Florida Senate - 2007

By Senator Oelrich

14-779-07

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 rules;
13	amending ss. 161.041 and 373.413, F.S.;
14	specifying application of the Incentive-based
15	Permitting Program; amending s. 403.087, F.S.;
16	revising criteria for department permit
17	issuance, to conform; specifying application of
18	the Incentive-based Permitting Program to
19	certain permits; providing an effective date.
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21	Be It Enacted by the Legislature of the State of Florida:
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23	Section 1. Section 403.0874, Florida Statutes, is
24	created to read:
25	403.0874 Incentive-based Permitting Program
26	(1) SHORT TITLEThis section may be cited as the
27	"Florida Incentive-based Permitting Act."
28	(2) LEGISLATIVE FINDINGS; PUBLIC PURPOSE
29	(a) The Legislature finds and declares that a permit
30	applicant's history of compliance with applicable permit
31	conditions and requirements and with the environmental laws of
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1 this state is a factor that should be considered by the agency 2 when the agency is considering whether to issue a new permit or reissue a permit to an applicant based upon compliance 3 4 incentives under this section. 5 (b) Permit applicants that have a history of б compliance with applicable permit conditions and requirements 7 and the environmental laws of this state should be eligible 8 for new permits at a new site, longer-duration permits, expedited permit reviews, short-form permit renewals, and 9 10 other incentives to reward and encourage such applicants. (c) The agency is encouraged to work with permittees 11 12 and permit applicants to encourage compliance and avoid 13 burdensome and expensive consequences of noncompliance. (d) It is therefore declared to be the purpose of this 14 section to provide the agency with clear and specific 15 authority to consider the compliance history of a permit 16 17 applicant who has applied for an incentive-based permit. 18 (3) DEFINITIONS. -- As used in this section, the term: (a) "Agency" means the Department of Environmental 19 20 Protection. 21 (b) "Applicant" means the proposed permittee or 2.2 transferee, owner, or operator of a regulated activity seeking 23 an agency permit. However, the term does not include a subsidiary of or an affiliate of an entity that has a history 2.4 of noncompliance for any regulated activity. 25 (c) "Environmental laws" means any state or federal 26 27 law that regulates activities for the purpose of protecting 2.8 the environment, or for the purpose of protecting the public 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 31

limited to, chapter 161, part IV of chapter 373, and chapter 1 2 403. 3 (d) "Regulated activity" means any activity, including, but not limited to, the construction or operation 4 5 of a facility, installation, system, or project for which a 6 permit or certification is required by law. 7 (e) "Site" means a single parcel, or multiple 8 contiguous or adjacent parcels, of land on which the applicant proposes to conduct, or has conducted, a regulated activity. 9 10 (4) COMPLIANCE INCENTIVES. -- In order to obtain compliance incentives, the applicant must affirmatively 11 12 request such incentives as part of the permit application. 13 Unless otherwise prohibited by state or federal law, agency rule, or federal regulation, and if the applicant meets all 14 other applicable criteria for the issuance of a permit, any 15 applicant who meets the criteria set forth in this subsection 16 17 is entitled to the following incentives: 18 (a) Level 1 incentives criteria; application for a new permit; rulemaking.--19 1. An applicant is entitled to incentives if the 20 21 activity is a new regulated activity and the applicant 2.2 conducted a similar regulated activity under an agency permit 23 at a different site in this state for at least 4 of the 5 years preceding submittal of the permit application. However, 2.4 an applicant is not entitled to incentives under this 25 paragraph if the applicant has a relevant compliance history 26 27 for a similar regulated activity which includes any violation 2.8 that resulted in enforcement action. If the applicant has alleged violations at a different site which may result in 29 enforcement action and the alleged violations may result in 30 the potential for harm to human health or the environment, the 31

1 applicant is not entitled to incentives under this paragraph. 2 However, if pending alleged violations that eliminate an applicant from receiving incentives under this paragraph are 3 4 disposed of and the applicant is found not to have committed the alleged violation, incentives shall be available to the 5 6 applicant. Alleged minor violations may not be considered 7 under this paragraph. 2. Level 1 incentives include: 8 9 Expedited permit review. -- The processing time a. 10 following receipt of a completed application shall be 75 days for the issuance of the agency action. 11 12 Extended permits.--Permits may be extended for 7 b. 13 years if the applicant has conducted a similar regulated activity at a site for 4 of the last 5 years. 14 3. Within 6 months after the effective date of this 15 section, the agency shall initiate rulemaking to implement 16 17 Level 1 incentives. The rule must specify what incentives will 18 be made available, how applicants may qualify for incentives, and how extended permits may be transferred. Until an 19 implementing rule is adopted, Level 1 incentives are not 20 21 available to permit applicants under this section. (b) Level 2 incentives criteria; application for 22 23 permit renewal; rulemaking.--1. An applicant for a renewal of a permit is entitled 2.4 to incentives pursuant to this paragraph if the applicant 25 conducted a regulated activity at the site in this state for 26 27 at least 4 of the last 5 years preceding submittal of an 2.8 application for renewal. An applicant is not entitled to incentives under this paragraph if the applicant has a 29 relevant compliance history at the site which includes any 30 violation that resulted in enforcement action. If the 31

1	applicant has alleged violations at the site which may result
2	in enforcement action and the alleged violations may result in
3	the potential for harm to human health or the environment, the
4	applicant is not entitled to incentives under this paragraph.
5	However, if pending alleged violations that eliminate an
6	applicant from receiving incentives under this paragraph are
7	disposed of and the applicant is found not to have committed
8	the alleged violation, incentives shall be available to the
9	applicant. Alleged minor violations may not be considered
10	under this paragraph. In addition, an applicant for the
11	renewal of a permit is entitled to incentives pursuant to this
12	paragraph if the applicant takes any other actions at the site
13	which are not otherwise required by law and which result in:
14	a. Beneficial reductions in actual or permitted
15	discharges or emissions;
16	b. Beneficial reductions in the effects of regulated
17	activities on public lands or natural resources;
18	c. Beneficial waste reduction or the reuse of waste
19	generated at the site;
20	d. Implementation of a voluntary environmental
21	management system; or
22	e. Other similar actions as determined by agency rule.
23	2. Level 2 incentives include:
24	a. Ten-year permits if the applicant has conducted a
25	regulated activity at the site for at least 5 years.
26	b. Fewer routine inspections than required for other
27	regulated activities similarly situated.
28	c. Short-form renewals of permits not involving
29	substantial modifications which may be made upon a shortened
30	application form specifying only the changes in the regulated
31	activity or a certification by the applicant that no changes

1 in the regulated activity are proposed if that is the case. Applicants for short-form renewals must complete and submit 2 the prescribed compliance form with the application and remain 3 4 subject to the compliance-history review of this section. All 5 other requirements for renewal applications apply. This 6 sub-subparagraph supplements any expedited-review process 7 provided by agency rules. 8 d. Expedited review of requests for permit 9 modifications. 10 e. Agency recognition, program-specific incentives, or certifications in lieu of renewal permits. 11 12 f. No more than two requests for additional 13 information. 3. Within 6 months after the effective date of this 14 section, the agency shall initiate rulemaking to implement 15 Level 2 incentives. The rule must specify what incentives will 16 17 be made available, how applicants may qualify for incentives, and how extended permits may be transferred. Until an 18 implementing rule is adopted, Level 2 incentives are not 19 available to permit applicants under this section. 2.0 21 Section 2. Subsection (5) is added to section 161.041, 2.2 Florida Statutes, to read: 23 161.041 Permits required.--(5) The Incentive-based Permitting Program in s. 2.4 403.0874 applies to all permits issued under this chapter. 25 Section 3. Subsection (6) is added to section 373.413, 26 27 Florida Statutes, to read: 2.8 373.413 Permits for construction or alteration.--(6) The Incentive-based Permitting Program in s. 29 30 403.0874 applies to permits issued under this section. 31

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1 Section 4. Subsection (7) of section 403.087, Florida 2 Statutes, is amended, and subsection (10) is added to that 3 section, to read: 4 403.087 Permits; general issuance; denial; revocation; 5 prohibition; penalty.-б (7) A permit issued pursuant to this section shall not 7 become a vested right in the permittee. The department may 8 revoke any permit issued by it if it finds that the permitholder: 9 10 (a) Has submitted material false or inaccurate information in the his or her application for the permit; 11 12 (b) Has violated law, department orders, rules, or regulations, or permit conditions that are directly related to 13 14 the permit; (c) Has failed to submit operational reports or other 15 16 information required by department rule or regulation that are 17 directly related to the permit; or 18 (d) Has refused lawful inspection under s. 403.091 at the facility authorized by the permit. 19 20 (10) The Incentive-based Permitting Program in s. 21 403.0874 applies to permits issued under this chapter. 22 Section 5. This act shall take effect upon becoming a 23 law. 2.4 25 26 SENATE SUMMARY 27 Provides for an Incentive-based Permitting Program. Provides compliance incentives for certain environmental 2.8 permitting activities. Provides program requirements and limitations. Provides for administration of the program 29 by the Department of Environmental Protection. Requires the department to adopt rules. Specifies application of program provisions. Revises criteria for issuance of 30 department permits. 31

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