

# Bill as Introduced

HB 1291-FN - AS INTRODUCED

2010 SESSION

10-2049

08/10

HOUSE BILL            **1291-FN**

AN ACT                relative to the fuel oil importation fee.

SPONSORS:            Rep. C. Christensen, Hills 19; Rep. Webb, Merr 2; Sen. Lasky, Dist 13

COMMITTEE:          Ways and Means

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ANALYSIS

This bill makes permanent an increase in import fees for the fuel oil discharge cleanup fund.

This bill is a request of the oil fund disbursement board and the department of environmental services.

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Explanation:        Matter added to current law appears in ***bold italics***.  
                         Matter removed from current law appears [~~in brackets and struckthrough.~~]  
                         Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Ten*

AN ACT           relative to the fuel oil importation fee.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1           1 Fuel Oil Import Fees. Amend RSA 146-E:3,II to read as follows:

2           II. A fee of [~~\$.01~~] *\$0.0125* per gallon of fuel oil shall be assessed at the time of importation  
3 into this state. [~~An additional fee of \$.0025 per gallon of fuel oil shall be assessed on imports after~~  
4 ~~July 1, 2009. Assessment of this additional fee shall be discontinued on June 30, 2010.~~]

5           2 Effective Date. This act shall take effect July 1, 2010.

LBAO  
10-2049  
10/26/09

**HB 1291-FN - FISCAL NOTE**

AN ACT                    relative to the fuel oil importation fee.

**FISCAL IMPACT:**

The Department of Environmental Services states this bill will increase state restricted revenues and expenditures by \$683,075 in FY 2011 and each year thereafter. This bill may increase state, county and local expenditures by an indeterminable amount in FY 2011 and each year thereafter. This bill will have no fiscal impact on county and local revenues.

**METHODOLOGY:**

The Department of Environmental Services states this bill permanently increases fuel oil fees paid by licensed distributors from \$.01 per gallon to \$.0125 per gallon. The Department states the fee provides restricted revenues designated to the Fuel Oil Discharge Cleanup Fund. The Department expects fuel imports in FY 2011 and thereafter to at least equal FY 2008 imports (273,229,900 gallons). Under this assumption the Department estimates state restricted revenues will increase by \$683,075 (273,229,900 Gallons \* \$.0025/Gallon) in FY 2011 and each year thereafter. The Department states expenditures for reimbursements will increase by an equal amount.

The Department states licensed distributors may pass all or a portion of the import fee increase to state, county and local governments. The Department has no information on how much fuel oil is purchased by state, county or local governments or the portion of the import fee that licensed distributors might pass to purchasers of fuel oil so the exact fiscal impact cannot be determined at this time.

# Amendments

NOT ADOPTED

Amendment to HB 1291-FN

1 Amend the bill by inserting after section 1 the following and renumbering the original section 2 to  
2 read as 4:

3

4 2 Fuel Oil Discharge Disposal Cleanup Fund Initial Cleanup Costs. RSA 146-E:6, I is repealed  
5 and reenacted to read as follows:

6 I. The fuel oil discharge cleanup fund shall be available to owners of on-premise-use  
7 facilities and bulk storage facilities which are in compliance with this chapter, or owners of land  
8 where compliant bulk storage facilities were located, or owners of land where compliant on-premise-  
9 use facilities are or were located. The oil fund disbursement board may adopt rules for  
10 administering disbursements from the fund using the same rulemaking process and authorities  
11 established in RSA 146-D:5, I, including the development of additional eligibility criteria. Owners of  
12 bulk storage facilities or land where compliant bulk storage facilities were located shall be liable to  
13 the fund for initial cleanup costs in the manner described in RSA 146-D:6, II. Owners of on-premise-  
14 use facilities or land where complaint on-premise-use facilities are or were located shall be liable to  
15 the fund for the lesser of the initial \$500 of cleanup costs, or the balance of the prior owner's initial  
16 cost liability, to the extent such amount is expended from the fund, or for such lesser amount as is  
17 expended.

18 3 Fuel Oil Discharge Cleanup Fund Initial Cleanup Costs. Amend RSA 146-E, 6, II to read as  
19 follows:

20 II. Owners of facilities or land eligible under this chapter may apply for reimbursement of  
21 court-ordered damages to third parties for bodily injury or property damage, and for the costs of on-  
22 site and off-site cleanup of fuel oil discharges in amounts not to exceed a total of \$500,000, incurred  
23 on or after October 1, 1992. Owners of on-premise-use facilities or land eligible under this chapter  
24 who have demonstrated financial need, may apply for reimbursement of costs to meet the  
25 requirements of RSA 146-E:4, I and II in amounts not to exceed a total of \$1,500 and may apply for  
26 reimbursement of underground storage tank abandonment or removal costs in amounts not to exceed  
27 a total of \$2,500, incurred on or after the effective date of this paragraph. *For such owners who*  
28 *have demonstrated financial need, the amount of initial cleanup cost liability under*  
29 *paragraph I of this section shall be reduced to \$100.*



2010-0415h

**AMENDED ANALYSIS**

**This bill:**

- I. **Makes permanent an increase in import fees for the fuel oil discharge cleanup fund.**
- II. **Makes owners of eligible facilities liable for the lesser of the initial \$500 of cleanup costs or the balance of the cleanup cost.**
- III. **Allows moneys of eligible facilities with financial difficulty to have a reduced liability.**



NOT ADOPTED

Amendment to HB 1291-FN

1 Amend the bill by replacing all after section 1 with the following:

*NO Fuel Discharge*

2  
3 2 Report Required. The department of environmental services shall make a report on or before  
4 December 1, 2011 to the house ways and means committee reporting on the administration of the  
5 fuel oil discharge clean-up fund, detailing its adherence to fund guidance documents, departmental  
6 rules and chapter 146-E.

7 3 Repeal. RSA 146-E:3, II, relative to fuel oil ~~import~~ fees, is repealed.

*The amendment is amended by Price to delete language so that ~~only~~ only the fee increase is repealed; into Section 1 to take effect 7/1/10 & renumbered to effect 6/20/12*

8 4 Effective Date.

9 I. Section 3 of this act shall take effect June 30, 2012.

10 II. The remainder of this act shall take effect July 1, 2010.

*2. Fuel oil import fees  
II amend  
3. Effective date  
I - 7/1/10  
II - 6/30/12*



2010-0647h

AMENDED ANALYSIS

This bill:

- I. Increases the import fees for the fuel oil discharge cleanup fund.
- II. Requires a report from the department of environmental services on the administration of the fuel oil discharge cleanup fund.
- III. Prospectively repeals the import fees for the fuel oil discharge cleanup fund.

Amendment to HB 1291-FN

1 Amend the bill by replacing all after section 1 with the following:

2

3 2 Fuel Oil Import Fees. Amend RSA 146-E:3, II to read as follows:

4 II. A fee of [~~\$0.0125~~] **\$.01** per gallon of fuel oil shall be assessed at the time of importation  
5 into this state.

6 3 Report Required. The oil fund disbursement board shall make a report on or before  
7 December 1, 2011 to the house ways and means committee reporting on the administration of the  
8 fuel oil discharge clean-up fund, and detailing its adherence to fund guidance documents,  
9 departmental rules, and chapter 146-E.

10 4 Effective Date.

11 I. Section 2 of this act shall take effect July 1, 2012.

12 II. The remainder of this act shall take effect July 1, 2010.

2010-0656h

AMENDED ANALYSIS

This bill:

- I. Increases the import fees for the fuel oil discharge cleanup fund.
- II. Requires a report from the oil fund disbursement board on the administration of the fuel oil discharge cleanup fund.
- III. Repeals the increase in the import fees for the fuel oil discharge cleanup fund effective July 1, 2012.

# Speakers



# Hearing Minutes

HOUSE COMMITTEE ON WAYS AND MEANS

PUBLIC HEARING ON HB 1291

**BILL TITLE:** relative to the fuel oil importation fee.

**DATE:** 2/2/10

**LOB ROOM:** 202      **Time Public Hearing Called to Order:** 10:05 a.m

**Time Adjourned:** 10:43 a.m

(please circle if present)

**Committee Members:** Reps. Almy, Hatch, Davis, Butynski, Vachon, Shattuck, J. Kelley, Mack,  
W. Johnson, S. Price, Walsh, Major, Griffin, Lockwood, Boutin, Bettencourt, R. Ober, Sapareto,  
Ulery and Osgood.

**Bill Sponsors:** Reps. C. Christ<sup>e</sup>nsen, Webb, Sen. Lasky

TESTIMONY

\* Use asterisk if written testimony and/or amendments are submitted.

\***Rep. Chris Christiansen**, prime sponsor and Chair of Oil Fund Disbursement Board  
-Supports, submitted written testimony

\***Mike Wimsatt and Kim Denison**, representing NH DES, supporting the bill  
-Submitted written testimony and amendment  
-After discussion agreed to ignore the amendment attached and instead hold it for HB 1292  
-Annual report due on 10/2/09 but has not been completed due to problems obtaining data from new ERP system, but even more complete information is available through the recently released LBAO audit.  
-Oil Fund Disbursement Board uses same rates for reimbursement as negotiated by NHDES; average cleanup cost is \$17,300; use guide of \$1,500 for safe tank installation.

Respectfully submitted,



Rep. William Butynski,  
CLERK OF THE COMMITTEE

HOUSE COMMITTEE ON WAYS AND MEANS

PUBLIC HEARING ON HB 1291

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Bill Sponsors: Reps. C. Christensen, Webb, Sen. Lasky

TESTIMONY

\* Use asterisk if written testimony and/or amendments are submitted.

*★ Reps. Chris Christensen, Prime Sponsor & Chair, Oil Fund Reimbursement Board (Chair) & Mike Wimsatt & Kim Demiro of NH DES - Support the bill & have written testimony & amendment. After discussion, agreed to ignore the amendment attached & instead hold it for HB 1292; annual report due to our 10/2/09 has not yet been completed, due to problems obtaining data from the new ERP systems but even more complete information is available through the recently released LBAO audit. Oil Fund Reimbursement Board uses same rates for reimbursement as negotiated by NH DES, average cleanup cost is \$17,300; new guide of \$1,500 for safe tank installations.*



# Testimony



The State of New Hampshire  
**DEPARTMENT OF ENVIRONMENTAL SERVICES**



**Thomas S. Burack, Commissioner**

February 3, 2010

The Honorable Susan W. Almy, Chairman  
House Ways and Means Committee  
Room 202  
Legislative Office Building  
Concord, New Hampshire 03301

**SUBJECT: HB 1291-FN, Relative to the Fuel Oil Importation Fee  
Requested information from the 2009 Annual Report  
of the Petroleum Reimbursement Fund Program**

Dear Chairman Almy:

Per your request, please find enclosed the Funds Summary Table (25 copies) excerpted from the 2009 annual report of the Petroleum Reimbursement Fund Program. The table outlines the import fee, revenues, annual budget, and balance of the Fuel Oil (heating oil) Discharge Cleanup Fund established under RSA 146-E, and administered by the Oil Fund Disbursement Board. The table also includes this information for the other petroleum cleanup funds administered by the Board.

If you have any questions please contact Tim Denison at 271-2570 or [Timothy.Denison@des.nh.gov](mailto:Timothy.Denison@des.nh.gov), or me at 271-1997, [Michael.Wimsatt@des.nh.gov](mailto:Michael.Wimsatt@des.nh.gov).

Sincerely yours,

Michael J. Wimsatt, Director  
Waste Management Division

Enclosures

cc: Rep. Chris Christensen, Chair, Oil Fund Disbursement Board  
Rep. Leigh Webb  
Sen. Bette Lasky  
Tim Denison – DES (e-cc)

N.H. PETROLEUM CLEANUP REIMBURSEMENT FUNDS SUMMARY - Annual Report 11/23/09

STATUTE	FUND NAME	PETROLEUM TYPE <sup>1</sup>	IMPORT FEE PER GALLON	FY 2009 REVENUES	FUND TYPE <sup>2</sup>	FUND USE	FUND BALANCE 6/30/09	ANNUAL BUDGET FY 2010 <sup>3</sup>
RSA 146-D Effective 7/1/1988	Oil Discharge and Disposal Cleanup Fund (ODDCF)	Motor fuels (gasoline & diesel)	\$0.0125 on gasoline \$0.015 on diesel	\$11,159,871	Financial responsibility (Excess insurance)	Reimbursement for clean up by owners of regulated motor fuel USTs and ASTs	\$948,655	\$12,827,345
RSA 146-E Effective 8/28/1993	Fuel Oil Discharge Cleanup Fund (FODCF)	Heating oil	\$0.01 \$0.0025 additional for FY 2010	\$2,793,379	Excess insurance	Reimbursement for clean up by owners of heating oil facilities (primarily homeowners)	\$382,744	\$2,996,461
RSA 146-F Effective 7/1/1995	Motor Oil Discharge Cleanup Fund (MODCF)	Motor oil	\$0.04	\$254,955	Excess insurance	Reimbursement for clean up by owners of motor oil storage facilities (primarily service stations and automobile dealers)	\$387,279	\$208,703
RSA 146-G Effective 7/1/ 2001	Gasoline Remediation & Elimination of Ethers (GREE) Fund	Gasoline Containing Ethers ("MtBE")	\$.0025	\$1,803,856	Remediation of gasoline ether contamination	Reimbursement to owners of impacted water supplies and source properties	\$1,194,949	\$1,852,662
<b>Total:</b>								<b>\$17,885,171</b>

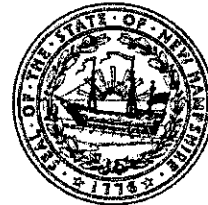
NOTES:

- Petroleum type indicates the type of petroleum on which the import fee is assessed and/or the nature of the facility or petroleum release which can be addressed by the fund.
- Financial responsibility of up to \$1,000,000 for cleanup costs and third-party damages is required for all motor fuel underground storage tanks. The ODDCF is a USEPA-approved financial responsibility mechanism for underground storage tanks in New Hampshire. The ODDCF, FODCF, and MODCF operate as excess insurance funds. The GREE fund operates as a remediation fund only. This fund is available to owners of public and private water supplies who incur costs for periodic monitoring and for replacement of contaminated supplies, and owners of sites that are a source of gasoline ether contamination. The fund is also available to pay NHDES contractor costs for providing temporary potable water and performing investigations to determine sources of gasoline ether contamination.
- Annual budgets include corrective action funding and program management and administrative costs. Management and administrative costs are allocated to each fund on a percentage basis in consideration of fund activity.

2/2/10 - HB1291



The State of New Hampshire  
**DEPARTMENT OF ENVIRONMENTAL SERVICES**



**Thomas S. Burack, Commissioner**

**Rep. D.L. Chris Christensen, Chairman**

*Oil Fund Disbursement Board*

February 2, 2010

The Honorable Susan W. Almy, Chairman  
House Ways and Means Committee  
Room 202  
Legislative Office Building  
Concord, New Hampshire 03301

**SUBJECT: HB 1291-FN, Relative to the Fuel Oil Importation Fee**

Dear Chairman Almy:

Thank you for the opportunity to testify in support of House Bill 1291-FN. This bill would make permanent the additional \$0.0025 per gallon fuel oil import fee approved by the Legislature for FY 2010 (Laws of 2009, Chapter 231, HB 296-FN-A), which provides supplemental income for the Fuel Oil Discharge Cleanup Fund (FODCF) established as a dedicated environmental cleanup fund under RSA 146-E in 1993. In a December 2009 FODCF Performance Audit Report, the Legislative Budget Assistant (LBA) concluded that the fund is effective and functioning as intended. However, the LBA also concluded that insufficient FODCF income has caused delays in environmental cleanup and has restricted funding for low income homeowners to repair or replace substandard fuel oil storage tanks, which prevents releases and avoids more costly cleanup. From FY 2000 through FY 2009, the FODCF import fee was \$0.01 per gallon. Making the FY 2010 additional fee permanent, i.e., establishing the import fee at \$0.0125 per gallon, could generate an estimated \$683,000 in supplemental income each year. 100% of this supplemental income would be passed-through to eligible parties, to help achieve the expected level of FODCF services.

RSA 146-E provides authorization and funding for important and very successful programs administered by the Oil Fund Disbursement Board (Board) for the statewide cleanup of fuel oil contamination and prevention of fuel oil releases, to the direct benefit of New Hampshire citizens. Such contamination is a significant risk to public health and the environment. Insurance is not available for most cleanup costs. In fact, homeowner policies often specifically exclude such coverage. Owners of fuel oil storage facilities, including individuals, businesses, state agencies, local governments and most notably single-family homeowners, have depended on the FODCF since 1993 to fund cleanup work. Low income homeowners have depended on the FODCF since 1999 to fund replacement of substandard heating oil storage tanks to prevent releases.

Because annual income at the \$0.01 per gallon import fee has remained level in recent years, the fuel oil release prevention program (known as "SAFETANK") is not in full operation, and FODCF income is currently directed primarily toward contamination cleanup. Increased income in FY 2010 due to the additional \$.0025 per gallon fuel oil import fee, and a transfer of \$400,000 from the Oil Pollution Control Fund included under HB 296-FN-A, has allowed processing of many cleanup payments held over from FY 2009. However, the fund balance has not stabilized enough such that SAFETANK operations may be increased.

The FODCF fiscal situation is shown in the table below.

Fiscal Year	Income	Expenses	Annual Income vs. Expense (Deficit) Surplus	Balance
2006	\$3,081,973	\$3,377,335	(\$295,362)	\$661,812
2007	\$3,171,445	\$2,970,517	\$200,928	\$862,740
2008	\$2,867,751	\$2,789,479	\$78,272	\$941,012
2009	\$2,743,665	\$3,301,932	(\$558,267)	\$382,745
2010 (1)	\$1,910,237(2)	\$1,814,448	\$95,789	\$478,534

(1) As of January 31, 2010.

(2) Income includes a \$400,000 transfer from the OPCF approved under HB 296-FN-A in 2009.

When fully active, demand for SAFETANK funding is \$500,000 per year, demand for cleanup funding is \$2,500,000 per year, and administrative costs are budgeted at approximately \$400,000 for FY 2010, for a total of \$3,400,000 for the FODCF programs. If fuel oil imports remain at FY 2008 - 2009 levels, a \$0.0125 per gallon import fee would generate annual income of approximately \$3,420,000. Further, in consideration of the LBA audit findings, the Board also supports amending HB 1291-FN to increase the existing \$100 cleanup cost "deductible" (established in 1997) to \$500 for all FODCF recipients, except those qualifying for the SAFETANK program. This would yield approximately \$56,800 in annual cleanup cost savings that can be re-directed to the SAFETANK program, to fund up to 38 tank replacements. A proposed amendment is attached, and if approved, HB 1291-FN would have to be reconciled with HB 1292. HB 1292 also repeals and reenacts RSA 146-E: 6, I with the same language as the attached amendment, however the deductible is still at \$100.

Making the FY 2010 fuel oil import fee increase permanent may result in a nominal consumer cost increase of \$2.50 per 1,000 gallons of fuel oil purchased. We believe increasing the deductible from \$100 to \$500 is reasonable considering cleanup funding recipients receive an average of \$17,300 in FODCF coverage. These small cost increases provide needed FODCF resources for maintaining and restoring environmental quality and protecting public health for all citizens/consumers throughout New Hampshire.

Thank you for your careful consideration of this important bill. If you have questions, please contact Michael Wimsatt, Director of the Waste Management Division at (603) 271-2905 [Michael.Wimsatt@des.nh.gov](mailto:Michael.Wimsatt@des.nh.gov), or Timothy R. Denison at (603) 271-2570 [Timothy.Denison@des.nh.gov](mailto:Timothy.Denison@des.nh.gov). Detailed FODCF program operating reports are available.

Sincerely,



Rep. D.L. Chris Christensen, Chairman  
Oil Fund Disbursement Board



Thomas S. Burack, Commissioner  
Department of Environmental Services

Attachment

cc: Members of the Ways and Means Committee  
Rep. Leigh Webb  
Sen. Bette Lasky  
Oil Fund Disbursement Board

# TITLE X PUBLIC HEALTH

## CHAPTER 146-E FUEL OIL DISCHARGE CLEANUP FUND

### Section 146-E:1

**146-E:1 Purpose.** – The general court finds that discharges of fuel oil represent a potential serious health and safety problem to the citizens of New Hampshire and a threat to the quality of the groundwaters and surface waters of the state. In addition, the cost of cleanup of fuel oil discharges is a significant economic burden for which economic assistance is otherwise not available. The purpose of this chapter is to establish a fund to be used in addressing the costs incurred in the prevention and cleanup of fuel oil discharges.

**Source.** 1993, 337:1. 1999, 164:5, eff. July 1, 1999.

# TITLE X PUBLIC HEALTH

## CHAPTER 146-E FUEL OIL DISCHARGE CLEANUP FUND

### Section 146-E:4

#### **146-E:4 Requirements for On-Premise-Use Facilities. –**

I. On-premise-use facilities installed on or after the effective date of this act shall comply with the provisions of the National Fire Protection Association standard NFPA 31, and all applicable local codes or ordinances.

II. All on-premise-use facilities shall be equipped with a vent alarm system on or before July 1, 1995.

III. On-premise-use facilities subject to the provisions of RSA 146-C shall comply with the provisions of New Hampshire code of administrative rules Env-Ws 411.

**Source.** 1993, 337:1. 1995, 282:4, eff. July 1, 1995.

# TITLE X

## PUBLIC HEALTH

### CHAPTER 146-E

### FUEL OIL DISCHARGE CLEANUP FUND

#### Section 146-E:6

##### **146-E:6 Eligible Expenses. —**

I. The fund shall be available to owners of on-premise-use facilities, owners of land upon which on-premise-use facilities are located, and bulk storage facilities as defined in this chapter. The oil fund disbursement board may adopt rules for administering disbursements from the fund using the same rulemaking process and authorities established in RSA 146-D:5, I, including the development of additional eligibility criteria. Owners of bulk storage facilities shall be liable to the fund for initial cleanup costs in the manner described in RSA 146-D:6, II. Owners of on-premise-use facilities shall be liable to the fund for the initial \$100 of cleanup costs at each facility owned, to the extent such amount is expended from the fund, or for such lesser amount as is expended.

II. Owners of facilities or land eligible under this chapter may apply for reimbursement of court-ordered damages to third parties for bodily injury or property damage, and for the costs of on-site and off-site cleanup of fuel oil discharges in amounts not to exceed a total of \$500,000, incurred on or after October 1, 1992. Owners of on-premise-use facilities or land eligible under this chapter who have demonstrated financial need, may apply for reimbursement of costs to meet the requirements of RSA 146-E:4, I and II in amounts not to exceed a total of \$1,500 and may apply for reimbursement of underground storage tank abandonment or removal costs in amounts not to exceed a total of \$2,500, incurred on or after the effective date of this paragraph.

III. The fund shall be deemed excess insurance over any other valid and collectible insurance for the costs of cleanup and damages to third parties. There shall be no right of recovery against the fund for payments made under other insurance.

IV. Requests for reimbursement received by the oil fund disbursement board for which sufficient funds are not available shall be held by the board pending availability of funds and shall be reviewed in the order in which they were received.

V. Facilities which have not met the requirements of RSA 146-E:4 and RSA 146-E:5 shall not be eligible for reimbursement until compliance with such sections has been achieved. The board may waive the registration deadlines established by RSA 146-E:5, II on a case by case basis, for good cause.

VI. Costs of new bulk storage facilities or new on-premise-use facilities subject to regulation under RSA 146-C, or repairs to such existing facilities, shall not be considered eligible costs under this chapter.

VII. Ownership of facilities or land on which on-premises-use facilities are located, eligible under this chapter, where the facilities have been physically removed or closed in place on or after October 1, 1992 in accordance with the requirements of the department and where cleanup of oil has not yet been completed, may be transferred to a new owner, and the new owner shall be eligible to apply to the fund subject to the same compliance requirements as the original owner. After ownership is transferred, only the new owner shall be eligible for reimbursement from the fund.

VIII. Upon payment from the fund for cleanup and corrective action costs or for third party liability costs pursuant to this chapter, the right of an owner to recover any payment from any third party potentially responsible for such costs shall be assumed by the board to the extent of payment made from the fund. An owner shall not receive multiple compensation for the same injury and any such compensation shall be repaid to the fund.

**Source.** 1993, 337:1. 1995, 247:8. 1997, 39:5; 58:3. 1999, 164:7, 8, eff. July 1, 1999. 2005, 115:1, eff. Aug. 14, 2005.



# Voting Sheets

HOUSE COMMITTEE ON WAYS AND MEANS

EXECUTIVE SESSION on HB 1291

**BILL TITLE:** relative to the fuel oil importation fee.

**DATE:** February 11, 2010

**LOB ROOM:** 202

**Amendments:**

Sponsor: Rep. S. Price OLS Document #: 2010 0656h

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

**Motions:** OTP, OTP/A, DTL, Interim Study (Please circle one.)

Moved by Rep. Price

Seconded by Rep. Osgood

Vote: 13-4 (Please attach record of roll call vote.)

**Motions:** OTR, OTP/A, DTL, Interim Study (Please circle one.)

Moved by Rep. Price

Seconded by Rep. Osgood

Vote: 15-2 (Please attach record of roll call vote.)

**CONSENT CALENDAR VOTE: NO**

(Vote to place on Consent Calendar must be unanimous.)

**Statement of Intent:** Refer to Committee Report

Respectfully submitted,

Rep. William Butynski, Clerk

HOUSE COMMITTEE ON WAYS AND MEANS

EXECUTIVE SESSION on HB 1291

BILL TITLE: relative to the fuel oil importation fee.

DATE: 2/11/10

LOB ROOM: 202

Amendments:

Sponsor: Rep. *S. Price*

OLS Document #: 2010-0647 *has been amended further by*

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

*House Committee Trustee  
and then was  
amended  
further  
by  
2010-0656*

*on Amendment # 2010-~~0647~~ 0656*

Motions:  OTP  OTP/A  ITL, Interim Study (Please circle one.)

Moved by Rep. *Price*

Seconded by Rep. *Osgood*

Vote: *13 to 4* (Please attach record of roll call vote.)  
*HAND VOTE for 2010-0656 (h)*

Motions: OTP  OTP/A  ITL, Interim Study (Please circle one.)

Moved by Rep. *Price*

Seconded by Rep. *Osgood*

Vote: *15 to 2* (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE:

*NO on Regular Calendar*  
(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. William Butynski, Clerk

WAYS AND MEANS

Bill #: HB 1291 Title: relative to the fuel oil importation fee

PH Date: 2, 2, 10 Exec Session Date: 2/11/10

Motion: OTP/A Amendment #: 2010-0656 h

MEMBER	YEAS	NAYS
Almy, Susan W, Chairman	✓	
Hatch, William A, V Chairman	✓	
Davis, Frank W		✓
Butynski, William, Clerk	✓	
Vachon, Dennis P		✓
Shattuck, Gilman	✓	
Kelley, John D	✓	
Mack, Ron J	✓	
Johnson, William G	✓	
Price, Susan G	✓	
Walsh, Robert M	✓	
Major, Norman L	✓	
Griffin, Mary E	✓	
Lockwood, Priscilla P	✓	
<del>Routin, David R</del>		
<del>Bettencourt, David J</del>		
Ober, Russell T	✓	
<del>Sapareto, Frank V</del>		
Ulery, Jordan G	✓	
Osgood, Joe	✓	
	<u>15</u>	<u>2</u>

# Committee Report

**REGULAR CALENDAR**

**February 16, 2010**

**HOUSE OF REPRESENTATIVES**

**REPORT OF COMMITTEE**

The Majority of the Committee on WAYS AND MEANS  
to which was referred HB1291-FN,

AN ACT relative to the fuel oil importation fee. Having  
considered the same, report the same with the following  
amendment, and the recommendation that the bill  
OUGHT TO PASS WITH AMENDMENT.

Rep. Susan G Price

FOR THE MAJORITY OF THE COMMITTEE

## **MAJORITY COMMITTEE REPORT**

**Committee:** WAYS AND MEANS  
**Bill Number:** HB1291-FN  
**Title:** relative to the fuel oil importation fee.  
**Date:** February 16, 2010  
**Consent Calendar:** NO  
**Recommendation:** OUGHT TO PASS WITH AMENDMENT

### **STATEMENT OF INTENT**

The fuel oil discharge cleanup fund administered by the NHDES Oil Remediation and Compliance Bureau (Bureau) was established in 1993 to address converge gaps in personal and commercial property and casualty insurance policies for releases of fuel oil, also known as, home heating oil. A performance audit was conducted in 2009 and identified areas in which the Bureau was not operating efficiently or in full compliance with RSA 146-E. The audit identified the following areas of concern: 1) an absence of quality control over work scopes and project documentation resulting in a lack of readily available project documentation and inaccurate work scopes, 2) a lack of project cost documentation that reduces the ability to track the total cost of a project, 3) an absence of a requirement to make contractors submit documentation of actual time worked on a project, 4) weaknesses in allocating program management and administrative costs, tracking outstanding fund liabilities, and to assure revenues collected were accurately recorded, 5) funds were used to pay property restoration costs that are not authorized for payment by statute, 6) the Bureau was not in compliance with certain statutes, administrative rules, and policies, 7) the Bureau was not complying with rules requiring proof of lack of private insurance coverage and that the responsible party had upgraded their tank system to fire code prior to releasing payment to contractors conducting the clean ups, and 8) the deductible paid by responsible parties was low in comparison to other New England states with similar programs. The cumulative effects of these issues, as well as, a decrease in the amount of home heating oil purchased within the state, have contributed to the fund declining below levels sufficient to comply with RSA 146-E. While the Bureau has responded to some of the issues identified in the audit, the majority felt that enacting a permanent increase in the environmental fee without first receiving a report of progress on all of the issues identified in the audit, was premature. The bill was amended to allow a temporary two year increase in the fee to alleviate the immediate need for funding and the submission of a progress report to the house ways and means committee no later than December 1, 2011, to allow the committee an opportunity to evaluate the Bureau's corrective actions and to evaluate the need to increase or decrease the fee

Original: House Clerk

Cc: Committee Bill File

in the future.

Vote 15-2

Rep. Susan G Price  
FOR THE MAJORITY

Original: House Clerk  
Cc: Committee Bill File



## REGULAR CALENDAR

### WAYS AND MEANS

**HB1291-FN**, relative to the fuel oil importation fee. **OUGHT TO PASS WITH AMENDMENT.**

Rep. Susan G Price for the **Majority** of WAYS AND MEANS. The fuel oil discharge cleanup fund administered by the NHDES Oil Remediation and Compliance Bureau (Bureau) was established in 1993 to address converge gaps in personal and commercial property and casualty insurance policies for releases of fuel oil, also known as, home heating oil. A performance audit was conducted in 2009 and identified areas in which the Bureau was not operating efficiently or in full compliance with RSA 146-E. The audit identified the following areas of concern: 1) an absence of quality control over work scopes and project documentation resulting in a lack of readily available project documentation and inaccurate work scopes, 2) a lack of project cost documentation that reduces the ability to track the total cost of a project, 3) an absence of a requirement to make contractors submit documentation of actual time worked on a project, 4) weaknesses in allocating program management and administrative costs, tracking outstanding fund liabilities, and to assure revenues collected were accurately recorded, 5) funds were used to pay property restoration costs that are not authorized for payment by statute, 6) the Bureau was not in compliance with certain statutes, administrative rules, and policies, 7) the Bureau was not complying with rules requiring proof of lack of private insurance coverage and that the responsible party had upgraded their tank system to fire code prior to releasing payment to contractors conducting the clean ups, and 8) the deductible paid by responsible parties was low in comparison to other New England states with similar programs. The cumulative effects of these issues, as well as, a decrease in the amount of home heating oil purchased within the state, have contributed to the fund declining below levels sufficient to comply with RSA 146-E. While the Bureau has responded to some of the issues identified in the audit, the majority felt that enacting a permanent increase in the environmental fee without first receiving a report of progress on all of the issues identified in the audit, was premature. The bill was amended to allow a temporary two year increase in the fee to alleviate the immediate need for funding and the submission of a progress report to the house ways and means committee no later than December 1, 2011, to allow the committee an opportunity to evaluate the Bureau's corrective actions and to evaluate the need to increase or decrease the fee in the future.

**Vote 15-2.**

Original: House Clerk  
Cc: Committee Bill File

# COMMITTEE REPORT

COMMITTEE: Ways + Means

BILL NUMBER: HR 1291

TITLE: returns to the fuel oil importation fee

DATE: 2/11/10 CONSENT CALENDAR: YES  NO

OUGHT TO PASS

OUGHT TO PASS W/ AMENDMENT

INEXPEDIENT TO LEGISLATE

INTERIM STUDY (Available only 2<sup>nd</sup> year of biennium)

Amendment No.  
2010 - 0658(h)

STATEMENT OF INTENT:  
mailed attached

COMMITTEE VOTE: 15-2

RESPECTFULLY SUBMITTED,

- Copy to Committee Bill File
- Use Another Report for Minority Report

Rep. [Signature]  
For the Committee [Signature]

## HB 1291-FN

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Rep. Susan Price for the Majority



The fuel oil discharge cleanup fund administered by the NHDES Oil Remediation and Compliance Bureau was established in 1993 to address converge gaps in personal and commercial property and casualty insurance policies for releases of fuel oil, also known as, home heating oil. A performance audit was conducted in 2009 and identified areas in which the Bureau was not operating efficiently or in full compliance with RSA 146-E. The audit identified the following areas of concern: 1) an absence of quality control over work scopes and project documentation resulting in a lack of readily available project documentation and inaccurate work scopes, 2) a lack of project cost documentation that reduces the ability to track the total cost of a project, 3) an absence of a requirement to make contractors submit documentation of actual time worked on a project, 4) weaknesses in allocating program management and administrative costs, tracking outstanding fund liabilities, and to assure revenues collected were accurately recorded, 5) funds were used to pay property restoration costs that are not authorized for payment by statute, 6) the Bureau was not in compliance with certain statutes, administrative rules, and policies, 7) the Bureau was not complying with rules requiring proof of lack of private insurance coverage and that the responsible party had upgraded their tank system to fire code prior to releasing payment to contractors conducting the clean ups, and 8) the deductible paid by responsible parties was low in comparison to other New England states with similar programs. The cumulative effects of these issues, as well as, a decrease in the amount of home heating oil purchased within the state, have contributed to the fund declining below levels sufficient to comply with RSA 146-E. While the Bureau has responded to some of the issues identified in the audit, the majority felt that enacting a permanent increase in the environmental fee without first receiving a report of progress on all of the issues identified in the audit, was premature. The bill was amended to allow a temporary two year increase in the fee to alleviate the immediate need for funding and the submission of a progress report to the house ways and means committee no later than December 1, 2011, to allow the committee an opportunity to evaluate the Bureau's corrective actions and to evaluate the need to increase or decrease the fee in the future.

Rep. Susan Price for the Majority



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A handwritten signature in black ink, appearing to be 'S. Price' or similar, located in the lower right quadrant of the page.

**REGULAR CALENDAR**

**February 16, 2010**

**HOUSE OF REPRESENTATIVES**

**REPORT OF COMMITTEE**

**The Minority of the Committee on WAYS AND MEANS  
to which was referred HB1291-FN,**

**AN ACT relative to the fuel oil importation fee. Having  
considered the same, and being unable to agree with  
the Majority, report with the recommendation that the  
bill OUGHT TO PASS.**

**Rep. Dennis P Vachon**

**FOR THE MINORITY OF THE COMMITTEE**

## **MINORITY COMMITTEE REPORT**

**Committee:** WAYS AND MEANS  
**Bill Number:** HB1291-FN  
**Title:** relative to the fuel oil importation fee.  
**Date:** February 16, 2010  
**Consent Calendar:** NO  
**Recommendation:** OUGHT TO PASS

### **STATEMENT OF INTENT**

The minority believe that the committee amendment represents a violation of separation of powers as embodied in Part 1, Article 37 of the New Hampshire Constitution. The committee amendment would sunset a fee increase in two years and require the oil fund disbursement board to report back to the house committee on ways and means on its administration of the program at that time. Without this amendment, HB 1291 would make permanent a fee increase which the department of environmental services had already justified as necessary to meet the ongoing demands on the program but which the legislature had sunset pending the outcome of a performance audit which revealed no significant problems other than those related to a lack of funding of the program. The minority respectfully submits that in adopting the amendment, the committee is improperly seeking to coerce an executive department to propose a prevention program to address the future release or discharge of fuel oil from faulty or failing home fuel oil tanks rather than to see to the proper application of funds appropriated by the legislature. Although the executive branch of state government is responsible for the implementation of all laws under Part 2, Article 41, it is the responsibility of the general court under Part 2, Article 5 to establish such laws. To sunset the fee increase a second time threatens future protection of ground water that is contaminated when fuel oil is discharged into the environment from a leaking home oil tank. And, it sets a dangerous legislative precedent to sunset fee increases or programs in order to force the executive branch to propose measures which the legislature does not have political will to propose itself.

Original: House Clerk  
Cc: Committee Bill File

Rep. Dennis P Vachon  
FOR THE MINORITY

Original: House Clerk  
Cc: Committee Bill File



## REGULAR CALENDAR

### WAYS AND MEANS

**HB1291-FN**, relative to the fuel oil importation fee. **OUGHT TO PASS.**

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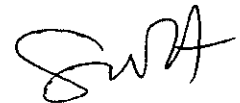
HB 1291

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Rep. Dennis Vachon



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A handwritten signature in black ink, appearing to be the initials 'SWA' in a cursive, stylized font.

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