

By the Committee on Environmental Preservation; and Senator Campbell

592-1997-05

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

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22 Be It Enacted by the Legislature of the State of Florida:  
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24           Section 1. Section 403.0874, Florida Statutes, is  
25 created to read:

26           403.0874 Incentive-based Permitting Program.--

27           (1) SHORT TITLE.--This section may be cited as the  
28 "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 conditions

1 and requirements of a permit and the environmental laws of  
2 this state is a factor that should be considered by the  
3 department when the department is considering whether to issue  
4 or reissue a permit to an applicant, based upon compliance  
5 incentives under this section.

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

12 (c) The agency is encouraged to work with permittees  
13 and permit applicants to encourage compliance and avoid  
14 burdensome and expensive consequences of noncompliance.

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

19 (3) DEFINITIONS.--As used in this section, the term:

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

22 (b) "Applicant" means the proposed permittee or  
23 transferee, owner, or operator of a regulated activity seeking  
24 an agency permit.

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

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

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

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

18 (a) Level I.--

19 1. An applicant may be entitled to incentives pursuant  
20 to this paragraph at a site if the applicant conducted the  
21 regulated activity for at least 4 of the 5 years preceding  
22 submittal of the permit application or, if the activity is a  
23 new regulated activity, the applicant conducted a similar  
24 regulated activity under an agency permit for at least 4 of  
25 the 5 years at a different site in this state preceding  
26 submittal of the permit application. However, an applicant is  
27 not entitled to incentives under this paragraph if the  
28 applicant has a relevant compliance history at the subject  
29 site which includes any violation that resulted in enforcement  
30 action and the violation resulted in the potential for harm to  
31 human health or the environment. Alleged violations may not be

1 considered unless a consent order or other settlement has been  
2 entered into or the violation has been adjudicated.

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

12 a. The processing time following receipt of a  
13 completed application may be 45 days for the issuance of  
14 agency action.

15 b. Renewal of a permit not involving substantial  
16 construction or expansion may be made upon a shortened  
17 application form specifying only the changes in the regulated  
18 activity or a certification by the applicant that no changes  
19 in the regulated activity are proposed if that is the case. An  
20 applicant for short-form renewal shall complete and submit the  
21 prescribed compliance form with the application and remains  
22 subject to the compliance-history review of this section. All  
23 other procedural requirements for a renewal application remain  
24 unchanged. This sub-subparagraph supplements any expedited  
25 review process provided in agency rules.

26 c. Within 6 months after the effective date of this  
27 section, the department may initiate rulemaking to implement  
28 Level 1 incentives. The rule may specify what incentives will  
29 be made available, how applicants may qualify for incentives,  
30 and how extended permits may be transferred. Until an  
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1 implementing rule is adopted, Level 1 incentives are not  
2 available to permit applicants under this section.  
3 (b) Level 2.--  
4 1. An applicant is entitled to incentives pursuant to  
5 this paragraph if the applicant meets the requirements for  
6 Level 1 and the applicant takes any other actions not  
7 otherwise required by law which result in:  
8 a. Reductions in actual or permitted discharges or  
9 emissions;  
10 b. Reductions in the affects 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 may also include:  
19 a. Ten-year permits, if the applicant has conducted a  
20 regulated activity at the site for at least 5 years.  
21 b. Fewer routine inspections than other regulated  
22 activities similarly situated.  
23 c. Expedited review of requests for permit  
24 modifications.  
25 d. Agency recognition, program-specific incentives, or  
26 certifications in lieu of renewal permits.  
27 e. No more than two requests for additional  
28 information.  
29 3. Within 6 months after the effective date of this  
30 section, the department may initiate rulemaking to implement  
31 Level 2 incentives. The rule may specify what incentives will

1 be made available, how applicants may qualify for incentives,  
2 and how extended permits may be transferred. Until an  
3 implementing rule is adopted, Level 2 incentives are not  
4 available to permit applicants under this section.

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

7 161.041 Permits required.--

8 (5) The provisions of the Incentive-based Permitting  
9 Program of s. 403.0874 apply to all permits issued under this  
10 chapter.

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

13 373.413 Permits for construction or alteration.--

14 (6) The provisions of the Incentive-based Permitting  
15 Program of s. 403.0874 apply to permits issued under this  
16 section.

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

19 403.087 Permits; general issuance; denial; revocation;  
20 prohibition; penalty.--

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

25 (a) Has submitted false or inaccurate information in  
26 the his or her application for the permit when true or  
27 accurate information would have warranted denial of the  
28 permit;

29 (b) Has violated law, department orders, rules, or  
30 regulations, or ~~permit~~ conditions directly related to the  
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1 permit and has refused to correct or cure such violations when  
2 requested to do so;

3 (c) Has failed to submit operational reports or other  
4 information required by department rule or regulation directly  
5 related to the permit and has refused to correct or cure such  
6 violations when requested to do so; or

7 (d) Has refused lawful inspection under s. 403.091 at  
8 the facility authorized by the permit.

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

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12 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
13 COMMITTEE SUBSTITUTE FOR  
14 Senate Bill 1182

15 The committee substitute authorizes the Department of  
16 Environmental Protection to provide incentives to permit  
17 applicants who comply with the permit conditions and all  
18 applicable environmental laws. The department may develop  
19 rules to implement an incentive-based permitting program.  
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