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## Bill would protect oil pre-buy deals

By *Shira Schoenberg*

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Rep works with AG on legislation

In April 2007, the Concord-based Rumford Energy shut abruptly, leaving customers who had paid for the following year's heating oil out in the cold. In December 2009, the state attorney general's office accused Flynn's Oil Co. in Exeter of taking customers' money for pre-buy contracts but not delivering the oil.

Now, state Rep. Lee Quandt, an Exeter Republican, is working with the attorney general's office to find a new way to protect consumers who pre-buy oil. Several oil companies say they are willing to go along with the proposed measures, which would require them to set aside customers' money.

"It's certainly an added burden on dealers," said Kim Weiland, district manager for Dead River Co. in Bristol and past chairman of the Oil Heat Council of New Hampshire. "But we've all seen where dealers didn't appropriately set aside money and have defaulted, and we'd like to see that not happen again. It paints all dealers in a bad light."

Quandt's bill, which has five co-sponsors and is pending before the House Commerce and Consumer Affairs Committee, would require oil dealers to sign futures contracts with suppliers, obligating them to buy the amount of oil necessary to fulfill their pre-buy contracts. While futures contracts do not obligate a dealer to pay the money up front, the bill would require dealers to put 75 percent of the price of the oil into an escrow account. That would prevent the company from using the pre-buy money to pay for operating expenses. If the company shuts down before the oil is bought, the money in the account could be returned to customers.

"We're looking at ways to guarantee that the money or the oil is there," Quandt said.

### Safeguards

The Legislature first started regulating pre-buy oil contracts in 2007, in response to the Rumford Oil closing. Then-Sen. Harold Janeway, a Webster Democrat, tried to institute several changes to the law, including forcing oil companies to take out an insurance bond with the attorney general's office for the amount of money they are paid for pre-buy oil contracts. But oil companies opposed the proposal, and the Legislature passed a compromise bill.

"It didn't end up where we intended," Janeway said.

The law that was enacted put in some protections. It requires dealers that enter pre-buy contracts to have one of several forms of protection - a futures contract, a surety bond or a letter of credit. According to Senior Assistant Attorney General James Boffetti, who runs the state's Consumer Protection Bureau, most companies choose futures contracts, which require little up-front payment. That means the companies can collect pre-buy money from customers any time after Jan. 1 and not have to pay for the oil until that year's heating season, which begins in October. Typically, oil companies offer pre-buy deals in late spring or summer.

"The oil company could take the pre-buy money, with no obligation to safeguard it, just a promise to buy the oil down the line," Boffetti said. "If they're having financial problems, they could use pre-buy money to pay current expenses."

The problem with the law, Boffetti said, comes when a company runs out of money before it buys the oil. Boffetti said the attorney general's office was forced to take enforcement action against four oil companies in 2010 because they defaulted on pre-buy contracts.

In the Flynn's case, Boffetti said the average loss to customers was about \$2,000, though it varied widely. When Rumford Energy closed, it owed nearly 1,200 customers and companies a total of \$2.72 million, according to bankruptcy filings, though about half of that was a loan from the owner's parents.

"It happens with enough frequency that we think that statute does not work. It does not provide sufficient protections to consumers," Boffetti said.

The attorney general's office worked with Quandt and representatives of the heating oil industry to develop the bill. Quandt said he tried to satisfy concerns by oil companies that government was telling them how to run their business. The law would not change how or when companies buy their oil. "We do want to tell them if you take \$1 for oil, down the road, make sure they get \$1 worth of oil or get their \$1 back," Quandt said.

## **Following the law**

Bob Scully, executive director of the Oil Heat Council of New Hampshire, said the group supports the bill.

"Our association feels it's important to protect the customer," Scully said. "We are doing the right thing to make sure customers get fuel to heat their homes and their money is protected."

But some dealers may still object. Chuck Cosseboom, operations manager at Rymes Oil in Pembroke, said current laws are adequate to protect consumers, assuming dealers follow the law.

"All the companies today that are abiding by the laws that are in place are providing fuel as they are required to," Cosseboom said. "If this was to address a few of the smaller retailers who haven't honored their agreements . . . probably they have not met the letter of law today, and adding another provision probably won't help either."

Cosseboom has not read Quandt's proposal. But he said his concern with new regulations is that they add costs, which get passed on to the consumer. Ultimately, he said, adding too many costs leads to a situation where companies no longer sell pre-buy contracts or where customers are no longer interested in buying them.

"If the law is followed as written today, it does an adequate job protecting consumers and keeps activity at a level that's affordable for both retailers to do and consumers to afford," he said.

Weiland said there will be additional administrative costs and time needed to manage the escrow account. But he said the burden is worth it.

"As long as oil dealers that sell pre-buy contracts follow the rules, it will add significant protections for consumers," he said.

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