Petroleum Underground Storage Tank Release Compensation Board

Senate Finance and Financial Institutions Committee

Kerry Sullivan, Budget Analyst

Legislative Service Commission

May 6, 2003

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Attachment: LSC Budget Spreadsheet, Executive to House Passed Comparison

May 6, 2003

Petroleum Underground Storage Tank Release Compensation Board

- No GRF funding
- Funding in FYs 2004 and 2005 is equal to estimated expenditures in FY 2003

OVERVIEW

The Petroleum Underground Storage Tank Release Compensation Board serves Ohio's underground storage tank (UST) owners and operators through administration of the Financial Assurance Fund (FAF). The United States Environmental Protection Agency regulations require that every UST owner demonstrate financial responsibility for taking corrective action and for compensating third parties for injury or property damage caused by accidental releases of petroleum from underground tanks. The Financial Assurance Fund assures UST owners reimbursement of up to $1.0 million, minus a deductible, for necessary corrective actions. Ohio's underground storage tank owners pay annual tank fees into the FAF. Moneys in the fund consist of: (1) the fees and charges paid by owners of USTs, (2) interest earned on moneys in the fund, and (3) proceeds from any sale of revenue bonds authorized by the Board. Coverage under the standard deductible of $55,000 is currently provided to tank owners at an annual fee of $450 per tank. Owners of six or fewer USTs may pay an additional fee of $150 per tank ($600 per tank total) and reduce their deductible to $11,000 per release.

Currently, the FAF assures approximately 3,360 UST owners and 23,300 USTs. In FY 1994, the Board issued $30 million in revenue bonds, and an additional $35 million in FY 1999. No additional issues are anticipated for the FY 2004-2005 biennium. The Board anticipates an estimated $11.4 million will be collected in fees during FY 2003, and approximately $10.0 million will be reimbursed in claims.

The Board's budget submission is for personnel costs only, which are expended through Fund 691. The Board consists of nine members who are appointed by the Governor and three ex officio members. The Board has a current staff of 14 employees who perform the daily operations of the Board. The Board intends to staff its vacant positions within the current and upcoming biennium, bringing its total to 16. All expenditures related to reimbursement for corrective actions are paid directly from the FAF via a warrant of the State Treasurer. As of December 30, 2002, the FAF had an unobligated balance of approximately $23.0 million, and an obligated balance of approximately $14.6 million.

The Executive recommends funding of $1,075,158 in each of FYs 2004 and 2005. This is equal to the level of funding appropriated in FY 2003.

ANALYSIS OF EXECUTIVE PROPOSAL

Petroleum Underground Storage Tank Release Compensation Board

Purpose: The Petroleum Underground Storage Tank Release Compensation Board provides a low cost mechanism for owners of Ohio's underground storage tanks (UST) to comply with the United States Environmental Protection Agency regulations.

The following table shows the line item used to fund this program series, as well as the Governor's recommended funding levels.

Fund	ALI	Title	FY 2004	FY 2005
SSR 691	810-632	PUSTRCB Staff	$1,075,158	$1,075,158
Total funding:	**Petroleum Underground Storage Tank Release Compensation Board**		**$1,075,158**	**$1,075,158**

Petroleum Underground Storage Tank Release Compensation Board

Program Description: The Petroleum Underground Storage Tank Release Compensation Board administers the Financial Assurance Fund (FAF) under authority from Revised Code sections 3737.90 to 3737.99. The Board was established in July 1989 and consists of nine members appointed by the Governor. The State Treasurer and the directors of the Department of Commerce and the Ohio Environmental Protection Agency serve as ex officio members. The fund provides a mechanism for all UST owners and operators to meet the federal regulations requiring them to demonstrate their financial capability (set at $1.0 million) to pay for potential damages caused by releases from their USTs. The fund reimburses responsible parties for costs of corrective actions and/or third-party liability for property damage or bodily injury caused by an accidental release of petroleum from regulated USTs. The Board has 12 full-time employees, but plans to staff its vacant positions within the current and upcoming biennium, bringing its total to 16.

A primary function of the Board's staff is to determine who is eligible for reimbursement costs and how much money to grant in the event of an accidental release. For owners to seek reimbursement from the FAF, they must first submit an eligibility application to the Board. If an owner is deemed eligible for reimbursement, that owner may then submit a claim reimbursement application. The Board may reimburse for the costs of corrective actions in two ways: (1) an installment payment given after a claim is initially reviewed or (2) a settlement payment given after the claim has been thoroughly reviewed and the final settlement is offered. Money from the FAF may be used only for the costs of remediation. Ancillary costs, such as tank removal or site renovation, must be paid by tank owners.

Funding Source: The primary source of revenue for the Board is the annual fee assessed to each petroleum UST owner. Under the standard $55,000 deductible, this fee is $450 per tank. Owners of six or fewer tanks may pay a fee of $600 per tank and reduce their deductible to $11,000 per release. A portion of this fee revenue is transferred to Fund 691 for the Board's personnel costs.

Line Item: 810-632

Implication of the Executive Recommendation: The Executive recommends funding of $1,075,158 in each of FYs 2004 and 2005. Funding will provide for the continuation of FY 2003 service levels. Payroll expenses are the only funds of the Board that are appropriated.

ADDITIONAL FACTS AND FIGURES

Petroleum Underground Storage Tank Release Compensation Board Staffing Levels						
					Estimated	
Program Series/Division	**2000**	**2001**	**2002**	**2003**	**2004**	**2005**
Administration	3	3	3	3	3	3
Claims	8	7	6	6	8	8
Fiscal	5	5	5	5	5	5
Totals	**16**	**15**	**14**	**14**	**16**	**16**

Staffing Issues

As a small agency with little room for promotional opportunities, the Board has experienced staffing difficulties and continues to experience a relatively high turnover in its professional staff. Consequently, it is not unusual for the Board to have positions open for a significant amount of time in any given fiscal year. As a result, the Board's actual spending tends to be lower than its estimated spending. Appropriating for estimated spending, however, provides sufficient funding to allow all positions to be filled for the entire year.

Currently, the Board's staff consists of 14 full-time employees. The Board expects two vacant positions to be filled during the current fiscal year or early in the FY 2004-2005 biennium, bringing the total staff size to 16.

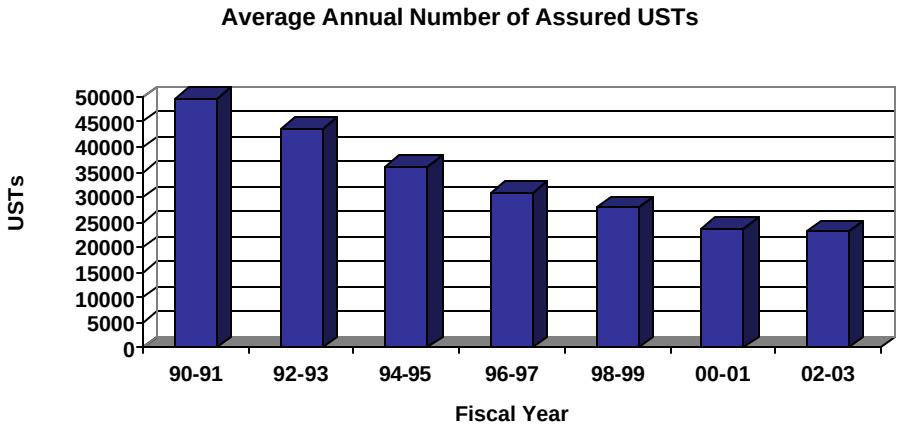
Tank Fees

Under the standard $55,000 deductible, the current tank fee is $450 per tank. Owners of six or fewer tanks may pay a fee of $600 per tank and reduce their deductible to $11,000 per release. Although a fee increase is not anticipated for FY 2004, the Board annually reviews its tank fee structure and operating budget based on the Financial Assurance Fund's unobligated balance, the claims paying experience of the Board, and the claims expenses projected to be certified for payment in the coming fiscal year. The Board also considers the number of tanks it expects to assure. Based upon these claims projections and the expected tank population, the Board establishes the annual tank fee for the coming fiscal year. The actual fees collected by the Financial Assurance Fund over past biennia, and the projected fees to be collected over the FY 2002-2003 and the FY 2004-2005 biennia are as follows:

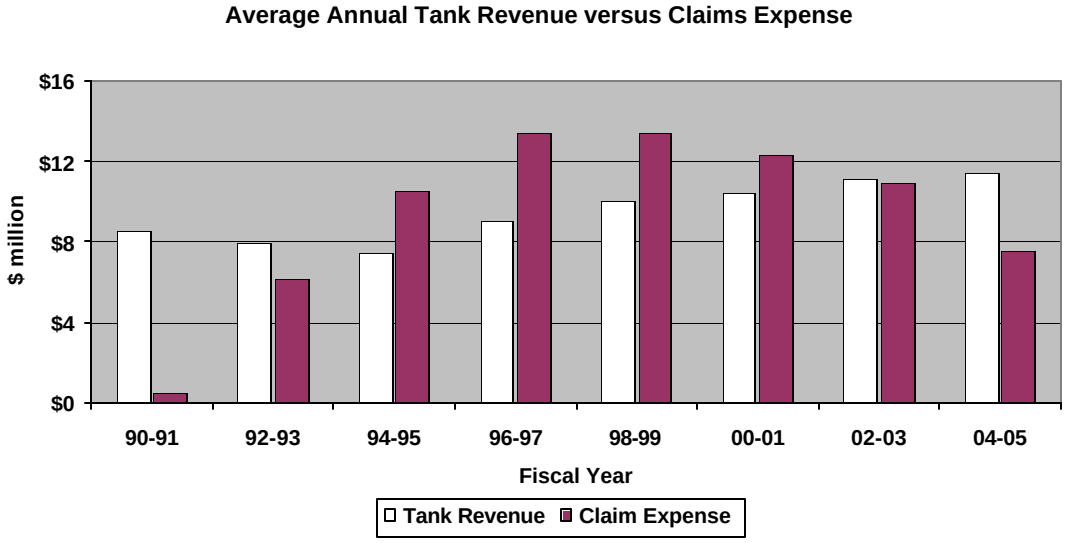
Biennium	Fees Collected
1990-1991	$18,882,206
1992-1993	$19,466,379
1994-1995	$15,352,567
1996-1997	$18,661,585
1998-1999	$18,902,104
2000-2001	$19,739,511
2002-2003	$22,900,000
2004-2005	$22,800,000

Federal Upgrade Deadline

The United States Environmental Protection Agency issued mandates to upgrade, remove, or replace USTs by December 1998, which resulted in a substantial decrease in the number of assurable USTs for which fees were collected. In the first year of the Board's existence, fees were collected for approximately 50,000 USTs. Today the number of assured USTs has decreased to approximately 23,300. The following chart depicts this trend.



As owners came into compliance with the 1998 upgrade standards, the Board expected that annual claims reimbursements would exceed annual fee revenue. In addition, because corrective action is ongoing in nature and may span several years, it was anticipated that the Financial Assurance Fund would continue to experience a shortfall in revenue for some time following the deadline. The following chart depicts this trend. Data for FYs 2004 and 2005 are projected.



Future Trends

Changes made to the Ohio Administrative Code in 1999 have had a significant impact on the UST financial assurance program. At that time, the State Fire Marshal's Bureau of Underground Storage Tank Removal (BUSTR) amended the Code to allow for a risk-based approach to corrective action. This change allows tank owners to remediate a site according to individualized cleanup standards that consider various potential pathways to exposure and the health risks associated with each. Previously, owners were required to meet prescribed cleanup standards based on specific contaminant levels, regardless of the risk of exposure to those contaminants. Approximately 40% of tank owners have opted to switch to the new BUSTR rules, which is likely to result in reduced reimbursement costs for the Board.

In response to BUSTRS's rule change, the Board amended its filing deadlines to require owners to submit claims for reimbursement within one year of the completion of a program task. The result of this revision has been a greater number of claim applications being submitted per eligible release. In addition, owners have started to submit some claims for reimbursement that are below deductible amounts in order to protect their rights to reimbursement should the release be reopened by BUSTR. Owners also may not be able to determine, at the completion of a program task, what the total costs of corrective action will be and whether that amount will exceed the deductible. As a result, claims are being submitted now that may not have been submitted under the Board's previous filing rules. In FY 2001, a total of 444 claims for reimbursement were submitted to the Board. In FY 2002, this number had increased to 775, a 75% increase. This higher level of total claims submissions is expected to continue over the FY 2004-2005 biennium.

PERMANENT AND TEMPORARY LAW SECTION

This section describes permanent and temporary law provisions contained in the executive budget that will affect the Board's activities and spending decisions during the next biennium.

There are no permanent or temporary law provisions with fiscal effects on this agency.

REQUESTS NOT FUNDED

The executive budget proposal for the FY 2004-2005 biennium fully funds the Board's budget request. Funding will allow for the continuation of FY 2003 service levels, as well as maintenance of a full staff. The recommended funding level for each of FYs 2004 and 2005 is $1,075,158.

State Special Revenue Fund Group

691 810-632 PUSTRCB Staff

2000	2001	2002	2003 Estimate	2004 House Passed	2005 House Passed
$768,697	$735,510	$862,295	$1,075,158	**$1,075,158**	**$1,075,158**
	-4.3%	17.2%	24.7%	**0.0%**	**0.0%**

Source: SSR: Annual tank fees paid by underground storage tank owners (allocated to this account from the petroleum underground storage tank Financial Assurance Fund)

Legal Basis: ORC 3737.91 (originally established by Controlling Board in June 1990)

Purpose: Moneys in this fund are used to pay the salaries and other expenses of the permanent staff of the Petroleum Underground Storage Tank Release Compensation Board.

LSC Budget Spreadsheet by Line Item, FY 2004 - FY 2005

Fund	ALI	ALI Title	Estimated 2003	As Introduced 2004	House Sub Bill 2004	% Change Est. 2003 to House 2004	As Introduced 2005	House Sub Bill 2005	% Change House 2004 to House 2005
UST		**Petroleum Underground Storage Tank Release Compensation Board**							
691	810-632	PUSTRCB Staff	$1,075,158	$ 1,075,158	$ 1,075,158	0.0%	$ 1,075,158	$ 1,075,158	0.0%
		State Special Revenue Fund Group Total	**$ 1,075,158**	**$ 1,075,158**	**$ 1,075,158**	**0.0%**	**$ 1,075,158**	**$ 1,075,158**	**0.0%**
		Total All Budget Fund Groups	***$ 1,075,158***	***$ 1,075,158***	***$ 1,075,158***	***0.0%***	***$ 1,075,158***	***$ 1,075,158***	***0.0%***