

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

B. EFFECT OF PROPOSED CHANGES:

Present Situation

One of the primary means by which DEP controls the impact of activities on the environment is through the issuance of permits. Section 403.061(14), F.S., authorizes DEP to establish a permitting system, requiring a permit for any installation that may be a source of air or water pollution. Section 403.087(2), F.S., requires DEP to adopt rules for the issuance, denial, modification and revocation of such permits.

DEP has adopted rules describing the various requirements that must be met by applicants for permits. These requirements can include equipment requirements, operating and maintenance requirements, and limitations on emissions or discharges from the installation. For every application, the applicant is required to provide “reasonable assurance” that it will meet all applicable requirements.

Under Rule 62-4.070(5), Florida Administrative Code (FAC), DEP may consider environmental violations of the applicant committed at any location in the state when it determines whether the applicant has provided the necessary “reasonable assurance.” DEP has not consistently applied this rule.

Different programs within DEP deal with the issue of an applicant’s compliance history and its impact on permitting decisions in different ways. For example, Section 403.707(8), F.S., authorizes DEP to deny a permit application for a *solid waste management facility* if an applicant who has repeatedly violated statutes, rules, orders, or permit terms related to, and is deemed to be irresponsible, as defined by 62-701.320(3)(b), F.A.C. For *wastewater facilities*, DEP considers violations of rules related to wastewater facilities or activities when it makes the “reasonable assurance” determination.¹ Rules applicable to *environmental resource permitting* direct DEP to consider ERP rule and permit violations.²

Effect of the Proposed Changes

This bill creates s. 403.0874, F.S., to establish incentives for those applicants who meet a specified level of compliance with their previous permits and establishes consequences for a specified level of noncompliance, including denial of the requested permit or issuance of a short term “probationary” permit. The bill specifically requires DEP to consider and weigh the compliance history of permit applicants when making permitting decisions, using factors set forth in the statute. The bill sets forth the scope of violations that DEP may consider as part of the compliance history review. The bill also requires DEP to give violators notice at the time an enforcement action is taken against them of the possible permitting consequences.

¹ Rule 62-620.320, F.A.C.

² chapters 373, part IV, and 161, F.S.

Incentives for Compliance

The bill creates an incentive program for those meeting certain specified criteria. These are broken into Tier 1 and Tier 2. Tier 1 criteria are that the applicant has conducted the regulated activity at the site for at least 4 out of the 5 years preceding the application, without:

1. a knowing violation of any agency law, rule, order or judgment;
2. an environmental crime; or
3. two or more knowing violations of the permit occurring on two or more occasions resulting in two or more formal enforcement actions.

If it is a new activity, the applicant must have conducted a similar regulated activity under a DEP permit for at least 4 out of the 5 years at a different site in the state.

The Tier 1 incentives provide for: automatic permit renewal, reduction in processing time for permits to 45 days (most are now 90 days or longer), and short form renewals.

The Tier 2 criteria are that the applicant meet all the Tier 1 criteria and take voluntary action to significantly reduce threats or impacts to human health or the environment not required by law. Tier 2 incentives may include:

1. ten year permits;
2. fewer routine inspections;
3. expedited review of permit modifications;
4. DEP recognition programs; and
5. no more than two requests for additional information.

Consequences of Noncompliance

The bill creates 403.0874(5), F.S., to establish the consequences of noncompliance. The bill provides that DEP is to consider the applicant's relevant compliance history when determining whether the applicant has provided "reasonable assurance." The applicant's relevant compliance history consists of knowing civil and criminal violations of environmental laws, rules, orders or judgments with specified limitations, including:

- the criminal violation must have occurred in the preceding 5 years;
- the civil violation must have occurred in the preceding 3 years;
- if the application is for a renewal of a permit, the violation must have occurred at the same site for which the application is filed, or if the violation was an environmental felony, the violation could have been at any site in the country; and
- if the application is for a new permit, DEP may consider violations at any site conducting the same activity regulated by DEP, or if the violation was an environmental felony, the offense could have been at any site in the country.

DEP may consider any full and finally adjudicated civil violations. If the compliance history does include knowing civil or criminal violations, DEP must consider and weigh certain enumerated factors in order to determine whether the applicant has provided the requisite reasonable assurance. These factors include:

- the number of violations and the seriousness of them in relation to the industry norm;
- the number of similar facilities controlled by the applicant;
- the complexity of the permits held by the applicant and the statistical potential for violations;
- whether the violations involved similar regulatory programs;
- whether the violations involved similar activities;

- whether the violations resulted in harm to human health or the environment;
- whether remedial measures have been undertaken.

DEP may determine that the applicant has not provided reasonable assurance and may deny the permit if the applicant's compliance history includes one or more of the following:

- a felony criminal violation of any environmental law in the U.S.;
- a knowing violation of a DEP law, rule, order or judgment that would constitute a felony;
- a knowing violation of a DEP law, rule, order or judgment that would constitute a misdemeanor;
- a violation involving the intentional circumvention of pollution control equipment;
- a violation involving the knowing failure to install required monitoring equipment;
- a violation involving the knowing submittal of false information to DEP;
- a violation involving rendering inaccurate any required monitoring device.

In such cases the applicant may not reapply for the permit for 1 year.

When an applicant has a "pattern of noncompliance," DEP may issue a "probationary" permit not to exceed one year in duration. A pattern of noncompliance is deemed to exist when an applicant is responsible for two or more environmental crimes, knowing civil violations or a combination thereof occurring on two or more occasions and resulting in two or more separate formal enforcement actions in which the violation resulted in a significant harm to human health or the environment within a 5 year period. If the applicant continues with its pattern of noncompliance during the probationary period, DEP may deny the applicant's application for renewal for a period of 6 months. However, if during the probationary period or after denial of a permit renewal, the applicant implements "an approach, program, or remedial measures that are effectively designed to prevent a recurrence of the noncompliance", DEP must issue a standard duration permit.

The bill also provides that DEP must give violators notice at the time of a formal enforcement action that it has determined that "applicant" has a history of noncompliance that will result in future probationary permits.

C. SECTION DIRECTORY:

Section 1. Creates s. 403.0874, F.S. to establish incentives for those applicants who meet a specified level of compliance with their previous permits and establishes consequences for a specified level of noncompliance;

Section 2. Amends s. 403.087, F.S., to delete obsolete language and conform to new provisions of s. 403.0874, F.S.

Section 3. Amends s. 403.0872, F.S., to delete obsolete language and conform to new provisions of s. 403.0874, F.S.

Section 4. Amends s. 403.088, F.S., to delete obsolete language and conform to new provisions of s. 403.0874, F.S.

Section 5. Amends s. 403.703(17)(b), F.S., to correct a cross-reference.

Section 6. Repeals s. 403.707(8), F.S., and renumbers subsequent subsections.

Section 7. Amends s. 373.413, to make s. 403.0874, F.S., applicable to individual and conceptual permits issued under Part IV of ch. 373, F.S.

Section 8. Amends s. 161.041, F.S., to make s. 403.0874, F.S., applicable to permits issued under ch. 161, F.S.

Section 9. Provides an effective date of January 1, 2004.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None

2. Expenditures: None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None

D. FISCAL COMMENTS: None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not affect municipal or county government.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires DEP to develop rules to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

