

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: March 24, 1998 Revised: \_\_\_\_\_

Subject: Air Pollution Control Revenues

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Branning</u>	<u>Voigt</u>	<u>NR</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>WM</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

**I. Summary:**

This bill exempts the Air Pollution Control Trust Fund from the 7 percent General Revenue Fund surcharge. Provides that the air-operation license fee may only be adjusted after the required audit is performed which must be completed by January 1, 2003 and only after a finding by the secretary of the Department of Environmental Protection of a shortage or surplus of revenue for support of the major stationary source air-operation permit program. Provides restrictions on how the revenues from the air-operation license fee may be used. Revises the program audit provisions.

This bill amends sections 215.22 and 403.0872, Florida Statutes.

**II. Present Situation:**

On November 15, 1990, the Clean Air Act Amendments of 1990 were signed into law by the President. These amendments represented significant changes designed to achieve enhanced air quality goals and cover a wide range of air pollution issues.

In 1992 and 1993, the Legislature passed legislation which enabled Florida to receive delegation to administer the federal Clean Air Act Title V program pursuant to 42 U.S.C. s. 7661a. Section 403.0872, F.S., allows the Department of Environmental Protection (DEP) to issue operation permits for major sources of air pollution. Each permitted major source of air pollution must pay an annual operation license fee in an amount determined by the department that is sufficient to cover all reasonable direct and indirect costs required to develop and administer the major stationary source air-operation permit program. The fee is calculated by multiplying a license fee factor by the tons of each regulated air pollutant. Currently, the fee is \$25 per ton. The fee may be increased only if the secretary of the DEP affirmative finds that a shortage of revenue for support

of the major stationary source air-operation permit program will occur in the absence of a fee adjustment. However, the fee may never exceed \$35 per ton. Pursuant to s. 403.0873, F.S., all fees collected for this program are deposited into the Florida Air-Operation License Fee Account in the DEP's Air Pollution Control Trust Fund.

In accordance with the U.S. Environmental Protection Agency's (EPA) regulations and guidelines, s. 403.0872(11)(b), F.S., the fees collected must specifically cover the costs of:

- Reviewing and acting upon any application for such a permit.
- Implementing and enforcing the terms and conditions of any such permit, excluding court costs or other costs associated with any enforcement action.
- Emissions and ambient monitoring.
- Preparing generally applicable regulations or guidance.
- Modeling, analyses, and demonstrations.
- Preparing inventories and tracking emissions.
- Implementing the Small Business Stationary Source Technical and Environmental Compliance Assistance Program.
- Certain studies and audits.

An audit of the program must be conducted 2 years after the EPA has given full approval of the program, or by the end of 1996, whichever comes later, to ascertain whether the annual operation license fees collected by the DEP are used solely to support any reasonable direct and indirect costs. A program audit must be performed biennially after the first audit. The EPA has not yet given their full approval of the program.

Pursuant to s. 215.20, F.S., a service charge of 7 percent, representing the estimated pro rata share of the cost of general government paid from the General Revenue Fund, is deducted from all income of a revenue nature deposited in all trust funds except those enumerated in s. 215.22, F.S. The Air Pollution Control Trust Fund is not currently exempt from this surcharge.

### **III. Effect of Proposed Changes:**

This bill amends s. 215.22, F.S., to exempt the Air Pollution Control Trust Fund from the 7 percent General Revenue Fund surcharge.

The bill amends s. 403.0872, F.S., to delete some outdated language relating to the license fee factor for FY 1993, FY 1994, and FY 1995. The provisions allowing for the current license fee

factor, which is \$25 per ton, to be adjusted by rule after an audit is performed, are amended to provide for a finding by the secretary of the DEP of a shortage or *surplus* of revenue will occur in the absence of a fee adjustment. The bill further specifies what expenditures may be made and used in calculating whether there is a shortage of revenue. The annual operation licence fees collected by the department must be used solely to cover the costs of meeting the functions of the permitting program.

Provisions relating to a study to determine reasonable revenue requirements that has already been conducted are deleted.

The bill also amends the provisions which specify the cost elements that are reasonably related to the implementation of the major stationary source air-operation permit program.

- Ambient air monitoring costs are allowed only to the extent that site-specific monitoring is necessary for the issuance of a major stationary source air permit or permits, as documented in the permit or permits.
- Costs associated with the preparation of regulations or guidance, modeling, analyses, demonstrations, and site-specific emissions monitoring only to the extent required for the implementation of the program.
- Costs associated with preparing inventories and tracking emissions only to the extent required for the implementation of the program.
- Costs associated with conducting the required audits.

The required is audit to ascertain whether the annual operation license fees collected by the DEP are sufficient and are used by the department and local programs solely to cover the reasonable direct and indirect costs and must not be commenced until January 1, 2002, and must be completed by January 1, 2003. A program audit must be performed every 5 years instead of biennially.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

This bill exempts the Air Pollution Control Trust Fund from the 7 percent General Revenue Fund surcharge. The impact to the General Revenue Fund is expected to be a reduction of \$1.4 million annually.

B. Private Sector Impact:

Operators of major stationary sources subject to the air-operation permit fees (Title V) have maintained that the Department of Environmental Protection has spent Title V fees on non-Title V activities, such as area-wide ambient air quality monitoring and general air program rule development. In addition, it has been suggested that the 7 percent General Revenue Fund surcharge is in contravention of the Clean Air Act requirement to use Title V fees sole for Title V activities. Operators of major stationary sources subject to the fee strongly contest the assertion of the department that there will be a shortfall of revenues to cover program costs since this money should be used for program costs.

This bill would assure that there will be no adjustment in the fee that is charged per ton of regulated pollutant until the required audit is conducted in 2002.

C. Government Sector Impact:

On November 26, 1997, the Department of Environmental Protection determined that the Title V fees collected were not sufficient to cover all reasonable direct and indirect costs of the Title V program. In its determination, the department indicated that the revenue received from the Title V program fees were less than the costs of the program for FY 1996 and FY 1997.

	<b>FY 1996</b>	<b>FY 1997</b>
<b>Revenues</b>	\$9,409,589	\$8,860,045
<b>Expenditures</b>	\$10,285,312	\$11,702,376

Part of this deficit would be offset if the \$1.4 million that is currently being transferred to the General Revenue Fund would stay in the Air Pollution Control Trust Fund. Also, the bill limits the uses of the Title V fee revenues. Currently, expenditures are being made to monitor ambient air quality. The bill restricts the use of the Title V fees for this purpose to ambient air monitoring only to the extent that site-specific monitoring is necessary for the issuance of a major stationary source air permit.

There would be no change in the amount of Title V fee revenues paid to the state since the bill would prohibit any adjustment to the fee factor until an audit is done in 2002.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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