

GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2007

Legislative Fiscal Note

BILL NUMBER: House Bill 2498 (Second Edition)

SHORT TITLE: Underground Storage Tank Pgrm Amends-2008.

SPONSOR(S): Representatives Gibson and Allen

FISCAL IMPACT					
(in millions)					
	Yes (x)	No ()	No Estimate Available ()		
	<u>FY 2008-09</u>	<u>FY 2009-10</u>	<u>FY 2010-11</u>	<u>FY 2011-12</u>	<u>FY 2012-13</u>
REVENUES					
Commercial UST Fund	\$2.04	\$4.08	\$4.08	\$4.08	\$4.08
EXPENDITURES					
Commercial UST Fund	\$2.04	\$4.08	\$4.08	\$4.08	\$4.08
Estimated that all new funds will be expended by the UST program. The bill directs that up to \$3 million be used specifically for free product removal.					
POSITIONS (cumulative): none					
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Environment and Natural Resources, Division of Waste Management; Department of Insurance					
EFFECTIVE DATE: Sections 1, 2, 3, 6, and 12 effective January 1, 2009. Sections 4, 5, 7, 8, 9, and 10 effective when the bill becomes law. Section 11 effective retroactively to October 1, 2006.					

BILL SUMMARY:

Section 1 increases the annual operating fee for any regulated petroleum commercial UST to \$420.00. Under current law the fee for a tank of 3,500 gallons or less is \$200.00, and for a tank of 3,500 gallons or more is \$300.00. Section 1 would become effective 1 January 2009.

Sections 2 and 3 establish time limitations associated with reimbursement of costs from UST cleanups. Section 3 also generally prohibits DENR from withholding payment of authorized costs in order to recover other costs in dispute. Sections 2 and 3 would become effective 1 January 2009.

Section 4 clarifies the amount of financial responsibility that an owner or operator of an UST must demonstrate. Section 4 would become effective when the bill becomes law.

Section 5 requires secondary containment for all components of an UST system. Under current law, secondary containment is only required for nontank components. Section 5 would become effective when the bill becomes law.

Section 6 provides that DENR must only issue an operating permit if an owner or operator of an UST has demonstrated the required financial responsibility. Section 6 would become effective 1 January 2009.

Section 7 directs DENR to establish a pilot program to evaluate the use of site-specific cleanup standards for the cleanup of discharges or releases from USTs as opposed to the risk-based assessment and corrective action standards set forth in the administrative code in order to determine whether site-specific standards provide effective protection of public health, safety, and the environment at a lower overall cost. Section 7 would become effective when the bill becomes law, and expire 1 September 2014.

Section 8 provides that an owner or operator may request reclassification of a discharge or release to a lower risk classification. Section 8 would become effective when the PCS becomes law, and expire 1 September 2014.

Section 9 requires that DENR establish a process to provide informal notice of any proposed policy change and receive and consider comment from interested parties before implementation of a proposed policy change, except in situations that require immediate action. Section 9 would become effective when the bill becomes law.

Section 10 requires that the Department of Insurance, in consultation with the Petroleum Underground Storage Tank Funds Council and DENR, provide guidance and technical assistance for formation of an insurance pool. Section 9 would become effective when the bill becomes law.

Section 11 would extend the Pay for Performance Program, originally enacted in 2001, until 1 October 2011. The program allows DENR to select qualified contractors for site cleanup using a competitive bidding process. Section 11 is effective retroactively to 1 October 2006.

Section 12 directs DENR to annually use up to \$3,000,000 of the receipts from the increase in tank fees that would be enacted under the bill solely for the removal of free petroleum from groundwater and the balance of the increase of fees to address other concerns raised in a 19 September 2006 letter from the United States Environmental Protection Agency to the Secretary of DENR. Section 12 would become effective 1 January 2009.

BACKGROUND:

The Underground Storage Tank Program is funded from five sources:

1. A portion of the fuel tax (22/64 of a cent per gallon)
2. A portion of the ¼ of 1 cent per gallon inspection tax on kerosene and motor fuel
3. UST operating permit fees
4. Costs recovered from UST owners and operators for State-lead sites
5. Interest earned on the Fund balances.

Revenues are deposited into two funds – the Commercial Leaking Underground Storage Tank Fund and the Noncommercial Leaking Underground Storage Tank Fund. A five-year history of funding for these two Funds by fund source is provided below:

Commercial UST Fund					
	Actual	Actual	Actual	Actual	Actual
	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07
Revenues	\$27,055,759	\$26,934,685	\$50,255,908	\$28,143,119	\$27,564,837
Gas Tax	\$18,052,511	\$15,622,250	\$38,670,750	\$17,123,883	\$15,958,944
Inspection Tax	\$3,948,292	\$2,562,662	\$3,271,536	\$2,836,253	\$2,693,239
Permit Fees	\$8,087,034	\$8,309,807	\$7,987,101	\$7,951,508	\$7,937,236
Cost Recovery	\$23,224	\$86,592	\$81,186	\$24,562	\$58,705
Interest & Other	-\$3,055,302	\$353,374	\$245,335	\$206,913	\$916,713
Expenditures	\$28,829,373	\$26,041,631	\$49,618,617	\$18,111,218	\$10,097,821
Cash Balance	\$2,184,943	\$3,077,997	\$3,715,289	\$13,747,190	\$31,214,205

Non-Commercial UST Fund					
	Actual	Actual	Actual	Actual	Actual
	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07
Revenues	\$4,245,340	\$8,060,151	\$14,885,997	\$7,615,613	\$6,053,993
Gas Tax	\$2,378,180	\$2,468,195	\$8,333,567	\$2,705,441	\$2,521,390
Inspection Tax	\$1,698,292	\$3,496,240	\$3,271,536	\$2,836,253	\$2,693,239
Cost Recovery	\$0	\$506	\$48,441	\$604	\$19,138
Interest & Other	\$168,868	\$2,095,211	\$3,232,453	\$2,073,315	\$820,226
Expenditures	\$7,646,309	\$9,001,443	\$12,592,398	\$3,604,019	\$6,448,355
Cash Balance	\$2,576,308	\$1,635,016	\$3,928,614	\$5,240,209	\$4,845,847

ASSUMPTIONS AND METHODOLOGY:

Revenues

Section 1 increases the tank operating permit fees to \$420 annually. Current fees are \$200 for tanks less than 3500 gallons and \$300 for tanks over 3500 gallons. **Fiscal Research estimates**

that **\$4,080,000 annually in new revenue will be raised by this increase.** A steady state of 29,000 tanks is assumed. The following table lays out the current permit revenue and the new permit revenue:

Current Fee Revenue

	<u># of Tanks</u>	<u>Fee</u>	<u>Revenue</u>
Large	23,000	\$300	\$6,900,000
Small	6,000	\$200	\$1,200,000
			\$8,100,000

Proposed Fee Revenue

All Tanks	29,000	\$420	\$12,180,000
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Total New Revenue **\$4,080,000**
(Proposed - Current)

As the fee is not effective until January 1, 2009, Fiscal Research estimates that only half of the \$4,080,000 will be raised in FY 2008-09.

Expenditures

Section 10 directs that the Department of Insurance consult with the Petroleum Underground Storage Tank Funds Council and DENR to provide guidance and technical assistance for the formation of an insurance pool. Fiscal Research does not anticipate that this directive will require additional funding or positions.

Section 12 directs that DENR use up to \$3,000,000 of the new revenue raised by the operating permit fee increase to cleanup free product sites. The remainder of the funds shall be used to address other concerns that the Environmental Protection Agency (EPA) raised in a September 19, 2006 letter to the Department. The EPA is concerned about the frequency of inspections at UST facilities and would like each facility inspected every three years. Currently the Department inspects each facility every 4-5 years. Additional inspections will require additional inspector positions. The Appropriations Act (H.B. 2436, 7th edition) as it passed the Senate contained a special provision authorizing the Department to use up to \$791,614 of funds in the Commercial Leaking Underground Storage Tank Fund to establish 11 new positions to address these concerns.

SOURCES OF DATA: Department of Environment and Natural Resources

TECHNICAL CONSIDERATIONS: None

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