

NATIONAL OILHEAT RESEARCH ALLIANCE ACT OF 1998

OCTOBER 6, 1998.—Ordered to be printed

Mr. BLILEY, from the Committee on Commerce,
submitted the following

REPORT

[To accompany H.R. 3610]

[Including cost estimate of the Congressional Budget Office]

The Committee on Commerce, to whom was referred the bill (H.R. 3610) 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, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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AMENDMENT

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “National Oilheat Research Alliance Act of 1998”.

SEC. 2. FINDINGS.

The Congress finds that—

(1) oilheat is an important commodity relied upon by approximately 30,000,000 Americans annually as an efficient and economical energy source for commercial and residential space and hot water heating;

(2) oilheat equipment operates at efficiencies among the highest of any space heating energy source, reducing fuel costs and making oilheat an economical means of space heating;

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

(4) only very limited Federal resources have been made available for oilheat research, development, safety, training, and education efforts, to the detriment of both the oilheat industry and its 30,000,000 consumers; and

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

SEC. 3. DEFINITIONS.

For the purposes of this Act—

(1) the term “Alliance” means a National Oilheat Research Alliance created pursuant to section 4 of this Act;

(2) the term “consumer education” means the provision of information that will assist consumers and other persons in making evaluations and decisions regarding oilheat and other nonindustrial commercial or residential space or hot water heating fuels;

(3) the term “exchange” means an agreement that entitles each party or its customers to receive product from the other party and requires only an insubstantial portion of the volumes involved in the exchange to be settled in cash or property other than the product;

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

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

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

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

(8) the term “oilheat” means—

(A) No. 1 distillate; or

(B) No. 2 dyed distillate,

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

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

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

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

(12) the term “retail marketer” means a person engaged primarily in the sale of oilheat to the ultimate consumer;

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

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

(A) produces;

(B) imports; or

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

and

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

SEC. 4. REFERENDA.

(a) CREATION OF PROGRAM.—The industry, through the qualified industry organization, may conduct, at its own expense, a referendum among retail marketers and wholesale distributors for the creation of a National Oilheat Research Alliance. The Alliance, if established, shall reimburse the qualified industry organization for the cost of referendum accounting and documentation. Such referendum shall be conducted by an independent auditing firm. Voting rights of a retail marketer in such referendum shall be based on the volume of oilheat sold in a State by the retail marketer in the previous calendar year or other representative period. Voting rights of a wholesale distributor in such referendum shall be based on the volume of No. 1 distillate and No. 2 dyed distillate sold in a State by the wholesale distributor in the previous calendar year or other representative period, weighted by the ratio of the total volume of No. 1 distillate and No. 2 dyed distillate sold for nonindustrial commercial and residential space and hot water heating in that State to the total volume of No. 1 distillate and No. 2 dyed distillate sold in that State. Upon approval of those persons representing two-thirds of the total volume of oilheat voted in the retail marketer class and two-thirds of the total weighted volume of No. 1 distillate and No. 2 dyed distillate voted in the wholesale distributor class, the Alliance shall be established, and shall be authorized to levy assessments in accordance with section 6. All persons voting in the referendum shall certify to the independent auditing firm the volume of oilheat, No. 1 distillate, or No. 2 dyed distillate represented by their vote. Except as provided in subsection (b), a State shall not participate in the Alliance if less than 50 percent of the retail marketer vote in that State, subject to the volumetric voting rules established by this subsection, is in favor of the creation of the Alliance. A qualified State association may notify the qualified industry organization within 90 days after the date of the enactment of this Act in writing that a referendum under this subsection will not be conducted in that State.

(b) SUBSEQUENT STATE PARTICIPATION.—A State that has not participated initially in the Alliance may subsequently elect to participate by conducting a referendum in accordance with subsection (a).

(c) TERMINATION OR SUSPENSION.—On the Alliance’s own initiative, or on petition to the Alliance by retail marketers and wholesale distributors representing 35 percent of the volume of oilheat or weighted No. 1 distillate and No. 2 dyed distillate in each class, the Alliance shall, at its own expense, hold a referendum, to be conducted by an independent auditing firm selected by the Alliance, to determine whether the industry favors termination or suspension of the Alliance. Termination or suspension shall not take effect unless it is approved by persons representing more than one-half of the total volume of oilheat voted in the retail marketer class and more than one-half of the total volume of weighted No. 1 distillate and No. 2 dyed distillate voted in the wholesale distributor class, or is approved by persons representing more than two-thirds of the total volume of fuel voted in either such class.

SEC. 5. NATIONAL OILHEAT RESEARCH ALLIANCE.

(a) SELECTION OF MEMBERS.—Except as otherwise provided in subsection (c)(3), the qualified industry organization shall select all members of the Alliance. The qualified industry organization shall select a member representing a State from a list of nominees submitted by that State’s qualified State association. Vacancies in unfinished terms of Alliance members shall be filled in the same manner as were the original appointments.

(b) REPRESENTATION.—In selecting members of the Alliance, the qualified industry organization shall give due regard to selecting a Alliance that is representative of the industry, including representation of—

(1) interstate and intrastate operators among retail marketers;

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

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

(4) diverse geographic regions of the country.

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

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

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

(3) 5 representatives of retail marketers, one each to be selected by the qualified State associations of the 5 States with the highest volume of annual oilheat sales.

(4) 5 additional representatives of retail marketers.

(5) 21 representatives of wholesale distributors.

(6) 6 public members, who shall be representatives of significant users of oilheat, the oilheat research community, or other groups knowledgeable about oilheat.

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

(d) COMPENSATION.—Alliance members shall receive no compensation for their services, nor shall Alliance members be reimbursed for expenses relating to their service, except that public members, upon request, may be reimbursed for reasonable expenses directly related to their participation in Alliance meetings.

(e) TERMS.—Alliance members shall serve terms of 3 years and may serve not more than 2 full consecutive terms. Members filling unexpired terms may serve not more than a total of 7 consecutive years. Former members of the Alliance may be returned to the Alliance if they have not been members for a period of 2 years. Initial appointments to the Alliance shall be for terms of 1, 2, and 3 years, as determined by the qualified industry organization, staggered to provide for the subsequent selection of one-third of the members each year.

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

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

(B) to provide for research, development, and demonstration of clean and efficient oilheat utilization equipment; and

(C) for consumer education,

and may provide for the payment of the costs thereof with funds collected pursuant to this Act. The Alliance shall coordinate its activities with industry trade associations and others as appropriate to provide efficient delivery of services and to avoid unnecessary duplication of activities.

(2) Research, development, and demonstration activities authorized under paragraph (1)(B) shall include all activities incidental to research, development, and demonstration of clean and efficient oilheat utilization equipment. Such activities include obtaining a patent, including payment of attorney's fees for making and perfecting a patent application. Such activities do not include research, development, and demonstration of oilheat utilization equipment with respect to which technically feasible and commercially feasible operations have been verified, except that funds may be provided for improvements to existing equipment until the technical feasibility and commercial feasibility of the operation of those improvements have been verified.

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

(g) PRIORITIES.—Issues related to research, development, and demonstration, safety, consumer education, and training shall be given priority by the Alliance in the development of its programs and projects.

(h) ADMINISTRATION.—The Alliance shall select from among its members a Chairman and other officers as necessary, may establish and authorize committees and subcommittees of the Alliance to take specific actions the Alliance is authorized to take, and shall adopt rules and bylaws for the conduct of business and the implementation of this Act. The Alliance shall establish procedures for the solicitation of industry comment and recommendations on any significant plans, programs, and projects to be funded by the Alliance. The Alliance may establish advisory committees of persons other than Alliance members. Each member of the Alliance shall have 1 vote in matters before the Alliance.

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

(2) The Alliance shall annually reimburse the Secretary for costs incurred by the Federal Government relating to the Alliance. Such reimbursement for any fiscal year shall not exceed the amount that the Secretary determines is 2 times the average annual salary of 1 employee of the Department of Energy.

(j) BUDGET.—Before August 1 each year, the Alliance shall publish for public review and comment a budget plan for the next calendar year, including the probable costs of all programs, projects, and contracts and a recommended rate of assessment sufficient to cover such costs. Following this review and comment, the Alliance shall submit the proposed budget to the Secretary and to the Congress. The Secretary may recommend programs and activities the Secretary considers appropriate. The Alliance shall not implement a proposed budget until after receiving the Secretary's recommendations, or after the expiration of 60 days after submitting the proposed budget, whichever occurs first.

(k) RECORDS; AUDITS.—The Alliance shall keep books and records that clearly reflect all of the acts and transactions of the Alliance and make public such information. The books of the Alliance, including fee assessment reports and applications for refunds, shall be audited by a certified public accountant at least once each fiscal year and at such other times as the Alliance may designate. Copies of such audit shall be provided to the Secretary, all members of the Alliance, the qualified industry organization, and to other members of the industry upon request. The Alliance shall establish policies and procedures for auditing compliance with this Act that shall conform with generally accepted accounting principles. The Secretary shall make available to the Alliance any information the Alliance requests for auditing compliance, except for information the Secretary is prohibited by law from releasing.

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

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

(m) ANNUAL REPORT.—Each year the Alliance shall prepare and make publicly available a report which includes an identification and description of all programs and projects undertaken by the Alliance during the previous year as well as those planned for the coming year. Such report shall also detail the allocation or planned allocation of Alliance resources for each such program and project.

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

SEC. 6. ASSESSMENTS.

(a) AMOUNT.—The Alliance shall set the initial assessment at no greater than two tenths of 1 cent per gallon of No. 1 distillate and No. 2 dyed distillate. Thereafter, annual assessments shall be sufficient to cover the costs of the plans and programs developed by the Alliance, except that under no circumstances shall the assessment be greater than one-half cent per gallon of No. 1 distillate and No. 2 dyed distillate unless approved by a majority of those voting in a referendum in both the retail marketer class and the wholesale distributor class. In no case may the assessment be raised by more than one tenth of 1 cent per gallon of No. 1 distillate and No. 2 dyed distillate annually, and no increases may occur unless approved by a two-thirds vote of the Alliance.

(b) COLLECTION RULES.—The assessment shall be collected upon the sale of No. 1 distillate and No. 2 dyed distillate by a wholesale distributor to a person other than a wholesale distributor, including a sale made pursuant to an exchange. The wholesale distributor shall be responsible for payment of the assessment to the Alliance and shall provide to the Alliance certification of the volume of fuel sold. A person who has no ownership interest in No. 1 distillate or No. 2 dyed distillate shall not be responsible for payment of an assessment under this section. Assessments shall be made on all No. 1 distillate and No. 2 dyed distillate sold in a State that is participating in the Alliance, and are payable to the Alliance on a quarterly basis. Any No. 1 distillate or No. 2 dyed distillate previously assessed shall not be subject to further assessment. A wholesale distributor who fails within one year of sale to receive payments from a purchaser for No. 1 distillate or No. 2 dyed distillate sold may apply for a refund directly from the Alliance. Such refund may not exceed the amount of the assessments levied upon the No. 1 distillate and No. 2 dyed distillate for which payment was not received. The owner of No. 1 distillate and No. 2 dyed distillate imported after the point of sale described in the first sentence of this subsection shall be responsible for payment of the assessment to the Alliance at the point at which the product enters the United States, and shall provide to the Alliance certification of the volume of fuel so imported.

(c) EXCLUSIONS.—No. 1 distillate and No. 2 dyed distillate sold for uses other than oilheat are excluded from the assessment. The Alliance shall establish rules and procedures for refunding to wholesale distributors, and to retail marketers or other end users who purchase from a wholesale distributor, assessments collected on excluded gallons.

(d) ALTERNATIVE COLLECTION RULES.—The Alliance may establish, or approve a State's request for, an alternative means of collecting the assessment if another means is found to be more efficient and effective. The Alliance may establish a late payment charge and rate of interest to be imposed on any person who fails to remit or pay to the Alliance any amount due under this Act.

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

(f) STATE PROGRAMS.—

(1) COORDINATION.—The Alliance shall establish a program coordinating the operation of the Alliance with those of any similar State, local, or regional program created by State law or regulation, or similar entity.

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

(A) BASE AMOUNT.—The Alliance shall make available to each State's qualified State association 15 percent of the funds raised in the State pursuant to the assessment under this section.

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

- (i) specify the amount of funds requested;
- (ii) describe in detail the specific uses for which the requested funds are sought;
- (iii) include a commitment to comply with this Act in using the requested funds; and
- (iv) be made publicly available.

The Alliance shall not provide any funds in response to a request under this subparagraph unless it determines that the funds will be used to directly benefit the oilheat industry. The Alliance shall monitor the use of funds provided under this subparagraph, and shall impose whatever terms, conditions, and reporting requirements it considers necessary to ensure compliance with this Act.

SEC. 7. COMPLIANCE.

The Alliance may bring suit in Federal court to compel compliance with an assessment levied by the Alliance under this Act. A successful action for compliance under this section may also require payment by the defendant of the costs incurred by the Alliance in bringing such action.

SEC. 8. LOBBYING RESTRICTIONS.

No funds collected by the Alliance shall be used in any manner for influencing legislation or elections, except that the Alliance may recommend to the Secretary changes in this Act or other statutes that would further the purposes of this Act.

SEC. 9. DISCLOSURE.

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

SEC. 10. VIOLATIONS.

(a) PROHIBITION.—Any consumer education activity, undertaken with funds provided by the Alliance, that includes—

- (1) a reference to a private brand name;
- (2) a false or unwarranted claim on behalf of oilheat or related products; or
- (3) a reference with respect to the attributes or use of any competing product,

is prohibited.

(b) FILING AND TRANSMITTAL OF COMPLAINTS.—A public utility aggrieved by a violation described in subsection (a) may file a complaint. Such complaint shall be transmitted concurrently to the Alliance and to any qualified State association undertaking the consumer education activity with respect to which the complaint is

made. Upon receipt of a complaint under this subsection, the Alliance, and any qualified State association undertaking the consumer education activity with respect to which the complaint is made, shall cease those consumer education activities until—

(1) the complaint is withdrawn; or

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

(c) RESOLUTION BY PARTIES.—Not later than 10 days after a complaint is filed and transmitted under subsection (b), the complaining party, the Alliance, and any qualified State association undertaking the consumer education activity with respect to which the complaint is made shall meet to attempt to resolve the complaint. If the issues in dispute are resolved in those discussions, the complainant shall withdraw its complaint.

(d) JUDICIAL REVIEW.—A public utility filing a complaint under this section, the Alliance, a qualified State association undertaking the consumer education activity with respect to which a complaint under this section is made, or any aggrieved person, may seek relief under this section in Federal court. A public utility filing a complaint under this section shall be entitled to temporary and injunctive relief enjoining the consumer education activity with respect to which a complaint under this section is made until—

(1) the complaint is withdrawn; or

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

(e) ATTORNEYS FEES.—In any case in Federal court in which the court grants a public utility injunctive relief under subsection (d), the public utility shall be entitled to recover its attorneys fees from the Alliance and any qualified State association undertaking the consumer education activity with respect to which a complaint under this section is made. In any case under subsection (d) in which the court determines a complaint under subsection (b) to be frivolous and without merit, the prevailing party shall be entitled to recover its attorneys fees.

SEC. 11. SUNSET.

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

PURPOSE AND SUMMARY

H.R. 3610 authorizes the oilheat industry to establish an oilheat check-off fee to fund research, development, and consumer education activities with respect to heating oil and heating oil utilization equipment. Under the bill, the oilheat industry is authorized to conduct a referendum among its retailers and wholesalers for the creation of a National Oilheat Research Alliance (“NORA” or “Alliance”). If the oilheat industry approves such a referendum, NORA would be authorized to collect annual assessments from oilheat wholesalers to cover its planning and program costs. The Alliance would then be authorized to allocate these collected funds to conduct research and development of oilheat utilization equipment, to promote consumer education, and to inform and educate the public about safety and other issues associated with the use of oilheat.

BACKGROUND AND NEED FOR LEGISLATION

Heating oil plays a vital role in keeping homes and businesses warm in the winter in many parts of the United States. In 1996, homes and businesses purchased more than 10 billion gallons of heating oil, with most of it concentrated in New England and the Mid-Atlantic States. Heating oil was used in an estimated 10.7 million households and more than 500,000 commercial buildings. In all, over 10 billion dollars was spent on heating oil in 1996. Heating oil use in the U.S. has declined since the 1970s when demand was at its peak. This decline occurred for a number of reasons: in-

creased availability of natural gas; the development of more efficient electric heating systems; and the investment in energy conservation by homes and businesses.

Oilheat is virtually the only home heating fuel without a national industry promotion program. Thus, in order for home heating fuel to compete with other home heating fuels on a fair and equitable basis, it must obtain greater resources. This bill would allow the oilheat industry to do research, education, and marketing without using any Federal money. In particular, H.R. 3610 allows the heating oil industry to establish an oilheat check-off fee to fund research, development, and consumer education programs related to oilheat. The program is made mandatory rather than voluntary to prevent "free-riders;" that is, marketers or producers who would not contribute to the program, but would receive benefits from it.

Specifically, H.R. 3610 authorizes the oilheat industry to conduct a referendum among its retailers and wholesalers for the creation of a National Oilheat Research Alliance. According to the bill, if the oilheat industry approves such a referendum, NORA would be authorized to collect annual assessments from oilheat wholesalers to cover its planning and program costs. H.R. 3610 then permits the Alliance to allocate these collected funds to conduct research and development of oilheat utilization equipment, to promote consumer education, and to inform and educate the public about safety and other issues associated with the use of oilheat.

Under the terms of H.R. 3610, NORA cannot be established unless a majority of the oilheat industry desires it. Specifically, the bill directs the oilheat industry to conduct a referendum among oilheat producers and retail marketers to determine if such a program is wanted by the industry. Two-thirds of both the producers and marketers must vote in favor of this program in order for the program to be established. A majority vote by both groups or a two-thirds vote by the combined groups could also terminate the program.

Once the program is established, the Alliance is allowed to assess and collect a mandatory fee from oilheat wholesale distributors based on the volume of oilheat sold and placed into commerce. The initial amount of fees to be collected is no greater than $\frac{2}{10}$ of one cent per gallon. However, this amount can rise $\frac{1}{10}$ of one cent per year until the fee assessment is capped at $\frac{1}{2}$ of one cent per gallon. The oilheat industry has indicated that it expects to raise approximately \$20 million during NORA's first year of existence. Any increase in fee assessment may not occur unless approved by two-thirds of the Alliance. In addition, the Alliance may bring suit in Federal court to compel compliance with the Act, including payment of the fee assessment.

Funds collected through the assessment may be used to fund consumer and employee safety and training programs, research and development of clean and efficient oilheat utilization equipment, and for public education on safety and other issues associated with the use of oilheat (including advertising campaigns). Importantly, no funds collected through the fee can be used to lobby Congress. In addition, each year, the Alliance must prepare and make publicly available a report which includes an identification and description of all programs and projects undertaken by the Alliance

during the previous year, as well as those planned for the coming year. Significantly, before August 1 each year, the Alliance must publish for public review and comment a budget plan for the next calendar year, including the probable costs of all programs, projects, and contracts, and a recommended rate of assessment sufficient to cover such costs. Following this review and comment, the Alliance must submit the proposed budget to the Secretary of Energy and to the Congress.

One of the objectives of H.R. 3610 is to assemble an oilheat Alliance that is representative of the entire industry. Therefore, NORA would be representative of the diverse geographical regions of the country, and would include representation from interstate and intrastate operators among retail marketers, wholesale distributors, and both large and small companies among wholesale distributors and retail marketers. To that end, the membership of NORA is to be comprised of the following: one member from each State with oilheat sales over 32 million gallons per year; ten retail marketers (including 1 each from the five States with the highest volume of annual oilheat sales); 21 wholesale distributors; and six public members to represent oilheat consumers and the oilheat research community. Importantly, no members of NORA will receive any compensation for their service.

In addition, given the competitive nature of the oilheat industry and its sensitive pricing structure, proponents of the bill believe it is unlikely that the annual assessment will be passed along to consumers. However, in the event that it is passed along, it is expected to cost residential consumers of oilheat only \$1.00–1.50 per year. Moreover, it has been estimated by industry and in a study conducted by the Brookhaven National Laboratory that consumers should receive more than \$4.00 in benefits for every dollar spent on research.

HEARINGS

The Subcommittee on Energy and Power held a hearing on H.R. 3610, the National Oilheat Research Alliance Act of 1998, on June 16, 1998. The Subcommittee received testimony from the following witnesses: Mr. Don Allen, Co-Chairman, Legislative Action Committee, National Oilheat Research Alliance; Mr. Jack Sullivan, President, New England Fuel Institute; Mr. Jerry Gass, Director, Corporate Communications and Governmental Affairs, Southern States Cooperative; Mr. Craig G. Matthews, Executive Vice President, Marketspan; and Mr. Roy Willis, President, Propane Education and Research Council.

COMMITTEE CONSIDERATION

On September 17, 1998, the Subcommittee on Energy and Power met in open markup session and approved H.R. 3610, the National Oilheat Research Alliance Act of 1998, for Full Committee consideration, amended, by a voice vote. On September 24, 1998, the Full Committee met in open markup session and ordered H.R. 3610 reported to the House, amended, by a voice vote, a quorum being present.

ROLL CALL VOTES

Clause 2(1)(2)(B) of rule XI of the Rules of the House requires the Committee to list the recorded votes on the motion to report legislation and amendments thereto. There were no recorded votes taken in connection with ordering H.R. 3610 reported. An En Bloc Amendment offered by Mr. Greenwood clarifying the provisions with respect to consumer education activities, was agreed to by a voice vote. A motion by Mr. Bliley to order H.R. 3610 reported to the House, amended, was agreed to by a voice vote, a quorum being present.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 2(1)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee held a legislative hearing and made findings that are reflected in this report.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

Pursuant to clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Reform and Oversight.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 2(1)(3)(B) of rule XI of the Rules of the House of Representatives, the Committee finds that H.R. 3610, the National Oilheat Research Alliance Act of 1998, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 2(1)(3)(C) of rule XI of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 2, 1998.

Hon. TOM BLILEY,
*Chairman, Committee on Commerce, House of Representatives,
Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3610, the National Oilheat Research Alliance Act of 1998.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Kim Cawley (for federal costs), and Jean Wooster (for the private-sector impact).

Sincerely,

JUNE E. O'NEILL, *Director*.

Enclosure.

H.R. 3610—National Oilheat Research Alliance Act of 1998

Summary: H.R. 3610 would authorize the National Association for Oilheat Research and Education to conduct a referendum among retail marketers and wholesale distributors to determine if an industry research organization should be established. If there is sufficient industry support, the National Oilheat Research alliance would be established to enhance consumer and employee safety and training; provide for research, development, and demonstration of oilheat equipment; and educate consumers. The alliance would be funded through an initial annual assessment of up to two-tenths of 1 cent per gallon of No. 1 distillate and No. 2 dyed distillate sold in the retail market and used for nonindustrial commercial or residential space or hot water heating. Funds collected through this assessment would be available to fund the Alliance's programs without further appropriation by the Congress. The bill would allow the distillate assessment to be changed or terminated if there is sufficient industry support.

Assuming that the industry would choose to establish the alliance, CBO estimates that enacting H.R. 3610 would increase both governmental receipts and outlays from direct spending by \$16 million to \$17 million a year over the authorized four-year period (fiscal years 1999 through 2002). Because the bill would affect direct spending and receipts, pay-as-you-go procedures would apply, but CBO estimates that the increase in annual receipts would be matched by outlay increases so that there would be no net budgetary impact for each year.

The bill contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments. H.R. 3610 would impose a private-sector mandate, as defined by UMRA, on producers, importers, and transporters of heating oil sold in the retail market and used for nonindustrial commercial or residential space or hot water heating. CBO estimates that the cost of this mandate would not exceed the annual threshold for private-sector mandates (\$100 million in 1996, adjusted for inflation).

Estimated cost to the Federal Government: CBO estimates that enacting H.R. 3610 would increase governmental receipts and direct spending (from the disbursement of such receipts) by \$16 million in each of fiscal year 1999 and 2000, and by \$17 million in each of fiscal years 2001 and 2002. For purposes of this estimate, CBO assumes that the industry will vote to establish the National Association for Oilheat Research Alliance, and that the distillate assessment will be set at two-tenths of 1 cent per gallon of distillate sold. CBO believes that the cash flows related to the alliance should appear in the budget as governmental receipts and direct spending because the payments between companies would stem from exercise of the sovereign power of the federal government.

The estimates of annual assessments are based on recent industry data on the amount of distillate sold in the United States retail market. The authority to collect such assessments would expire four years after the National Oilheat Research Alliance is established. Thus, there would be no budgetary effects after 2002. Although the Department of Energy projects that distillate sales for residential and commercial heating will continue to decline slightly, we assume the alliance would adjust the assessment on sales to increase funding for this program to keep pace with anticipated inflation.

Pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. CBO estimates that enacting H.R. 3610 would affect both direct spending and receipts in equal and offsetting amounts; therefore, pay-as-you-go procedures would apply, but H.R. 3610 would have no net budgetary impact in each year. The changes in outlays and governmental receipts that are subject to pay-as-you-go procedures are shown in the following table.

	By fiscal years, in millions of dollars—									
	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Changes in outlays	16	16	17	17	0	0	0	0	0	0
Changes in receipts	16	16	17	17	0	0	0	0	0	0

Estimated impact on State, local, and tribal governments: The bill contains no intergovernmental mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Estimated impact on the private sector: H.R. 3610 would impose a private-sector mandate on producers, importers, and transporters of heating oil that is sold in the retail market and used for non-industrial commercial or residential space or hot water heating, who would be required to pay an annual assessment to the National Oilheat Research Alliance. Based on testimony of representatives of the industry in a Congressional hearing, CBO assumes that the retail marketers and wholesale distributors would vote favorably on a referendum to establish the alliance. CBO estimates that the annual assessments would total \$16 million in each of the next two years, and \$17 million in 2001 and 2002, well below the annual \$100 million threshold established in UMRA.

Estimate prepared by: Federal Costs: Kim Cawley. Impact on the Private Sector: Jean Wooster.

Estimate approved by: Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 2(1)(4) of rule XI of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in Article I, section 8, clause 3, which grants Congress the power to regulate commerce with foreign nations, among the several States, and with the Indian tribes.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section establishes the short title of this legislation as the “National Oilheat Research Alliance Act of 1998”.

Section 2. Findings

Section 2 sets forth the findings of the Congress with respect to the legislation.

Section 3. Definitions

This section defines several terms for use in the Act including “Alliance,” “qualified industry organization,” “qualified State association,” and “retail marketer.” Importantly, this section also defines “consumer education” as “the provision of information that will assist consumers and other persons in making evaluations and decisions regarding oilheat and other nonindustrial commercial or residential space or hot water heating fuels.”

Section 4. Referenda

Subsection (a) provides for the industry, through the qualified industry organization, to conduct at its own expense a referendum among retail marketers and wholesale distributors of heating oil for the creation of a National Oilheat Research Alliance. If the Alliance is established, the qualified industry organization shall be reimbursed for the cost of the referendum accounting and documentation. The voting rights of retail marketers in the referendum shall be based on the volume of oilheat sold in a State by that marketer in the previous calendar year or other representative period. Wholesale distributors’ voting rights are based on the volume of No. 1 distillate and No. 2 dyed distillate sold in a State by the wholesale distributor in the previous calendar year or other representative period, weighted by the ratio of the total volume of those fuels sold for nonindustrial commercial and residential space and hot water heating in that State to their total volumes sold in the State. The Alliance shall be established if two-thirds of the volumes voted in the retail marketer class and two-thirds of the volumes voted in the wholesale distributor class approve it. A State shall not participate in the Alliance if less than 50 percent of the retail marketer vote in that State, based on the volumetric voting rules, is in favor of the creation of the Alliance. In addition, a

qualified State association may notify the qualified industry organization within 90 days after enactment that a referendum will not be conducted in that State. Subsection (b) provides that if a State that has chosen not to participate initially in the Alliance subsequently decides it would like to participate, it may do so by conducting a referendum in accordance with subsection (a).

Section 5. National Oilheat Research Alliance

Section 5 provides for the selection of members of the Alliance and establishes many of the rules with which it must comply.

Specifically, subsection (a) provides that members of the Alliance shall be selected by the qualified industry organization based on a list of nominees submitted by a State's qualified State association.

Subsection (b) requires that in selecting members of the Alliance, the qualified industry organization must give regard to selecting an Alliance that is representative of the industry, including representation of interstate and intrastate retail marketers, wholesale distributors of No. 1 distillate and No. 2 dyed distillate, large and small companies, and geographic diversity.

Subsection (c) establishes the number and type of members the Alliance must have.

Subsection (d) provides that Alliance members may not be compensated for their services or be reimbursed for expenses relating to their service, except that public members may be reimbursed for expenses directly related to their participation in Alliance meetings.

Subsection (e) sets three-year terms for Alliance members with the limitation that members cannot serve more than two full consecutive terms. Former members of the Alliance may return only if they have not been members for at least two years. The subsection also provides that initial appointments are to be staggered to provide for the subsequent selection of one-third of the members each year.

The Alliance is authorized to develop programs and enter into contracts or agreements to implement the Act by subsection (f). This includes programs to enhance consumer and employee safety and training, provide research, development and demonstration of clean and efficient oilheat utilization equipment, and for consumer education. The activities are to be paid for out of the funds collected under this Act and must be coordinated with industry trade associations and others to avoid unnecessary duplication of activities. Advertising, promotions, or consumer surveys in support of advertising or promotions are prohibited under the Act.

Subsection (g) requires that the Alliance give priority in the development of its programs to issues related to research, development, and demonstration, safety, consumer education, and training.

Subsection (h) establishes the requirements for the administration of the Alliance. It provides for the Alliance to select a Chairman and other officers and establish advisory committees. This subsection also provides that each Alliance member has one vote in matters before the Alliance.

Subsection (i) limits the administrative expenses of operating the Alliance to 7 percent of the funds collected, except in the first year

in which the limit is 10 percent. The Alliance is also required to reimburse the Secretary of Energy annually for any costs incurred by the Federal government in relation to the Alliance.

Subsection (j) requires the Alliance to publish its budget annually and submit it to Congress and the Secretary of Energy and not to implement a proposed budget until after receiving the Secretary's recommendation or the expiration of 60 days after submitting the budget.

The Alliance is required to keep books and records that reflect its activities by subsection (k).

Subsection (l) requires that all meetings of the Alliance be open to the public after 30 days public notice and that the minutes of all meetings shall be publicly available.

Subsection (m) requires the Alliance to prepare an annual report.

Subsection (n) provides that a determination of the volume of oilheat that was sold in a given year will be based on information provided by the Energy Information Administration.

Section 6. Assessments

Subsection (a) provides that the initial assessment under this Act cannot be greater than two-tenths of one cent per gallon of heating oil. That amount can be raised by not more than one-tenth of one cent per gallon of heating oil annually to a maximum of one-half cent per gallon to cover the costs of the plans and programs developed by the Alliance. No increase in the fee can occur unless approved by a two-thirds vote of the Alliance.

Subsection (b) establishes the rules for collection of the fee.

Subsection (c) provides that fuel sold for purposes other than oilheat are excluded from the assessment.

Under subsection (d), the Alliance is authorized to establish alternative means of collecting the assessment and late fees for non-payment.

Subsection (e) limits the investment of funds collected under this Act pending their disbursement.

Subsection (f) provides for the Alliance to return 15 percent of the funds collected in each State to the State's qualified State association. A qualified State association can request any portion of the remaining 85 percent of the funds raised in the State by making certain showings.

Section 7. Compliance

This section authorizes the Alliance to bring suit in Federal court to compel compliance with an assessment levied by the Alliance under this Act. If the compliance action is successful, the Alliance is authorized to seek payment by the defendant of the costs incurred by the Alliance in bringing such action.

Section 8. Lobbying restrictions

Section 8 prohibits any funds collected by the Alliance from being used in any manner for influencing legislation or elections. The only exception to this prohibition is that the Alliance may recommend to the Secretary of Energy changes in the Act or other statutes that would further the purposes of the Act.

Section 9. Disclosure

This section requires that any consumer education activity undertaken with funds provided by the Alliance shall include a statement that the activities were supported, in whole or in part, by the Alliance.

Section 10. Violations

Subsection (a) prohibits consumer education activities from including references to private brand names, making false or unwarranted claims on behalf of oilheat or related products, or making reference to the attributes of any competing product.

Subsections (b), (c), (d) and (e) provide a process for the speedy resolution of complaints for violations of Section 10.

Section 11. Sunset

This section provides for the Act to sunset four years after the date on which the Alliance is established.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

This legislation does not amend any existing Federal statute.

