

106TH CONGRESS
1ST SESSION

H. R. 380

To authorize and facilitate a program to enhance training, research and development, energy conservation and efficiency, and consumer education in the oilheat industry for the benefit of oilheat consumers and the public, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 19, 1999

Mr. GREENWOOD (for himself, Mr. NORWOOD, Mr. WHITFIELD, Mr. BOEHLERT, Mr. HOLDEN, Mr. WEYGAND, Mr. HINCHEY, Mr. BOUCHER, Mr. TIERNEY, Mr. KENNEDY, Mr. ENGLISH, Mr. BURR of North Carolina, Mr. SHAYS, Mr. NEY, Mr. GEJDENSON, Mr. PETERSON of Pennsylvania, Mr. ANDREWS, Mr. OXLEY, Mr. ALLEN, Mr. PRICE of North Carolina, Mr. PALLONE, Mr. NADLER, Mr. NEAL of Massachusetts, Mr. METCALF, Mr. HOBSON, Mr. ACKERMAN, Mr. KING, Mr. McNULTY, Mr. BROWN of Ohio, Mr. BASS, Mr. RANGEL, Mr. STUPAK, Mr. FRANKS of New Jersey, Mr. GIBBONS, Ms. DELAURO, Mr. MICA, Mrs. MORELLA, Mr. KLINK, Mrs. MCCARTHY of New York, Mrs. MYRICK, Mr. GOODE, Mr. CARDIN, Mr. TOWNS, and Mr. CROWLEY) introduced the following bill; which was referred to the Committee on Commerce

A BILL

To authorize and facilitate a program to enhance training, research and development, energy conservation and efficiency, and consumer education in the oilheat industry for the benefit of oilheat consumers and the public, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “National Oilheat Re-
3 search Alliance Act of 1999”.

4 **SEC. 2. FINDINGS.**

5 The Congress finds that—

6 (1) oilheat is an important commodity relied
7 upon by approximately 30,000,000 Americans annu-
8 ally as an efficient and economical energy source for
9 commercial and residential space and hot water
10 heating;

11 (2) oilheat equipment operates at efficiencies
12 among the highest of any space heating energy
13 source, reducing fuel costs and making oilheat an ec-
14 onomical means of space heating;

15 (3) the production, distribution, and marketing
16 of oilheat and oilheat equipment plays a significant
17 role in the economy of the United States accounting
18 for approximately \$12,900,000,000 in expenditures
19 annually and employing millions of Americans in all
20 aspects of the industry;

21 (4) only very limited Federal resources have
22 been made available for oilheat research, develop-
23 ment, safety, training, and education efforts, to the
24 detriment of both the oilheat industry and its
25 30,000,000 consumers; and

1 (5) the cooperative development, self-financing,
2 and implementation of a coordinated national oilheat
3 industry program of research and development,
4 training, and consumer education is necessary and
5 important for the welfare of the oilheat industry, in-
6 cluding wholesale distributors and retail marketers,
7 as well as for the general economy of the United
8 States and the millions of Americans who rely on
9 oilheat for commercial and residential space and hot
10 water heating.

11 **SEC. 3. DEFINITIONS.**

12 For the purposes of this Act—

13 (1) the term “Alliance” means a National
14 Oilheat Research Alliance created pursuant to sec-
15 tion 4 of this Act;

16 (2) the term “consumer education” means the
17 provision of information that will assist consumers
18 and other persons in making evaluations and deci-
19 sions regarding oilheat and other nonindustrial com-
20 mercial or residential space or hot water heating
21 fuels;

22 (3) the term “exchange” means an agreement
23 that entitles each party or its customers to receive
24 product from the other party and requires only an
25 insubstantial portion of the volumes involved in the

1 exchange to be settled in cash or property other than
2 the product;

3 (4) the term “industry” means those persons
4 involved in the production, transportation, and sale
5 of oilheat, and in the manufacture and distribution
6 of oilheat utilization equipment, in the United
7 States, but such term does not include the ultimate
8 consumers of oilheat;

9 (5) the term “industry trade association”
10 means an organization exempt from tax, under sec-
11 tion 501(c) (3) or (6) of the Internal Revenue Code
12 of 1986, representing participants in the industry;

13 (6) the term “No. 1 distillate” means fuel oil
14 classified as No. 1 distillate by the American Society
15 for Testing and Materials;

16 (7) the term “No. 2 dyed distillate” means fuel
17 oil classified as No. 2 distillate by the American So-
18 ciety for Testing and Materials which is indelibly
19 dyed in accordance with regulations prescribed by
20 the Secretary of the Treasury pursuant to section
21 4082(a)(2) of the Internal Revenue Code of 1986;

22 (8) the term “oilheat” means—

23 (A) No. 1 distillate; or

24 (B) No. 2 dyed distillate,

1 which is used as a fuel for nonindustrial commercial
2 or residential space or hot water heating;

3 (9) the term “public member” means a member
4 of the Alliance described in section 5(c)(6);

5 (10) the term “qualified industry organization”
6 means the National Association for Oilheat Research
7 and Education or a successor organization;

8 (11) the term “qualified State association”
9 means the industry trade association or other orga-
10 nization that the qualified industry organization, or,
11 after its establishment under this Act, the Alliance,
12 determines best represents retail marketers in a
13 State;

14 (12) the term “retail marketer” means a person
15 engaged primarily in the sale of oilheat to the ulti-
16 mate consumer;

17 (13) the term “Secretary” means the Secretary
18 of Energy; and

19 (14) the term “wholesale distributor” means a
20 person who—

21 (A) produces;

22 (B) imports; or

23 (C) transports across State boundaries and
24 among local marketing areas, and

1 No. 1 distillate or No. 2 dyed distillate, and sells
2 such distillate to another person who does not
3 produce, import, or transport distillates as described
4 in this paragraph.

5 **SEC. 4. REFERENDA.**

6 (a) CREATION OF PROGRAM.—The industry, through
7 the qualified industry organization, may conduct, at its
8 own expense, a referendum among retail marketers and
9 wholesale distributors for the creation of a National
10 Oilheat Research Alliance. The Alliance, if established,
11 shall reimburse the qualified industry organization for the
12 cost of referendum accounting and documentation. Such
13 referendum shall be conducted by an independent auditing
14 firm. Voting rights of a retail marketer in such referen-
15 dum shall be based on the volume of oilheat sold in a State
16 by the retail marketer in the previous calendar year or
17 other representative period. Voting rights of a wholesale
18 distributor in such referendum shall be based on the vol-
19 ume of No. 1 distillate and No. 2 dyed distillate sold in
20 a State by the wholesale distributor in the previous cal-
21 endar year or other representative period, weighted by the
22 ratio of the total volume of No. 1 distillate and No. 2 dyed
23 distillate sold for nonindustrial commercial and residential
24 space and hot water heating in that State to the total vol-
25 ume of No. 1 distillate and No. 2 dyed distillate sold in

1 that State. Upon approval of those persons representing
2 two-thirds of the total volume of oilheat voted in the retail
3 marketer class and two-thirds of the total weighted volume
4 of No. 1 distillate and No. 2 dyed distillate voted in the
5 wholesale distributor class, the Alliance shall be estab-
6 lished, and shall be authorized to levy assessments in ac-
7 cordance with section 6. All persons voting in the referen-
8 dum shall certify to the independent auditing firm the vol-
9 ume of oilheat, No. 1 distillate, or No. 2 dyed distillate
10 represented by their vote. Except as provided in subsection
11 (b), a State shall not participate in the Alliance if less
12 than 50 percent of the retail marketer vote in that State,
13 subject to the volumetric voting rules established by this
14 subsection, is in favor of the creation of the Alliance. A
15 qualified State association may notify the qualified indus-
16 try organization within 90 days after the date of the enact-
17 ment of this Act in writing that a referendum under this
18 subsection will not be conducted in that State.

19 (b) SUBSEQUENT STATE PARTICIPATION.—A State
20 that has not participated initially in the Alliance may sub-
21 sequently elect to participate by conducting a referendum
22 in accordance with subsection (a).

23 (c) TERMINATION OR SUSPENSION.—On the Alli-
24 ance's own initiative, or on petition to the Alliance by re-
25 tail marketers and wholesale distributors representing 35

1 percent of the volume of oilheat or weighted No. 1 dis-
2 tillate and No. 2 dyed distillate in each class, the Alliance
3 shall, at its own expense, hold a referendum, to be con-
4 ducted by an independent auditing firm selected by the
5 Alliance, to determine whether the industry favors termi-
6 nation or suspension of the Alliance. Termination or sus-
7 pension shall not take effect unless it is approved by per-
8 sons representing more than one-half of the total volume
9 of oilheat voted in the retail marketer class and more than
10 one-half of the total volume of weighted No. 1 distillate
11 and No. 2 dyed distillate voted in the wholesale distributor
12 class, or is approved by persons representing more than
13 two-thirds of the total volume of fuel voted in either such
14 class.

15 **SEC. 5. NATIONAL OILHEAT RESEARCH ALLIANCE.**

16 (a) SELECTION OF MEMBERS.—Except as otherwise
17 provided in subsection (c)(3), the qualified industry orga-
18 nization shall select all members of the Alliance. The
19 qualified industry organization shall select a member rep-
20 resenting a State from a list of nominees submitted by
21 that State's qualified State association. Vacancies in un-
22 finished terms of Alliance members shall be filled in the
23 same manner as were the original appointments.

24 (b) REPRESENTATION.—In selecting members of the
25 Alliance, the qualified industry organization shall give due

1 regard to selecting a Alliance that is representative of the
2 industry, including representation of—

3 (1) interstate and intrastate operators among
4 retail marketers;

5 (2) wholesale distributors of No. 1 distillate and
6 No. 2 dyed distillate;

7 (3) large and small companies among wholesale
8 distributors and retail marketers; and

9 (4) diverse geographic regions of the country.

10 (c) MEMBERSHIP.—The membership of the Alliance
11 shall be as follows:

12 (1) One member representing each State with
13 oilheat sales in excess of 32,000,000 gallons per
14 year.

15 (2) If less than 24 States are represented under
16 paragraph (1), one member representing each of the
17 States with the highest volume of annual oilheat
18 sales as necessary to cause the total number of
19 States represented under paragraph (1) and this
20 paragraph combined to equal 24.

21 (3) 5 representatives of retail marketers, one
22 each to be selected by the qualified State associa-
23 tions of the 5 States with the highest volume of an-
24 nual oilheat sales.

1 (4) 5 additional representatives of retail mar-
2 keters.

3 (5) 21 representatives of wholesale distributors.

4 (6) 6 public members, who shall be representa-
5 tives of significant users of oilheat, the oilheat re-
6 search community, or other groups knowledgeable
7 about oilheat.

8 Other than the public members, Alliance members shall
9 be full-time employees or owners of businesses in the in-
10 dustry, except that members described in paragraphs (3),
11 (4), and (5) may be employees of the qualified industry
12 organization or an industry trade association.

13 (d) COMPENSATION.—Alliance members shall receive
14 no compensation for their services, nor shall Alliance
15 members be reimbursed for expenses relating to their serv-
16 ice, except that public members, upon request, may be re-
17 imbursed for reasonable expenses directly related to their
18 participation in Alliance meetings.

19 (e) TERMS.—Alliance members shall serve terms of
20 3 years and may serve not more than 2 full consecutive
21 terms. Members filling unexpired terms may serve not
22 more than a total of 7 consecutive years. Former members
23 of the Alliance may be returned to the Alliance if they
24 have not been members for a period of 2 years. Initial
25 appointments to the Alliance shall be for terms of 1, 2,

1 and 3 years, as determined by the qualified industry orga-
2 nization, staggered to provide for the subsequent selection
3 of one-third of the members each year.

4 (f) FUNCTIONS.—(1) The Alliance shall develop pro-
5 grams and projects and enter into contracts or agreements
6 for implementing this Act, including programs—

7 (A) to enhance consumer and employee safety
8 and training;

9 (B) to provide for research, development, and
10 demonstration of clean and efficient oilheat utiliza-
11 tion equipment; and

12 (C) for consumer education,
13 and may provide for the payment of the costs thereof with
14 funds collected pursuant to this Act. The Alliance shall
15 coordinate its activities with industry trade associations
16 and others as appropriate to provide efficient delivery of
17 services and to avoid unnecessary duplication of activities.

18 (2) Research, development, and demonstration activi-
19 ties authorized under paragraph (1)(B) shall include all
20 activities incidental to research, development, and dem-
21 onstration of clean and efficient oilheat utilization equip-
22 ment. Such activities include obtaining a patent, including
23 payment of attorney's fees for making and perfecting a
24 patent application. Such activities do not include research,
25 development, and demonstration of oilheat utilization

1 equipment with respect to which technically feasible and
2 commercially feasible operations have been verified, except
3 that funds may be provided for improvements to existing
4 equipment until the technical feasibility and commercial
5 feasibility of the operation of those improvements have
6 been verified.

7 (3) Activities authorized under paragraph (1)(A) or
8 (B) shall not include advertising, promotions, or consumer
9 surveys in support of advertising or promotions.

10 (g) PRIORITIES.—Issues related to research, develop-
11 ment, and demonstration, safety, consumer education, and
12 training shall be given priority by the Alliance in the devel-
13 opment of its programs and projects.

14 (h) ADMINISTRATION.—The Alliance shall select from
15 among its members a Chairman and other officers as nec-
16 essary, may establish and authorize committees and sub-
17 committees of the Alliance to take specific actions the Alli-
18 ance is authorized to take, and shall adopt rules and by-
19 laws for the conduct of business and the implementation
20 of this Act. The Alliance shall establish procedures for the
21 solicitation of industry comment and recommendations on
22 any significant plans, programs, and projects to be funded
23 by the Alliance. The Alliance may establish advisory com-
24 mittees of persons other than Alliance members. Each

1 member of the Alliance shall have 1 vote in matters before
2 the Alliance.

3 (i) ADMINISTRATIVE EXPENSES.—(1) The adminis-
4 trative expenses of operating the Alliance (not including
5 costs incurred in the collection of the assessment pursuant
6 to section 6) plus amounts paid under paragraph (2) shall
7 not exceed 7 percent of the funds collected in any fiscal
8 year, except that during the first year of its operation such
9 expenses and amounts shall not exceed 10 percent of such
10 funds.

11 (2) The Alliance shall annually reimburse the Sec-
12 retary for costs incurred by the Federal Government relat-
13 ing to the Alliance. Such reimbursement for any fiscal
14 year shall not exceed the amount that the Secretary deter-
15 mines is 2 times the average annual salary of 1 employee
16 of the Department of Energy.

17 (j) BUDGET.—Before August 1 each year, the Alli-
18 ance shall publish for public review and comment a budget
19 plan for the next calendar year, including the probable
20 costs of all programs, projects, and contracts. Following
21 this review and comment, the Alliance shall submit the
22 proposed budget to the Secretary and to the Congress.
23 The Secretary may recommend programs and activities
24 the Secretary considers appropriate. The Alliance shall not

1 implement a proposed budget until after the expiration of
2 60 days after submitting the proposed budget.

3 (k) RECORDS; AUDITS.—The Alliance shall keep
4 books and records that clearly reflect all of the acts and
5 transactions of the Alliance and make public such infor-
6 mation. The books of the Alliance, including fee assess-
7 ment reports and applications for refunds, shall be audited
8 by a certified public accountant at least once each fiscal
9 year and at such other times as the Alliance may des-
10 ignate. Copies of such audit shall be provided to the Sec-
11 retary, all members of the Alliance, the qualified industry
12 organization, and to other members of the industry upon
13 request. The Alliance shall establish policies and proce-
14 dures for auditing compliance with this Act that shall con-
15 form with generally accepted accounting principles.

16 (l) PUBLIC ACCESS TO ALLIANCE PROCEEDINGS.—
17 (1) All meetings of the Alliance shall be open to the public
18 after at least 30 days advance public notice.

19 (2) The minutes of all meetings of the Alliance shall
20 be made available to and readily accessible by the public.

21 (m) ANNUAL REPORT.—Each year the Alliance shall
22 prepare and make publicly available a report which in-
23 cludes an identification and description of all programs
24 and projects undertaken by the Alliance during the pre-
25 vious year as well as those planned for the coming year.

1 Such report shall also detail the allocation or planned allo-
2 cation of Alliance resources for each such program and
3 project.

4 (n) CALCULATION OF OILHEAT SALES.—For pur-
5 poses of this section, the volume of oilheat sold annually
6 in a State shall be determined on the basis of information
7 provided by the Energy Information Administration with
8 respect to the preceding calendar year or other equivalent
9 period.

10 **SEC. 6. ASSESSMENTS.**

11 (a) AMOUNT.—The assessment shall be set at two
12 tenths of 1 cent per gallon of No. 1 distillate and No.
13 2 dyed distillate.

14 (b) COLLECTION RULES.—The assessment shall be
15 collected upon the sale of No. 1 distillate and No. 2 dyed
16 distillate by a wholesale distributor to a person other than
17 a wholesale distributor, including a sale made pursuant
18 to an exchange. The wholesale distributor shall be respon-
19 sible for payment of the assessment to the Alliance and
20 shall provide to the Alliance certification of the volume of
21 fuel sold. A person who has no ownership interest in No.
22 1 distillate or No. 2 dyed distillate shall not be responsible
23 for payment of an assessment under this section. Assess-
24 ments shall be made on all No. 1 distillate and No. 2 dyed
25 distillate sold in a State that is participating in the Alli-

1 ance, and are payable to the Alliance on a quarterly basis.
2 Any No. 1 distillate or No. 2 dyed distillate previously as-
3 sessed shall not be subject to further assessment. A whole-
4 sale distributor who fails within one year of sale to receive
5 payments from a purchaser for No. 1 distillate or No. 2
6 dyed distillate sold may apply for a refund directly from
7 the Alliance. Such refund may not exceed the amount of
8 the assessments levied upon the No. 1 distillate and No.
9 2 dyed distillate for which payment was not received. The
10 owner of No. 1 distillate and No. 2 dyed distillate im-
11 ported after the point of sale described in the first sen-
12 tence of this subsection shall be responsible for payment
13 of the assessment to the Alliance at the point at which
14 the product enters the United States, and shall provide
15 to the Alliance certification of the volume of fuel so im-
16 ported.

17 (c) EXCLUSIONS.—No. 1 distillate and No. 2 dyed
18 distillate sold for uses other than oilheat are excluded from
19 the assessment. The Alliance shall establish rules and pro-
20 cedures for refunding to wholesale distributors, and to re-
21 tail marketers or other end users who purchase from a
22 wholesale distributor, assessments collected on excluded
23 gallons.

24 (d) ALTERNATIVE COLLECTION RULES.—The Alli-
25 ance may establish, or approve a State’s request for, an

1 alternative means of collecting the assessment if another
2 means is found to be more efficient and effective. The Alli-
3 ance may establish a late payment charge and rate of in-
4 terest to be imposed on any person who fails to remit or
5 pay to the Alliance any amount due under this Act.

6 (e) INVESTMENT OF FUNDS.—Pending disbursement
7 pursuant to a program, plan, or project, the Alliance may
8 invest funds collected through assessments, and any other
9 funds received by the Alliance, only in obligations of the
10 United States or any agency thereof, in general obligations
11 of any State or any political subdivision thereof, in any
12 interest-bearing account or certificate of deposit of a bank
13 that is a member of the Federal Reserve System, or in
14 obligations fully guaranteed as to principal and interest
15 by the United States.

16 (f) STATE PROGRAMS.—

17 (1) COORDINATION.—The Alliance shall estab-
18 lish a program coordinating the operation of the Al-
19 liance with those of any similar State, local, or re-
20 gional program created by State law or regulation,
21 or similar entity.

22 (2) FUNDS MADE AVAILABLE TO QUALIFIED
23 STATE ASSOCIATIONS.—

24 (A) BASE AMOUNT.—The Alliance shall
25 make available to each State's qualified State

1 association 15 percent of the funds raised in
2 the State pursuant to the assessment under this
3 section.

4 (B) REQUEST FOR ADDITIONAL
5 AMOUNT.—A qualified State association may
6 request that the Alliance provide any portion of
7 the remaining 85 percent of the funds raised in
8 the State. A request under this subparagraph
9 shall—

10 (i) specify the amount of funds re-
11 quested;

12 (ii) describe in detail the specific uses
13 for which the requested funds are sought;

14 (iii) include a commitment to comply
15 with this Act in using the requested funds;
16 and

17 (iv) be made publicly available.

18 The Alliance shall not provide any funds in re-
19 sponse to a request under this subparagraph
20 unless it determines that the funds will be used
21 to directly benefit the oilheat industry. The Alli-
22 ance shall monitor the use of funds provided
23 under this subparagraph, and shall impose
24 whatever terms, conditions, and reporting re-

1 quirements it considers necessary to ensure
2 compliance with this Act.

3 **SEC. 7. COMPLIANCE.**

4 The Alliance may bring suit in Federal court to com-
5 pel compliance with an assessment levied by the Alliance
6 under this Act. A successful action for compliance under
7 this section may also require payment by the defendant
8 of the costs incurred by the Alliance in bringing such ac-
9 tion.

10 **SEC. 8. LOBBYING RESTRICTIONS.**

11 No funds collected by the Alliance under section 6
12 shall be used in any manner for influencing legislation or
13 elections, except that the Alliance may use such funds to
14 recommend to the Secretary changes in this Act or other
15 statutes that would further the purposes of this Act.

16 **SEC. 9. DISCLOSURE.**

17 Any consumer education activity undertaken with
18 funds provided by the Alliance shall include a statement
19 that the activities were supported, in whole or in part, by
20 the Alliance.

21 **SEC. 10. VIOLATIONS.**

22 (a) PROHIBITION.—Any consumer education activity,
23 undertaken with funds collected by the Alliance under sec-
24 tion 6, that includes—

25 (1) a reference to a private brand name;

1 (2) a false or unwarranted claim on behalf of
2 oilheat or related products; or
3 (3) a reference with respect to the attributes or
4 use of any competing product,
5 is prohibited.

6 (b) FILING AND TRANSMITTAL OF COMPLAINTS.—A
7 public utility aggrieved by a violation described in sub-
8 section (a) may file a complaint. Such complaint shall be
9 transmitted concurrently to the Alliance and to any quali-
10 fied State association undertaking the consumer education
11 activity with respect to which the complaint is made. Upon
12 receipt of a complaint under this subsection, the Alliance,
13 and any qualified State association undertaking the con-
14 sumer education activity with respect to which the com-
15 plaint is made, shall cease those consumer education ac-
16 tivities until—

17 (1) the complaint is withdrawn; or
18 (2) a court of jurisdiction has determined that
19 the consumer education activity complained of does
20 not constitute a violation of subsection (a).

21 (c) RESOLUTION BY PARTIES.—Not later than 10
22 days after a complaint is filed and transmitted under sub-
23 section (b), the complaining party, the Alliance, and any
24 qualified State association undertaking the consumer edu-
25 cation activity with respect to which the complaint is made

1 shall meet to attempt to resolve the complaint. If the
2 issues in dispute are resolved in those discussions, the
3 complainant shall withdraw its complaint.

4 (d) JUDICIAL REVIEW.—A public utility filing a com-
5 plaint under this section, the Alliance, a qualified State
6 association undertaking the consumer education activity
7 with respect to which a complaint under this section is
8 made, or any aggrieved person, may seek relief under this
9 section in Federal court. A public utility filing a complaint
10 under this section shall be entitled to temporary and in-
11 junctive relief enjoining the consumer education activity
12 with respect to which a complaint under this section is
13 made until—

14 (1) the complaint is withdrawn; or

15 (2) a court of jurisdiction has determined that
16 the consumer education activity complained of does
17 not constitute a violation of subsection (a).

18 (e) ATTORNEYS FEES.—In any case in Federal court
19 in which the court grants a public utility injunctive relief
20 under subsection (d), the public utility shall be entitled
21 to recover its attorneys fees from the Alliance and any
22 qualified State association undertaking the consumer edu-
23 cation activity with respect to which a complaint under
24 this section is made. In any case under subsection (d) in
25 which the court determines a complaint under subsection

1 (b) to be frivolous and without merit, the prevailing party
2 shall be entitled to recover its attorneys fees.

3 **SEC. 11. SUNSET.**

4 This Act shall cease to be effective 4 years after the
5 date on which the Alliance is established.

