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HOUSE BILL 1720

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State of Washington                      52nd Legislature                      1991 Regular Session

By Representatives R. Meyers, May, Scott, Ballard, Anderson, Broback, Mielke, Winsley, Paris and Mitchell.

Read first time February 6, 1991. Referred to Committee on Financial Institutions & Insurance\Revenue. Referred 2/7/91 to Committee on Energy & Utilities.

1            AN ACT Relating to retail heating oil dealers; and adding a new  
2 chapter to Title 43 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4            NEW SECTION.    **Sec. 1.**            The legislature finds that it is in the  
5 best interest of all residents to safely operate oil heat tanks and  
6 expeditiously deal with tank leaks or spills. The legislature further  
7 finds that the heating oil tanks of oil-heated homes are susceptible to  
8 corrosion because of the soil conditions of Washington, tank  
9 construction, and tank operation. The legislature further finds that  
10 it is necessary to protect homeowners from the financial hardship  
11 related to damaged oil heat tanks and to address legitimate third-party  
12 claims caused by leaking tanks, and directs the oil heat commission of  
13 Washington to provide a pollution insurance safety net for the oil-  
14 heated homeowners of Washington. The problem is especially acute  
15 because home heating oil dealers are primarily small businesses that do

1 not have the financial capital available to assist with environmental  
2 protection. Therefore, the legislature finds that the best solution to  
3 this problem is to allow the oil heat dealers of Washington to join  
4 together to create the oil heat commission of Washington, to tax  
5 themselves in order to create a fund for the purpose of cleaning up any  
6 spill resulting from a damaged tank, and replacing or repairing those  
7 damaged tanks.

8 NEW SECTION. **Sec. 2.** This chapter may be known and cited as  
9 the Washington state oil heat commission act.

10 NEW SECTION. **Sec. 3.** Unless the context clearly requires  
11 otherwise, the definitions in this section apply throughout this  
12 chapter.

13 (1) "Commission" means the Washington state oil heat commission.

14 (2) "Director" means the director of the Washington state pollution  
15 liability insurance agency or the director's duly appointed  
16 representative.

17 (3) "Pollution liability insurance agency" means the Washington  
18 state pollution liability insurance agency.

19 (4) "Person" includes an individual, firm, corporation, trust,  
20 association, partnership, society, or other organization of  
21 individuals.

22 (5) "Heating oil" means number one and two heating oil for use in  
23 oil-fired furnaces, heaters, and boilers for space heating. It does  
24 not include heating for industrial processing or generation of  
25 electrical energy.

26 (6) "Oil dealer" means a person who handles, ships, buys, or sells  
27 heating oil.

1 (7) "Affected dealer" means a person who sells heating oil in  
2 commercial quantity in Washington.

3 (8) "Affected unit" means one gallon of heating oil.

4 (9) "Commercial quantity" means five thousand gallons or more of  
5 heating oil sold in any calendar year by any oil dealer.

6 (10) "Fiscal year" means the twelve-month period beginning July 1st  
7 of a year and ending the following June 30th, both dates being  
8 inclusive.

9 (11) "Heating oil tank" means a tank of one thousand one hundred  
10 gallons or less, which is above or below ground with pipes connected to  
11 the tank for heating human living or working space on the premises  
12 where stored, and is in continuous operation. It does not include  
13 decommissioned or abandoned heating oil tanks, or tanks used solely for  
14 commercial or industrial process heating purposes.

15 (12) "Release" means a spill, leak, emission, escape, or leaching  
16 into the environment.

17 (13) "Remedial action" means those actions consistent with a  
18 permanent action taken in the event of the release of heating oil from  
19 a heating oil tank into the environment, and includes:

20 (a) Actions at the location of the release such as: (i) storage or  
21 confinement; (ii) perimeter protection using dikes, trenches, ditches,  
22 clay cover, or neutralization; (iii) cleanup of released heating oil  
23 from a heating oil tank and associated contaminated materials; (iv)  
24 recycling, reuse, diversion, destruction, or segregation of reactive  
25 wastes; (v) collection of leachate and runoff; (vi) on-site treatment  
26 or incineration; (vii) security fencing or other measures to limit  
27 access; (viii) provision of alternative drinking and household water  
28 supplies; (ix) temporary evacuation and housing of threatened  
29 individuals; and (x) any monitoring reasonably required to assure that

1 such actions protect the public health, safety, welfare, and  
2 environment;

3 (b) Off-site transport and off-site storage, treatment,  
4 destruction, or secure disposition of heating oil released from a  
5 heating oil tank and associated contaminated materials;

6 (c) Those actions as may be necessary to monitor, assess, evaluate,  
7 or investigate a release of heating oil from a heating oil tank; and

8 (d) Repairing an existing leaking heating oil tank or installation  
9 of a new tank to replace a leaking tank.

10 (14) "Remedial action costs" means reasonable costs which are  
11 attributable to or associated with a remedial action.

12 (15) "Third-party liability" means the liability of an oil heat  
13 tank owner to another person or persons resulting in property damage or  
14 personal injury from a leak or spill.

15 NEW SECTION. **Sec. 4.** The Washington oil heat commission is  
16 hereby established to provide and promote the health, safety, and  
17 welfare of the oil heat customers in Washington. To carry out these  
18 purposes, the commission may establish a program to address claims made  
19 by a heating oil tank owner or an affected person or persons for  
20 remedial action costs that have accrued due to a release from the  
21 owner's heating oil tank, which has been in continuous service prior to  
22 the release, and provide for reimbursement of costs of remedial actions  
23 performed under this chapter that meet the clean-up standards and  
24 requirements established under the model toxics control act, chapter  
25 70.105D RCW.

26 NEW SECTION. **Sec. 5.** In an effort to address and acknowledge  
27 the differences in remedial action between western Washington and  
28 eastern Washington, the state will be divided into seven districts. The

1 districts shall administer the funds derived from those districts for  
2 remedial action and third-party liability purposes in those districts.  
3 The entire commission shall be responsible for the general  
4 administrative expenses of the commission proportionate to the  
5 assessments collected from each side of the state.

6 (1) For the purposes of this chapter, Washington is initially  
7 divided into seven districts as follows:

8 (a) District one includes the counties of Clallam, Clark, Cowlitz,  
9 Grays Harbor, Jefferson, Kitsap, Lewis, Mason, Pacific, Skamania, and  
10 Wahkiakum;

11 (b) District two includes the county of King;

12 (c) District three includes the counties of Island, San Juan,  
13 Skagit, Snohomish, and Whatcom;

14 (d) District four includes the counties of Pierce and Thurston;

15 (e) District five includes the counties of Chelan, Douglas, Ferry,  
16 Grant, Kittitas, Lincoln, Okanogan, Pend Orielle, and Stevens;

17 (f) District six includes the counties of Adams, Asotin, Benton,  
18 Columbia, Franklin, Garfield, Klickitat, Walla Walla, Whitman, and  
19 Yakima; and

20 (g) District seven includes the county of Spokane.

21 (2) The boundaries of the commission districts shall be maintained  
22 in a manner that assures each oil dealer representation in the  
23 commission which is reasonably equal with the representation afforded  
24 all other oil dealers by their commission members.

25 NEW SECTION. **Sec. 6.** (1) The oil heat commission is  
26 established to administer this chapter and is composed of ten members,  
27 eight of whom shall be affected oil dealers selected as provided in  
28 this section, and two of whom shall be affected oil heat customers, one  
29 from each side of the Cascade mountains, selected by the commissioners

1 representing those areas. In addition, the director of the pollution  
2 liability insurance agency, or the director's duly appointed  
3 representative, shall be an ex officio, nonvoting member.

4 (2) The director shall establish a list of affected oil dealers.  
5 To identify affected dealers for this list, the director shall consult:  
6 The Oil Heat Institute of Washington, the Inland Empire Oil Heat  
7 Institute, and Oil Fuel Dealer's Credit Association, Inc., other  
8 associations for their membership lists, the Yellow Pages, other  
9 directories, and such other sources as the director deems prudent.

10 (3) The state shall initially be divided into seven districts and  
11 each district shall have the designated number of commission members  
12 set forth below. Each district shall nominate at least as many  
13 nominees as there are designated members for that district, or more,  
14 but elect only the designated number of commission members.

15 (a) District one shall have one representative;

16 (b) District two shall have two representatives;

17 (c) District three shall have one representative;

18 (d) District four shall have one representative;

19 (e) District five shall have one representative;

20 (f) District six shall have one representative; and

21 (g) District seven shall have one representative.

22 (4) Commission members shall be residents of this state and over  
23 the age of twenty-five years. With the exception of the public  
24 members, oil dealer members of the commission shall sell oil in the  
25 district where they are nominated and elected. Oil dealer members of  
26 the commission must have been actively selling heating oil within  
27 Washington for a period of five or more continuous years, and during  
28 that time have derived a substantial portion of his or her income  
29 therefrom, and is an owner of the business, or corporate officer if the  
30 dealer is incorporated, or manager if the dealer is a cooperative. To

1 serve on the commission, the person representing an oil dealer member  
2 must provide documentation showing that he or she has been authorized  
3 by the affected dealer. The required qualifications of oil dealer  
4 members of the commission, as provided for in this section, are  
5 applicable to the members throughout their term in office.

6 (5) The term of office of a commission member is three years from  
7 the date of his or her election, and until a qualified successor is  
8 elected. One-third of the membership, or as close to that number as  
9 possible, shall be elected each year. No elected individual member of  
10 the board may serve more than two consecutive three-year terms. The  
11 terms of office for the initial commission members shall be drawn by  
12 lot for one, two, or three years.

13 (6) In the event of a vacancy on the commission, the remaining  
14 elected members shall select a qualified person from within the vacated  
15 district to fill the unexpired term.

16 (7) A majority of the members shall constitute a quorum for the  
17 transaction of all business and the carrying out of all duties of the  
18 board.

19 (8) No member of the commission shall receive any salary or other  
20 compensation, but each member shall be reimbursed for actual  
21 subsistence and traveling expenses incurred due to attendance of  
22 meetings or other board activities. However, such expenses shall be  
23 authorized by resolution, and by unanimous approval of the commission  
24 at a regular meeting.

25 (9) The commission shall have the responsibility of carrying out  
26 the purposes of this chapter in compliance with all laws and rules  
27 governing its activities.

28 (10) The commission shall reimburse the director for the necessary  
29 costs of conducting elections under the provisions of this chapter.

1        NEW SECTION.    **Sec. 7.**

The powers and duties of the commission

2 shall include the following:

3        (1) Administer and enforce the provisions of this chapter, and  
4 doing all acts necessary to effectuate the purposes of this chapter;

5        (2) Elect a chairperson and other officers as the board deems  
6 advisable;

7        (3) Employ and discharge at its discretion a manager, secretary,  
8 agents, attorneys, consultants, companies, organizations, and employees  
9 as it deems necessary, and to prescribe their duties and powers, and  
10 fix their compensation;

11        (4) Establish by resolution, a headquarters which shall serve as  
12 headquarters until changed by the board. All records, books, and  
13 minutes of board meetings shall be kept at headquarters;

14        (5) Pay only from moneys collected as assessments or advances, the  
15 costs arising in connection with the formulation, issuance,  
16 administration, and enforcement of activities directly arising from  
17 this chapter;

18        (6) Require a bond of all board members and employees of the board  
19 in a position of trust in an amount the board shall deem necessary.  
20 The premium for the bond or bonds shall be paid by the board from  
21 assessments collected;

22        (7) Adopt rules of a technical or administrative nature subject to  
23 the provisions of chapter 34.05 RCW;

24        (8) Establish oil heat commission funds, which shall be deposited  
25 in a bank or banks or financial institution or institutions, approved  
26 for the deposit of state funds, in which all money received by the  
27 commission, except an amount of petty cash for each day's needs, shall  
28 be deposited daily or as often during the day as advisable. RCW  
29 43.01.050 shall apply to money collected under this chapter;

1       (9) Prepare a budget or budgets covering anticipated income  
2 proportionate to assessments collected in western Washington and  
3 eastern Washington. The upper limit for the funds for section 4 of  
4 this act shall be set at one and one-half million dollars for districts  
5 one through four, and one-half million for districts five through  
6 seven, and deposited in the oil heat commission remedial action  
7 accounts, as described in section 12 of this act. At this point the  
8 assessment may be substantially reduced or discontinued. Once the fund  
9 for section 4 of this act drops to seven hundred fifty thousand dollars  
10 for districts one through four and to two hundred fifty thousand  
11 dollars for districts five through seven, then the assessment will be  
12 resumed and the moneys will go back into these accounts until the  
13 balance or balances once again reach the upper limit set for each fund;

14       (10) Keep accurate records of all of its dealings, which shall be  
15 open to inspection and audit by the state auditor;

16       (11) Accept contributions or matching funds from any source for any  
17 purpose consistent with the provisions of this chapter;

18       (12) Cooperate with the department of ecology to develop and  
19 administer environmental clean-up programs, and to publish and  
20 distribute information as necessary to carry out the purposes of this  
21 chapter;

22       (13) Contract or cooperate with any other local, state, or national  
23 commission, organization, or agency, whether voluntary or established  
24 pursuant to state or federal law, including recognized oil heat  
25 groups, engaged in work or activities similar to the work and  
26 activities of the commission created by this chapter. The commission  
27 may make contracts and agreements with these organizations or agencies  
28 in order to carry out joint programs beneficial to the oil heat  
29 industry.

1        NEW SECTION.    **Sec. 8.**        The commission may issue orders for any  
2 one or more of the following purposes:

3        (1) To provide for dissemination of information on the purposes of  
4 the commission; and

5        (2) To provide for the establishment and administration of the oil  
6 heat remedial action accounts, as established in section 12 of this  
7 act, to pay certain costs associated with remedial action and contract  
8 for claims administration.

9        NEW SECTION.    **Sec. 9.**        The commission may adopt rules pursuant  
10 to chapter 34.05 RCW as necessary to carry out the provisions of this  
11 chapter.

12        NEW SECTION.    **Sec. 10.**        (1) The initial assessment on the oil  
13 dealer for heating oil sold shall be set by the commission, and in no  
14 event shall the assessment exceed one cent per gallon of affected goods  
15 sold.

16        (2) Before adjusting the initial or revised assessment, the  
17 commission shall determine by a referendum whether or not the affected  
18 dealers assent to the proposed action, based on the procedure set forth  
19 in this section. The director shall conduct the referendum among the  
20 affected dealers and the affected dealers shall be deemed to have  
21 assented to the proposed assessment or change of assessment if  
22 fifty-one percent or more by number reply to the referendum within the  
23 time specified by the director, and if, of those replying, sixty-five  
24 percent or more by number; and sixty percent or more by volume assent  
25 to the proposed order. The determination by volume shall be made on  
26 the basis of volume of affected units sold by affected dealers. No  
27 assessment or change of assessment shall be effective unless the  
28 affected dealers have assented as provided in this subsection.

1        NEW SECTION.    **Sec. 11.**        Assessments shall be paid by oil heat  
2 dealers as prescribed by rule. A due and payable assessment levied in  
3 a specified amount as determined by the commission under section 10 of  
4 this act constitutes a personal debt. If a person fails to pay the  
5 commission the full amount of the assessment by the date due, the  
6 commission may add to the unpaid assessment an amount not exceeding ten  
7 percent of the assessment to defray the cost of enforcing its  
8 collection. If the person fails to pay a due and payable assessment or  
9 other sum, the commission may bring a civil action for collection  
10 against the person or persons in a court of competent jurisdiction.  
11 The action shall be tried and judgment rendered as in any other cause  
12 of action for a debt due and payable.

13        NEW SECTION.    **Sec. 12.**        (1) The oil heat commission remedial  
14 action accounts are established separate and distinct from the  
15 commission general fund.

16        (2) The assessments collected and administered under section 6 of  
17 this act shall be deposited into the commission general fund and  
18 credited to the heating oil remedial action accounts by districts  
19 divided between eastern Washington and western Washington.

20        (3) The commission may invest and reinvest moneys in the account in  
21 the manner provided by law with any interest accrued being the sole  
22 property of the commission and credited to the commission account.

23        (4) The moneys in the account are appropriated continuously to the  
24 commission to be used as provided in subsection (5) of this section.

25        (5) Moneys in the account may be used by the commission for the  
26 following purposes:

27        (a) Payment of remedial action costs;

28        (b) Payment of legitimate third-party liability claims; and

29        (c) Payment of the costs of administering the account.

1        NEW SECTION.    **Sec. 13.**        In administering the oil heat commission  
2 remedial action account of the commission general fund, the commission  
3 may:

4        (1) Determine and pay claims for remedial action costs;

5        (2) Reject claims only if they do not comply with the requirements  
6 of this chapter;

7        (3) Disseminate reliable information about avoiding or responding  
8 to releases of heating oil from heating oil tanks; and

9        (4) Enter into contracts which it considers appropriate in order to  
10 administer the accounts, including entering into contracts with  
11 adjusters to adjust claims for remedial action costs.

12       NEW SECTION.    **Sec. 14.**        The commission, upon receipt of a notice  
13 of a release, will furnish to the claimant a form for filing proof of  
14 the remedial action estimates.

15       NEW SECTION.    **Sec. 15.**        (1) Written proof of the remedial action  
16 costs must be filed with the commission within ninety days of the  
17 discovery of the release. Failure to furnish proof within the time  
18 required shall not invalidate or reduce any claim if it was not  
19 reasonably possible to give estimates within such time, provided  
20 estimates are furnished as soon as reasonably possible and in no event,  
21 except in the absence of legal capacity, later than one year from the  
22 time proof is otherwise required.

23        (2)        After notice of a release and an estimate for cleanup action  
24 has been received by the commission, the commission shall order an  
25 approval of a claim and reimburse a homeowner for final claim costs.

26        (3)        No person shall willfully conceal or misrepresent any  
27 material fact or circumstances concerning a claim for or proof of  
28 remedial action costs.

1 (4) A violation of subsection (3) of this section shall be a basis  
2 for a rejection of a claim for remedial action costs.

3 NEW SECTION. **Sec. 16.** Any person who has complied with section  
4 15 of this act, but has received less than the full amount of the claim  
5 may seek up to the full amount of the claim by filing a demand for a  
6 hearing with the commission. The demand shall identify the name and  
7 address of the claimant, the date proof of the remedial action costs  
8 was filed, and the date of the determination paying the claim, in full  
9 or in part, or rejecting the claim. The demand for a hearing must be  
10 filed within thirty days of the determination paying the claim, in full  
11 or in part, or rejecting the claim.

12 NEW SECTION. **Sec. 17.** (1) If timely demand for a hearing is  
13 filed, the commission should hold a hearing on the order as provided by  
14 RCW 34.05.410. In the absence of a timely demand for a hearing, no  
15 person shall be entitled to judicial review of the determination.

16 (2) After the hearing, the commission shall enter a final order  
17 vacating, modifying, or affirming the determination.

18 NEW SECTION. **Sec. 18.** A person aggrieved by an order of the  
19 commission which has been the subject of a timely application for  
20 hearing before the commission shall be entitled to judicial review of  
21 the order under chapter 34.05 RCW.

22 NEW SECTION. **Sec. 19.** Notwithstanding any other provisions of  
23 this chapter, the commission has no obligation to pay any claims for  
24 remedial action costs or payment of third-party claims if the moneys in  
25 the account are insufficient to pay all of the claims for remedial  
26 action costs for which forms of written proof have been filed, but

1 which have not yet been determined, paid, or rejected. The commission  
2 may adopt rules providing for the partial payment of claims for  
3 remedial action costs whenever the moneys within the account are  
4 insufficient.

5 NEW SECTION. **Sec. 20.** The director of the pollution liability  
6 insurance agency may review all actions of the commission, and by order  
7 may invalidate any action of the commission that the director  
8 determines is not in the public interest.

9 NEW SECTION. **Sec. 21.** Nothing contained in this chapter shall  
10 permit the fixing of prices not otherwise permitted by law, or permit  
11 any limitation on production.

12 NEW SECTION. **Sec. 22.** Nothing contained in this chapter shall  
13 authorize any commercial conduct which is prohibited by RCW 19.86.020  
14 through 19.86.060, or be deemed to be an implied repeal of any of those  
15 sections of the Revised Code of Washington.

16 NEW SECTION. **Sec. 23.** Commission members shall not incur civil  
17 liability for actions taken by the commission within the scope and  
18 purpose of this chapter.

19 NEW SECTION. **Sec. 24.** If any provision of this act or its  
20 application to any person or circumstance is held invalid, the  
21 remainder of the act or the application of the provision to other  
22 persons or circumstances is not affected.

23 NEW SECTION. **Sec. 25.** Sections 1 through 24 of this act shall  
24 constitute a new chapter in Title 43 RCW.