

By the Committee on Environmental Preservation; and Senator Haridopolos

592-2445-06

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 short title; 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 to adopt certain  
13 rules; amending ss. 161.041 and 373.413, F.S.;  
14 specifying application of Incentive-based  
15 Permitting Program provisions; amending s.  
16 403.087, F.S.; revising criteria for department  
17 permit issuance to conform; specifying  
18 application of the provisions of the  
19 Incentive-based Permitting Program to certain  
20 permits; providing an effective date.

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

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 permit

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

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

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. However, the term does not include a  
25 subsidiary of or an affiliate of an entity that has a history  
26 of noncompliance for any regulated activity.

27 (c) "Environmental laws" means any state or federal  
28 law that regulates activities for the purpose of protecting  
29 the environment, or for the purpose of protecting the public  
30 health from pollution or contaminants, but does not include  
31 any law that regulates activities for the purpose of zoning,

1 growth management, or land use. The term includes, but is not  
2 limited to, chapter 161, part IV of chapter 373, and chapter  
3 403.

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

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

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

19 (a) Level 1 incentives criteria; application for a new  
20 permit; rulemaking.--

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

1 the potential for harm to human health or the environment, the  
2 applicant shall not be entitled to incentives under this  
3 paragraph. However, when pending alleged violations that  
4 eliminate an applicant from receiving incentives under this  
5 paragraph are disposed of and the applicant was found not to  
6 have committed the alleged violation, incentives shall be  
7 available to the applicant. Alleged minor violations shall not  
8 be considered under this paragraph.

9 2. Level 1 incentives shall include:

10 a. Expedited permit review.--The processing time  
11 following receipt of a completed application shall be 75 days  
12 for the issuance of the agency action.

13 b. Extended permits.--Permits may be extended for 7  
14 years, provided the applicant has conducted a similar  
15 regulated activity at a site for 4 of the last 5 years.

16 3. Within 6 months after the effective date of this  
17 section, the agency shall initiate rulemaking to implement  
18 Level 1 incentives. The rule shall specify what incentives  
19 will be made available, how applicants may qualify for  
20 incentives, and how extended permits may be transferred. Until  
21 an implementing rule is adopted, Level 1 incentives shall not  
22 be available to permit applicants under this section.

23 (b) Level 2 incentives criteria; application for  
24 permit renewal; rulemaking.--

25 1. An applicant for a renewal of a permit shall be  
26 entitled to incentives pursuant to this paragraph if the  
27 applicant conducted a regulated activity at the site in this  
28 state for at least 4 of the last 5 years preceding submittal  
29 of an application for renewal. An applicant shall not be  
30 entitled to incentives under this paragraph if the applicant  
31 has a relevant compliance history at the site that includes

1 any violation that resulted in enforcement action. If the  
2 applicant has alleged violations at the site that may result  
3 in enforcement action and the alleged violations may result in  
4 the potential for harm to human health or the environment, the  
5 applicant shall not be entitled to incentives under this  
6 paragraph. However, when pending alleged violations that  
7 eliminate an applicant from receiving incentives under this  
8 paragraph are disposed of and the applicant was found not to  
9 have committed the alleged violation, incentives shall be  
10 available to the applicant. Alleged minor violations shall not  
11 be considered under this paragraph. In addition, an applicant  
12 for the renewal of a permit shall be entitled to incentives  
13 pursuant to this paragraph if the applicant takes any other  
14 actions not otherwise required by law that at the site result  
15 in:

- 16       a. Beneficial reductions in actual or permitted  
17 discharges or emissions;  
18       b. Beneficial reductions in the impacts of regulated  
19 activities on public lands or natural resources;  
20       c. Beneficial waste reduction or the reuse of waste  
21 generated at the site;  
22       d. Implementation of a voluntary environmental  
23 management system; or  
24       e. Other similar actions as determined by agency rule.

25       2. Level 2 incentives shall include:

- 26       a. Ten-year permits, provided the applicant has  
27 conducted a regulated activity at the site for at least 5  
28 years.  
29       b. Fewer routine inspections than other regulated  
30 activities similarly situated.

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1           c. Short form renewals of permits not involving  
2 substantial modifications which may be made upon a shortened  
3 application form specifying only the changes in the regulated  
4 activity or a certification by the applicant that no changes  
5 in the regulated activity are proposed if that is the case.  
6 Applicants for short form renewals shall complete and submit  
7 the prescribed compliance form with the application and shall  
8 remain subject to the compliance history review of this  
9 section. All other procedure requirements for renewal  
10 applications apply. This provision shall supplement any  
11 expedited review process provided by agency rules.

12           d. Expedited review of requests for permit  
13 modifications.

14           e. Agency recognition, program-specific incentives, or  
15 certifications in lieu of renewal permits.

16           f. No more than two requests for additional  
17 information.

18           3. Within 6 months after the effective date of this  
19 section, the agency shall initiate rulemaking to implement  
20 Level 2 incentives. The rule shall specify what incentives  
21 will be made available, how applicants may qualify for  
22 incentives, and how extended permits may be transferred. Until  
23 an implementing rule is adopted, Level 2 incentives shall not  
24 be available to permit applicants under this section.

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

27           161.041 Permits required.--

28           (5) The provisions of the Incentive-based Permitting  
29 Program in s. 403.0874 shall apply to all permits issued under  
30 this chapter.

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

3           373.413 Permits for construction or alteration.--

4           (6) The provisions of the Incentive-based Permitting  
5 Program in s. 403.0874 shall apply to permits issued under  
6 this section.

7           Section 4. Subsection (7) of section 403.087, Florida  
8 Statutes, is amended, and subsection (10) is added to that  
9 section, to read:

10          403.087 Permits; general issuance; denial; revocation;  
11 prohibition; penalty.--

12          (7) A permit issued pursuant to this section shall not  
13 become a vested right in the permittee. The department may  
14 revoke any permit issued by it if it finds that the  
15 permitholder:

16           (a) Has submitted material false or inaccurate  
17 information in the his or her application for such permit;

18           (b) Has violated law, department orders, rules, or  
19 regulations, or ~~permit~~ conditions directly related to such  
20 permit;

21           (c) Has failed to submit operational reports or other  
22 information required by department rule or regulation directly  
23 related to such permit; or

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

26          (10) The provisions of the Incentive-based Permitting  
27 Program in s. 403.0874 shall apply to permits issued under  
28 this chapter.

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

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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
COMMITTEE SUBSTITUTE FOR  
Senate Bill 2510

The committee substitute provides that the Level 1 incentives are limited to a new regulated activity. Provides that the Level 1 incentives may provide for an expedited review. The DEP has 75 days to process a completed application for the incentives. Provides that a permit may be extended for 7 years if the applicant has conducted a similar activity at a site for 4 of the last 5 years.

Level 2 incentives are available for permit renewals if the applicant conducted a regulated activity at the site in this state for 4 of the last 5 years preceding submittal of an application for renewal. An applicant for Level 2 incentives is entitled to the incentives if the applicant takes any actions not otherwise required by law that: reduce actual or permitted discharges or emissions; reduce the impacts of the the regulated activities on public lands or natural resources; reduce waste or reuse waste generated at the site; or implement a voluntary environmental management system.

Level 2 incentives include 10-year permits; fewer routine inspections; short form renewals; expedited review for permit modifications; and agency recognition, program-specific incentives or certification in lieu of renewal permits.

The incentive-based permitting program also applies to permits for certain coastal construction activities, stormwater management permits, and permits issued under ch. 403, F.S.