

A bill to be entitled

An act relating to the Florida Incentive-based Permitting Act; creating s. 403.0874, F.S.; providing a short title; 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 to adopt certain rules; 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; specifying application of Incentive-based Permitting Program provisions to certain permits; 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) SHORT TITLE.--This section may be cited as 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

29 state is a factor that should be considered by the agency when  
30 the agency is considering whether to issue a new permit or  
31 reissue a permit to an applicant, based upon compliance  
32 incentives under this section.

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

39 (c) The agency is encouraged to work with permittees and  
40 permit applicants to encourage compliance and avoid burdensome  
41 and expensive consequences of noncompliance.

42 (d) It is therefore declared to be the purpose of this  
43 section to provide the agency with clear and specific authority  
44 to 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) "Agency" means the Department of Environmental  
48 Protection.

49 (b) "Applicant" means the proposed permittee or  
50 transferee, owner, or operator of a regulated activity seeking  
51 an agency permit. However, the term "applicant" does not include  
52 a subsidiary of or an affiliate of an entity with a history of  
53 noncompliance for any regulated activity.

54 (c) "Environmental laws" means any state or federal law  
55 that regulates activities for the purpose of protecting the  
56 environment, or for the purpose of protecting the public health

57 from pollution or contaminants, but does not include any law  
58 that regulates activities for the purpose of zoning, growth  
59 management, or land use. The term includes, but is not limited  
60 to, chapter 161, part IV of chapter 373, and chapter 403.

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

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

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

76 (a) Level 1 incentives criteria; application for a new  
77 permit; rulemaking.--

78 1. An applicant shall be entitled to incentives if the  
79 activity is a new regulated activity and the applicant conducted  
80 a similar regulated activity under an agency permit for at least  
81 4 of the 5 years at a different site in this state preceding  
82 submittal of the permit application. However, an applicant shall  
83 not be entitled to incentives under this paragraph if the  
84 applicant has a relevant compliance history for a similar

85 regulated activity that includes any violation that resulted in  
86 enforcement action. If the applicant has alleged violations at a  
87 different site that may result in enforcement action and the  
88 alleged violations may result in the potential for harm to human  
89 health or the environment, the applicant shall not be entitled  
90 to incentives under this paragraph. However, when pending  
91 alleged violations that eliminate an applicant from receiving  
92 incentives under this paragraph are disposed of and the  
93 applicant was found not to have committed the alleged violation,  
94 incentives shall be available to the applicant. Alleged minor  
95 violations shall not be considered under this paragraph.

96 2. Level 1 incentives shall include:

97 a. Expedited permit review.--The processing time following  
98 receipt of a completed application shall be 75 days for the  
99 issuance of the agency action.

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

103 3. Within 6 months after the effective date of this  
104 section, the agency shall initiate rulemaking to implement Level  
105 1 incentives. The rule shall specify what incentives will be  
106 made available, how applicants may qualify for incentives, and  
107 how extended permits may be transferred. Until an implementing  
108 rule is adopted, Level 1 incentives shall not be available to  
109 permit applicants under this section.

110 (b) Level 2 incentives criteria; application for permit  
111 renewal; rulemaking.--

112       1. An applicant for a renewal of a permit shall be  
113 entitled to incentives pursuant to this paragraph if the  
114 applicant conducted a regulated activity at the site in this  
115 state for at least 4 of the last 5 years preceding submittal of  
116 an application for renewal. An applicant shall not be entitled  
117 to incentives under this paragraph if the applicant has a  
118 relevant compliance history at the site that includes any  
119 violation that resulted in enforcement action. If the applicant  
120 has alleged violations at the site that may result in  
121 enforcement action and the alleged violations may result in the  
122 potential for harm to human health or the environment, the  
123 applicant shall not be entitled to incentives under this  
124 paragraph. However, when pending alleged violations that  
125 eliminate an applicant from receiving incentives under this  
126 paragraph are disposed of and the applicant was found not to  
127 have committed the alleged violation, incentives shall be  
128 available to the applicant. Alleged minor violations shall not  
129 be considered under this paragraph. In addition, an applicant  
130 for the renewal of a permit shall be entitled to incentives  
131 pursuant to this paragraph if the applicant takes any other  
132 actions not otherwise required by law that at the site result  
133 in:

134       a. Beneficial reductions in actual or permitted discharges  
135 or emissions;

136       b. Beneficial reductions in the impacts of regulated  
137 activities on public lands or natural resources;

138       c. Beneficial waste reduction or the reuse of waste  
139 generated at the site;

140 d. Implementation of a voluntary environmental management  
 141 system; or  
 142 e. Other similar actions as determined by agency rule.  
 143 2. Level 2 incentives shall include:  
 144 a. Ten-year permits, provided the applicant has conducted  
 145 a regulated activity at the site for at least 5 years.  
 146 b. Fewer routine inspections than other regulated  
 147 activities similarly situated.  
 148 c. Short form renewals of permits not involving  
 149 substantial modifications which may be made upon a shortened  
 150 application form specifying only the changes in the regulated  
 151 activity or a certification by the applicant that no changes in  
 152 the regulated activity are proposed if that is the case.  
 153 Applicants for short form renewals shall complete and submit the  
 154 prescribed compliance form with the application and shall remain  
 155 subject to the compliance history review of this section. All  
 156 other procedure requirements for renewal applications apply.  
 157 This provision shall supplement any expedited review process  
 158 provided by agency rules.  
 159 d. Expedited review of requests for permit modifications.  
 160 e. Agency recognition, program-specific incentives, or  
 161 certifications in lieu of renewal permits.  
 162 f. No more than two requests for additional information.  
 163 3. Within 6 months after the effective date of this  
 164 section, the agency shall initiate rulemaking to implement Level  
 165 2 incentives. The rule shall specify what incentives will be  
 166 made available, how applicants may qualify for incentives, and  
 167 how extended permits may be transferred. Until an implementing

168 rule is adopted, Level 2 incentives shall not be available to  
 169 permit applicants under this section.

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

172 161.041 Permits required.--

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

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

178 373.413 Permits for construction or alteration.--

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

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

184 403.087 Permits; general issuance; denial; revocation;  
 185 prohibition; penalty.--

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

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

192 (b) Has violated law, department orders, rules, or  
 193 regulations, or ~~permit~~ conditions directly related to such  
 194 permit;

195 (c) Has failed to submit operational reports or other

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196 information required by department rule or regulation directly  
197 related to such permit; or

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

200 (10) The Incentive-based Permitting Program provisions of  
201 s. 403.0874 shall apply to permits issued under this chapter.

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