

**NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE**

BILL NUMBER: Senate Bill 956 (First Edition)

SHORT TITLE: Pay for Performance/LUST Cleanups

SPONSOR(S): Senator Odom

FISCAL IMPACT

Yes () No (X) No Estimate Available ()

FY 2001-02 FY 2002-03 FY 2003-04 FY 2004-05 FY 2005-06

REVENUES (See Assumptions and Methodologies)

EXPENDITURES

POSITIONS:

PRINCIPAL DEPARTMENT(S) &

PROGRAM(S) AFFECTED: The Department of Environment and Natural Resources, Division of Waste Management

EFFECTIVE DATE: July 1, 2001

BILL SUMMARY: The bill grants authority to the Department of Environment and Natural Resources (DENR) to implement a performance-based cleanup program and provides the Department with the authority to allocate up to 50 percent of the funds in the Commercial and Noncommercial Leaking Underground Storage Tank Cleanup Funds to contract for performance-based cleanups of petroleum-contaminated sites. If the Department chooses to use a performance-based cleanup contract, the bill requires the Department to award the contract to the lowest responsible bid. The bill also provides the Environmental Management Commission with authority to adopt temporary rules to implement the program.

ASSUMPTIONS AND METHODOLOGY:

Background: The Leaking Petroleum Underground Storage Tank Cleanup Act of 1988 established two separate funds: the Commercial Trust Fund and the Noncommercial Trust Fund. Both Funds are administered by DENR's Division of Waste Management and may be used to reimburse eligible underground storage tank (UST) owners, operators, and landowners for reasonable and necessary costs incurred as result of environmental cleanup and third party liability claims. After applicable deductibles have been met, both Funds will reimburse for cleanup costs on a time and material basis, based on reasonable rate guidelines.

Performance Based Cleanup Programs: According to the Department, a performance-based cleanup program (also known as pay-for-performance) is one in which an environmental consulting firm has agreed, through a signed contract, to remediate a site to specified cleanup levels for a fixed price over a specified period of time. The contracting firm is paid as it achieves reduced contaminant concentrations to levels dictated by the contract. This type of program creates financial incentives for the contractor to complete cleanups as quickly as possible because reimbursement is tied to achieving cleanup goals specified in the contract, not to the length of time spent cleaning up. A performance-based cleanup contract can be negotiated between the State and the contracting or awarded through a competitive bid process.¹

Bill Impact: This bill would allow the Department to use a competitive bidding process to select qualified contractors for site cleanup of underground storage tank spills and to use up to 50 percent of the funds available in the Commercial and Noncommercial Trust Funds to reimburse contractors selected under this process.

Experience in other states (Florida, South Carolina and Wisconsin) with a pay-for-performance program similar to the one being proposed in North Carolina is limited. However, initial results from these states have shown substantial reductions in cleanup costs, ranging from 50 to 70 percent. Based on this collective experience, the Division of Waste Management conservatively estimates that it could save 30 percent in cleanup costs for sites chosen through this process.

In order to project an actual dollar amount of future savings, this fiscal note assumes that the expenditure patterns of the Commercial and Noncommercial Trust Funds over the past three years are indicative of expenditure patterns in the future. Over the past three years, expenditures from the Commercial and Noncommercial Trust Funds have averaged \$22.97 million and \$3.89 million respectively. **A 30 percent savings on cleanup costs would save approximately \$6.9 million from the Commercial Trust Fund and approximately \$1.17 million from the Noncommercial Trust Fund for a projected total savings of \$8.07 million annually.**

This savings does not generate any new money for the State. It simply uses less money from the Trust Funds for cleanups than would have otherwise been spent. The net result is more money available in the Trust Fund for additional cleanup projects.

Expenditures: Implementing a pay-for-performance program will necessitate the following steps: 1) developing qualifications/standards that contractors must meet in order to participate in the program, 2) maintaining a list of qualified professionals eligible to bid on contracts, and 3) developing the rules to implement the program. There are also front-end costs associated with the bidding process including the request for proposals, evaluating the bids and awarding the contracts. All of these costs involve staff time that the Department believes can be absorbed at their existing staff levels. Thus no additional resources are required to implement this program.

¹ Division of Waste Management, Underground Storage Tank Section

TECHNICAL CONSIDERATIONS: None

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