

By Representative K. Smith

1                                   A bill to be entitled  
2           An act relating to air pollution; amending s.  
3           215.22, F.S.; exempting the Air Pollution  
4           Control Trust Fund from a required service  
5           charge; amending s. 403.0872, F.S.; revising  
6           procedure and requirements for annual operation  
7           license fee adjustments under the major  
8           stationary source air-operation permit program;  
9           restricting use of fees collected; deleting  
10          obsolete language relating to a study;  
11          providing for continued funding of certain  
12          activities; revising time frames and  
13          requirements for audits of the permit program;  
14          reenacting s. 403.518, F.S., relating to annual  
15          operation license fees for electrical power  
16          plants, to incorporate the amendment to s.  
17          403.0872, F.S., in a reference thereto;  
18          providing an effective date.

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

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22           Section 1. Paragraph (v) is added to subsection (1) of  
23           section 215.22, Florida Statutes, 1998 Supplement, as amended  
24           by chapter 98-414, Laws of Florida, to read:

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

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

30           (v) The Air Pollution Control Trust Fund.

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

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

19           (11) Commencing in 1993, each major source of air  
20 pollution permitted to operate in this state must pay between  
21 January 15 and March 1 of each year, upon written notice from  
22 the department, an annual operation license fee in an amount  
23 determined by department rule. The annual operation license  
24 fee shall be terminated immediately in the event the United  
25 States Environmental Protection Agency imposes annual fees  
26 solely to implement and administer the major source  
27 air-operation permit program in Florida under 40 C.F.R. s.  
28 70.10(d).

29           (a) The annual fee must be assessed based upon the  
30 source's previous year's emissions and must be calculated by  
31 multiplying the applicable annual operation license fee factor

1 times the tons of each regulated air pollutant (except carbon  
2 monoxide) allowed to be emitted per hour by specific condition  
3 of the source's most recent construction or operation permit,  
4 times the annual hours of operation allowed by permit  
5 condition; provided, however, that:

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

1 ~~assessing whether a \$25-per-ton fee factor is sufficient to~~  
2 ~~adequately fund the major source air operation permit program.~~  
3 ~~The results of the study must be presented to the Governor,~~  
4 ~~the President of the Senate, the Speaker of the House of~~  
5 ~~Representatives, and the Public Service Commission, including~~  
6 ~~the Public Counsel's Office, by no later than October 31,~~  
7 ~~1994.~~

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

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

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

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

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

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

1 underpaid, provided that the permittee has timely remitted  
2 payment of at least 90 percent of the amount determined to be  
3 due and remits full payment within 60 days after receipt of  
4 notice of the amount underpaid. The department may waive the  
5 collection of underpayment and shall not be required to refund  
6 overpayment of the fee, if the amount due is less than 1  
7 percent of the fee, up to \$50. The department may revoke any  
8 major air pollution source operation permit if it finds that  
9 the permitholder has failed to timely pay any required annual  
10 operation license fee, penalty, or interest.

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

15 9. Notwithstanding the computational provisions of  
16 this subsection, the annual operation license fee for any  
17 source subject to this section shall not be less than \$250,  
18 except that the annual operation license fee for sources  
19 permitted solely through general permits issued under s.  
20 403.814 shall not exceed \$50 per year.

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

1 403.087(6)(a)4.a. for the construction of a new major source  
2 of air pollution that will be subject to the permitting  
3 requirements of this section once constructed and for  
4 activities triggering permitting requirements under Title I,  
5 Part C or Part D, of the federal Clean Air Act, 42 U.S.C. ss.  
6 7470-7514a.

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

17 1. Reviewing and acting upon any application for such  
18 a permit.

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

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

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

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

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

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

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

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

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14 However, each activity described in subparagraphs 1.-8., as  
15 created by section 3 of chapter 92-132, Laws of Florida, which  
16 was in existence before July 1, 1999, shall continue to be  
17 funded from the Air Pollution Control Trust Fund on and after  
18 July 1, 1999.

19           (c) An audit of the major stationary source  
20 air-operation permit program must not be commenced until  
21 January 1, 2002, and must be completed by January 1, 2003  
22 ~~conducted 2 years after the United States Environmental~~  
23 ~~Protection Agency has given full approval of the program, or~~  
24 ~~by the end of 1996, whichever comes later, to ascertain~~  
25 whether the annual operation license fees collected by the  
26 department are sufficient and are used by the department and  
27 local programs solely to cover the support any reasonable  
28 direct and indirect costs as listed in subparagraph (a)10. and  
29 paragraph (b). In addition, the audit must evaluate the  
30 department's system for measuring program performance,

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1 efficiency, and accountability.A program audit must be  
2 performed every 5 years ~~biennially~~ after the first audit.

3 Section 3. For the purpose of incorporating the  
4 amendment to section 403.0872, Florida Statutes, in a  
5 reference thereto, subsection (2) of section 403.518, Florida  
6 Statutes, is reenacted to read:

7 403.518 Fees; disposition.--

8 (2) Effective upon the date commercial operation  
9 begins, the operator of an electrical power plant certified  
10 under this part is required to pay to the department an annual  
11 operation license fee as specified in s. 403.0872(11) to be  
12 deposited in the Air Pollution Control Trust Fund.

13 Section 4. This act shall take effect July 1, 1999.

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16 HOUSE SUMMARY

17 Provides that revenue income deposited in the Air  
18 Pollution Control Trust Fund is exempt from a service  
19 charge to fund general government. Revises procedure and  
20 requirements for adjustments of annual operation license  
21 fees for support of the major stationary source  
22 air-operation permit program. Restricts the use of fees  
23 collected to cover the costs of the permit program.  
24 Provides for continued funding of certain activities  
25 funded prior to the effective date of the act. Revises  
26 the time frame for initial audit of the permit program,  
27 revises audit requirements, and requires program audits  
28 every 5 years after the initial audit, rather than  
29 biennially.  
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