

SENATE BILL REPORT

SB 5677

AS REPORTED BY COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE,
MARCH 5, 1991

Brief Description: Creating the Washington state oil heat tank pollution liability protection act.

SPONSORS: Senators Matson, Vognild, Johnson, Owen and Amondson.

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

Majority Report: That Substitute Senate Bill No. 5677 be substituted therefor, and the substitute bill do pass.

Signed by Senators von Reichbauer, Chairman; Johnson, Vice Chairman; McCaslin, Moore, Owen, Pelz, Rasmussen, Sellar, Vognild, and West.

Staff: Meg Jones (786-7416)

Hearing Dates: February 28, 1991; March 5, 1991

BACKGROUND:

In 1988, the federal Environmental Protection Agency rules regarding underground petroleum storage tank technical and financial responsibility standards to address the risk of leaching or spillage from these tanks prompted the Washington Legislature to pass the Underground Petroleum Storage Tanks Act. This 1989 legislation created the Washington Pollution Liability Insurance program as an independent state agency. The agency provides reinsurance coverage for risks associated with fuel tank releases and corrective cleanup actions at a minimum level of \$500,000 per occurrence up to a \$2 million aggregate. The act was adopted in recognition of the need to balance the cost to business of clean up measures and the environmental cost to society if such remedial measures were not affordable.

Under the standards adopted, most homeowners tanks are exempt from the financial responsibility requirements due to the size of the tanks used (250,300 and 700 gallon size). However, all citizens, regardless of the size of their fuel oil tanks, face civil liability and cleanup penalties if there is a spill. The cost of cleanup and other remedial action can be extraordinary, particularly if the water table has been polluted by the oil. Homeowner cases have been reported at the \$200,000 and even \$600,000 level. Homeowner insurance has not agreed to cover this.

SUMMARY:

The Legislature recognizes the cost to homeowners if a residential home oil heat tank leaks or spills and directs the Pollution Liability Insurance Agency of Washington to administer a program to fill the cost gap left unfilled by homeowner's insurance.

An eleven member oil heat advisory committee is established to assist the director of the pollution liability insurance agency or representative in administering the oil heat pollution liability fund. Eight of the committee members are affected oil dealers from seven districts comprised from the counties in the state appointed by the Governor for three-year terms. Two of the committee members are affected oil heat customers, one from each side of the Cascades. All members must be over 25 years of age, and if oil dealer members, engaged in selling heating oil for five or more years as an owner, corporate officer or manager of the business. Travel expenses are reimbursed.

The oil heat pollution liability fund shall pay for remedial action costs, dissemination of information about avoiding or responding to releases of heating oil from heating oil tanks and other claim costs. Payment in the event of a claim shall occur only after written proof of loss including remedial action costs filed within 90 days of the discovery of the release or for reasonable cause up to one year after the 90 days of discovery of the release. Wilful concealment or misrepresentation of material facts may void coverage under the act.

If not fully reimbursed for the full amount of the claim, a person complying with the reporting requirements may demand a hearing before the director within 30 days of the claim having been paid and closed. Judicial review of the decision is provided for.

If the fund is insufficiently funded, claims may be partially paid.

The program is funded by a tax of up to 1/2 cent per gallon sold on the oil dealers of the state. The director sets the tax assessment.

EFFECT OF PROPOSED SUBSTITUTE:

The oil pollution liability fund is created and supervised by a committee of oil heat dealers and consumers. The age requirement for committee service is eliminated. The fund covers claims related to clean-up and remedial action, but does not cover repair or replacement of oil storage tanks. The bill is clarified to include small business owners who use oil for heating purposes. Funding is provided through a tax of up to one half cent per gallon of fuel oil. The funding pays both claims and administrative costs.

Appropriation: none

Revenue: none

Fiscal Note: requested

TESTIMONY FOR:

The fund provides assistance to consumers who otherwise would be unable to pay for remedial costs of oil leaks or spills and protects fuel oil dealers from potential liability and ensuing bankruptcy for those same costs. The fund addresses a need to provide financial resources to preserve the watershed/aquifer from damage caused by fuel oil spills or leaks.

TESTIMONY AGAINST: None

TESTIFIED: Lis Gildemeister, Don Clark and Del Stutz, Oil Heat Institute (pro); Don Wessels, Oil Heat Dealers, Spokane (pro); Tom Allen, Acme Fuel Co. of Olympia (pro)