

Bill No. SB 1896

Amendment No. ____

<u>Senate</u>	CHAMBER ACTION	<u>House</u>
---------------	----------------	--------------

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

.
.
.
.
.

Senator Laurent moved the following amendment to amendment (920738):

Senate Amendment (with title amendment)

On page 16, between lines 13 and 14,

insert:

Section 4. Section 403.0872, Florida Statutes, is amended to read:

403.0872 Operation permits for major sources of air pollution; annual operation license fee.--Provided that program approval pursuant to 42 U.S.C. s. 7661a has been received from the United States Environmental Protection Agency, beginning January 2, 1995, each major source of air pollution, including electrical power plants certified under s. 403.511, must obtain from the department an operation permit for a major source of air pollution under this section. This operation permit ~~which~~ is the only department operation permit for a major source of air pollution required for such source; provided, at the applicant's request, the department shall issue a separate Acid Rain permit for a major

Bill No. SB 1896

Amendment No. ____

1 source of air pollution that is an affected source within the
2 meaning of 42 U.S.C. s. 7651a(1). Operation permits for major
3 sources of air pollution, except general permits issued
4 pursuant to s. 403.814, must be issued in accordance with the
5 following procedures and in accordance with chapter 120;
6 however, to the extent that chapter 120 is inconsistent with
7 the provisions of this section, the procedures contained in
8 this section prevail:

9 (1) For purposes of this section, a major source of
10 air pollution means a stationary source of air pollution, or
11 any group of stationary sources within a contiguous area and
12 under common control, which emits any regulated air pollutant
13 and which is any of the following:

14 (a) A major source within the meaning of 42 U.S.C. s.
15 7412(a)(1);

16 (b) A major stationary source or major emitting
17 facility within the meaning of 42 U.S.C. s. 7602(j) or 42
18 U.S.C. subchapter I, part C or part D;

19 (c) An affected source within the meaning of 42 U.S.C.
20 s. 7651a(1);

21 (d) An air pollution source subject to standards or
22 regulations under 42 U.S.C. s. 7411 or s. 7412; provided that
23 a source is not a major source solely because of its
24 regulation under 42 U.S.C. s. 7412(r); or

25 (e) A stationary air pollution source belonging to a
26 category designated as a 40 C.F.R. part 70 source by
27 regulations adopted by the administrator of the United States
28 Environmental Protection Agency under 42 U.S.C. ss. 7661 et
29 seq. The department shall exempt those facilities that are
30 subject to this section solely because they are subject to
31 requirements under 42 U.S.C. s. 7411 or solely because they

Bill No. SB 1896

Amendment No. ____

1 are subject to reporting requirements under 42 U.S.C. s. 7412
2 for as long as the exemption is available under federal law.

3 (2) An application for an operation permit for a major
4 source of air pollution must be submitted in accordance with
5 rules of the department governing permit applications. The
6 department shall adopt rules defining the timing, content, and
7 distribution of an application for a permit under this
8 section. A permit application processing fee is not required.
9 The department may issue an operation permit for a major
10 source of air pollution only when it has reasonable assurance
11 that the source applies pollution control technology,
12 including fuel or raw material selection, necessary to enable
13 it to comply with the standards or rules adopted by the
14 department or an approved compliance plan for that source. If
15 two or more major air pollution sources that belong to the
16 same Major Group as described in the Standard Industrial
17 Classification Manual, 1987, are operated at a single site,
18 the owner may elect to receive a single operation permit
19 covering all such sources at the site.

20 (a) An application for a permit under this section is
21 timely and complete if it is submitted in accordance with
22 department rules governing the timing of applications and
23 substantially addresses the information specified in
24 completeness criteria determined by department rule in
25 accordance with applicable regulations of the United States
26 Environmental Protection Agency governing the contents of
27 applications for permits under 42 U.S.C. s. 7661b(d). Unless
28 the department requests additional information or otherwise
29 notifies the applicant of incompleteness within 60 days after
30 receipt of an application, the application is complete.

31 (b) Any permitted air pollution source that submits a

Bill No. SB 1896

Amendment No. ____

1 timely and complete application for a permit under this
2 section is entitled to operate in compliance with its existing
3 air permit pending the conclusion of proceedings associated
4 with its application. Notwithstanding the timing requirements
5 of paragraph (c) and subsection (3), the department may
6 process applications received during the first year of permit
7 processing under this section, in a manner consistent with 42
8 U.S.C. s. 7661b(c).

9 (c) The department may request additional information
10 necessary to process a permit application subsequent to a
11 determination of completeness in accordance with s.
12 403.0876(1).

13 (3) Within 90 days after the date on which the
14 department receives all information necessary to process an
15 application for a permit under this section, the department
16 shall issue a draft permit or a determination that the
17 requested permit should be denied. A draft permit must contain
18 all conditions that the department finds necessary to ensure
19 that operation of the source will be in compliance with
20 applicable law, rules, or compliance plans. If the department
21 proposes to deny the permit application, the department's
22 determination must provide an explanation for the denial. The
23 department shall furnish a copy of each draft permit to the
24 United States Environmental Protection Agency and to any
25 contiguous state whose air quality could be affected or which
26 is within 50 miles of the source pursuant to procedures
27 established by department rule.

28 (4) The department shall require the applicant to
29 publish notice of any draft permit in accordance with
30 department rule. The department must accept public comment
31 with respect to a draft permit for 30 days following the date

Bill No. SB 1896

Amendment No. ____

1 of notice publication. The notice must be published in a
2 newspaper of general circulation as defined in s. 403.5115(2).
3 If comments received during this period result in a change in
4 the draft permit, the department must issue a revised draft
5 permit, which shall be supplied to the United States
6 Environmental Protection Agency and to any contiguous state
7 whose air quality could be affected or which is within 50
8 miles of the source.

9 (5) Any person whose substantial interests are
10 affected by a draft permit or the denial determination may
11 request an administrative hearing under ss. 120.569 and
12 120.57, in accordance with the rules of the department. A
13 draft permit must notify the permit applicant of any review
14 process applicable to the permit decision of the department.
15 The department shall prescribe, by rule, a suitable standard
16 format for such notification.

17 (6) If a hearing is not requested under ss. 120.569
18 and 120.57, the draft permit will become the department's
19 proposed permit but does not become final until the time for
20 federal review of the proposed permit has elapsed. The
21 department shall furnish the United States Environmental
22 Protection Agency a copy of each proposed permit and its
23 written response to any comments regarding the permit
24 submitted by contiguous states. If no objection to the
25 proposed permit is made by the United States Environmental
26 Protection Agency within the time established by 42 U.S.C. s.
27 7661d, the proposed permit must become final no later than 55
28 days after the date on which the proposed permit was mailed to
29 the United States Environmental Protection Agency. The
30 department shall issue a conformed copy of the final permit as
31 soon as is practicable thereafter.

Bill No. SB 1896

Amendment No. ____

1 (7) If a draft permit is the subject of an
2 administrative hearing under ss. 120.569 and 120.57, a
3 proposed permit containing changes, if any, resulting from the
4 hearing process, after the conclusion of the hearing, must be
5 issued and a copy must be provided to the applicant, to the
6 United States Environmental Protection Agency, and to any
7 contiguous state whose air quality could be affected or which
8 is within 50 miles of the source, as soon as practicable. The
9 proposed permit shall not become final until the time for
10 review, by the United States Environmental Protection Agency,
11 of the proposed permit has elapsed. If comments from a
12 contiguous state regarding the permit are received, the
13 department must provide a written response to the applicant,
14 to the state, and to the United States Environmental
15 Protection Agency. If no objection to the proposed permit is
16 made by the United States Environmental Protection Agency
17 within the time established by 42 U.S.C. s. 7661d, the
18 proposed permit must become final no later than 55 days after
19 the date on which the proposed permit was mailed to the United
20 States Environmental Protection Agency. The department shall
21 issue a conformed copy of the final permit as soon as is
22 practicable thereafter.

23 (8) If the administrator of the United States
24 Environmental Protection Agency timely objects to a proposed
25 permit under this section, the department must not issue a
26 final permit until the objection is resolved or withdrawn. A
27 copy of the written objection of the administrator must be
28 provided to the permit applicant as soon as practicable after
29 the department receives it. Within 45 days after the date on
30 which the department serves the applicant with a copy of an
31 objection by the United States Environmental Protection Agency

Bill No. SB 1896

Amendment No. ____

1 to a proposed permit, the applicant may file a written reply
2 to the objection. The written reply must include any
3 supporting materials that the applicant desires to include in
4 the record relevant to the issues raised by the objection. The
5 written reply must be considered by the department in issuing
6 a final permit to resolve the objection of the administrator.
7 A final permit issued by the department to resolve an
8 objection of the administrator is not subject to ss. 120.569
9 and 120.57.

10 (9) A final permit issued under this section is
11 subject to judicial review under s. 120.68. If judicial review
12 of a final permit results in material changes to the
13 conditions of the permit, the department shall notify the
14 United States Environmental Protection Agency and any state
15 that is contiguous to this state whose air quality could be
16 affected or that is within 50 miles of the source, pursuant to
17 rules of the department.

18 (10) If the department is notified by the
19 administrator of the United States Environmental Protection
20 Agency that cause exists to terminate, modify, or revoke and
21 reissue a permit under this section, the department shall,
22 within 90 days after receipt of such notification, furnish to
23 the administrator and the permittee a proposed determination
24 of termination, modification, or revocation and reissuance as
25 appropriate. Within 45 days after the date on which the
26 department notifies the permittee that the United States
27 Environmental Protection Agency proposes action regarding its
28 permit, the permittee may file a written response concerning
29 the proposed action. The written response must include any
30 supporting materials that the permittee desires to include in
31 the record relevant to the issues raised by the proposed

Bill No. SB 1896

Amendment No. ____

1 action. The permittee's written response must be considered by
2 the department in formulating its proposed determination under
3 this subsection.

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

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

22 1. For 1993 and 1994, the license fee factor is \$10.
23 For 1995, the license fee factor is \$25. In succeeding years,
24 the license fee factor is \$25 or another amount determined by
25 department rule which ensures that the revenue provided by
26 each year's operation license fees is sufficient to cover all
27 reasonable direct and indirect costs of the major stationary
28 source air-operation permit program established by this
29 section. The license fee factor may be increased beyond \$25
30 only if the secretary of the department affirmatively finds
31 that a shortage of revenue for support of the major stationary

Bill No. SB 1896

Amendment No. ____

1 source air-operation permit program will occur in the absence
2 of a fee factor adjustment. The annual license fee factor may
3 never exceed \$35. The department shall retain a nationally
4 recognized accounting firm to conduct a study to determine the
5 reasonable revenue requirements necessary to support the
6 development and administration of the major source
7 air-operation permit program as prescribed in paragraph (b).
8 The results of that determination must be considered in
9 assessing whether a \$25-per-ton fee factor is sufficient to
10 adequately fund the major source air-operation permit program.
11 The results of the study must be presented to the Governor,
12 the President of the Senate, the Speaker of the House of
13 Representatives, and the Public Service Commission, including
14 the Public Counsel's Office, by no later than October 31,
15 1994.

16 2. For any source that operates for fewer hours during
17 the calendar year than allowed under its permit, the annual
18 fee calculation must be based upon actual hours of operation
19 rather than allowable hours if the owner or operator of the
20 source documents the source's actual hours of operation for
21 the calendar year. For any source that has an emissions limit
22 that is dependent upon the type of fuel burned, the annual fee
23 calculation must be based on the emissions limit applicable
24 during actual hours of operation.

25 3. For any source whose allowable emission limitation
26 is specified by permit per units of material input or heat
27 input or product output, the applicable input or production
28 amount may be used to calculate the allowable emissions if the
29 owner or operator of the source documents the actual input or
30 production amount. If the input or production amount is not
31 documented, the maximum allowable input or production amount

Bill No. SB 1896

Amendment No. ____

1 specified in the permit must be used to calculate the
2 allowable emissions.

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

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

19 6. The amount of each regulated air pollutant in
20 excess of 4,000 tons per year allowed to be emitted by any
21 source, or group of sources belonging to the same Major Group
22 as described in the Standard Industrial Classification Manual,
23 1987, may not be included in the calculation of the fee. Any
24 source, or group of sources, which does not emit any regulated
25 air pollutant in excess of 4,000 tons per year, is allowed a
26 one-time credit not to exceed 25 percent of the first annual
27 licensing fee for the prorated portion of existing
28 air-operation permit application fees remaining upon
29 commencement of the annual licensing fees.

30 7. If the department has not received the fee by
31 February 15 of the calendar year, the permittee must be sent a

Bill No. SB 1896

Amendment No. ____

1 written warning of the consequences for failing to pay the fee
2 by March 1. If the fee is not postmarked by March 1 of the
3 calendar year, commencing with calendar year 1997, the
4 department shall impose, in addition to the fee, a penalty of
5 50 percent of the amount of the fee, plus interest on such
6 amount computed in accordance with s. 220.807. The department
7 may not impose such penalty or interest on any amount
8 underpaid, provided that the permittee has timely remitted
9 payment of at least 90 percent of the amount determined to be
10 due and remits full payment within 60 days after receipt of
11 notice of the amount underpaid. The department may waive the
12 collection of underpayment and shall not be required to refund
13 overpayment of the fee, if the amount due is less than 1
14 percent of the fee, up to \$50. The department may revoke any
15 major air pollution source operation permit if it finds that
16 the permit holder has failed to timely pay any required annual
17 operation license fee, penalty, or interest.

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

22 9. Notwithstanding the computational provisions of
23 this subsection, the annual operation license fee for any
24 source subject to this section shall not be less than \$250,
25 except that the annual operation license fee for sources
26 permitted solely through general permits issued under s.
27 403.814 shall not exceed \$50 per year.

28 10. Notwithstanding the provisions of s.
29 403.087(6)(a)4.a., authorizing air pollution construction
30 permit fees, the department may not require such fees for
31 changes or additions to a major source of air pollution

Bill No. SB 1896

Amendment No. ____

1 permitted pursuant to this section, unless the activity
2 triggers permitting requirements under Title I, Part C or Part
3 D, of the federal Clean Air Act, 42 U.S.C. ss. 7470-7514a.
4 Costs to issue and administer such permits shall be considered
5 direct and indirect costs of the major stationary source
6 air-operation permit program under s. 403.0873. The department
7 shall, however, require fees pursuant to the provisions of s.
8 403.087(6)(a)4.a. for the construction of a new major source
9 of air pollution that will be subject to the permitting
10 requirements of this section once constructed and for
11 activities triggering permitting requirements under Title I,
12 Part C or Part D, of the federal Clean Air Act, 42 U.S.C. ss.
13 7470-7514a.

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

- 23 1. Reviewing and acting upon any application for such
24 a permit.
- 25 2. Implementing and enforcing the terms and conditions
26 of any such permit, excluding court costs or other costs
27 associated with any enforcement action.
- 28 3. Emissions and ambient monitoring.
- 29 4. Preparing generally applicable regulations or
30 guidance.
- 31 5. Modeling, analyses, and demonstrations.

Bill No. SB 1896

Amendment No. ____

- 1 6. Preparing inventories and tracking emissions.
- 2 7. Implementing the Small Business Stationary Source
- 3 Technical and Environmental Compliance Assistance Program.
- 4 8. The study conducted under subparagraph (a)1. and
- 5 any audits conducted under paragraph (c).
- 6 (c) An audit of the major stationary source
- 7 air-operation permit program must be conducted 2 years after
- 8 the United States Environmental Protection Agency has given
- 9 full approval of the program, or by the end of 1996, whichever
- 10 comes later, to ascertain whether the annual operation license
- 11 fees collected by the department are used solely to support
- 12 any reasonable direct and indirect costs as listed in
- 13 paragraph (b). A program audit must be performed biennially
- 14 after the first audit.
- 15 (12) Permits issued under this section must allow
- 16 changes within a permitted facility without requiring a permit
- 17 revision, if the changes are not physical changes in, or
- 18 changes in the method of operation of, the facility which
- 19 increase the amount of any air pollutant emitted by the
- 20 facility or which result in the emission of any air pollutant
- 21 not previously emitted by the facility, and the changes do not
- 22 exceed the emissions allowable under the permit (whether
- 23 expressed therein as a rate of emissions or in terms of total
- 24 emissions), provided that the facility provides the
- 25 administrator and the department with 30 days' written,
- 26 advance notice of the proposed changes. The department shall
- 27 adopt rules implementing this flexibility requirement.
- 28 (13)(a) In order to ensure statewide consistency in
- 29 the implementation of the national Acid Deposition Control
- 30 Allowance Transfer System, a department district office or
- 31 local pollution control program may not issue or administer

Bill No. SB 1896

Amendment No. ____

1 permits under this section for any electrical power plant or
2 any source that participates in the allowance transfer system.

3 (b) For emission units that are subject to continuous
4 monitoring requirements under 42 U.S.C. ss. 7661-7661f or 40
5 C.F.R. part 75, compliance with nitrogen oxides emission
6 limits shall be demonstrated based on a 30-day rolling
7 average, except as specifically provided by 40 C.F.R. part 60
8 or part 76.

9 (14) In order to ensure statewide consistency in the
10 permitting of major sources, a local pollution control program
11 may not issue permits under this section for sources that
12 belong to Major Group 26, Paper and Allied Products; for
13 sources that belong to Major Group 28, Chemicals and Allied
14 Products; or for sources that belong to Industry Number 2061,
15 Cane Sugar, Except Refining, as defined in the Standard
16 Industrial Classification Manual, 1987.

17 (15) Any permittee that operates in compliance with an
18 air-operation permit issued under this section is deemed to be
19 in compliance with applicable permit requirements of the Clean
20 Air Act and all implementing state, local, and federal air
21 pollution control rules and regulations and all provisions of
22 this chapter, relating to air pollution, and rules adopted
23 thereunder.

24 (16) The department shall adopt a rule to provide for
25 a procedure for notice to the appropriate approved local
26 pollution control programs, pursuant to s. 403.182, of any
27 draft permits, amended draft permits, or final permits issued
28 by the department.

29 (17) The administrator of the United States
30 Environmental Protection Agency may intervene as a matter of
31 right in any administrative or judicial proceeding relating to

Bill No. SB 1896

Amendment No. ____

1 an operation permit for a major source of air pollution
2 required under this section.

3 (18) The department shall require certification of all
4 applications, submittals, and reports by a responsible
5 official of a major source of air pollution and shall require
6 the inclusion of those specific federal requirements listed at
7 42 U.S.C. s. 7661a(f)(1), (2), and (3) in all permits to which
8 such terms apply.

9
10 (Redesignate subsequent sections.)

11
12

13 ===== T I T L E A M E N D M E N T =====

14 And the title is amended as follows:

15 On page 17, line 30, after the second semicolon

16

17 insert:

18 amending s. 403.0872, F.S.; providing for a
19 separate Acid Rain permit;

20

21

22

23

24

25

26

27

28

29

30

31