HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
FINANCE AND TAXATION
BILL RESEARCH & ECONOMIC IMPACT STATEMENT

BILL #: CS/HB 3795

RELATING TO: Air Pollution Control

SPONSOR(S): Committee on Environmental Protection and Representative K. Smith

COMPANION BILL(S): SB 1554(s) by Senator Williams

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) ENVIRONMENTAL PROTECTION YEAS 10 NAYS 0
(2) FINANCE AND TAXATION
(3) GENERAL GOVERNMENT APPROPRIATIONS
(4)
(5)

I. SUMMARY:

The bill would:

- Exempt the Air Pollution Control Trust Fund from the 7 percent General Revenue Fund surcharge;

- Revise provisions relating to the calculation of the annual operation license fee assessed against holders of permits for major sources of air pollution, however, the fee would remain at $25 per ton;

- Provide that any uses of the fees generated from major stationary source permits may only be used for the implementation of that program.

- Revise program audit requirements.

The bill provides that the act will take effect on July 1, of the year enacted.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Section 212.20, F.S., directs that income of specific trust funds shall be subject to a 7 percent service charge to cover the estimated pro rata share of the cost of general government paid from the General Revenue Fund. Exemptions to the provisions of that section are detailed in s. 212.22, F.S.

Pursuant to the delegation of the federal Clean Air Act Title V program (42 U.S.C.s. 7661a), s. 403.0872, F.S., was enacted to provide for the regulation of major sources of air pollution. (These sources are commonly referred to as Title V facilities.)

Section 403.0872(11), F.S., provides the Department of Environmental Protection (DEP) with the authority to charge fees to cover the cost of the program. Fees are calculated and charged according to a “per ton” formula. For 1993 and 1994 the fee was statutorily set at $10 and raised to $25 in 1995. For succeeding years the fee was to remain at $25 or another amount determined by the DEP to ensure that revenue provided by the annual fees was sufficient to cover all direct and indirect costs of the program. The fee is currently $25.

Fees collected from Title V facilities are then deposited into the Air Pollution Control Trust Fund. In addition to these fees the fund also receives fees from non-Title V facilities. Specifically, a Title V facility is one that:

1. Emits 10 tons of a specific toxic pollutant or an aggregate of 25 tons of a group of toxic pollutants, or

2. Emits 100 tons of certain pollutants or an aggregate of 250 tons of certain pollutants.

The pollutants are identified, categorized (toxic or non-toxic), and listed by the U.S. Environmental Protection Agency.

Fees collected from Title V facilities are to be used to develop and administer the program including the following elements:

1. Reviewing and acting upon applications for permits.
2. Implementing and enforcing the terms and conditions of permits.
3. Emissions and ambient monitoring.
4. Preparing applicable regulations or guidance.
5. Modeling, analyses, and demonstrations.
6. Preparing inventories and tracking emissions.
7. Implementing the Small Business Stationary Source Technical and Environmental Compliance Assistance Program.

According to the DEP, revenues generated by Title V facilities are now insufficient to meet the cost of the elements described above. Fees from Title V facilities generate $9 million annually, while the DEP reports that expenditures are $11.5 million annually. Both DEP and industry representatives indicate the problem is due to the broad nature of the elements which has lead to expenditures that encompass activities of non-Title V facilities.

Finally, the current law requires that the DEP perform an audit of the major source air-operation permit program within two years of receiving full delegation from the EPA. As of 1998 full delegation has not been received.

B. EFFECT OF PROPOSED CHANGES:

The overall effect of the changes proposed by the bill would be to make the necessary statutory changes to ensure the fiscal viability of the fund without fee increases. Specific provisions of the bill will:

- Create an exemption from the 7 percent General Revenue Fund surcharge for the Air Pollution Control Trust Fund. (This change would increase revenues to the fund by $ 1.4 M.) The DEP states that this exemption is provided for in existing statutes (ss. 403.0872 and 403.0873, F.S.) which require that Title V fees be used “solely” for Title V activities.

- Provide that the fee may only be adjusted after an audit of the program.

- Direct that only activities specifically referred to in the bill may be used to calculate the fee and that such fees may only be used to cover those activities.

- Delete the antiquated requirement that the DEP hire an accounting firm to conduct a study to determine the reasonable revenue requirements of the program. The study was completed and submitted in 1994. However, this study must be retained and considered in any future fee adjustment.

- Amend provisions relating to the uses of the fees. Language is added to the provisions that allow expenditures for: emissions and ambient air monitoring; preparing regulations and guidance; modeling, analyses, and demonstrations; and preparing inventories; to direct the DEP that such expenditures must only be used for Title V program requirements. (These changes are anticipated to save $2.5 M in program costs.)

- The audit requirement is amended to direct that one be commenced after January 1, 2002 and completed by January 1, 2003 and again every five years afterward. Current law requires that an audit be performed two years after the program was delegated by the EPA. This audit has not been performed because full delegation has not occurred. Additionally, the new audit, would be directed to ascertain that fees collected are sufficient and properly used and to evaluate the DEP’s system for measuring program performance, efficiency, and accountability.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

   a. Does the bill create, increase or reduce, either directly or indirectly:

      (1) any authority to make rules or adjudicate disputes?

      No.

      (2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

      No.

      (3) any entitlement to a government service or benefit?

      No.

   b. If an agency or program is eliminated or reduced:

      (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

      The cost of non-Title V activities, such as area-wide ambient monitoring and general rule development would be passed onto non-Title V facilities. The annual cost of these activities is estimated to be $2.5 M.

      (2) what is the cost of such responsibility at the new level/agency?

      N/A

      (3) how is the new agency accountable to the people governed?

      N/A

2. Lower Taxes:

   a. Does the bill increase anyone's taxes?

   No.

   b. Does the bill require or authorize an increase in any fees?

   No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Sections 215.22, and 403.872, F.S.

E. SECTION-BY-SECTION RESEARCH:

<u>Section 1</u>: Amends s. 215.22, F.S., to create an exemption from the General Revenue surcharge for the Air Pollution Control Trust Fund.

<u>Section 2</u>: Amends s. 403.872, F.S., to: revise provisions relating to the calculation of the fee; restricting the use of the fees; and revising program audit requirements.

Section 3: Provides that the act shall take effect on July 1, of the year enacted.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

   None

2. Recurring Effects:

   Column 1 reflects current year revenues and expenditures from the Air Pollution Control Trust Fund. Column 2 reflects the annual impact of the bill. As is seen by the numbers, supplied by the DEP, the bill has a two-fold impacts
   1) $1.4 million would be retained for the Non-Title V programs via the exemption from the surcharge.
   2) cost shifting $2.5 million to Non-Title V programs due to restricting the uses of Title V fees.

Annual Revenues	Col 1	Col 2
Non-Title V fees	$16m	$16m
Title V fees	9m	9m
Total Revenues	$25m	$25m
Annual Expenditures		
Pass-throughs to Local Government	$5.5m	$5.5m
7% General Revenue Surcharge	1.4m	0
Title V program	11.5m	9.0m
Non-Title V program	6.6m	10.5m
Total Expenditures	$25.0m	$25.0m

   As indicated above, general revenue funds accruing to the state would be reduced by $ 1.4 M.

3. Long Run Effects Other Than Normal Growth:

   N/A

4. Total Revenues and Expenditures:

   The trust fund would receive an additional $1.4 million annually due to the exemption from the 7 percent General Revenue Fund surcharge. Expenditures in the fund would go unchanged, however, cost shifting would occur.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

   N/A

2. Recurring Effects:

   N/A

3. Long Run Effects Other Than Normal Growth:

   N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

   N/A

2. Direct Private Sector Benefits:

   N/A

3. Effects on Competition, Private Enterprise and Employment Markets:

   N/A

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to spend funds or take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority that local governments have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the percentage of state tax shared with local governments.

V. COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 19, 1998, the Committee on Environmental Protection considered the bill. Two amendments were adopted and the bill was passed as a committee substitute. The amendments: reinstated current law to ensure that the DEP used the 1994 study in any future fee adjustment; and made a technical change to the allowable uses of the fees.

VII. SIGNATURES:

COMMITTEE ON ENVIRONMENTAL PROTECTION:

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