

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Environmental Preservation Committee

BILL: CS/SB 1182

SPONSOR: Environmental Preservation Committee and Senator Campbell

SUBJECT: Florida Incentive-Based Permitting Act

DATE: April 12, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Branning</u>	<u>Kiger</u>	<u>EP</u>	<u>Fav/CS</u>
2.	_____	_____	<u>GA</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This committee substitute creates the Florida Incentive-based Permitting Act. The act declares that a permit applicant's history of compliance with applicable conditions and requirements of a permit and the environmental laws of this state is a factor that should be considered when the Department of Environmental Protection (DEP) is considering whether to issue or reissue a permit to an applicant, based on compliance incentives. The committee substitute creates a program that provides for Level 1 and Level 2 incentives. These incentives would include longer duration permits, expedited permit reviews, and short-form permit renewals.

DEP may develop rules associated with Level 1 and Level 2 incentives. DEP is encouraged to provide notice to permit applicants on the incentive-based components.

The incentive-based permitting program would apply to all permits issued under ch. 403, F.S., to coastal construction permitting activities permitted under ch. 161, F.S., and to permits issued under ch. 373, F.S.

This bill substantially amends the following sections of the Florida Statutes: 161.041, 373.413, and 403.087.

The bill creates the following section of the Florida Statutes: 403.0874.

II. Present Situation:

Florida regulates the impacts of certain activities on the environment primarily through three chapters of the Florida Statutes – ch. 403, 161, and 373, F.S

Section 403.087, F.S., provides the general authority for the Department of Environmental Protection (DEP) to issue permits for stationary installations that are reasonably expected to be sources of air or water pollution. The department is provided with the authority to permit the operation, maintenance, construction, expansion or modification of these facilities. Permits may be issued for no longer than 10 years, and operation permits issued after July 1, 1992, for major sources of air pollution have a fixed term of no more than 5 years. The DEP has rulemaking authority to adopt, amend, or repeal rules related to the issuance, denial, modification or revocation of permits issued under this section.

Section 403.087, F.S., also provides that the renewal of operation permits for wastewater treatment facilities other than those regulated under the National Pollutant Discharge Elimination System (NPDES) Program must be issued for term of up to 10 years, and must be issued for the same cost and under the same conditions as a 5-year permit, if the applicant can meet certain conditions. Also, the DEP is required to issue permits for the construction, operation, maintenance, expansion, or modification of installations expected to be sources of pollution only when the agency determines that the installation is provided or equipped with pollution control facilities that will abate or prevent pollution in accordance with standards or rules adopted by the agency.

Subsection (6) of s. 403.087, F.S., contains the fee structure for permits issued by the DEP including but not limited to hazardous waste construction or operating permits, injection well construction permits, solid waste construction or operating permits, domestic waste construction or operating permits, and drinking water distribution system permits.

Many of the environmental permits issued under ch. 373, F.S., are issued by the water management districts.

Parts I and II of ch. 161, F.S., are known as the “Beach and Shore Preservation Act.” This act was created to protect, preserve, and manage Florida’s 825 miles of sandy coastline fronting the Atlantic Ocean, the Gulf of Mexico, or the Straits of Florida. Any coastal construction, reconstruction of existing structures, or physical activity undertaken specifically for shore protection purposes upon sovereignty lands of Florida requires a coastal construction permit issued by DEP.

Currently, s. 403.087,(3), F.S., provides limited financial incentives for the permitting of domestic wastewater treatment facilities other than those regulated under the NPDES Program if certain conditions are met.

Rule 62-4.070(5), F.A.C., provides that the DEP must take into consideration a permit applicant’s violation of any department rules at any installation when determining whether the applicant has provided reasonable assurances that department standards will be met.

III. Effect of Proposed Changes:

Section 1. This bill creates s. 403.0874, F.S., the Florida Incentive-based Permitting Act. The act declares that a permit applicant’s history of compliance with applicable conditions and requirements of a permit and the environmental laws of this state is a factor that should be

considered when the Department of Environmental Protection (DEP) is considering whether to issue or reissue a permit to an applicant, based on compliance incentives under this section. The DEP is encouraged to work with permittees and permit applicants to encourage compliance and avoid burdensome and expensive consequences of noncompliance. The bill defines the following terms: “agency,” “applicant,” “environmental laws,” “regulated activity,” and “site.”

The bill provides for Level 1 and Level 2 compliance incentives. In order to obtain the compliance incentives, the applicant may affirmatively request the incentives as part of the permit application. Unless otherwise prohibited by state or federal law, agency rule, or federal regulation, and if the applicant meets all other applicable criteria for the issuance of a permit, any applicant who meets the criteria specified in this bill, is entitled to the following incentives:

Level 1

An applicant may be entitled to incentives at a site:

- If the applicant conducted the regulated activity for at least 4 of the 5 years preceding submittal of the permit application, or
- If the activity is a new regulated activity, the applicant conducted a similar regulated activity under an agency permit for at least 4 of the 5 years at a different site in the state preceding submittal of the permit application.

An applicant is not entitled to incentives if the applicant has a relevant compliance history at the subject site that includes any violation that resulted in formal enforcement action and the violation resulted in potential harm to human health or the environment. Alleged violations may not be considered unless a consent order or other settlement has been entered into or the violation has been adjudicated.

Level 1 incentives include the renewal of a permit for 5 years and, after notice and an opportunity for public comment, the automatic renewal for one additional 5-year term without agency action unless the agency determines, based on information submitted by the applicant or resulting from public comments or its own records, that the applicant has committed violations during the relevant review period which disqualify the applicant from receiving the automatic or expedited renewal.

The processing time following receipt of a completed application may be 45 days for the issuance of DEP action.

Renewal of a permit not involving substantial construction or expansion may be made upon a shortened application form specifying only the changes in the regulated activity or a certification by the applicant that no changes in the regulated activity are proposed if that is the case. An applicant for a short-form renewal shall complete and submit the prescribed compliance form with the application and remains subject to the compliance-history review. All other procedural requirements for a renewal application remain unchanged.

Within 6 months after the effective date of this bill, the DEP may initiate rulemaking to implement Level 1 incentives. The rule may specify what incentives will be made available, how applicants may qualify for incentives, and how extended permits may be transferred. Until an implementing rule is adopted, Level 1 incentives are not available to permit applicants.

Level 2

An applicant is entitled to Level 2 incentives if the applicant meets the requirements for Level 1 and the applicant takes any other actions not otherwise required by law that result in:

- Reductions in actual or permitted discharges or emissions;
- Reductions in the affects of regulated activities on public lands or natural resources;
- Waste reduction or reuse;
- Implementation of a voluntary environmental management system; or
- Other similar actions as determined by DEP rule.

Level 2 incentives may include all Level 1 incentives and may also include:

- 10-year permits, if the applicant has conducted a regulated activity at the site for at least 5 years.
- Fewer routine inspections than other regulated activities similarly situated.
- Expedited review of requests for permit modifications.
- DEP recognition, program-specific incentives, or certification in lieu of renewal permits.
- No more than two requests for additional information.

Within 6 months after the effective date of this bill, the DEP may initiate rulemaking to implement Level 2 incentives. The rule may specify what incentives will be made available, how applicants may qualify for incentives, and how extended permits may be transferred. Until an implementing rule is adopted, Level 2 incentives are not available to permit applicants under this bill.

Sections 2 and 3. Sections 161.041 and 373.413, F.S., are amended to apply the Incentive-based Permitting Program to all permits issued under those chapters.

Section 4. Section 403.087, F.S., is amended to provide that the DEP may revoke any permit if it finds that the permitholder:

- Has submitted false or inaccurate information on the application for the permit when true or accurate information would have warranted denial of the permit;
- Has violated laws, department orders, rules, or regulations, or conditions directly related to the permit and has refused to correct or cure the violations when requested to do so;
- Has failed to submit operational reports or other information required by department rule or regulation directly related to the permit and has refused to correct or cure such violations when requested to do so; or
- Has refused lawful inspection at the facility authorized by the permit.

Section 5. The bill would take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Permitholders could experience significant cost savings associated with obtaining and renewing permits. Permits would be issued faster, and in some cases, may be automatically renewed.

C. Government Sector Impact:

The DEP could incur costs associated with rulemaking for the incentive program.

The DEP has indicated that the implementation of an incentive-based program as provided in this bill could impact the department's permitting efforts. The department estimates that the majority of permit applicants may qualify for the proposed compliance incentives. The bill could reduce the time for department review of permits significantly and the department could have thousands of permit applications each year. Further, the department has indicated that without a corresponding increase in permitting staff, there may be more default permits, more poorly crafted permits, or more permit denials. The funding the department receives from permit fees may be reduced.

The DEP has also expressed concern that the incentive-based permitting program provided by the bill could make it difficult for the department to revoke any permit, even in those cases where a permittee has committed numerous violations of rules or permit conditions, or where the permittee has submitted false information on the application.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
