

106TH CONGRESS
1ST SESSION

S. 348

AN ACT

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 **TITLE I—NATIONAL OIL HEAT**
2 **RESEARCH ALLIANCE ACT OF**
3 **1999**

4 **SEC. 101. SHORT TITLE.**

5 This title may be cited as the “National Oilheat Re-
6 search Alliance Act of 1999”.

7 **SEC. 102. FINDINGS.**

8 Congress finds that—

9 (1) oilheat is an important commodity relied on
10 by approximately 30,000,000 Americans as an effi-
11 cient and economical energy source for commercial
12 and residential space and hot water heating;

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

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

23 (4) only very limited Federal resources have
24 been made available for oilheat research, develop-
25 ment, safety, training, and education efforts, to the

1 detriment of both the oilheat industry and its
2 30,000,000 consumers; and

3 (5) the cooperative development, self-financing,
4 and implementation of a coordinated national oilheat
5 industry program of research and development,
6 training, and consumer education is necessary and
7 important for the welfare of the oilheat industry, the
8 general economy of the United States, and the mil-
9 lions of Americans that rely on oilheat for commer-
10 cial and residential space and hot water heating.

11 **SEC. 103. DEFINITIONS.**

12 In this title:

13 (1) **ALLIANCE.**—The term “Alliance” means a
14 national oilheat research alliance established under
15 section 104.

16 (2) **CONSUMER EDUCATION.**—The term “con-
17 sumer education” means the provision of informa-
18 tion to assist consumers and other persons in mak-
19 ing evaluations and decisions regarding oilheat and
20 other nonindustrial commercial or residential space
21 or hot water heating fuels.

22 (3) **EXCHANGE.**—The term “exchange” means
23 an agreement that—

24 (A) entitles each party or its customers to
25 receive oilheat from the other party; and

1 (B) requires only an insubstantial portion
2 of the volumes involved in the exchange to be
3 settled in cash or property other than the
4 oilheat.

5 (4) INDUSTRY TRADE ASSOCIATION.—The term
6 “industry trade association” means an organization
7 described in paragraph (3) or (6) of section 501(c)
8 of the Internal Revenue Code of 1986 that is exempt
9 from taxation under section 501(a) of that Code and
10 is organized for the purpose of representing the
11 oilheat industry.

12 (5) NO. 1 DISTILLATE.—The term “No. 1 dis-
13 tillate” means fuel oil classified as No. 1 distillate
14 by the American Society for Testing and Materials.

15 (6) NO. 2 DYED DISTILLATE.—The term “No.
16 2 dyed distillate” means fuel oil classified as No. 2
17 distillate by the American Society for Testing and
18 Materials that is indelibly dyed in accordance with
19 regulations prescribed by the Secretary of the Treas-
20 ury under section 4082(a)(2) of the Internal Rev-
21 enue Code of 1986.

22 (7) OILHEAT.—The term “oilheat” means—

23 (A) No. 1 distillate; and

24 (B) No. 2 dyed distillate;

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

3 (8) OILHEAT INDUSTRY.—

4 (A) IN GENERAL.—The term “oilheat in-
5 dustry” means—

6 (i) persons in the production, trans-
7 portation, or sale of oilheat; and

8 (ii) persons engaged in the manufac-
9 ture or distribution of oilheat utilization
10 equipment.

11 (B) EXCLUSION.—The term “oilheat in-
12 dustry” does not include ultimate consumers of
13 oilheat.

14 (9) PUBLIC MEMBER.—The term “public mem-
15 ber” means a member of the Alliance described in
16 section 105(c)(1)(F).

17 (10) QUALIFIED INDUSTRY ORGANIZATION.—

18 The term “qualified industry organization” means
19 the National Association for Oilheat Research and
20 Education or a successor organization.

21 (11) QUALIFIED STATE ASSOCIATION.—The

22 term “qualified State association” means the indus-
23 try trade association or other organization that the
24 qualified industry organization or the Alliance deter-
25 mines best represents retail marketers in a State.

1 (12) RETAIL MARKETER.—The term “retail
2 marketer” means a person engaged primarily in the
3 sale of oilheat to ultimate consumers.

4 (13) SECRETARY.—The term “Secretary”
5 means the Secretary of Energy.

6 (14) WHOLESALE DISTRIBUTOR.—The term
7 “wholesale distributor” means a person that—

8 (A)(i) produces No. 1 distillate or No. 2
9 dyed distillate;

10 (ii) imports No. 1 distillate or No. 2 dyed
11 distillate; or

12 (iii) transports No. 1 distillate or No. 2
13 dyed distillate across State boundaries or
14 among local marketing areas; and

15 (B) sells the distillate to another person
16 that does not produce, import, or transport No.
17 1 distillate or No. 2 dyed distillate across State
18 boundaries or among local marketing areas.

19 (15) STATE.—The term “State” means the sev-
20 eral States, except the State of Alaska.

21 **SEC. 104. REFERENDA.**

22 (a) CREATION OF PROGRAM.—

23 (1) IN GENERAL.—The oilheat industry,
24 through the qualified industry organization, may
25 conduct, at its own expense, a referendum among re-

1 tail marketers and wholesale distributors for the es-
2 tablishment of a national oilheat research alliance.

3 (2) REIMBURSEMENT OF COST.—The Alliance,
4 if established, shall reimburse the qualified industry
5 organization for the cost of accounting and docu-
6 mentation for the referendum.

7 (3) CONDUCT.—A referendum under paragraph
8 (1) shall be conducted by an independent auditing
9 firm.

10 (4) VOTING RIGHTS.—

11 (A) RETAIL MARKETERS.—Voting rights of
12 retail marketers in a referendum under para-
13 graph (1) shall be based on the volume of
14 oilheat sold in a State by each retail marketer
15 in the calendar year previous to the year in
16 which the referendum is conducted or in an-
17 other representative period.

18 (B) WHOLESALE DISTRIBUTORS.—Voting
19 rights of wholesale distributors in a referendum
20 under paragraph (1) shall be based on the vol-
21 ume of No. 1 distillate and No. 2 dyed distillate
22 sold in a State by each wholesale distributor in
23 the calendar year previous to the year in which
24 the referendum is conducted or in another rep-
25 resentative period, weighted by the ratio of the

1 total volume of No. 1 distillate and No. 2 dyed
2 distillate sold for nonindustrial commercial and
3 residential space and hot water heating in the
4 State to the total volume of No. 1 distillate and
5 No. 2 dyed distillate sold in that State.

6 (5) ESTABLISHMENT BY APPROVAL OF TWO-
7 THIRDS.—

8 (A) IN GENERAL.—Subject to subpara-
9 graph (B), on approval of persons representing
10 two-thirds of the total volume of oilheat voted
11 in the retail marketer class and two-thirds of
12 the total weighted volume of No. 1 distillate
13 and No. 2 dyed distillate voted in the wholesale
14 distributor class, the Alliance shall be estab-
15 lished and shall be authorized to levy assess-
16 ments under section 107.

17 (B) REQUIREMENT OF MAJORITY OF RE-
18 TAIL MARKETERS.—Except as provided in sub-
19 section (b), the oilheat industry in a State shall
20 not participate in the Alliance if less than 50
21 percent of the retail marketer vote in the State
22 approves establishment of the Alliance.

23 (6) CERTIFICATION OF VOLUMES.—Each per-
24 son voting in the referendum shall certify to the
25 independent auditing firm the volume of oilheat, No.

1 1 distillate, or No. 2 dyed distillate represented by
2 the vote of the person.

3 (7) NOTIFICATION.—Not later than 90 days
4 after the date of enactment of this title, a qualified
5 State association may notify the qualified industry
6 organization in writing that a referendum under
7 paragraph (1) will not be conducted in the State.

8 (b) SUBSEQUENT STATE PARTICIPATION.—The
9 oilheat industry in a State that has not participated ini-
10 tially in the Alliance may subsequently elect to participate
11 by conducting a referendum under subsection (a).

12 (c) TERMINATION OR SUSPENSION.—

13 (1) IN GENERAL.—On the initiative of the Alli-
14 ance or on petition to the Alliance by retail market-
15 ers and wholesale distributors representing 35 per-
16 cent of the volume of oilheat or weighted No. 1 dis-
17 tillate and No. 2 dyed distillate in each class, the Al-
18 liance shall, at its own expense, hold a referendum,
19 to be conducted by an independent auditing firm se-
20 lected by the Alliance, to determine whether the
21 oilheat industry favors termination or suspension of
22 the Alliance.

23 (2) VOLUME PERCENTAGES REQUIRED TO TER-
24 MINATE OR SUSPEND.—Termination or suspension

1 shall not take effect unless termination or suspen-
2 sion is approved by—

3 (A) persons representing more than one-
4 half of the total volume of oilheat voted in the
5 retail marketer class and more than one-half of
6 the total volume of weighted No. 1 distillate
7 and No. 2 dyed distillate voted in the wholesale
8 distributor class; or

9 (B) persons representing more than two-
10 thirds of the total volume of fuel voted in either
11 such class.

12 (d) CALCULATION OF OILHEAT SALES.—For the
13 purposes of this section and section 105, the volume of
14 oilheat sold annually in a State shall be determined on
15 the basis of information provided by the Energy Informa-
16 tion Administration with respect to a calendar year or
17 other representative period.

18 **SEC. 105. MEMBERSHIP.**

19 (a) SELECTION.—

20 (1) IN GENERAL.—Except as provided in sub-
21 section (c)(1)(C), the qualified industry organization
22 shall select members of the Alliance representing the
23 oilheat industry in a State from a list of nominees
24 submitted by the qualified State association in the
25 State.

1 (2) VACANCIES.—A vacancy in the Alliance
2 shall be filled in the same manner as the original se-
3 lection.

4 (b) REPRESENTATION.—In selecting members of the
5 Alliance, the qualified industry organization shall make
6 best efforts to select members that are representative of
7 the oilheat industry, including representation of—

8 (1) interstate and intrastate operators among
9 retail marketers;

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

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

14 (4) diverse geographic regions of the country.

15 (c) NUMBER OF MEMBERS.—

16 (1) IN GENERAL.—The membership of the Alli-
17 ance shall be as follows:

18 (A) One member representing each State
19 with oilheat sales in excess of 32,000,000 gal-
20 lons per year.

21 (B) If fewer than 24 States are rep-
22 resented under subparagraph (A), 1 member
23 representing each of the States with the highest
24 volume of annual oilheat sales, as necessary to
25 cause the total number of States represented

1 under subparagraph (A) and this subparagraph
2 to equal 24.

3 (C) 5 representatives of retail marketers, 1
4 each to be selected by the qualified State asso-
5 ciations of the 5 States with the highest volume
6 of annual oilheat sales.

7 (D) 5 additional representatives of retail
8 marketers.

9 (E) 21 representatives of wholesale dis-
10 tributors.

11 (F) 6 public members, who shall be rep-
12 resentatives of significant users of oilheat, the
13 oilheat research community, State energy offi-
14 cials, or other groups knowledgeable about
15 oilheat.

16 (2) FULL-TIME OWNERS OR EMPLOYEES.—

17 Other than the public members, Alliance members
18 shall be full-time owners or employees of members of
19 the oilheat industry, except that members described
20 in subparagraphs (C), (D), and (E) of paragraph (1)
21 may be employees of the qualified industry organiza-
22 tion or an industry trade association.

23 (d) COMPENSATION.—Alliance members shall receive
24 no compensation for their service, nor shall Alliance mem-
25 bers be reimbursed for expenses relating to their service,

1 except that public members, on request, may be reim-
2 bursed for reasonable expenses directly related to partici-
3 pation in meetings of the Alliance.

4 (e) TERMS.—

5 (1) IN GENERAL.—Subject to paragraph (4), a
6 member of the Alliance shall serve a term of 3 years,
7 except that a member filling an unexpired term may
8 serve a total of 7 consecutive years.

9 (2) TERM LIMIT.—A member may serve not
10 more than 2 full consecutive terms.

11 (3) FORMER MEMBERS.—A former member of
12 the Alliance may be returned to the Alliance if the
13 member has not been a member for a period of 2
14 years.

15 (4) INITIAL APPOINTMENTS.—Initial appoint-
16 ments to the Alliance shall be for terms of 1, 2, and
17 3 years, as determined by the qualified industry or-
18 ganization, staggered to provide for the subsequent
19 selection of one-third of the members each year.

20 **SEC. 106. FUNCTIONS.**

21 (a) IN GENERAL.—

22 (1) PROGRAMS, PROJECTS; CONTRACTS AND
23 OTHER AGREEMENTS.—The Alliance—

24 (A) shall develop programs and projects
25 and enter into contracts or other agreements

1 with other persons and entities for imple-
2 menting this title, including programs—

3 (i) to enhance consumer and employee
4 safety and training;

5 (ii) to provide for research, develop-
6 ment, and demonstration of clean and effi-
7 cient oilheat utilization equipment; and

8 (iii) for consumer education; and
9 (B) may provide for the payment of the
10 costs of carrying out subparagraph (A) with as-
11 sessments collected under section 107.

12 (2) COORDINATION.—The Alliance shall coordi-
13 nate its activities with industry trade associations
14 and other persons as appropriate to provide efficient
15 delivery of services and to avoid unnecessary dupli-
16 cation of activities.

17 (3) ACTIVITIES.—

18 (A) EXCLUSIONS.—Activities under clause
19 (i) or (ii) of paragraph (1)(A) shall not include
20 advertising, promotions, or consumer surveys in
21 support of advertising or promotions.

22 (B) RESEARCH, DEVELOPMENT, AND DEM-
23 ONSTRATION ACTIVITIES.—

1 (i) IN GENERAL.—Research, develop-
2 ment, and demonstration activities under
3 paragraph (1)(A)(ii) shall include—

4 (I) all activities incidental to re-
5 search, development, and demonstra-
6 tion of clean and efficient oilheat utili-
7 zation equipment; and

8 (II) the obtaining of patents, in-
9 cluding payment of attorney’s fees for
10 making and perfecting a patent appli-
11 cation.

12 (ii) EXCLUDED ACTIVITIES.—Re-
13 search, development, and demonstration
14 activities under paragraph (1)(A)(ii) shall
15 not include research, development, and
16 demonstration of oilheat utilization equip-
17 ment with respect to which technically fea-
18 sible and commercially feasible operations
19 have been verified, except that funds may
20 be provided for improvements to existing
21 equipment until the technical feasibility
22 and commercial feasibility of the operation
23 of those improvements have been verified.

1 (b) PRIORITIES.—In the development of programs
2 and projects, the Alliance shall give priority to issues relat-
3 ing to—

- 4 (1) research, development, and demonstration;
- 5 (2) safety;
- 6 (3) consumer education; and
- 7 (4) training.

8 (c) ADMINISTRATION.—

9 (1) OFFICERS; COMMITTEES; BYLAWS.—The
10 Alliance—

11 (A) shall select from among its members a
12 chairperson and other officers as necessary;

13 (B) may establish and authorize commit-
14 tees and subcommittees of the Alliance to take
15 specific actions that the Alliance is authorized
16 to take; and

17 (C) shall adopt bylaws for the conduct of
18 business and the implementation of this title.

19 (2) SOLICITATION OF OILHEAT INDUSTRY COM-
20 MENT AND RECOMMENDATIONS.—The Alliance shall
21 establish procedures for the solicitation of oilheat in-
22 dustry comment and recommendations on any sig-
23 nificant contracts and other agreements, programs,
24 and projects to be funded by the Alliance.

1 (3) ADVISORY COMMITTEES.—The Alliance may
2 establish advisory committees consisting of persons
3 other than Alliance members.

4 (4) VOTING.—Each member of the Alliance
5 shall have 1 vote in matters before the Alliance.

6 (d) ADMINISTRATIVE EXPENSES.—

7 (1) IN GENERAL.—The administrative expenses
8 of operating the Alliance (not including costs in-
9 curred in the collection of assessments under section
10 107) plus amounts paid under paragraph (2) shall
11 not exceed 7 percent of the amount of assessments
12 collected in any calendar year, except that during
13 the first year of operation of the Alliance such ex-
14 penses and amounts shall not exceed 10 percent of
15 the amount of assessments.

16 (2) REIMBURSEMENT OF THE SECRETARY.—

17 (A) IN GENERAL.—The Alliance shall an-
18 nually reimburse the Secretary for costs in-
19 curred by the Federal Government relating to
20 the Alliance.

21 (B) LIMITATION.—Reimbursement under
22 subparagraph (A) for any calendar year shall
23 not exceed the amount that the Secretary deter-
24 mines is twice the average annual salary of 1
25 employee of the Department of Energy.

1 (e) BUDGET.—

2 (1) PUBLICATION OF PROPOSED BUDGET.—Be-
3 fore August 1 of each year, the Alliance shall pub-
4 lish for public review and comment a proposed budg-
5 et for the next calendar year, including the probable
6 costs of all programs, projects, and contracts and
7 other agreements.

8 (2) SUBMISSION TO THE SECRETARY AND CON-
9 GRESS.—After review and comment under para-
10 graph (1), the Alliance shall submit the proposed
11 budget to the Secretary and Congress.

12 (3) RECOMMENDATIONS BY THE SECRETARY.—
13 The Secretary may recommend for inclusion in the
14 budget programs and activities that the Secretary
15 considers appropriate.

16 (4) IMPLEMENTATION.—The Alliance shall not
17 implement a proposed budget until the expiration of
18 60 days after submitting the proposed budget to the
19 Secretary.

20 (f) RECORDS; AUDITS.—

21 (1) RECORDS.—The Alliance shall—

22 (A) keep records that clearly reflect all of
23 the acts and transactions of the Alliance; and

24 (B) make the records available to the pub-
25 lic.

1 (2) AUDITS.—

2 (A) IN GENERAL.—The records of the Alli-
3 ance (including fee assessment reports and ap-
4 plications for refunds under section 107(b)(4))
5 shall be audited by a certified public accountant
6 at least once each year and at such other times
7 as the Alliance may designate.

8 (B) AVAILABILITY OF AUDIT REPORTS.—
9 Copies of each audit report shall be provided to
10 the Secretary, the members of the Alliance, and
11 the qualified industry organization, and, on re-
12 quest, to other members of the oilheat industry.

13 (C) POLICIES AND PROCEDURES.—

14 (i) IN GENERAL.—The Alliance shall
15 establish policies and procedures for audit-
16 ing compliance with this title.

17 (ii) CONFORMITY WITH GAAP.—The
18 policies and procedures established under
19 clause (i) shall conform with generally
20 accepted accounting principles.

21 (g) PUBLIC ACCESS TO ALLIANCE PROCEEDINGS.—

22 (1) PUBLIC NOTICE.—The Alliance shall give at
23 least 30 days' public notice of each meeting of the
24 Alliance.

1 (2) MEETINGS OPEN TO THE PUBLIC.—Each
2 meeting of the Alliance shall be open to the public.

3 (3) MINUTES.—The minutes of each meeting of
4 the Alliance shall be made available to and readily
5 accessible by the public.

6 (h) ANNUAL REPORT.—Each year the Alliance shall
7 prepare and make publicly available a report that—

8 (1) includes a description of all programs,
9 projects, and contracts and other agreements under-
10 taken by the Alliance during the previous year and
11 those planned for the current year; and

12 (2) details the allocation of Alliance resources
13 for each such program and project.

14 **SEC. 107. ASSESSMENTS.**

15 (a) RATE.—The assessment rate shall be equal to
16 two-tenths-cent per gallon of No. 1 distillate and No. 2
17 dyed distillate.

18 (b) COLLECTION RULES.—

19 (1) COLLECTION AT POINT OF SALE.—The as-
20 sessment shall be collected at the point of sale of
21 No. 1 distillate and No. 2 dyed distillate by a whole-
22 sale distributor to a person other than a wholesale
23 distributor, including a sale made pursuant to an
24 exchange.

1 (2) RESPONSIBILITY FOR PAYMENT.—A whole-
2 sale distributor—

3 (A) shall be responsible for payment of an
4 assessment to the Alliance on a quarterly basis;
5 and

6 (B) shall provide to the Alliance certifi-
7 cation of the volume of fuel sold.

8 (3) NO OWNERSHIP INTEREST.—A person that
9 has no ownership interest in No. 1 distillate or No.
10 2 dyed distillate shall not be responsible for payment
11 of an assessment under this section.

12 (4) FAILURE TO RECEIVE PAYMENT.—

13 (A) REFUND.—A wholesale distributor
14 that does not receive payments from a pur-
15 chaser for No. 1 distillate or No. 2 dyed dis-
16 tillate within 1 year of the date of sale may
17 apply for a refund from the Alliance of the as-
18 sessment paid.

19 (B) AMOUNT.—The amount of a refund
20 shall not exceed the amount of the assessment
21 levied on the No. 1 distillate or No. 2 dyed dis-
22 tillate for which payment was not received.

23 (5) IMPORTATION AFTER POINT OF SALE.—The
24 owner of No. 1 distillate or No. 2 dyed distillate im-
25 ported after the point of sale—

1 (A) shall be responsible for payment of the
2 assessment to the Alliance at the point at which
3 the product enters the United States; and

4 (B) shall provide to the Alliance certifi-
5 cation of the volume of fuel imported.

6 (6) LATE PAYMENT CHARGE.—The Alliance
7 may establish a late payment charge and rate of in-
8 terest to be imposed on any person who fails to
9 remit or pay to the Alliance any amount due under
10 this title.

11 (7) ALTERNATIVE COLLECTION RULES.—The
12 Alliance may establish, or approve a request of the
13 oilheat industry in a State for, an alternative means
14 of collecting the assessment if another means is de-
15 termined to be more efficient or more effective.

16 (c) SALE FOR USE OTHER THAN AS OILHEAT.—No.
17 1 distillate and No. 2 dyed distillate sold for uses other
18 than as oilheat are excluded from the assessment.

19 (d) INVESTMENT OF FUNDS.—Pending disbursement
20 under a program, project, or contract or other agreement
21 the Alliance may invest funds collected through assess-
22 ments, and any other funds received by the Alliance,
23 only—

24 (1) in obligations of the United States or any
25 agency of the United States;

1 (2) in general obligations of any State or any
2 political subdivision of a State;

3 (3) in any interest-bearing account or certifi-
4 cate of deposit of a bank that is a member of the
5 Federal Reserve System; or

6 (4) in obligations fully guaranteed as to prin-
7 cipal and interest by the United States.

8 (e) STATE, LOCAL, AND REGIONAL PROGRAMS.—

9 (1) COORDINATION.—The Alliance shall estab-
10 lish a program coordinating the operation of the Al-
11 liance with the operator of any similar State, local,
12 or regional program created under State law (includ-
13 ing a regulation), or similar entity.

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

16 (A) IN GENERAL.—

17 (i) BASE AMOUNT.—The Alliance
18 shall make available to the qualified State
19 association of each State an amount equal
20 to 15 percent of the amount of assess-
21 ments collected in the State.

22 (ii) ADDITIONAL AMOUNT.—

23 (I) IN GENERAL.—A qualified
24 State association may request that the
25 Alliance provide to the association any

1 portion of the remaining 85 percent of
2 the amount of assessments collected
3 in the State.

4 (II) REQUEST REQUIREMENTS.—

5 A request under this clause shall—

6 (aa) specify the amount of
7 funds requested;

8 (bb) describe in detail the
9 specific uses for which the re-
10 quested funds are sought;

11 (cc) include a commitment
12 to comply with this title in using
13 the requested funds; and

14 (dd) be made publicly avail-
15 able.

16 (III) DIRECT BENEFIT.—The Al-
17 liance shall not provide any funds in
18 response to a request under this
19 clause unless the Alliance determines
20 that the funds will be used to directly
21 benefit the oilheat industry.

22 (IV) MONITORING; TERMS, CON-
23 DITIONS, AND REPORTING REQUIRE-
24 MENTS.—The Alliance shall—

1 (aa) monitor the use of
2 funds provided under this clause;
3 and

4 (bb) impose whatever terms,
5 conditions, and reporting require-
6 ments that the Alliance considers
7 necessary to ensure compliance
8 with this title.

9 **SEC. 108. MARKET SURVEY AND CONSUMER PROTECTION.**

10 (a) PRICE ANALYSIS.—Beginning 2 years after es-
11 tablishment of the Alliance and annually thereafter, the
12 Secretary of Commerce, using only data provided by the
13 Energy Information Administration and other public
14 sources, shall prepare and make available to the Congress,
15 the Alliance, the Secretary of Energy, and the public, an
16 analysis of changes in the price of oilheat relative to other
17 energy sources. The oilheat price analysis shall compare
18 indexed changes in the price of consumer grade oilheat
19 to a composite of indexed changes in the price of residen-
20 tial electricity, residential natural gas, and propane on an
21 annual national average basis. For purposes of indexing
22 changes in oilheat, residential electricity, residential nat-
23 ural gas, and propane prices, the Secretary of Commerce
24 shall use a 5-year rolling average price beginning with the
25 year 4 years prior to the establishment of the Alliance.

1 (b) **AUTHORITY TO RESTRICT ACTIVITIES.**—If in any
2 year the 5-year average price composite index of consumer
3 grade oilheat exceeds the 5-year rolling average price com-
4 posite index of residential electricity, residential natural
5 gas, and propane in an amount greater than 10.1 percent,
6 the activities of the Alliance shall be restricted to research
7 and development, training, and safety matters. The Alli-
8 ance shall inform the Secretary of Energy and the Con-
9 gress of any restriction of activities under this subsection.
10 Upon expiration of 180 days after the beginning of any
11 such restriction of activities, the Secretary of Commerce
12 shall again conduct the oilheat price analysis described in
13 subsection (a). Activities of the Alliance shall continue to
14 be restricted under this subsection until the price index
15 excess is 10.1 percent or less.

16 **SEC. 109. COMPLIANCE.**

17 (a) **IN GENERAL.**—The Alliance may bring a civil ac-
18 tion in United States district court to compel payment of
19 an assessment under section 107.

20 (b) **COSTS.**—A successful action for compliance under
21 this section may also require payment by the defendant
22 of the costs incurred by the Alliance in bringing the action.

23 **SEC. 110. LOBBYING RESTRICTIONS.**

24 No funds derived from assessments under section 107
25 collected by the Alliance shall be used to influence legisla-

tion or elections, except that the Alliance may use such funds to formulate and submit to the Secretary recommendations for amendments to this title or other laws that would further the purposes of this title.

SEC. 111. 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. 112. VIOLATIONS.

(a) PROHIBITION.—It shall be unlawful for any person to conduct a consumer education activity, undertaken with funds derived from assessments collected by the Alliance under section 107, 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.

(b) COMPLAINTS.—

(1) IN GENERAL.—A public utility that is aggrieved by a violation described in subsection (a) may file a complaint with the Alliance.

(2) TRANSMITTAL TO QUALIFIED STATE ASSOCIATION.—A complaint shall be transmitted concur-

rently to any qualified State association undertaking the consumer education activity with respect to which the complaint is made.

(3) CESSATION OF ACTIVITIES.—On 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 that consumer education activity until—

(A) the complaint is withdrawn; or

(B) a court determines that the conduct of the activity complained of does not constitute a violation of subsection (a).

(c) RESOLUTION BY PARTIES.—

(1) IN GENERAL.—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.

(2) WITHDRAWAL OF COMPLAINT.—If the issues in dispute are resolved in those discussions, the complaining party shall withdraw its complaint.

(d) JUDICIAL REVIEW.—

1 (1) IN GENERAL.—A public utility filing a com-
 2 plaint under this section, the Alliance, a qualified
 3 State association undertaking the consumer edu-
 4 cation activity with respect to which a complaint
 5 under this section is made, or any person aggrieved
 6 by a violation of subsection (a) may seek appropriate
 7 relief in United States district court.

8 (2) RELIEF.—A public utility filing a complaint
 9 under this section shall be entitled to temporary and
 10 injunctive relief enjoining the consumer education
 11 activity with respect to which a complaint under this
 12 section is made until—

13 (A) the complaint is withdrawn; or

14 (B) the court has determined that the con-
 15 sumer education activity complained of does not
 16 constitute a violation of subsection (a).

17 (e) ATTORNEY’S FEES.—

18 (1) MERITORIOUS CASE.—In a case in Federal
 19 court in which the court grants a public utility in-
 20 junctive relief under subsection (d), the public utility
 21 shall be entitled to recover an attorney’s fee from
 22 the Alliance and any qualified State association un-
 23 dertaking the consumer education activity with re-
 24 spect to which a complaint under this section is
 25 made.

1 (2) NONMERITORIOUS CASE.—In any case
 2 under subsection (d) in which the court determines
 3 a complaint under subsection (b) to be frivolous and
 4 without merit, the prevailing party shall be entitled
 5 to recover an attorney’s fee.

6 (f) SAVINGS CLAUSE.—Nothing in this section shall
 7 limit causes of action brought under any other law.

8 **SEC. 113. SUNSET.**

9 This title shall cease to be effective as of the date
 10 that is 4 years after the date on which the Alliance is es-
 11 tablished.

12 **TITLE II—SMALL HYDRO-**
 13 **ELECTRIC PROJECTS IN**
 14 **ALASKA**

15 **SEC. 201. ALASKA STATE JURISDICTION OVER SMALL HY-**
 16 **DROELECTRIC PROJECTS.**

17 Park I of the Federal Power Act (16 U.S.C. 792 et
 18 seq.) is amended by adding at the end the following:

19 **“SEC. 32. ALASKA STATE JURISDICTION OVER SMALL HY-**
 20 **DROELECTRIC PROJECTS.**

21 “(a) DISCONTINUANCE OF REGULATION BY THE
 22 COMMISSION.—Notwithstanding sections 4(e) and 23(b),
 23 the Commission shall discontinue exercising licensing and
 24 regulatory authority under this Park over qualifying
 25 project works in the State of Alaska, effective on the date

1 on which the Commission certifies that the State of Alaska
2 has in place a regulatory program for water-power devel-
3 opment that—

4 “(1) protects the public interest, the purposes
5 listed in paragraph (2), and the environment to the
6 same extent provided by licensing and regulation by
7 the Commission under this part and other applicable
8 Federal laws, including the Endangered Species Act
9 (16 U.S.C. 1531 et seq.) and the Fish and Wildlife
10 Coordination Act (16 U.S.C. 661 et seq.);

11 “(2) gives equal consideration to the purposes
12 of—

13 “(A) energy conservation;

14 “(B) the protection, mitigation of damage
15 to, and enhancement of, fish and wildlife (in-
16 cluding related spawning grounds and habitat);

17 “(C) the protection of recreational oppor-
18 tunities;

19 “(D) the preservation of other aspects of
20 environmental quality;

21 “(E) the interests of Alaska Natives; and

22 “(F) other beneficial public uses, including
23 irrigation, flood control, water supply, and navi-
24 gation; and

1 “(3) requires, as a condition of a license for any
2 project works—

3 “(A) the construction, maintenance, and
4 operation by a licensee at its own expense of
5 such lights and signals as may be directed by
6 the Secretary of the Department in which the
7 Coast Guard is operating, and such fishways as
8 may be prescribed by the Secretary of the Inte-
9 rior or the Secretary of Commerce, as appro-
10 priate;

11 “(B) the operation of any navigation facili-
12 ties which may be constructed as part of any
13 project to be controlled at all times by such rea-
14 sonable rules and regulations as may be made
15 by the Secretary of the Army; and

16 “(C) conditions for the protection, mitiga-
17 tion, and enhancement of fish and wildlife
18 based on recommendations received pursuant to
19 the Fish and Wildlife Coordination Act (16
20 U.S.C. 661 et seq.) from the National Marine
21 Fisheries Service, the United States Fish and
22 Wildlife Service, and State fish and wildlife
23 agencies.

1 “(b) DEFINITION OF ‘QUALIFYING PROJECT
2 WORKS’.—For purposes of this section, the term ‘quali-
3 fying project works’ means project works—

4 “(1) that are not part of a project licensed
5 under this Part or exempted from licensing under
6 this part or section 405 of the Public Utility Regu-
7 latory Policies Act of 1978 prior to the date of en-
8 actment of this section;

9 “(2) for which a preliminary permit, a license
10 application, or an application for an exemption from
11 licensing has not been accepted for filing by the
12 Commission prior to the date of enactment of sub-
13 section (c) (unless such application is withdrawn at
14 the election of the applicant);

15 “(3) that are part of a project that has a power
16 production capacity of 5,000 kilowatts or less;

17 “(4) that are located entirely within the bound-
18 aries of the State of Alaska; and

19 “(5) that are not located in whole or in part on
20 any Indian reservation, a conservation system unit
21 (as defined in section 102(4) of the Alaska National
22 Interest Lands Conservation Act (16 U.S.C.
23 3102(4))), or segment of a river designated for
24 study for addition to the Wild and Scenic Rivers
25 System.

1 “(c) ELECTION OF STATE LICENSING.—In the case
2 of nonqualifying project works that would be a qualifying
3 project works but for the fact that the project has been
4 licensed (or exempted from licensing) by the Commission
5 prior to the enactment of this section, the licensee of such
6 project may in its discretion elect to make the project sub-
7 ject to licensing and regulation by the State of Alaska
8 under this section.

9 “(d) PROJECT WORKS ON FEDERAL LANDS.—With
10 respect to projects located in whole or in part on a reserva-
11 tion, a conservation system unit, or the public lands, a
12 State license or exemption from licensing shall be subject
13 to—

14 “(1) the approval of the Secretary having juris-
15 diction over such lands; and

16 “(2) such conditions as the Secretary may pre-
17 scribe.

18 “(e) CONSULTATION WITH AFFECTED AGENCIES.—
19 The Commission shall consult with the Secretary of the
20 Interior, the Secretary of Agriculture, and the Secretary
21 of Commerce before certifying the State of Alaska’s regu-
22 latory program.

23 “(f) APPLICATION OF FEDERAL LAWS.—Nothing in
24 this section shall preempt the application of Federal envi-

1 ronmental, natural resources, or cultural resources protec-
2 tion laws according to their terms.

3 “(g) OVERSIGHT BY THE COMMISSION.—The State
4 of Alaska shall notify the Commission not later than 30
5 days after making any significant modification to its regu-
6 latory program. The Commission shall periodically review
7 the State’s program to ensure compliance with the provi-
8 sions of this section.

9 “(h) RESUMPTION OF COMMISSION AUTHORITY.—
10 Notwithstanding subsection (a), the Commission shall re-
11 assert its licensing and regulatory authority under this
12 part if the Commission finds that the State of Alaska has
13 not complied with one or more of the requirements of this
14 section.

15 “(i) DETERMINATION BY THE COMMISSION.—

16 “(1) Upon application by the Governor of the
17 State of Alaska, the Commission shall within 30
18 days commence a review of the State of Alaska’s
19 regulatory program for water-power development to
20 determine whether it complies with the requirements
21 of subsection (a).

22 “(2) The Commission’s review required by
23 paragraph (1) shall be completed within one year of
24 initiation, and the Commission shall within 30 days
25 thereafter issue a final order determining whether or

1 not the State of Alaska’s regulatory program for
 2 water-power development complies with the require-
 3 ments of subsection (a).

4 “(3) If the Commission fails to issue a final
 5 order in accordance with paragraph (2), the State of
 6 Alaska’s regulatory program for water-power devel-
 7 opment shall be deemed to be in compliance with
 8 subsection (a).

9 **TITLE III—HYDROELECTRIC** 10 **PROJECTS IN HAWAII**

11 **SEC. 301. PROJECTS ON FRESH WATERS IN THE STATE OF** 12 **HAWAII.**

13 Section 4(e) of the Federal Power Act (16 U.S.C.
 14 797(e)) is amended in the first sentence by striking “sev-
 15 eral States, or upon” and inserting “several States (except
 16 fresh waters in the State of Hawaii, unless a license would
 17 be required under section 23), or upon”.

18 **TITLE IV—ARROWROCK DAM** 19 **HYDROELECTRIC PROJECT**

20 **SEC. 401. EXTENSION OF TIME FOR FEDERAL ENERGY REG-** 21 **ULATORY COMMISSION PROJECT.**

22 Notwithstanding the time period specified in section
 23 13 of the Federal Power Act (16 U.S.C. 806) that would
 24 otherwise apply to the Federal Energy Regulatory Com-
 25 mission project numbered 4656, the Commission may, at

1 the request of the licensee for the project and after reason-
2 able notice, in accordance with the good faith, due dili-
3 gence, and public interest requirements of that section and
4 the Commission's procedures under that section, extend
5 until March 26, 2005, the time period during which the
6 licensee is required to commence construction of the
7 project.

Passed the Senate November 19, 1999.

Attest:

Secretary.

106TH CONGRESS
1ST SESSION

S. 348

AN ACT

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.

S 348 ES——2

S 348 ES——3

S 348 ES——4

S 348 ES——5

S 348 ES——6

S 348 ES——7

S 348 ES——8

S 348 ES——9

S 348 ES——10