

By Senator Argenziano

3-1733-04

See HB 319

1 A bill to be entitled
2 An act relating to the Florida Incentive-based
3 Permitting Act; creating s. 403.0874, F.S.;
4 providing a section name; providing legislative
5 findings; providing purposes; providing
6 definitions; providing for an Incentive-based
7 Permitting Program; providing compliance
8 incentives for certain environmental permitting
9 activities; providing requirements and
10 limitations; providing for administration by
11 the Department of Environmental Protection;
12 requiring the Department of Environmental
13 Protection to adopt certain rules; requiring
14 agency notification of formal enforcement
15 actions; providing notice requirements;
16 amending ss. 161.041 and 373.413, F.S.;
17 specifying application of Incentive-based
18 Permitting Program provisions; amending s.
19 403.087, F.S.; revising criteria for department
20 permit issuance to conform; providing an
21 effective date.

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

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25 Section 1. Section 403.0874, Florida Statutes, is
26 created to read:

27 403.0874 Incentive-based Permitting Program.--

28 (1) Popular name.--This section is the "Florida
29 Incentive-based Permitting Act."

30 (2) LEGISLATIVE FINDINGS; PUBLIC PURPOSE.--
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1 (a) The Legislature finds and declares that a permit
2 applicant's history of compliance with applicable permit
3 conditions and requirements and the environmental laws of this
4 state is a factor that should be considered by the department
5 when the department is considering whether to issue or reissue
6 a permit to an applicant, based upon compliance incentives
7 under this section.

8 (b) Permit applicants with a history of compliance
9 with applicable permit conditions and requirements and the
10 environmental laws of this state should be eligible for longer
11 permits, expedited permit reviews, short-form permit renewals,
12 and other incentives to reward and encourage such applicants.

13 (c) It is therefore declared to be the purpose of this
14 act to provide the department with clear and specific
15 authority to consider the compliance history of a permit
16 applicant who has applied for an incentive-based permit.

17 (3) DEFINITIONS.--For purposes of this section:

18 (a) "Applicant" means the proposed permittee or
19 transferee, owner, or operator of a regulated activity seeking
20 an agency permit.

21 (b) "Agency" means the Department of Environmental
22 Protection.

23 (c) "Environmental laws" means any state or federal
24 law that regulates activities for the purpose of protecting
25 the environment, or for the purpose of protecting the public
26 health from pollution or contaminants, but does not include
27 any law that regulates activities for the purpose of zoning,
28 growth management, or land use. The term includes, but is not
29 limited to, chapter 161, part IV of chapter 373, and chapter
30 403.

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1 (d) "Regulated activity" means any activity,
2 including, but not limited to, the construction or operation
3 of a facility, installation, system, or project, for which a
4 permit or certification is required under an agency law.

5 (e) "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 (4) COMPLIANCE INCENTIVES.--In order to obtain
9 compliance incentives, the applicant must affirmatively
10 request such incentives as part of the permit application.
11 Unless otherwise prohibited by state or federal law, agency
12 rule, or federal regulation, and provided the applicant meets
13 all other applicable criteria for the issuance of a permit,
14 any applicant who meets the criteria set forth in this
15 subsection is entitled to the following incentives:

16 (a) Level 1.--

17 1. An applicant shall be entitled to incentives
18 pursuant to this paragraph at a site if the applicant
19 conducted the regulated activity for at least 4 of the 5 years
20 preceding submittal of the permit application or, if the
21 activity is a new regulated activity, the applicant conducted
22 a similar regulated activity under an agency permit for at
23 least 4 of the 5 years at a different site in this state
24 preceding submittal of the permit application. However, an
25 applicant shall not be entitled to incentives under this
26 paragraph if the applicant has a relevant compliance history
27 at the subject site that includes any knowing violation that
28 resulted in formal enforcement action and the violation
29 resulted in significant harm to human health or the
30 environment. The term "knowing" means awareness of the nature
31 of a person's acts, not awareness that such acts violate the

1 law. The term does not include conduct that is the result of
2 an act of God, mechanical failure, events beyond the control
3 of the applicant, an accident or a mistake of fact. The term
4 "act of God," which means only an unforeseeable act
5 exclusively occasioned by the violence of nature without the
6 interference of any human agency, shall not be deemed to cause
7 any failure to comply with a permit condition or requirement.
8 2. Level 1 incentives shall include:
9 a. Automatic renewal of permit.--A renewal of an
10 operation or closure permit shall be issued for a period of 5
11 years and shall, after notice and an opportunity for public
12 comment, be automatically renewed for one additional 5-year
13 term without agency action unless the agency determines, based
14 on information submitted by the applicant or resulting from
15 the public comments or its own records, that the applicant has
16 committed violations during the relevant review period that
17 disqualify the applicant from receiving the automatic or
18 expedited renewal.
19 b. Expedited permit review.--The processing time
20 following receipt of a completed application shall be 45 days
21 for the issuance of the agency action.
22 c. Short-form renewals.--Renewals of operation or
23 closure permits not involving substantial construction or
24 expansion may be made upon a shortened application form
25 specifying only the changes in the regulated activity or a
26 certification by the applicant that no changes in the
27 regulated activity are proposed if that is the case.
28 Applicants for short-form renewals shall complete and submit
29 the prescribed compliance form with the application and shall
30 remain subject to the compliance history review of this
31 section. All other procedural requirements for renewal

1 applications remain unchanged. This provision shall supplement
2 any expedited review processes found in agency rules.

3 (b) Level 2.--

4 1. An applicant shall be entitled to incentives
5 pursuant to this paragraph if the applicant meets the
6 requirements for Level 1 and the applicant takes any other
7 actions not otherwise required by law that result in:

8 a. Reductions in actual or permitted discharges or
9 emissions;

10 b. Reductions in the impacts of regulated activities
11 on public lands or natural resources;

12 c. Waste reduction or reuse;

13 d. Implementation of a voluntary environmental
14 management system; or

15 e. Other similar actions as determined by department
16 rule.

17 2. Level 2 incentives may include all Level 1
18 incentives and shall also include:

19 a. Ten-year permits, provided the applicant has
20 conducted a regulated activity at the site for at least 5
21 years.

22 b. Fewer routine inspections than other regulated
23 activities similarly situated.

24 c. Expedited review of requests for permit
25 modifications.

26 d. Agency recognition, program-specific incentives, or
27 certifications in lieu of renewal permits.

28 e. No more than two requests for additional
29 information.

30 (c) Rulemaking.--Within 6 months after the effective
31 date of this act, the department shall initiate rulemaking to

1 implement Level 2 incentives. The rule shall specify what
2 incentives will be made available, how applicants may qualify
3 for incentives, how extended permits may be transferred. Until
4 an implementing rule is adopted, Level 2 incentives shall not
5 be available to permit applicants under this act.

6 (5) NOTIFICATION.--The agency is encouraged to work
7 with permittees and permit applicants to encourage compliance
8 and avoid burdensome and expensive consequences of
9 noncompliance. In each case in which the agency initiates a
10 formal enforcement action and prior to considering incentives
11 outlined in this section, the agency shall clearly and
12 specifically:

13 (a) Inform the alleged permittee if the provisions of
14 this section will allow for considering incentives.

15 (b) Put the alleged permittee on notice of the
16 consequences of violations and the potential consequences of
17 continuing noncompliance in relation to Level 1 or Level 2
18 incentives.

19 Section 2. Subsection (5) is added to section 161.041,
20 Florida Statutes, to read:

21 161.041 Permits required.--

22 (5) The Incentive-based Permitting Program provisions
23 of s. 403.0874 shall apply to all permits issued under this
24 chapter.

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

27 373.413 Permits for construction or alteration.--

28 (6) The Incentive-based Permitting Program provisions
29 of s. 403.0874 shall apply to individual and conceptual
30 permits issued under this section.

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1 Section 4. Subsection (7) of section 403.087, Florida
2 Statutes, is amended to read:

3 403.087 Permits; general issuance; denial; revocation;
4 prohibition; penalty.--

5 (7) A permit issued pursuant to this section shall not
6 become a vested right in the permittee. The department may
7 revoke any permit issued by it if it finds that the
8 permit holder knowingly:

9 (a) Has submitted false or inaccurate information in
10 the his or her application for such permit;

11 (b) Has violated law, department orders, rules, or
12 regulations, or ~~permit~~ conditions directly related to such
13 permit and has refused to correct or cure such violations when
14 requested to do so;

15 (c) Has failed to submit operational reports or other
16 information required by department rule or regulation directly
17 related to such permit and has refused to correct or cure such
18 violations when requested to do so; or

19 (d) Has refused lawful inspection under s. 403.091 at
20 the facility authorized by such permit.

21 Section 5. This act shall take effect upon becoming a
22 law.

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