

By Senator Williams

4-1080A-98

1 A bill to be entitled
2 An act relating to air pollution control
3 revenues; amending s. 215.22, F.S.; exempting
4 the Air Pollution Control Trust Fund from a
5 surcharge; amending s. 403.0872, F.S.;
6 providing for adjustments in the major
7 stationary source annual air-operation permit
8 license fees; changing the date for an audit of
9 the major stationary source air-operation
10 permit program; providing an effective date.

11
12 Be It Enacted by the Legislature of the State of Florida:

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14 Section 1. Paragraph (t) is added to subsection (1) of
15 section 215.22, Florida Statutes, to read:

16 215.22 Certain income and certain trust funds
17 exempt.--

18 (1) The following income of a revenue nature or the
19 following trust funds shall be exempt from the deduction
20 required by s. 215.20(1):

21 (t) The Air Pollution Control Trust Fund.

22 Section 2. Subsection (11) of section 403.0872,
23 Florida Statutes, is amended to read:

24 403.0872 Operation permits for major sources of air
25 pollution; annual operation license fee.--Provided that
26 program approval pursuant to 42 U.S.C. s. 7661a has been
27 received from the United States Environmental Protection
28 Agency, beginning January 2, 1995, each major source of air
29 pollution, including electrical power plants certified under
30 s. 403.511, must obtain from the department an operation
31 permit for a major source of air pollution under this section,

1 which is the only department operation permit for a major
2 source of air pollution required for such source. Operation
3 permits for major sources of air pollution, except general
4 permits issued pursuant to s. 403.814, must be issued in
5 accordance with the following procedures and in accordance
6 with chapter 120; however, to the extent that chapter 120 is
7 inconsistent with the provisions of this section, the
8 procedures contained in this section prevail:

9 (11) Commencing in 1993, each major source of air
10 pollution permitted to operate in this state must pay between
11 January 15 and March 1 of each year, upon written notice from
12 the department, an annual operation license fee in an amount
13 determined by department rule. The annual operation license
14 fee shall be terminated immediately in the event the United
15 States Environmental Protection Agency imposes annual fees
16 solely to implement and administer the major source
17 air-operation permit program in Florida under 40 C.F.R. s.
18 70.10(d).

19 (a) The annual fee must be assessed based upon the
20 source's previous year's emissions and must be calculated by
21 multiplying the applicable annual operation license fee factor
22 times the tons of each regulated air pollutant (except carbon
23 monoxide) allowed to be emitted per hour by specific condition
24 of the source's most recent construction or operation permit,
25 times the annual hours of operation allowed by permit
26 condition; provided, however, that:

27 1. ~~For 1993 and 1994, the license fee factor is \$10.~~
28 ~~For 1995, the license fee factor is \$25. In succeeding years,~~
29 The license fee factor is \$25 or another amount determined by
30 department rule which ensures that the revenue provided by
31 each year's operation license fees is sufficient to cover all

1 reasonable direct and indirect costs of the major stationary
2 source air-operation permit program established by this
3 section. The license fee factor may be adjusted by rule only
4 after an audit required under paragraph (c), and increased
5 ~~beyond \$25~~ only if the secretary of the department
6 affirmatively finds that a shortage or surplus of revenue for
7 support of the major stationary source air-operation permit
8 program will occur in the absence of a fee factor adjustment.
9 Only expenditures made or funded by the department which meet
10 the requirements under subparagraph (a)10. and paragraph (b)
11 may be used in calculating whether there is a shortage of
12 revenue. The annual operation license fees collected by the
13 department must be used solely to cover the costs of meeting
14 the functions of the permitting program as described in
15 subparagraph (a)10. and paragraph (b).The annual license fee
16 factor may never exceed \$35. The department shall retain a
17 nationally recognized accounting firm to conduct a study to
18 determine the reasonable revenue requirements necessary to
19 support the development and administration of the major source
20 air-operation permit program as prescribed in paragraph (b).
21 The results of that determination must be considered in
22 assessing whether a \$25-per-ton fee factor is sufficient to
23 adequately fund the major source air-operation permit program.
24 The results of the study must be presented to the Governor,
25 the President of the Senate, the Speaker of the House of
26 Representatives, and the Public Service Commission, including
27 the Public Counsel's Office, by no later than October 31,
28 1994.

29 2. For any source that operates for fewer hours during
30 the calendar year than allowed under its permit, the annual
31 fee calculation must be based upon actual hours of operation

1 rather than allowable hours if the owner or operator of the
2 source documents the source's actual hours of operation for
3 the calendar year. For any source that has an emissions limit
4 that is dependent upon the type of fuel burned, the annual fee
5 calculation must be based on the emissions limit applicable
6 during actual hours of operation.

7 3. For any source whose allowable emission limitation
8 is specified by permit per units of material input or heat
9 input or product output, the applicable input or production
10 amount may be used to calculate the allowable emissions if the
11 owner or operator of the source documents the actual input or
12 production amount. If the input or production amount is not
13 documented, the maximum allowable input or production amount
14 specified in the permit must be used to calculate the
15 allowable emissions.

16 4. For any new source that does not receive its first
17 operation permit until after the beginning of a calendar year,
18 the annual fee for the year must be reduced pro rata to
19 reflect the period during which the source was not allowed to
20 operate.

21 5. For any source that emits less of any regulated air
22 pollutant than allowed by permit condition, the annual fee
23 calculation for such pollutant must be based upon actual
24 emissions rather than allowable emissions if the owner or
25 operator documents the source's actual emissions by means of
26 data from a department-approved certified continuous emissions
27 monitor or from an emissions monitoring method which has been
28 approved by the United States Environmental Protection Agency
29 under the regulations implementing 42 U.S.C. ss. 7651 et seq.,
30 or from a method approved by the department for purposes of
31 this section.

1 6. The amount of each regulated air pollutant in
2 excess of 4,000 tons per year allowed to be emitted by any
3 source, or group of sources belonging to the same Major Group
4 as described in the Standard Industrial Classification Manual,
5 1987, may not be included in the calculation of the fee. Any
6 source, or group of sources, which does not emit any regulated
7 air pollutant in excess of 4,000 tons per year, is allowed a
8 one-time credit not to exceed 25 percent of the first annual
9 licensing fee for the prorated portion of existing
10 air-operation permit application fees remaining upon
11 commencement of the annual licensing fees.

12 7. If the department has not received the fee by
13 February 15 of the calendar year, the permittee must be sent a
14 written warning of the consequences for failing to pay the fee
15 by March 1. If the fee is not postmarked by March 1 of the
16 calendar year, commencing with calendar year 1997, the
17 department shall impose, in addition to the fee, a penalty of
18 50 percent of the amount of the fee, plus interest on such
19 amount computed in accordance with s. 220.807. The department
20 may not impose such penalty or interest on any amount
21 underpaid, provided that the permittee has timely remitted
22 payment of at least 90 percent of the amount determined to be
23 due and remits full payment within 60 days after receipt of
24 notice of the amount underpaid. The department may waive the
25 collection of underpayment and shall not be required to refund
26 overpayment of the fee, if the amount due is less than 1
27 percent of the fee, up to \$50. The department may revoke any
28 major air pollution source operation permit if it finds that
29 the permitholder has failed to timely pay any required annual
30 operation license fee, penalty, or interest.

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1 8. During the years 1993 through 1999, inclusive, no
2 fee shall be required to be paid under this section with
3 respect to emissions from any unit which is an affected unit
4 under 42 U.S.C. s. 7651c.

5 9. Notwithstanding the computational provisions of
6 this subsection, the annual operation license fee for any
7 source subject to this section shall not be less than \$250,
8 except that the annual operation license fee for sources
9 permitted solely through general permits issued under s.
10 403.814 shall not exceed \$50 per year.

11 10. Notwithstanding the provisions of s.
12 403.087(6)(a)4.a., authorizing air pollution construction
13 permit fees, the department may not require such fees for
14 changes or additions to a major source of air pollution
15 permitted pursuant to this section, unless the activity
16 triggers permitting requirements under Title I, Part C or Part
17 D, of the federal Clean Air Act, 42 U.S.C. ss. 7470-7514a.
18 Costs to issue and administer such permits shall be considered
19 direct and indirect costs of the major stationary source
20 air-operation permit program under s. 403.0873. The department
21 shall, however, require fees pursuant to the provisions of s.
22 403.087(6)(a)4.a. for the construction of a new major source
23 of air pollution that will be subject to the permitting
24 requirements of this section once constructed and for
25 activities triggering permitting requirements under Title I,
26 Part C or Part D, of the federal Clean Air Act, 42 U.S.C. ss.
27 7470-7514a.

28 (b) Annual operation license fees collected by the
29 department must be sufficient to cover all reasonable direct
30 and indirect costs required to develop and administer the
31 major stationary source air-operation permit program, which

1 shall consist of the following elements to the extent that
2 they are reasonably related to the implementation of the
3 ~~regulation of major stationary source air-operation permit~~
4 ~~program pollution sources~~, in accordance with United States
5 Environmental Protection Agency regulations and guidelines:

6 1. Reviewing and acting upon any application for such
7 a permit.

8 2. Implementing and enforcing the terms and conditions
9 of any such permit, excluding court costs or other costs
10 associated with any enforcement action.

11 3. ~~Emissions and~~ Ambient air monitoring only to the
12 extent that site-specific monitoring is necessary for the
13 issuance of a major stationary source air permit or permits,
14 as documented in the permit or permits.

15 4. Preparing ~~generally applicable~~ regulations or
16 guidance only to the extent required for the implementation of
17 the major stationary source air-operation permit program.

18 5. Modeling, analyses, and demonstrations only to the
19 extent required for the implementation of the major stationary
20 source air-operation permit program.

21 6. Preparing inventories and tracking emissions only
22 to the extent required for the implementation of the major
23 stationary source air-operation permit program.

24 7. Implementing the Small Business Stationary Source
25 Technical and Environmental Compliance Assistance Program.

26 8. ~~The study conducted under subparagraph (a)1. and~~
27 Any audits conducted under paragraph (c).

28 9. Site-specific emissions monitoring in conjunction
29 with an applicable requirement of a major stationary source.

30 (c) An audit of the major stationary source
31 air-operation permit program must not be commenced until

1 January 1, 2002, and must be completed by January 1, 2003,
2 ~~conducted 2 years after the United States Environmental~~
3 ~~Protection Agency has given full approval of the program, or~~
4 ~~by the end of 1996, whichever comes later, to ascertain~~
5 whether the annual operation license fees collected by the
6 department are sufficient and are used by the department and
7 local programs solely to cover the support any reasonable
8 direct and indirect costs as listed in subparagraph (a)10. and
9 paragraph (b). In addition, the audit must evaluate the
10 department's system for measuring program performance,
11 efficiency, and accountability.A program audit must be
12 performed every 5 years ~~biennially~~ after the first audit.

13 Section 3. This act shall take effect July 1, 1998.

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15 SENATE SUMMARY

16 Exempts the Air Pollution Control Trust Fund from the 7
17 percent General Revenue Fund surcharge. Clarifies the
18 license fee criteria and changes the date for an audit of
19 the major stationary source air-operation permit program.