for
61 an improper purpose, the recommended order shall ~~se~~ designate
62 that party and ~~shall~~ determine the award of costs and attorney
63 ~~attorney's~~ fees.

64 (e) For purposes ~~the purpose~~ of this subsection, the term:

65 1. "Improper purpose" means participation in a proceeding
66 pursuant to s. 120.57(1) primarily to harass or to cause
67 unnecessary delay or for frivolous purpose or to needlessly
68 increase the cost of litigation, licensing, or securing the
69 approval of an activity.

70 2. "Costs" has the same meaning as the costs allowed in
71 civil actions in this state as provided in chapter 57.

72 3. "Nonprevailing adverse party" means a party that has
73 failed to have substantially changed the outcome of the proposed
74 or final agency action which is the subject of a proceeding. If
75 ~~In the event that~~ a proceeding results in any substantial
76 modification or condition intended to resolve the matters raised
77 in a party's petition, it shall be determined that the party
78 having raised the issue addressed is not a nonprevailing adverse

79 party. The recommended order shall state whether the change is
80 substantial for purposes of this subsection. ~~In no event shall~~
81 The term "nonprevailing party" or "prevailing party" may not be
82 deemed to include a ~~any~~ party that has intervened in a
83 previously existing proceeding to support the position of an
84 agency.

85 (7) DETERMINATION OF RECOVERABLE FEES AND COSTS.—For
86 purposes of this chapter, s. 57.105(5), and s. 57.111, in
87 addition to an award of reasonable attorney fees and costs, the
88 prevailing party, if the prevailing party is not a state agency,
89 shall also recover reasonable attorney fees and costs incurred
90 in litigating entitlement to, and the determination or
91 quantification of, reasonable attorney fees and costs for the
92 underlying matter. Reasonable attorney fees and costs awarded
93 for litigating entitlement to, and the determination or
94 quantification of, reasonable attorney fees and costs for the
95 underlying matter are not subject to the limitations on amounts
96 provided in this chapter or s. 57.111.

97 Section 2. This act shall take effect July 1, 2014.