
SUBSTITUTE SENATE BILL 5677

State of Washington

52nd Legislature

1991 Regular Session

By Senate Committee on Financial Institutions & Insurance (originally sponsored by Senators Matson, Vognild, Johnson, Owen and Amondson).

Read first time March 6, 1991.

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.

7 NEW SECTION. **Sec. 2.** This chapter may be known and cited as
8 the Washington state oil heat pollution liability protection act.

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

12 (1) "Committee" means the Washington state oil heat advisory
13 committee.

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: (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 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; and

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.

8 (14) "Remedial action costs" means reasonable costs which are
9 attributable to or associated with a removal or remedial action.

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

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

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

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

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

1 (b) District two includes the county of King and has two
2 representatives;

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

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

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

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

13 (g) District seven includes the county of Spokane and has one
14 representative.

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

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

29 (6) No member of the committee shall receive any salary or other
30 compensation, but each member shall be reimbursed for actual

1 subsistence and travelling expenses incurred due to attendance of
2 meetings or other committee activities. Such expenses shall be
3 authorized by the director.

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

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

8 (1) Administer and enforce the provisions of this chapter,
9 including the carrying out of all acts necessary to effectuate the
10 purposes of this chapter;

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

15 (3) Employ and discharge at his or her discretion agents,
16 attorneys, consultants, companies, organizations, and employees as
17 deemed necessary, and to prescribe their duties and powers, and fix
18 their compensation;

19 (4) Pay only from moneys collected as assessments or advances, the
20 costs arising in connection with the formulation, issuance,
21 administration, and enforcement of activities directly arising from
22 this chapter;

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

26 (6) Establish an accounting procedure that will enable proceeds
27 from the oil heat liability pollution fund to be distributed by

1 districts, and dividing the state between districts one through four
2 and districts five through seven;

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

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

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

16 NEW SECTION. **Sec. 7.** (1) The oil heat pollution liability
17 fund is created in the custody of the state treasurer. All receipts
18 from the tax imposed under section 13 of this act shall be deposited
19 into the fund. Expenditures from the fund may be used only for the
20 purposes set out under this chapter. Only the director of the
21 Washington state pollution liability insurance agency or the director's
22 designee may authorize expenditures from the fund. The fund is subject
23 to allotment procedures under chapter 43.88 RCW, but no appropriation
24 is required for expenditures. The earnings on any surplus balances in
25 the oil heat pollution liability fund shall be credited to the fund
26 notwithstanding RCW 43.84.090.

27 (2) The tax assessments collected and administered under section 13
28 of this act shall be deposited into the oil heat pollution liability

1 fund, and the director shall credit moneys to the districts divided
2 between districts one through four and districts five through seven.

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

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

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

- 16 (a) Payment of remedial action costs;
- 17 (b) Payment of legitimate third-party liability claims; and
- 18 (c) Payment of the cost of administering the fund.

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

- 21 (1) Determine and pay claims for remedial action costs;
- 22 (2) Reject claims only if they do not comply with the requirements
23 of this chapter;
- 24 (3) Disseminate reliable information about avoiding or responding
25 to releases of heating oil from heating oil tanks; and
- 26 (4) Enter into contracts considered appropriate in order to
27 administer the fund, including entering into contracts with adjusters
28 to adjust claims for remedial action costs.

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

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

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

16 (4) No person shall willfully conceal or misrepresent a material
17 fact or circumstances concerning a claim for or proof of remedial
18 action costs.

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

21 NEW SECTION. **Sec. 10.** (1) A person who has complied with
22 section 9 of this act, but has received less than the full amount of
23 the claim, may seek up to the full amount of the claim by filing a
24 demand for a hearing with the director. The demand shall identify the
25 name and address of the claimant, the date that proof of the remedial
26 action costs was filed and the date of the determination paying the
27 claim, in full or in part, or rejecting the claim. The demand for a
28 hearing must be filed within thirty days of the determination paying
29 the claim, in full or in part, or rejecting the claim.

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

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

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

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

21 NEW SECTION. **Sec. 13.** (1) A tax is imposed on the affected
22 heating oil dealers in this state. The tax shall not exceed one-half
23 cent per gallon of an affected unit sold. The director shall set the
24 initial tax assessment on the affected dealers. The director shall
25 consult with the advisory committee before adjusting the initial or
26 revised tax assessment.

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

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

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

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

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