

By Representative Ryan

1 A bill to be entitled
2 An act relating to environmental regulation;
3 creating s. 403.08761, F.S.; creating the
4 "Florida Performance-Based Permitting Act";
5 creating s. 403.08762, F.S.; providing
6 legislative findings and public purpose;
7 creating s. 403.08763, F.S.; establishing the
8 performance-based permitting program for
9 regulated activities under ch. 161, F.S.,
10 relating to beach and shore preservation, pt.
11 IV of ch. 373, F.S., relating to management and
12 storage of surface waters, ch. 376, F.S.,
13 relating to pollutant discharge and removal,
14 and ch. 403, F.S., relating to environmental
15 control; providing definitions; requiring the
16 Department of Environmental Protection to
17 consider the compliance history of permit
18 applicants; providing categories of violations;
19 providing relevant compliance history criteria;
20 providing for burden of proof with respect to
21 civil violations; providing factors to consider
22 with respect to evaluation of an applicant's
23 compliance history; providing for possible
24 departmental actions in response to a permit
25 application; providing conditions for permit
26 denial or conditional issuance of a permit;
27 authorizing applicants to propose an
28 environmental management system as part of a
29 permit application or modification; providing
30 for the creation of forms and for submission of
31 specified information; providing for compliance

1 incentives, effective July 1, 2005, for
2 applicants who meet certain criteria;
3 authorizing the adoption of rules; providing
4 specified notification requirements with
5 respect to formal enforcement actions;
6 providing that an agency may continue to
7 evaluate compliance history based on other
8 provisions of law until July 1, 2005; providing
9 that, beginning July 1, 2005, the act
10 supersedes all other provisions of law
11 authorizing an agency to consider the
12 compliance history of applicants for permits
13 other than general permits; amending s.
14 403.087, F.S.; revising conditions under which
15 the department shall issue a permit to
16 construct, operate, maintain, expand, or modify
17 an installation which may reasonably be
18 expected to be a source of pollution; providing
19 that an applicant's compliance history shall be
20 a factor in determining whether the applicant
21 has provided specified reasonable assurance;
22 amending s. 373.413, F.S.; providing for
23 applicability of the performance-based
24 permitting program to permits for the
25 construction or alteration of any stormwater
26 management system, dam, impoundment, reservoir,
27 or appurtenant work or works, other than
28 general permits, under pt. IV of ch. 373, F.S.,
29 relating to management and storage of surface
30 waters; amending s. 161.041, F.S.; providing
31 for applicability of the performance-based

1 permitting program to all permits issued under
2 ch. 161, F.S., relating to beach and shore
3 preservation; providing an effective date.
4

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

6
7 Section 1. Section 403.08761, Florida Statutes, is
8 created to read:

9 403.08761 Short title.--Sections 403.08761-403.08763
10 may be cited as the "Florida Performance-Based Permitting
11 Act."

12 Section 2. Section 403.08762, Florida Statutes, is
13 created to read:

14 403.08762 Legislative findings; public purpose.--

15 (1) The Legislature finds and declares that:

16 (a) Permit applicants with a history of compliance
17 with environmental laws should be eligible for longer permits,
18 short-form permit renewals, and other incentives to reward and
19 encourage such applicants.

20 (b) Permit applicants with a history of noncompliance
21 with environmental laws should be subject to more stringent
22 requirements, and in some cases such applicants should be
23 denied permits for an appropriate period of time.

24 (c) Permit decisionmaking that considers past
25 compliance history and customizes the permit in recognition of
26 that history increases protection for the environment:

27 1. Because it encourages compliance;

28 2. By allowing the department to focus financial and
29 personnel resources on those few persons or entities subject
30 to regulation under this act with records of poor compliance;

31 and

1 3. Because it allows permit applicants with
2 satisfactory records to better focus their resources.

3 (d) In order to maximize the benefit of a permit
4 decisionmaking process that recognizes an applicant's
5 compliance history, the evaluation of that history should be
6 conducted in a more clear, consistent, and predictable manner.

7 (2) It is therefore declared to be the purpose of this
8 act to:

9 (a) Enhance the protection of the state's natural
10 resources by establishing and making available to those
11 persons and entities regulated under this act incentives to
12 encourage compliance and to reward those who meet or exceed
13 compliance requirements;

14 (b) Provide the department with clear and specific
15 authority to consider the compliance history of permit
16 applicants and those who control the applicants when
17 evaluating reasonable assurance and when designing and
18 implementing its permitting programs;

19 (c) Clearly define the extent to which the department
20 may consider compliance history in its permitting
21 decisionmaking; and

22 (d) Promote objectivity and consistency in the
23 evaluation process throughout the state by establishing
24 criteria for the review of compliance history and by defining
25 the potential permitting consequences of compliance and
26 noncompliance with environmental laws.

27 Section 3. Section 403.08763, Florida Statutes, is
28 created to read:

29 403.08763 Performance-based permitting program.--

30 (1) DEFINITIONS.--As used in this section, the term:

31

1 (a) "Applicant" means the proposed permittee, the
2 owner, and the operator of a regulated activity seeking an
3 agency permit. If the applicant has not held an agency permit
4 during at least 4 of the 5 years preceding submission of the
5 permit application, the term also includes any person who has
6 the legal or actual authority to control the owner, operator,
7 or permittee. The term also includes any person seeking the
8 transfer of an agency permit, and, if such prospective
9 transferee has not held an agency permit during at least 4 of
10 the 5 years preceding submission of the request to transfer
11 the permit, any person who has the legal or actual authority
12 to control the prospective transferee.

13 (b) "Agency" means the Department of Environmental
14 Protection, the water management districts acting pursuant to
15 part IV of chapter 373, and local governments acting under a
16 delegation agreement with the department or a water management
17 district.

18 (c) "Agency statutes" means chapter 161, part IV of
19 chapter 373, chapter 376, and chapter 403.

20 (d) "Department" means the Department of Environmental
21 Protection.

22 (e) "Environmental statutes" means any state or
23 federal statute that regulates activities for the purpose of
24 protecting the environment, but does not include any statute
25 that regulates activities only for purposes of zoning, growth
26 management, or land use.

27 (f) "Reasonable assurance" means that there is a
28 substantial likelihood, although not an absolute guarantee,
29 that the proposed activity and the applicant will comply with
30 agency rules, statutes, orders, and permit conditions.

31

1 (g) "Regulated activity" means any activity, including
2 the construction or operation of a facility, installation,
3 system, or project, for which a permit or certification is
4 required under an agency statute.

5 (h) "Site" means a single parcel or multiple
6 contiguous or adjacent parcels of land on which the applicant
7 proposes to conduct, or has conducted, a regulated activity
8 and includes any other contiguous parcels of land owned or
9 controlled by the applicant. A site is considered a "new site"
10 if the applicant has not held an agency permit for a regulated
11 activity at that location for at least 4 of the 5 years
12 preceding submission of an application.

13 (2) PERIOD OF REVIEW.--One factor in determining
14 whether a permit applicant has provided reasonable assurance
15 of compliance with applicable statutes and agency rules is the
16 compliance history of the applicant. The department shall
17 consider the compliance history of the applicant during the 5
18 years preceding submission of a complete application to the
19 agency.

20 (3) CATEGORIES OF VIOLATIONS.--Violations of agency
21 rules and statutes, and offenses under applicable criminal
22 statutes, are categorized as follows:

23 (a) Category A.--

24 1. Felony criminal violations.

25 a. The applicant has been convicted of, entered a plea
26 of guilty or nolo contendere to, or had adjudication withheld
27 for a felony criminal violation of any state or federal
28 environmental law.

29 b. For purposes of this subparagraph, if the applicant
30 is a business entity, violations include violations committed
31 by those officers, directors, trustees, partners, or

1 managerial employees of the applicant who have legal or actual
2 operational control over the regulated activity for which a
3 permit is being sought.

4 2. Harm to humans. The applicant is responsible for a
5 violation of an agency statute, rule, consent order, final
6 order, final judgment, or agreement that resulted in
7 significant physical harm or injury to one or more human
8 beings.

9 (b) Category B.--

10 1. Other criminal violations.

11 a. The applicant has been convicted of, entered a plea
12 of guilty or nolo contendere to, or had adjudication withheld
13 for a misdemeanor criminal violation of any environmental
14 statute in this state; or

15 b. The applicant has been convicted of, entered a plea
16 of guilty or nolo contendere to, or had adjudication withheld
17 for a crime of dishonesty in this state which involves or is
18 related to the operation of a facility or activity requiring
19 an agency permit. Such crimes may include theft, larceny,
20 dealing in stolen property, receiving stolen property,
21 burglary, embezzlement, obtaining property by false pretenses,
22 possession of altered property, or any fraudulent or dishonest
23 dealing.

24
25 For purposes of this subparagraph, if the applicant is a
26 business entity, violations include violations committed by
27 those officers, directors, trustees, partners, or managerial
28 employees of the applicant who have legal or actual
29 operational control over the regulated activity for which a
30 permit is being sought.

31 2. Circumvention or falsification.

1 a. The applicant is responsible for a violation
2 involving the knowing circumvention of pollution control
3 equipment required by agency rules, statutes, orders, or
4 permit conditions;

5 b. The applicant is responsible for a violation
6 involving the knowing failure to install, maintain, or operate
7 any monitoring device or method required to be maintained by
8 agency rules, statutes, orders, or permit conditions;

9 c. The applicant is responsible for a violation
10 involving the knowing submission of any false statement,
11 representation, or certification in any application, record,
12 report, plan, or other document filed or required to be
13 maintained by agency rules, statutes, orders, or permit
14 conditions; or

15 d. The applicant is responsible for a violation
16 involving falsifying, tampering with, or knowingly rendering
17 inaccurate any monitoring device or method required to be
18 maintained by agency rules, statutes, orders, or permit
19 conditions.

20 3. Harm to the environment. The applicant is
21 responsible for any violation of an agency statute, rule,
22 consent order, final order, final judgment, or agreement that
23 resulted in significant harm or injury to the environment.

24 (c) Category C.--

25 1. The applicant is responsible for a violation of an
26 agency statute, rule, consent order, final order, agreement,
27 or final judgment involving the agency which resulted in a
28 significant threat to human health or the environment.

29 2. The applicant is responsible for a violation of an
30 agency statute, rule, consent order, final order, agreement,
31 or final judgment involving the agency which is not addressed

1 in subparagraph 1., which has not been resolved, and which the
2 applicant has not attempted to resolve through a consent order
3 or other agreement with the agency, following a good-faith
4 effort on the part of the applicant at participation in a
5 process designed to achieve such resolution.

6 (d) Category D.--The applicant is responsible for two
7 or more violations, on at least two separate occasions, of
8 agency statutes, rules, consent orders, final orders,
9 agreements, or final judgments involving the agency which
10 establish a pattern of noncompliance indicating that the
11 applicant is unwilling or unable to comply with applicable
12 agency standards and criteria.

13 (4) RELEVANT COMPLIANCE HISTORY.--In evaluating an
14 applicant's compliance history, the agency shall consider only
15 those violations categorized in subsection (3), and only in
16 accordance with the following criteria:

17 (a) If the application is for the renewal of an agency
18 permit, or for a new permit at any site other than a new site,
19 the agency shall consider the applicant's violations at that
20 site, and shall also consider any of the applicant's Category
21 A crimes at any site in the United States.

22 (b) If the application is for a new permit at a new
23 site, the agency shall consider the applicant's violations at
24 any site in the state.

25 (c) If the application is for an operation permit for
26 a regulated activity for which a construction permit was
27 issued during the 5 years preceding the application, and if
28 the agency evaluated the compliance history of the applicant
29 during the review of the construction permit, the agency shall
30 not reevaluate that compliance history, unless the entities
31 whose histories were originally reviewed were responsible for

1 additional violations occurring after the agency completed the
2 construction permit review.

3 (d) This subsection does not apply to general permits
4 issued in accordance with ss. 373.414 and 403.814, and only
5 subsections (11)-(14) apply to applications for closure and
6 postclosure permits. However, the agency may continue to use
7 its authority under s. 403.087 to consider the compliance
8 history of those seeking to use a general permit.

9 (5) CIVIL VIOLATIONS; BURDEN OF PROOF.--The agency may
10 consider all civil violations that were committed during the
11 relevant review period and that resulted in the initiation of
12 a formal enforcement action by the agency. However, if a civil
13 violation or violations have not been resolved or adjudicated
14 before the agency takes final action on the application, the
15 civil violation must be established by a preponderance of the
16 evidence in any subsequent proceeding challenging the agency's
17 proposed agency action. In all such proceedings:

18 (a) The permit applicant has the initial burden in any
19 proceeding challenging the proposed agency action of
20 establishing a prima facie case that it has provided
21 reasonable assurance and is entitled to the permit;

22 (b) The agency, or any party seeking to establish
23 violations under this subsection, then has the burden of
24 presenting by a preponderance of the evidence a prima facie
25 case supporting the violations it contends were the
26 responsibility of the applicant, as well as the pattern of
27 noncompliance if a Category D violation is alleged; and

28 (c) The permit applicant retains the ultimate burden
29 of persuasion that it has provided reasonable assurance with
30 respect to all issues.

31

1 (6) FACTORS TO CONSIDER.--If the agency determines
2 that the applicant is responsible for any Category A, Category
3 B, or Category D violation, the agency shall initiate a
4 further review. If the agency determines that the applicant is
5 responsible for any Category C violation, the agency may
6 initiate a further review. The following factors must be
7 considered and weighed in order to evaluate such violations in
8 the context of the applicant's overall compliance history, and
9 to determine whether the applicant has provided reasonable
10 assurance of future compliance with agency rules and statutes:
11 (a) The number of violations or crimes and the
12 seriousness of such violations or crimes;
13 (b) The number of other similar facilities controlled
14 by the applicant;
15 (c) The number and complexity of permits held by the
16 applicant;
17 (d) Whether the violations or crimes involved
18 regulatory programs that are the same as, or similar to, the
19 regulatory program under which the permit is being requested;
20 (e) Whether the violations or crimes involved
21 activities that are the same as, similar to, or related to the
22 regulated activity for which a permit is being requested;
23 (f) Whether the applicant has resolved, or in good
24 faith participated in a process to resolve, all previous
25 violations by the applicant; and
26 (g) Whether the applicant has developed an
27 environmental management system that complies with the
28 requirements of subsection (9).
29 (7) POSSIBLE ACTIONS.--After considering the
30 applicant's compliance history, including any mitigating
31

1 factors, the agency may in its discretion take one or more of
2 the following actions:

3 (a) Issue a permit with special conditions designed to
4 minimize the likelihood of similar future violations.

5 (b) Issue a permit with an accompanying administrative
6 order. The administrative order may include a schedule for
7 coming into compliance with agency rules, statutes, orders, or
8 permit conditions; additional operating, training, or auditing
9 procedures necessary to assure compliance; specified penalties
10 for future noncompliance; and financial assurance in the form
11 of a cash deposit, bond, insurance policy, or letter of credit
12 sufficient to cover damages or cleanup costs that could
13 foreseeably result from future violations.

14 (c) Require independent compliance audits or programs
15 at the regulated activity at the applicant's cost.

16 (d) Issue a permit with a duration of less than 5
17 years, if not prohibited by federal law.

18 (e) Issue a permit with more frequent reporting
19 requirements than are generally required by rule or practice.

20 (f) Issue a permit requiring financial assurance
21 designed to guarantee performance.

22 (8) PERMIT DENIAL; CONDITIONAL ISSUANCE.--The agency
23 may deny a permit application only if the agency determines
24 that any action taken under subsection (7) would not
25 reasonably be expected to result in future compliance. Upon
26 such determination, the agency may, in its discretion, deny a
27 permit application, or issue a conditional permit, in
28 accordance with the following:

29 (a) If the applicant is responsible for a Category A
30 violation, the agency may deny the permit application, and the
31 applicant is not entitled to apply for a permit for the

1 regulated activity for which a permit is sought for a period
2 of 1 year from the date of entry of a final order denying the
3 permit.

4 (b) If the applicant is responsible for two or more
5 Category B violations, the agency may deny the permit
6 application, and the applicant is not entitled to apply for a
7 permit for the regulated activity for a period of 6 months
8 from the date of entry of a final order denying the permit.

9 (c) If the applicant is responsible for a Category D
10 violation, the agency may issue a permit, not to exceed 1 year
11 in duration, which may also include any of the actions
12 provided for in subsection (7). The following criteria will
13 apply to any such permit:

14 1. The agency shall include in its notice of intended
15 agency action a statement explaining that the agency has
16 determined that the applicant has a pattern of noncompliance
17 and that this determination has formed the basis for taking
18 any of the actions provided for in subsection (7). The agency
19 shall also include a notification that an application to renew
20 the permit could be denied if the pattern of noncompliance
21 continues.

22 2. If, at the time for permit renewal, the agency
23 determines that the applicant has demonstrated a continuing
24 pattern of noncompliance, the agency shall deny the permit
25 renewal application, and the applicant is not entitled to
26 apply for a permit for the regulated activity for which permit
27 renewal is sought for a period of 6 months from the date of
28 entry of a final order denying the permit renewal.

29 (d) In considering an application for a permit that
30 includes corrective action requirements, the agency may deny
31 that portion of the permit authorizing operation, and may

1 issue a permit that contains only the specified corrective
2 action requirements and conditions.

3 (e) If the applicant has twice been denied a permit in
4 accordance with this subsection during the 5 years preceding
5 submission of a complete application to the agency, the
6 applicant may not apply for a permit for any regulated
7 activity in this state.

8 (9) ENVIRONMENTAL MANAGEMENT SYSTEMS.--An applicant
9 may propose an environmental management system as part of a
10 permit application or modification. For the purposes of
11 paragraph (6)(f) and paragraph (11)(b), such a program must be
12 approved by the department and be included as a specific
13 permit condition. An approved environmental management system
14 must:

15 (a) Be designed to eliminate or reduce the likelihood
16 of recurrence of violations;

17 (b) Establish compliance standards and procedures to
18 be followed by the applicant's employees and agents which are
19 reasonably capable of reducing the prospect of violations;

20 (c) Provide that specific individuals who have
21 substantial control over the applicant or who have a
22 substantial role in the applicant's policymaking have been
23 assigned overall responsibility to oversee compliance with
24 such standards and procedures;

25 (d) Provide that the applicant use due care not to
26 delegate substantial discretionary authority to individuals
27 whom the applicant knows, or should have known through the
28 exercise of due diligence, have engaged in violations;

29 (e) Be communicated effectively to all employees and
30 independent contractors by requiring routine participation in
31 training programs and by disseminating written or electronic

1 information that explains program requirements in a practical
2 manner;

3 (f) Establish monitoring and auditing systems
4 reasonably designed to detect environmental violations by the
5 applicant's employees and independent contractors;

6 (g) Establish a readily available reporting system
7 whereby employees and independent contractors may report
8 environmental violations by others within the applicant's
9 organization without fear of retribution; and

10 (h) Be consistently enforced through appropriate
11 disciplinary and incentive mechanisms, including, as
12 appropriate, discipline of individuals responsible for the
13 failure to detect an environmental violation.

14 (10) FORM.--The agency shall establish by rule a form
15 to be used for the purpose of implementing this section. Each
16 permit application submitted to the agency under this section
17 must be accompanied by this completed form. During the permit
18 review process, the form shall be updated by the applicant to
19 reflect any changes in any information included on the
20 application from the time of submission of the application
21 until the agency makes a final determination on the
22 application. The form must include the following:

23 (a) A section requiring each applicant to report the
24 relevant criminal history of the applicant, including the
25 nature of any offense or offenses, the date of the offense,
26 the court having jurisdiction in the case, the date of
27 conviction or other disposition, and the disposition of the
28 offense; and

29 (b) A section requiring each applicant who has not
30 held an agency permit during the 5 years preceding submission
31 of a permit application to identify those persons having legal

1 or actual authority to control the owner, operator, or
2 permittee. The form shall specify in detail the information
3 required to be reported.

4 (11) COMPLIANCE INCENTIVES.--Effective July 1, 2005,
5 any applicant who meets the criteria set forth in this
6 subsection is eligible for the incentives set forth in this
7 subsection, unless otherwise prohibited by state or federal
8 statute, agency rule, or federal regulation, provided that the
9 applicant meets all other applicable criteria for the issuance
10 of a permit. In order to obtain an incentive, the applicant
11 must affirmatively request the incentive as part of the permit
12 application.

13 (a) Tier 1. An applicant is eligible for the
14 incentives under subparagraphs 1. and 2. if the applicant
15 conducted the regulated activity for which a permit is sought
16 for at least 4 of the past 5 years or, if it is a new
17 regulated activity, the applicant conducted a similar
18 regulated activity under an agency permit for at least 4 of
19 the past 5 years, and the applicant has not been responsible
20 for any Category A, Category B, Category C, or Category D
21 violations:

22 1. Extended permit. A renewal of an operation or
23 closure permit, which may include expansions or modifications
24 involving construction, shall be issued for a period of 5
25 years and shall be automatically renewed for an additional 5
26 years without agency action under the following conditions:

27 a. At least 180 days before the end of the first
28 5-year period, the applicant shall complete and submit the
29 prescribed form to the agency. The applicant shall
30 concurrently publish notice of the application in a newspaper
31 of general circulation in the county in which the regulated

1 activity is conducted, and inform the public that the agency
2 will accept comments on the compliance history of the
3 applicant for a period of 30 days after the notice is
4 published. Within 45 days after publication, the agency shall
5 conduct a review of the compliance history of the applicant,
6 including consideration of any timely public comments, and
7 shall determine whether the applicant continues to meet the
8 criteria set forth in this paragraph.

9 b. If the applicant no longer meets the criteria set
10 forth in this paragraph, the agency shall so notify the
11 applicant and shall require the applicant to submit a permit
12 renewal application in accordance with applicable agency
13 statutes and rules. A renewal application submitted within 60
14 days after such notification is considered timely submitted
15 for purposes of s. 120.60.

16 c. If the applicant meets the criteria set forth in
17 this paragraph, the agency may notify the applicant, but need
18 take no further action for the renewal to be effective.

19 d. If the applicant seeks to transfer the extended
20 permit to another entity, the transferee shall complete and
21 submit the prescribed form as part of the transfer
22 application. If the agency determines that the transferee has
23 met the criteria set forth in this paragraph over the previous
24 5 years, and if the transferee complies with all other
25 applicable criteria, the agency shall transfer the extended
26 permit.

27 2. Short-form renewals. Renewal of permits not
28 involving substantial construction or expansion may be made on
29 a shortened application form specifying only the changes in
30 the regulated activity for which permit renewal is sought or a
31 certification by the permittee that no changes in the

1 regulated activity are proposed, if that is the case.
2 Applicants for short-form renewals shall complete and submit
3 the prescribed compliance form with the application and shall
4 remain subject to the compliance history review of this
5 section. All other procedural requirements for renewal
6 applications under this section shall apply to short-form
7 renewals. This subparagraph supplements any expedited review
8 processes prescribed in agency rules.

9 (b) Tier 2. An applicant is eligible for the
10 incentives under subparagraphs 1.-4. if the applicant meets
11 the requirements set forth in paragraph (a) and has
12 implemented an environmental management system as provided in
13 subsection (9) which results in achieving performance
14 objectives that exceed the agency's minimum compliance
15 standards:

16 1. Extended permits and short-form renewals as
17 provided for in paragraph (a). However, if the applicant has
18 conducted a regulated activity at a site for at least 5 years,
19 the applicant is eligible for a 10-year permit at that site.

20 2. Fewer routine inspections than other regulated
21 activities similarly situated.

22 3. Expedited review of requests for permit
23 modifications.

24 4. Other incentives as may be provided by the agency,
25 which may include recognition by the secretary or
26 program-specific incentives.

27 (12) RULEMAKING.--The department may adopt rules
28 pursuant to ss. 120.536(1) and 120.54 to administer this
29 section. Any such rules adopted by the department shall apply
30 to all agencies as defined in this section, unless an agency
31

1 has adopted its own rule that is substantially identical to
2 the department's rule.

3 (13) ENFORCEMENT ACTION; NOTIFICATION.--The agency is
4 encouraged to work with permittees and permit applicants
5 before taking any of the actions authorized under this
6 section, in order to encourage compliance and avoid the overly
7 burdensome consequences of noncompliance. In each case in
8 which the agency initiates a formal enforcement action, it
9 shall clearly and specifically:

10 (a) Inform the alleged violator of the provisions of
11 this section;

12 (b) Put the alleged violator on notice of the
13 potential consequences of continuing noncompliance; and

14 (c) Inform the alleged violator if the agency has
15 determined that a Category A, Category B, or Category C
16 violation has occurred.

17 (14) CONSTRUCTION.--This section shall not be
18 construed to limit an agency's existing authority to consider
19 factors other than an applicant's compliance history, such as
20 the technical merits of a proposed project or the applicant's
21 financial and human resources, when determining whether the
22 applicant has provided the reasonable assurance necessary to
23 receive the requested permit, nor shall anything in this
24 section be construed to limit an agency's existing authority
25 to impose special conditions in any permit or to revoke any
26 permit.

27 (15) EFFECT.--Notwithstanding any provision of this
28 section to the contrary, an agency may continue to evaluate
29 compliance history based upon other provisions of law until
30 July 1, 2005. After July 1, 2005, this section shall supersede
31 all other provisions of law authorizing an agency to consider

1 the compliance history of applicants for permits, other than
2 general permits.

3 Section 4. Subsection (5) of section 403.087, Florida
4 Statutes, is amended to read:

5 403.087 Permits; general issuance; denial; revocation;
6 prohibition; penalty.--

7 (5) The department shall issue permits to construct,
8 operate, maintain, expand, or modify an installation which may
9 reasonably be expected to be a source of pollution only if the
10 applicant affirmatively provides the department with
11 reasonable assurance that the proposed activity and applicant
12 will comply with department rules, statutes, orders, and
13 permit conditions ~~when it determines that the installation is~~
14 ~~provided or equipped with pollution control facilities that~~
15 ~~will abate or prevent pollution to the degree that will comply~~
16 ~~with the standards or rules adopted by the department, except~~
17 ~~as provided in s. 403.088 or s. 403.0872.~~ The compliance
18 history of the applicant shall be one factor in determining
19 whether the applicant has provided such reasonable assurance.
20 However, separate construction permits shall not be required
21 for installations permitted under s. 403.0885, except that the
22 department may require an owner or operator proposing to
23 construct, expand, or modify such an installation to submit
24 for department review, as part of application for permit or
25 permit modification, engineering plans, preliminary design
26 reports, or other information 90 days prior to commencing
27 construction. The department may also require the engineer of
28 record or another registered professional engineer, within 30
29 days after construction is complete, to certify that the
30 construction was completed in accordance with the plans

31

1 submitted to the department, noting minor deviations which
2 were necessary because of site-specific conditions.

3 Section 5. Subsection (6) is added to section 373.413,
4 Florida Statutes, to read:

5 373.413 Permits for construction or alteration.--

6 (6) The provisions of s. 403.08763, the
7 performance-based permitting program, apply to all permits
8 issued under this section other than general permits.

9 Section 6. Subsection (5) is added to section 161.041,
10 Florida Statutes, to read:

11 161.041 Permits required.--

12 (5) The provisions of s. 403.08763, the
13 performance-based permitting program, shall apply to all
14 permits issued under this chapter.

15 Section 7. This act shall take effect July 1, 2002.

16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

HOUSE SUMMARY

Creates the "Florida Performance-Based Permitting Act."
Provides legislative findings and public purpose.
Establishes the performance-based permitting program for
regulated activities under ch. 161, F.S., relating to
beach and shore preservation, pt. IV of ch. 373, F.S.,
relating to management and storage of surface waters, ch.
376, F.S., relating to pollutant discharge and removal,
and ch. 403, F.S., relating to environmental control.
Provides definitions. Requires the Department of
Environmental Protection to consider the compliance
history of permit applicants. Provides categories of
violations. Provides relevant compliance history
criteria. Provides for burden of proof with respect to
civil violations. Provides factors to consider with
respect to evaluation of an applicant's compliance
history. Provides for possible departmental actions in
response to a permit application. Provides conditions
for permit denial and conditional issuance of a permit.
Authorizes applicants to propose an environmental
management system as part of a permit application or
modification. Provides for the creation of forms and for
submission of specified information. Provides for
compliance incentives, effective July 1, 2005, for
applicants who meet certain criteria. Authorizes the
adoption of rules. Provides specified notification
requirements with respect to formal enforcement actions.
Provides that an agency may continue to evaluate
compliance history based on other provisions of law until
July 1, 2005, at which time the act supersedes all other
provisions of law authorizing an agency to consider the
compliance history of applicants for permits other than
general permits.

Revises conditions under which the department shall issue
a permit to construct, operate, maintain, expand, or
modify an installation which may reasonably be expected
to be a source of pollution. Provides that an applicant's
compliance history shall be a factor in determining
whether the applicant has provided specified reasonable
assurance.