

By the Committees on Ways and Means; Natural Resources; and
Senators Williams and Kirkpatrick

301-2222-98

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; deleting obsolete provisions
9 relating to a study that was conducted;
10 changing the date for an audit of the major
11 stationary source air-operation permit program;
12 providing for continued funding of certain
13 activities; providing an effective date.

14
15 Be It Enacted by the Legislature of the State of Florida:

16
17 Section 1. Paragraph (t) is added to subsection (1) of
18 section 215.22, Florida Statutes, to read:

19 215.22 Certain income and certain trust funds
20 exempt.--

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

24 (t) The Air Pollution Control Trust Fund.

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

27 403.0872 Operation permits for major sources of air
28 pollution; annual operation license fee.--Provided that
29 program approval pursuant to 42 U.S.C. s. 7661a has been
30 received from the United States Environmental Protection
31 Agency, beginning January 2, 1995, each major source of air

1 pollution, including electrical power plants certified under
2 s. 403.511, must obtain from the department an operation
3 permit for a major source of air pollution under this section,
4 which is the only department operation permit for a major
5 source of air pollution required for such source. Operation
6 permits for major sources of air pollution, except general
7 permits issued pursuant to s. 403.814, must be issued in
8 accordance with the following procedures and in accordance
9 with chapter 120; however, to the extent that chapter 120 is
10 inconsistent with the provisions of this section, the
11 procedures contained in this section prevail:

12 (11) Commencing in 1993, each major source of air
13 pollution permitted to operate in this state must pay between
14 January 15 and March 1 of each year, upon written notice from
15 the department, an annual operation license fee in an amount
16 determined by department rule. The annual operation license
17 fee shall be terminated immediately in the event the United
18 States Environmental Protection Agency imposes annual fees
19 solely to implement and administer the major source
20 air-operation permit program in Florida under 40 C.F.R. s.
21 70.10(d).

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

30 1. ~~For 1993 and 1994, the license fee factor is \$10.~~
31 ~~For 1995, the license fee factor is \$25. In succeeding years,~~

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

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

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

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

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

1 under the regulations implementing 42 U.S.C. ss. 7651 et seq.,
2 or from a method approved by the department for purposes of
3 this section.

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

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

1 the permitholder has failed to timely pay any required annual
2 operation license fee, penalty, or interest.

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

7 9. Notwithstanding the computational provisions of
8 this subsection, the annual operation license fee for any
9 source subject to this section shall not be less than \$250,
10 except that the annual operation license fee for sources
11 permitted solely through general permits issued under s.
12 403.814 shall not exceed \$50 per year.

13 10. Notwithstanding the provisions of s.
14 403.087(6)(a)4.a., authorizing air pollution construction
15 permit fees, the department may not require such fees for
16 changes or additions to a major source of air pollution
17 permitted pursuant to this section, unless the activity
18 triggers permitting requirements under Title I, Part C or Part
19 D, of the federal Clean Air Act, 42 U.S.C. ss. 7470-7514a.
20 Costs to issue and administer such permits shall be considered
21 direct and indirect costs of the major stationary source
22 air-operation permit program under s. 403.0873. The department
23 shall, however, require fees pursuant to the provisions of s.
24 403.087(6)(a)4.a. for the construction of a new major source
25 of air pollution that will be subject to the permitting
26 requirements of this section once constructed and for
27 activities triggering permitting requirements under Title I,
28 Part C or Part D, of the federal Clean Air Act, 42 U.S.C. ss.
29 7470-7514a.

30 (b) Annual operation license fees collected by the
31 department must be sufficient to cover all reasonable direct

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

8 1. Reviewing and acting upon any application for such
9 a permit.

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

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

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

20 5. Modeling, analyses, ~~and demonstrations,~~ and
21 site-specific emissions monitoring only to the extent required
22 for the implementation of the major stationary source
23 air-operation permit program.

24 6. Preparing inventories and tracking emissions only
25 to the extent required for the implementation of the major
26 stationary source air-operation permit program.

27 7. Implementing the Small Business Stationary Source
28 Technical and Environmental Compliance Assistance Program.

29 8. Conducting or providing for the conduct of the
30 required ~~The study conducted under subparagraph (a)1. and Any~~
31 audits conducted under paragraph (c).

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

3
4 However, each activity described in subparagraphs 1.-8., as
5 created by section 3 of chapter 92-132, Laws of Florida, which
6 was in existence before July 1, 1998, shall be funded from the
7 Air Pollution Control Trust Fund after July 1, 1998.

8 (c) An audit of the major stationary source
9 air-operation permit program must not be commenced until
10 January 1, 2002, and must be completed by January 1, 2003,
11 ~~conducted 2 years after the United States Environmental~~
12 ~~Protection Agency has given full approval of the program, or~~
13 ~~by the end of 1996, whichever comes later, to ascertain~~
14 whether the annual operation license fees collected by the
15 department are sufficient and are used by the department and
16 local programs solely to cover the support any reasonable
17 direct and indirect costs as listed in subparagraph (a)10. and
18 paragraph (b). In addition, the audit must evaluate the
19 department's system for measuring program performance,
20 efficiency, and accountability.A program audit must be
21 performed every 5 years ~~biennially~~ after the first audit.

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

23
24 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
25 COMMITTEE SUBSTITUTE FOR
26 CS/SB 1554

27 Provides that the provisions which specify the cost elements
28 that are reasonably related to implementation of the major
29 stationary source air-operation permit program, as created by
30 s. 3 of Chapter 92-132, Laws of Florida, which was in
31 existence before July 1, 1998, shall be funded from the Air
Pollution Control Trust Fund after July 1, 1998.