

By the Committee on Environmental Protection and  
Representative Smith

1                                   A bill to be entitled  
2           An act relating to air pollution control;  
3           amending s. 215.22, F.S.; exempting the Air  
4           Pollution Control Trust Fund from the general  
5           revenue service charge deduction; amending s.  
6           403.0872, F.S., relating to operation permits  
7           for major sources of air pollution; revising  
8           provisions relating to calculation of the  
9           annual operation license fee; providing for  
10          adjustments to the license fee factor;  
11          providing restrictions on calculating whether  
12          there is a revenue shortage; restricting use of  
13          annual operation license fees collected;  
14          revising elements of the major stationary  
15          source air-operation permit program for  
16          purposes of establishing annual operation  
17          license fees; revising program audit  
18          requirements; providing an effective date.

19  
20 Be It Enacted by the Legislature of the State of Florida:

21  
22           Section 1. Paragraph (t) is added to subsection (1) of  
23 section 215.22, Florida Statutes, to read:

24           215.22 Certain income and certain trust funds  
25 exempt.--

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

29           (t) The Air Pollution Control Trust Fund.

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

1           403.0872 Operation permits for major sources of air  
2 pollution; annual operation license fee.--Provided that  
3 program approval pursuant to 42 U.S.C. s. 7661a has been  
4 received from the United States Environmental Protection  
5 Agency, beginning January 2, 1995, each major source of air  
6 pollution, including electrical power plants certified under  
7 s. 403.511, must obtain from the department an operation  
8 permit for a major source of air pollution under this section,  
9 which is the only department operation permit for a major  
10 source of air pollution required for such source. Operation  
11 permits for major sources of air pollution, except general  
12 permits issued pursuant to s. 403.814, must be issued in  
13 accordance with the following procedures and in accordance  
14 with chapter 120; however, to the extent that chapter 120 is  
15 inconsistent with the provisions of this section, the  
16 procedures contained in this section prevail:

17           (11) Commencing in 1993, each major source of air  
18 pollution permitted to operate in this state must pay between  
19 January 15 and March 1 of each year, upon written notice from  
20 the department, an annual operation license fee in an amount  
21 determined by department rule. The annual operation license  
22 fee shall be terminated immediately in the event the United  
23 States Environmental Protection Agency imposes annual fees  
24 solely to implement and administer the major source  
25 air-operation permit program in Florida under 40 C.F.R. s.  
26 70.10(d).

27           (a) The annual fee must be assessed based upon the  
28 source's previous year's emissions and must be calculated by  
29 multiplying the applicable annual operation license fee factor  
30 times the tons of each regulated air pollutant (except carbon  
31 monoxide) allowed to be emitted per hour by specific condition

1 of the source's most recent construction or operation permit,  
2 times the annual hours of operation allowed by permit  
3 condition; provided, however, that:  
4 1. ~~For 1993 and 1994, the license fee factor is \$10.~~  
5 ~~For 1995, the license fee factor is \$25. In succeeding years,~~  
6 The license fee factor is \$25 or another amount determined by  
7 department rule which ensures that the revenue provided by  
8 each year's operation license fees is sufficient to cover all  
9 reasonable direct and indirect costs of the major stationary  
10 source air-operation permit program established by this  
11 section. The license fee factor may be adjusted by rule only  
12 after an audit required under paragraph (c) and increased  
13 ~~beyond \$25~~ only if the secretary of the department  
14 affirmatively finds that a shortage or surplus of revenue for  
15 support of the major stationary source air-operation permit  
16 program will occur in the absence of a fee factor adjustment.  
17 Only expenditures made or funded by the department which meet  
18 the requirements of subparagraph 10. and paragraph (b) may be  
19 used in calculating whether there is a shortage of revenue.  
20 The annual operation license fees collected by the department  
21 shall be used solely to cover the costs of meeting the  
22 functions of the permitting program as described in  
23 subparagraph 10. and paragraph (b).The annual license fee  
24 factor may never exceed \$35. The department shall consider the  
25 1994 study conducted by Peat Marwick, which was designed  
26 ~~retain a nationally recognized accounting firm to conduct a~~  
27 ~~study~~ to determine the reasonable revenue requirements  
28 necessary to support the development and administration of the  
29 major source air-operation permit program as prescribed in  
30 paragraph (b), ~~. The results of that determination must be~~  
31 ~~considered~~ in assessing whether a \$25-per-ton fee factor is

1 sufficient to adequately fund the major source air-operation  
2 permit program. ~~The results of the study must be presented to~~  
3 ~~the Governor, the President of the Senate, the Speaker of the~~  
4 ~~House of Representatives, and the Public Service Commission,~~  
5 ~~including the Public Counsel's Office, by no later than~~  
6 ~~October 31, 1994.~~

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

16           3. For any source whose allowable emission limitation  
17 is specified by permit per units of material input or heat  
18 input or product output, the applicable input or production  
19 amount may be used to calculate the allowable emissions if the  
20 owner or operator of the source documents the actual input or  
21 production amount. If the input or production amount is not  
22 documented, the maximum allowable input or production amount  
23 specified in the permit must be used to calculate the  
24 allowable emissions.

25           4. For any new source that does not receive its first  
26 operation permit until after the beginning of a calendar year,  
27 the annual fee for the year must be reduced pro rata to  
28 reflect the period during which the source was not allowed to  
29 operate.

30           5. For any source that emits less of any regulated air  
31 pollutant than allowed by permit condition, the annual fee

1 calculation for such pollutant must be based upon actual  
2 emissions rather than allowable emissions if the owner or  
3 operator documents the source's actual emissions by means of  
4 data from a department-approved certified continuous emissions  
5 monitor or from an emissions monitoring method which has been  
6 approved by the United States Environmental Protection Agency  
7 under the regulations implementing 42 U.S.C. ss. 7651 et seq.,  
8 or from a method approved by the department for purposes of  
9 this section.

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

21           7. If the department has not received the fee by  
22 February 15 of the calendar year, the permittee must be sent a  
23 written warning of the consequences for failing to pay the fee  
24 by March 1. If the fee is not postmarked by March 1 of the  
25 calendar year, commencing with calendar year 1997, the  
26 department shall impose, in addition to the fee, a penalty of  
27 50 percent of the amount of the fee, plus interest on such  
28 amount computed in accordance with s. 220.807. The department  
29 may not impose such penalty or interest on any amount  
30 underpaid, provided that the permittee has timely remitted  
31 payment of at least 90 percent of the amount determined to be

1 due and remits full payment within 60 days after receipt of  
2 notice of the amount underpaid. The department may waive the  
3 collection of underpayment and shall not be required to refund  
4 overpayment of the fee, if the amount due is less than 1  
5 percent of the fee, up to \$50. The department may revoke any  
6 major air pollution source operation permit if it finds that  
7 the permitholder has failed to timely pay any required annual  
8 operation license fee, penalty, or interest.

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

13           9. Notwithstanding the computational provisions of  
14 this subsection, the annual operation license fee for any  
15 source subject to this section shall not be less than \$250,  
16 except that the annual operation license fee for sources  
17 permitted solely through general permits issued under s.  
18 403.814 shall not exceed \$50 per year.

19           10. Notwithstanding the provisions of s.  
20 403.087(6)(a)4.a., authorizing air pollution construction  
21 permit fees, the department may not require such fees for  
22 changes or additions to a major source of air pollution  
23 permitted pursuant to this section, unless the activity  
24 triggers permitting requirements under Title I, Part C or Part  
25 D, of the federal Clean Air Act, 42 U.S.C. ss. 7470-7514a.  
26 Costs to issue and administer such permits shall be considered  
27 direct and indirect costs of the major stationary source  
28 air-operation permit program under s. 403.0873. The department  
29 shall, however, require fees pursuant to the provisions of s.  
30 403.087(6)(a)4.a. for the construction of a new major source  
31 of air pollution that will be subject to the permitting

1 requirements of this section once constructed and for  
2 activities triggering permitting requirements under Title I,  
3 Part C or Part D, of the federal Clean Air Act, 42 U.S.C. ss.  
4 7470-7514a.

5 (b) Annual operation license fees collected by the  
6 department must be sufficient to cover all reasonable direct  
7 and indirect costs required to develop and administer the  
8 major stationary source air-operation permit program, which  
9 shall consist of the following elements to the extent that  
10 they are reasonably related to the implementation of the  
11 regulation of major stationary source air-operation permit  
12 program air pollution sources, in accordance with United  
13 States Environmental Protection Agency regulations and  
14 guidelines:

15 1. Reviewing and acting upon any application for such  
16 a permit.

17 2. Implementing and enforcing the terms and conditions  
18 of any such permit, excluding court costs or other costs  
19 associated with any enforcement action.

20 3. ~~Emissions and Ambient air~~ monitoring, only to the  
21 extent site-specific monitoring is necessary for the issuance  
22 of any major stationary source air-operation permit or  
23 permits, as documented in the permit or permits.

24 4. Preparing ~~generally applicable~~ regulations or  
25 guidance, only to the extent required for the implementation  
26 of the major stationary source air-operation permit program.

27 5. Modeling, analyses, ~~and~~ demonstrations, and  
28 site-specific emissions monitoring, only to the extent  
29 required for the implementation of the major stationary source  
30 air-operation permit program.

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1           6. Preparing inventories and tracking emissions, only  
2 to the extent required for the implementation of the major  
3 stationary source air-operation permit program.

4           7. Implementing the Small Business Stationary Source  
5 Technical and Environmental Compliance Assistance Program.

6           8. Conducting or providing for the conduct of the  
7 ~~study conducted under subparagraph (a)1. and any audits~~  
8 required conducted under paragraph (c).

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

23           Section 3. This act shall take effect July 1 of the  
24 year in which enacted.