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HOUSE BILL 1896

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By Representatives R. Meyers, May, Scott, Ballard, Anderson, Broback, Mielke, McLean, Paris, Miller, Winsley, Ferguson, Hochstatter and D. Sommers.

Read first time February 13, 1991. Referred to Committee on Financial Institutions & Insurance.

1 AN ACT Relating to oil heat tank pollution liability; and adding a  
2 new chapter to Title 70 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 oil heat tanks are susceptible to corrosion because of the  
8 soil conditions of Washington state, and due to the age of some tanks.  
9 The legislature further finds that it is necessary to protect tank  
10 owners from the financial hardship related to damaged oil heat tanks,  
11 address legitimate third-party claims caused by leaking tanks, and  
12 directs the pollution liability insurance agency of Washington to  
13 provide a pollution safety net for the oil heat tank owners of  
14 Washington. The problem is especially acute because oil heat tank  
15 owners are either unable to obtain pollution insurance or insurance for

1 the tanks is unaffordable. Therefore, the legislature finds that the  
2 best solution to this problem is to assess the oil heat dealers of  
3 Washington a fee that will fund a program to protect Washington's oil  
4 heat customers. The program will create a fiscal safety net within the  
5 pollution liability insurance agency for the purpose of cleaning up  
6 spills that result from damaged tanks, and replace or repair those  
7 damaged tanks.

8 NEW SECTION. **Sec. 2.** This chapter may be known and cited as  
9 the Washington state oil heat pollution liability protection 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) "Committee" means the Washington state oil heat advisory  
14 committee.

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

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

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

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

27 (6) "Oil dealer" means a person who handles, ships, buys, or sells  
28 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: (a) Of one thousand one  
10 hundred gallons or less; (b) above or below ground; and (c) with pipes  
11 connected to the tank for heating human living or working space on the  
12 premises where stored, and is in continuous operation. It does not  
13 include decommissioned or abandoned heating oil tanks, nor tanks used  
14 solely for 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) clean-up 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 run off; (vi) on-site treatment  
26 or incineration; (vii) security fencing or other measures to limit  
27 access to the location; (viii) provision of alternative drinking and  
28 household water supplies; (ix) temporary evacuation and housing of  
29 threatened individuals; and (x) any monitoring reasonably required to

1 assure that these actions protect the public health, safety, welfare,  
2 and 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) Repair of 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 removal or remedial action.

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

15 NEW SECTION. **Sec. 4.** (1) The oil heat advisory committee is  
16 established to advise the director. The committee is composed of  
17 eleven members appointed by the governor for three-year terms, eight of  
18 whom shall be affected oil dealers, and two of whom shall be affected  
19 oil heat customers, one from each side of the Cascade mountains. The  
20 director of the pollution liability insurance agency, or the director's  
21 duly appointed representative, is the chair of the committee.

22 (2) The state is initially divided into seven districts and each  
23 district has the designated number of committee members set forth in  
24 subsection (3) of this section. Each district shall submit nominations  
25 for at least three nominees for that district representative, but only  
26 the designated number of committee members will be appointed.

27 (3) For the purposes of this chapter, districts and the advisory  
28 committee are to be comprised as follows:

1 (a) District one includes the counties of Clallam, Clark, Cowlitz,  
2 Grays Harbor, Jefferson, Kitsap, Lewis, Mason, Pacific, Skamania, and  
3 Wahkiakum and has one representative;

4 (b) District two includes the county of King and has two  
5 representatives;

6 (c) District three includes the counties of Island, San Juan,  
7 Skagit, Snohomish, and Whatcom and has one representative;

8 (d) District four includes the counties of Pierce and Thurston and  
9 has one representative;

10 (e) District five includes the counties of Chelan, Douglas, Ferry,  
11 Grant, Kittitas, Lincoln, Okanogan, Pend Orielle, and Stevens and has  
12 one representative;

13 (f) District six includes the counties of Adams, Asotin, Benton,  
14 Columbia, Franklin, Garfield, Klickitat, Walla Walla, Whitman, and  
15 Yakima and has one representative; and

16 (g) District seven includes the county of Spokane and has one  
17 representative.

18 (4) Committee members shall be residents of this state over the age  
19 of twenty-five years. With the exception of the public members, oil  
20 dealer members of the committee shall sell oil in the district from  
21 which they are appointed. Oil dealer members of the committee must  
22 have been actively selling heating oil within Washington for a period  
23 of five or more continuous years, and during that time have derived a  
24 substantial portion of their income therefrom, and is an owner of the  
25 business, or corporate officer if the dealer is incorporated, or  
26 manager if the dealer is a cooperative. In order to be appointed by  
27 the governor to serve on the committee, the person representing an oil  
28 dealer member must provide documentation showing that he or she has  
29 been authorized by the affected dealer.

1 (5) In the event of a vacancy on the committee, the governor shall  
2 select a qualified person from within the vacated district to fill the  
3 unexpired term.

4 (6) No member of the committee shall receive any salary or other  
5 compensation, but each member shall be reimbursed for actual  
6 subsistence and travelling expenses incurred due to attendance of  
7 meetings or other committee activities. Such expenses shall be  
8 authorized by the director.

9 NEW SECTION. **Sec. 5.** The powers and duties of the advisory  
10 committee include providing technical assistance to the director on  
11 matters pertaining to the oil heat industry.

12 NEW SECTION. **Sec. 6.** The director shall:

13 (1) Administer and enforce the provisions of this chapter,  
14 including the carrying out of all acts necessary to effectuate the  
15 purposes of this chapter;

16 (2) Administer the oil heat pollution liability fund, as  
17 established under section 7 of this act, to enable the fund to pay for  
18 costs associated with remedial action and to contract for claims  
19 administration;

20 (3) Employ and discharge at his or her discretion agents,  
21 attorneys, consultants, companies, organizations, and employees as  
22 deemed necessary, and to prescribe their duties and powers, and fix  
23 their compensation;

24 (4) Pay only from moneys collected as assessments or advances, the  
25 costs arising in connection with the formulation, issuance,  
26 administration, and enforcement of activities directly arising from  
27 this chapter;

1 (5) Adopt rules of a technical or administrative nature pursuant to  
2 chapter 34.05 RCW as necessary to carry out the provisions of this  
3 chapter;

4 (6) Establish an accounting procedure that will enable proceeds  
5 from the oil heat liability pollution fund to be distributed by  
6 districts, and dividing the state between districts one through four  
7 and districts five through seven;

8 (7) Maintain accurate records of all of its dealings, which shall  
9 be open to inspection and audit by the state auditor;

10 (8) Cooperate with the department of ecology to develop and  
11 administer environmental clean-up programs, and to publish and  
12 distribute information as necessary to carry out the purposes of this  
13 chapter; and

14 (9) Contract and cooperate with any other local, state, or national  
15 commission, organization, or agency, whether voluntary or established  
16 pursuant to state or federal law, including recognized oil heat  
17 groups, engaged in work or activities similar to the work and  
18 activities created by this chapter. The director may make contracts  
19 and agreements with these organizations or agencies in order to carry  
20 out joint programs beneficial to the oil heat industry.

21 NEW SECTION. **Sec. 7.** (1) The oil heat pollution liability  
22 fund is created in the custody of the state treasurer. All receipts  
23 from the tax imposed under section 13 of this act shall be deposited  
24 into the fund. Expenditures from the fund may be used only for the  
25 purposes set out under this chapter. Only the director of the  
26 Washington state pollution liability insurance agency or the director's  
27 designee may authorize expenditures from the fund. The fund is subject  
28 to allotment procedures under chapter 43.88 RCW, but no appropriation  
29 is required for expenditures. The earnings on any surplus balances in

1 the oil heat pollution liability fund shall be credited to the fund  
2 notwithstanding RCW 43.84.090.

3 (2) The tax assessments collected and administered under section 13  
4 of this act shall be deposited into the oil heat pollution liability  
5 fund, and the director shall credit moneys to the districts divided  
6 between districts one through four and districts five through seven.

7 (3) The upper limit for the oil heat pollution liability fund, set  
8 out under subsection (1) of this section, is two million dollars. One  
9 million five hundred thousand dollars is set out for districts one  
10 through four, and five hundred thousand dollars is set out for  
11 districts five through seven. Once the fund reaches the upper limit,  
12 the tax assessments may be reduced or discontinued. When the fund  
13 balance falls to one million dollars, then the tax assessments will  
14 resume and the moneys will be deposited in the fund until the balance  
15 once again reaches the upper limit set for the fund.

16 (4) The money in the fund is continuously appropriated for the uses  
17 provided for under subsection (5) of this section.

18 (5) Money in the fund may be used by the director for the following  
19 purposes:

20 (a) Payment of remedial action costs;

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

22 (c) Payment of the cost of administering the fund.

23 NEW SECTION. **Sec. 8.** In administering the oil heat pollution  
24 liability fund, the director may:

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

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

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

1 (4) Enter into contracts considered appropriate in order to  
2 administer the fund, including entering into contracts with adjusters  
3 to adjust claims for remedial action costs.

4 NEW SECTION. **Sec. 9.** (1) The director, upon receipt of a  
5 notice of a release, will furnish to the claimant a form for filing  
6 proof of the remedial action estimates.

7 (2) Written proof of the remedial action cost estimates must be  
8 filed with the director within ninety days of the discovery of the  
9 release. Failure to furnish proof within the time required shall not  
10 invalidate or reduce any claim if it was not reasonably possible to  
11 give estimates within such time, provided that estimates are furnished  
12 as soon as reasonably possible and in no event, except in the absence  
13 of legal capacity, later than one year from the time proof is otherwise  
14 required.

15 (3) After notice of a release and an estimate for clean-up action  
16 has been received by the director, the director shall determine  
17 approval and amount of a claim and reimburse a tank owner for final  
18 claim costs.

19 (4) No person shall willfully conceal or misrepresent a material  
20 fact or circumstances concerning a claim for or proof of remedial  
21 action costs.

22 (5) A violation of subsection (4) of this section is a basis for a  
23 rejection of a claim for remedial action costs.

24 NEW SECTION. **Sec. 10.** (1) A person who has complied with  
25 section 9 of this act, but has received less than the full amount of  
26 the claim, may seek up to the full amount of the claim by filing a  
27 demand for a hearing with the director. The demand shall identify the  
28 name and address of the claimant, the date that proof of the remedial

1 action costs was filed and the date of the determination paying the  
2 claim, in full or in part, or rejecting the claim. The demand for a  
3 hearing must be filed within thirty days of the determination paying  
4 the claim, in full or in part, or rejecting the claim.

5 (2) If timely demand for a hearing is filed, the director should  
6 hold a hearing on the order as provided by RCW 34.05.410. In the  
7 absence of a timely demand for a hearing, no person shall be entitled  
8 to judicial review of the determination.

9 (3) After the hearing, the director shall enter a final order  
10 vacating, modifying, or affirming the determination.

11 NEW SECTION. **Sec. 11.** A person aggrieved by a decision of the  
12 director that has been the subject of a timely application for hearing  
13 before the director shall be entitled to judicial review of the  
14 decision under chapter 34.05 RCW.

15 NEW SECTION. **Sec. 12.** Notwithstanding any other provisions of  
16 this chapter, the director has no obligation to pay any claims for  
17 remedial action costs or payment of third-party claims if the moneys in  
18 the fund are insufficient to pay all of the claims for remedial action  
19 costs for which forms of written proof have been filed, but which have  
20 not yet been determined, paid, or rejected. The director may adopt  
21 rules providing for the partial payment of claims for remedial action  
22 costs whenever the moneys within the fund are insufficient. These  
23 rules are applicable until funds are available to pay the balance of  
24 all claims.

25 NEW SECTION. **Sec. 13.** (1) A tax is imposed on the affected  
26 heating oil dealers in this state. The tax shall not exceed one-half  
27 cent per gallon of an affected unit sold. The director shall set the

1 initial tax assessment on the affected dealers. The director shall  
2 consult with the advisory committee before adjusting the initial or  
3 revised tax assessment.

4 (2) Moneys collected under subsection (1) of this section shall be  
5 deposited in the oil heat pollution liability fund established under  
6 section 7 of this act.

7 NEW SECTION. **Sec. 14.** Nothing contained in this chapter shall  
8 permit the fixing of prices not otherwise permitted by law, or permit  
9 any limitation on production.

10 NEW SECTION. **Sec. 15.** Nothing contained in this chapter shall  
11 authorize any commercial conduct which is prohibited by RCW 19.86.020  
12 through 19.86.060, and no section of this chapter shall be deemed to be  
13 an implied repeal of any of those sections of the Revised Code of  
14 Washington.

15 NEW SECTION. **Sec. 16.** If any provision of this act or its  
16 application to any person or circumstance is held invalid, the  
17 remainder of the act or the application of the provision to other  
18 persons or circumstances is not affected.

19 NEW SECTION. **Sec. 17.** Sections 1 through 16 of this act shall  
20 constitute a new chapter in Title 70 RCW.