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A bill to be entitled

An act relating to the Florida Incentive-based Permitting Act; creating s. 403.0874, F.S.; providing a section name; providing legislative findings; providing purposes; providing definitions; providing for an Incentive-based Permitting Program; providing compliance incentives for certain environmental permitting activities; providing requirements and limitations; providing for administration by the Department of Environmental Protection; requiring the Department of Environmental Protection to adopt certain rules; requiring agency notification of formal enforcement actions; providing notice requirements; amending ss. 161.041 and 373.413, F.S.; specifying application of Incentive-based Permitting Program provisions; amending s. 403.087, F.S.; revising criteria for department permit issuance to conform; providing an effective date.

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

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

403.0874 Incentive-based Permitting Program.--

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

(2) LEGISLATIVE FINDINGS; PUBLIC PURPOSE.--

(a) The Legislature finds and declares that a permit applicant's history of compliance with applicable permit conditions and requirements and the environmental laws of this state is a factor that should be considered by the department

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31 when the department is considering whether to issue or reissue a  
32 permit to an applicant, based upon compliance incentives under  
33 this section.

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

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

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

44 (a) "Applicant" means the proposed permittee or  
45 transferee, owner, or operator of a regulated activity seeking  
46 an agency permit.

47 (b) "Agency" means the Department of Environmental  
48 Protection.

49 (c) "Environmental laws" means any state or federal law  
50 that regulates activities for the purpose of protecting the  
51 environment, or for the purpose of protecting the public health  
52 from pollution or contaminants, but does not include any law  
53 that regulates activities for the purpose of zoning, growth  
54 management, or land use. The term includes, but is not limited  
55 to, chapter 161, part IV of chapter 373, and chapter 403.

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

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60 (e) "Site" means a single parcel, or multiple contiguous  
61 or adjacent parcels, of land on which the applicant proposes to  
62 conduct, or has conducted, a regulated activity.

63 (4) COMPLIANCE INCENTIVES.--In order to obtain compliance  
64 incentives, the applicant must affirmatively request such  
65 incentives as part of the permit application. Unless otherwise  
66 prohibited by state or federal law, agency rule, or federal  
67 regulation, and provided the applicant meets all other  
68 applicable criteria for the issuance of a permit, any applicant  
69 who meets the criteria set forth in this subsection is entitled  
70 to the following incentives:

71 (a) Level 1.--

72 1. An applicant shall be entitled to incentives pursuant  
73 to this paragraph at a site if the applicant conducted the  
74 regulated activity for at least 4 of the 5 years preceding  
75 submittal of the permit application or, if the activity is a new  
76 regulated activity, the applicant conducted a similar regulated  
77 activity under an agency permit for at least 4 of the 5 years at  
78 a different site in this state preceding submittal of the permit  
79 application. However, an applicant shall not be entitled to  
80 incentives under this paragraph if the applicant has a relevant  
81 compliance history at the subject site that includes any knowing  
82 violation that resulted in formal enforcement action and the  
83 violation resulted in significant harm to human health or the  
84 environment. The term "knowing" means awareness of the nature of  
85 a person's acts, not awareness that such acts violate the law.  
86 The term does not include conduct that is the result of an act  
87 of God, mechanical failure, events beyond the control of the  
88 applicant, an accident or a mistake of fact. The term "act of  
89 God," which means only an unforeseeable act exclusively

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90 occasioned by the violence of nature without the interference of  
91 any human agency, shall not be deemed to cause any failure to  
92 comply with a permit condition or requirement.

93 2. Level 1 incentives shall include:

94 a. Automatic renewal of permit.--A renewal of an operation  
95 or closure permit shall be issued for a period of 5 years and  
96 shall, after notice and an opportunity for public comment, be  
97 automatically renewed for one additional 5-year term without  
98 agency action unless the agency determines, based on information  
99 submitted by the applicant or resulting from the public comments  
100 or its own records, that the applicant has committed violations  
101 during the relevant review period that disqualify the applicant  
102 from receiving the automatic or expedited renewal.

103 b. Expedited permit review.--The processing time following  
104 receipt of a completed application shall be 45 days for the  
105 issuance of the agency action.

106 c. Short-form renewals.--Renewals of operation or closure  
107 permits not involving substantial construction or expansion may  
108 be made upon a shortened application form specifying only the  
109 changes in the regulated activity or a certification by the  
110 applicant that no changes in the regulated activity are proposed  
111 if that is the case. Applicants for short-form renewals shall  
112 complete and submit the prescribed compliance form with the  
113 application and shall remain subject to the compliance history  
114 review of this section. All other procedural requirements for  
115 renewal applications remain unchanged. This provision shall  
116 supplement any expedited review processes found in agency rules.

117 (b) Level 2.--

118 1. An applicant shall be entitled to incentives pursuant  
119 to this paragraph if the applicant meets the requirements for

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120 Level 1 and the applicant takes any other actions not otherwise  
 121 required by law that result in:

122 a. Reductions in actual or permitted discharges or  
 123 emissions;

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

126 c. Waste reduction or reuse;

127 d. Implementation of a voluntary environmental management  
 128 system; or

129 e. Other similar actions as determined by department rule.

130 2. Level 2 incentives may include all Level 1 incentives  
 131 and shall also include:

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

134 b. Fewer routine inspections than other regulated  
 135 activities similarly situated.

136 c. Expedited review of requests for permit modifications.

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

139 e. No more than two requests for additional information.

140 (c) Rulemaking.--Within 6 months after the effective date  
 141 of this act, the department shall initiate rulemaking to  
 142 implement Level 2 incentives. The rule shall specify what  
 143 incentives will be made available, how applicants may qualify  
 144 for incentives, how extended permits may be transferred. Until  
 145 an implementing rule is adopted, Level 2 incentives shall not be  
 146 available to permit applicants under this act.

147 (5) NOTIFICATION.--The agency is encouraged to work with  
 148 permittees and permit applicants to encourage compliance and  
 149 avoid burdensome and expensive consequences of noncompliance. In

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150 each case in which the agency initiates a formal enforcement  
 151 action and prior to considering incentives outlined in this  
 152 section, the agency shall clearly and specifically:

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

155 (b) Put the alleged permittee on notice of the  
 156 consequences of violations and the potential consequences of  
 157 continuing noncompliance in relation to Level 1 or Level 2  
 158 incentives.

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

161 161.041 Permits required.--

162 (5) The Incentive-based Permitting Program provisions of  
 163 s. 403.0874 shall apply to all permits issued under this  
 164 chapter.

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

167 373.413 Permits for construction or alteration.--

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

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

173 403.087 Permits; general issuance; denial; revocation;  
 174 prohibition; penalty.--

175 (7) A permit issued pursuant to this section shall not  
 176 become a vested right in the permittee. The department may  
 177 revoke any permit issued by it if it finds that the permitholder  
 178 knowingly:

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179 (a) Has submitted false or inaccurate information in the  
 180 ~~his or her~~ application for such permit;

181 (b) Has violated law, department orders, rules, or  
 182 regulations, or ~~permit~~ conditions directly related to such  
 183 permit and has refused to correct or cure such violations when  
 184 requested to do so;

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

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

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