

HB 319

2004  
CS

## CHAMBER ACTION

1 The Committee on Natural Resources recommends the following:

2  
3 **Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

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

21  
22 Be It Enacted by the Legislature of the State of Florida:  
23

HB 319

2004  
CS

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

26 403.0874 Incentive-based Permitting Program.--

27 (1) POPULAR NAME.--This section may be referred to by the  
28 popular name the "Florida Incentive-based Permitting Act."

29 (2) LEGISLATIVE FINDINGS; PUBLIC PURPOSE.--

30 (a) The Legislature finds and declares that a permit  
31 applicant's history of compliance with applicable permit  
32 conditions and requirements and the environmental laws of this  
33 state is a factor that should be considered by the department  
34 when the department is considering whether to issue or reissue a  
35 permit to an applicant, based upon compliance incentives under  
36 this section.

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

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

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

47 (a) "Applicant" means the proposed permittee or  
48 transferee, owner, or operator of a regulated activity seeking  
49 an agency permit.

50 (b) "Agency" means the Department of Environmental  
51 Protection.

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

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

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

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

74        (a) Level 1.--

75        1. An applicant shall be entitled to incentives pursuant  
 76 to this paragraph at a site if the applicant conducted the  
 77 regulated activity for at least 4 of the 5 years preceding  
 78 submittal of the permit application or, if the activity is a new  
 79 regulated activity, the applicant conducted a similar regulated

HB 319

2004  
CS

80 activity under an agency permit for at least 4 of the 5 years at  
81 a different site in this state preceding submittal of the permit  
82 application. However, an applicant shall not be entitled to  
83 incentives under this paragraph if the applicant has a relevant  
84 compliance history at the subject site that includes any knowing  
85 violation that resulted in formal enforcement action and the  
86 violation resulted in significant harm to human health or the  
87 environment. The term "knowing" means awareness of the nature of  
88 a person's acts, not awareness that such acts violate the law.  
89 The term does not include conduct that is the result of an act  
90 of God, mechanical failure, events beyond the control of the  
91 applicant, an accident, or a mistake of fact. The term "act of  
92 God," which means only an unforeseeable act exclusively  
93 occasioned by the violence of nature without the interference of  
94 any human agency, shall not be deemed to cause any failure to  
95 comply with a permit condition or requirement.

96 2. Level 1 incentives shall include:

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

HB 319

2004  
CS

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

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

120 d. Rulemaking.--Within 6 months after the effective date  
121 of this act, the department shall initiate rulemaking to  
122 implement Level 1 incentives. The rule shall specify what  
123 incentives will be made available, how applicants may qualify  
124 for incentives, and how extended permits may be transferred.  
125 Until an implementing rule is adopted, Level 1 incentives shall  
126 not be available to permit applicants under this act.

127 (b) Level 2.--

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

132 a. Reductions in actual or permitted discharges or  
133 emissions;

HB 319

2004  
CS

- 134        b. Reductions in the impacts of regulated activities on  
135 public lands or natural resources;
- 136        c. Waste reduction or reuse;
- 137        d. Implementation of a voluntary environmental management  
138 system; or
- 139        e. Other similar actions as determined by department rule.
- 140        2. Level 2 incentives may include all Level 1 incentives  
141 and shall also include:
- 142            a. Ten-year permits, provided the applicant has conducted  
143 a regulated activity at the site for at least 5 years.
- 144            b. Fewer routine inspections than other regulated  
145 activities similarly situated.
- 146            c. Expedited review of requests for permit modifications.
- 147            d. Agency recognition, program-specific incentives, or  
148 certifications in lieu of renewal permits.
- 149            e. No more than two requests for additional information.
- 150        (c) Rulemaking.--Within 6 months after the effective date  
151 of this act, the department shall initiate rulemaking to  
152 implement Level 2 incentives. The rule shall specify what  
153 incentives will be made available, how applicants may qualify  
154 for incentives, and how extended permits may be transferred.  
155 Until an implementing rule is adopted, Level 2 incentives shall  
156 not be available to permit applicants under this act.
- 157        (5) NOTIFICATION.--The agency is encouraged to work with  
158 permittees and permit applicants to encourage compliance and  
159 avoid burdensome and expensive consequences of noncompliance. In  
160 each case in which the agency initiates a formal enforcement

HB 319

2004  
CS

161 action and prior to considering incentives outlined in this  
 162 section, the agency shall clearly and specifically:

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

165 (b) Put the alleged permittee on notice of the  
 166 consequences of violations and the potential consequences of  
 167 continuing noncompliance in relation to Level 1 or Level 2  
 168 incentives.

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

171 161.041 Permits required.--

172 (5) The Incentive-based Permitting Program provisions of  
 173 s. 403.0874 shall apply to all permits issued under this  
 174 chapter.

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

177 373.413 Permits for construction or alteration.--

178 (6) The Incentive-based Permitting Program provisions of  
 179 s. 403.0874 shall apply to permits issued under this section.

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

182 403.087 Permits; general issuance; denial; revocation;  
 183 prohibition; penalty.--

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

HB 319

2004  
CS

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

190 (b) Has violated law, department orders, rules, or  
191 regulations, or ~~permit~~ conditions directly related to such  
192 permit and has refused to correct or cure such violations when  
193 requested to do so;

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

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

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