

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 1133

A bill to create a propane commission and to prescribe its powers and duties; to prescribe the powers and duties of certain state governmental officers and entities; to levy an assessment on the distribution of certain propane products; to provide for the administration, collection, and disposition of the assessment; to impose a late fee on certain assessments; to create certain funds; to provide for the promulgation of rules; to provide for a referendum; and to provide remedies and penalties.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 1. This act shall be known and may be cited as the
2 "propane commission act".
3 Sec. 2. As used in this act:
4 (a) "Commission" means the propane commission created in

1 section 3.

2 (b) "Department" means the department of agriculture and rural
3 development.

4 (c) "Director" means the director of the department.

5 (d) "Education" means any action to provide propane consumers
6 or members of the propane industry with information regarding the
7 safe use and handling of propane, the proper use and handling of
8 propane equipment, and the proper mechanical and technical
9 practices when using and handling propane.

10 (e) "Financial institution" means a state or nationally
11 chartered bank, member of the farm credit system, savings and loan
12 association, savings bank, or credit union, whose deposits are
13 insured by an agency of the United States government and that
14 maintains a principal or branch office located in this state under
15 the laws of this state or the United States.

16 (f) "Import" means to bring odorized propane into this state
17 by motor vehicle, marine vessel, pipeline, or any other means.
18 Import does not include bringing odorized propane into this state
19 in the fuel supply tank of a motor vehicle if the odorized propane
20 is used to power that motor vehicle.

21 (g) "Industry association" means the Michigan Propane Gas
22 Association, a nonprofit corporation of this state.

23 (h) "MiPERC" means the national Propane Education and Research
24 Council affiliate in this state.

25 (i) "Person" means an individual, partnership, corporation,
26 association, cooperative, limited liability company, or any other
27 business entity.

28 (j) "Propane" means a hydrocarbon whose chemical composition
29 is predominantly C₃H₈, and includes liquefied petroleum gases,

1 renewable propane, and any mixture of both liquefied petroleum
2 gases and renewable propane.

3 (k) "Propane Education and Research Council" means a nonprofit
4 corporation operated by the national propane industry to promote
5 propane education, research, and use.

6 (l) "Research" means any type of study, investigation, or other
7 activity designed to advance the image, desirability, usage,
8 marketability, efficiency, and safety of propane and propane use
9 equipment and to further the development of information and
10 products related to propane and propane use equipment.

11 (m) "Retail propane dispenser" means a person that sells
12 odorized propane to consumers only in containers of less than 240
13 pounds water capacity or for use as fuel to power motor vehicles.

14 (n) "Retail propane marketer" means a person engaged in the
15 business of selling odorized propane to consumers in containers
16 larger than 240 pounds water capacity or selling odorized propane
17 to retail propane dispensers.

18 (o) "Wholesale propane distributor" means a person that sells
19 odorized propane to a retail propane marketer.

20 Sec. 3. (1) The propane commission is created within the
21 department.

22 (2) The commission is composed of all of the following:

23 (a) The director, or an individual designated by the director
24 from the director's staff, who serves as a nonvoting, ex officio
25 member of the commission.

26 (b) Five members appointed by the governor with the advice and
27 consent of the senate.

28 (3) A member appointed by the governor under subsection (2)
29 must be both of the following:

1 (a) A citizen and resident of this state who is 18 years of
2 age or older.

3 (b) Engaged in the retail propane industry in this state as an
4 employee or owner of a retail propane marketer for not less than 2
5 years immediately before appointment.

6 (4) Except as provided under subsection (5), the term of
7 office of a commission member appointed by the governor under
8 subsection (2)(b) is 3 years. The term of an appointed member
9 expires on July 1, except that a term continues until a successor
10 is appointed and qualified. A member shall vacate the office if the
11 member ceases to be qualified for office under this act. A member
12 appointed to fill a vacancy serves for the remainder of the
13 unexpired term and until a successor is appointed and qualified.

14 (5) Of the commission members initially appointed under
15 subsection (2)(b), 1 shall serve for a term of 1 year, 2 shall
16 serve for a term of 2 years, and 2 shall serve for a term of 3
17 years.

18 (6) The commission shall annually elect from its members a
19 chairperson, a treasurer, and other officers it considers
20 advisable.

21 (7) A majority of the voting members of the commission
22 constitutes a quorum for the transaction of business and the
23 carrying out of the duties of the commission. The business that the
24 commission may perform must be conducted at a public meeting of the
25 commission held in compliance with the open meetings act, 1976 PA
26 267, MCL 15.261 to 15.275. Public notice of the time, date, and
27 place of the meeting must be given in the manner required by the
28 open meetings act, 1976 PA 267, MCL 15.261 to 15.275. The
29 chairperson shall call meetings of the commission at least annually

1 and, additionally, shall call a meeting on petition of 3 or more
2 members of the commission not later than 7 days after receiving the
3 petition.

4 (8) The commission shall maintain accurate books, records, and
5 accounts of its transactions. The books, records, and accounts must
6 be open to inspection by the public and are subject to audit by the
7 auditor general or a certified public accountant. Except as
8 otherwise provided in subsection (9), a document prepared, owned,
9 used, in the possession of, or retained by the commission in the
10 performance of an official function must be made available to the
11 public in compliance with the freedom of information act, 1976 PA
12 442, MCL 15.231 to 15.246.

13 (9) Information collected under this act relating to any
14 assessments collected or remitted or gallons of propane imported,
15 sold, delivered, or used by a person is exempt from disclosure
16 under the freedom of information act, 1976 PA 442, MCL 15.231 to
17 15.246. This exemption does not include information regarding any
18 penalties levied under this act.

19 (10) The expenditures of the commission must be audited by a
20 certified public accountant not less than annually. Within 30 days
21 after completion of the audit, the certified public accountant
22 shall give copies of the audit to the members of the commission and
23 the director. The commission shall publish an activity and
24 financial report annually and make it available to interested
25 parties.

26 (11) The director shall supervise commission activities to
27 ensure compliance with this act and coordinate administrative
28 activities between the commission and the department. The director
29 may obtain information necessary to confirm compliance with this

1 act and may disclose statistical information except for information
2 exempt from disclosure as described in subsection (9).

3 Sec. 5. (1) The commission shall educate residents, business
4 owners, and other users of propane on the safe use of propane, and
5 promote the use of high efficiency appliances and equipment through
6 rebate and incentive programs for Michigan residents. The
7 commission may develop procedures and carry out any other activity
8 necessary to accomplish the purposes of this act.

9 (2) The commission may appoint committees to carry out a
10 project authorized under this act.

11 (3) The commission may appoint employees, agents, and
12 representatives. The commission may contract with other agencies,
13 associations, or organizations including, but not limited to, the
14 industry association and MiPERC. The commission may incur other
15 expenses to carry on the promotion activities for propane under
16 subsection (1) and to otherwise carry out the purposes of this act.

17 (4) This state is not liable for the acts of the commission or
18 its contracts. A member, employee, agent, or representative of the
19 commission is not personally liable for the contracts of the
20 commission. To ensure the commission's activities are self-
21 supporting, all salaries, expenses, obligations, and liabilities
22 incurred by the commission are payable only from money collected
23 under this act when used for the purposes of this act, except that
24 any money obtained through donations and gifts or provided by a
25 governmental agency may be used within limits stipulated by the
26 donor or governmental agency. No more than 10% of the money
27 collected through assessments under this act may be used for
28 administrative expenses.

29 (5) Money collected by the commission must not be used in any

1 manner for a campaign contribution. As used in this subsection,
2 "contribution" means that term as defined in section 4 of the
3 Michigan campaign finance act, 1976 PA 388, MCL 169.204.

4 Sec. 6. The commission is a body corporate and may sue and be
5 sued, plead and be impleaded, contract and be contracted with, and
6 carry out all powers granted to it. The commission is a public body
7 and has the powers necessary to effectuate the purposes of this
8 act. A grant of power to the commission is an extension of the
9 power of the commission and not a limitation of the power of the
10 commission.

11 Sec. 7. (1) Subject to a referendum under section 11(2),
12 beginning on January 1 of the year following the effective date of
13 this act, an initial assessment at the rate of 1/10 of 1 cent per
14 gallon is levied upon odorized propane sold and placed into
15 commerce in this state. The commission shall determine the
16 assessment rate for subsequent years subject to subsections (2) and
17 (3).

18 (2) Not later than December 1 of each year, the commission
19 shall notify each wholesale propane distributor and retail propane
20 marketer of the applicable assessment rate for the next year.

21 (3) The total annual assessment rate levied under this section
22 must not exceed 1/2 of 1 cent per gallon.

23 (4) Each wholesale propane distributor or other owner of
24 propane at the time of odorization in this state, or at the time of
25 import of odorized propane into this state, shall make and collect
26 an assessment based on the volume of odorized propane sold and
27 placed into commerce in this state. Each wholesale propane
28 distributor shall separately identify and itemize the assessment on
29 an invoice, bill of sale, or other similar billing document given

1 to a retail propane marketer for the sale of odorized propane.

2 (5) Each person responsible for collecting the assessment
3 shall remit all assessments to the commission on a quarterly basis,
4 not later than the 25th day of the month following the end of each
5 calendar quarter. Each person responsible for collecting the
6 assessment shall file a report, on a form provided by the
7 commission, not later than the 25th day of the month following the
8 end of the calendar quarter regardless of the amount due.

9 (6) Each person responsible for collecting the assessment
10 shall keep records of the volume of odorized propane the person
11 imported, sold, delivered, or used in this state, including the
12 number of gallons, name of purchaser, and rate of assessment with
13 respect to odorized propane that is subject to this act. All
14 records made or kept as required by this subsection must be made
15 available to the commission upon its written request to determine
16 compliance with this act. The commission shall keep the records
17 confidential and shall not disclose the records except to its
18 accountants, attorneys, or financial advisors without a court order
19 directing it to do so.

20 (7) The commission shall deposit the assessments it collects
21 under this act into a financial institution as described in section
22 8 and shall not commingle the assessments with other funds. The
23 commission shall use the assessments it collects under this act for
24 the purposes of this act.

25 Sec. 8. Money, assets, or other items of value collected or
26 received under this act, whether collected from assessments,
27 received as grants or gifts, or earned from royalties or license
28 fees or derived from any activities performed by an organization,
29 agency, or individual and conducted under this act, are not state

1 money and must be deposited in a financial institution in this
2 state. The money, assets, or other items of value described in this
3 section are allocated to the commission and must be disbursed by
4 the commission to carry out its responsibilities under this act.

5 Sec. 9. A person that fails to collect or remit an assessment
6 under this act shall pay to the commission the amount due, plus
7 both of the following:

8 (a) A late fee of 10% of the amount due.

9 (b) An additional late fee of 1% of the amount due for each
10 month the payment is overdue.

11 Sec. 10. (1) The department shall enforce the provisions of
12 this act. The commission shall reimburse the department for costs
13 incurred by the department in holding referenda, reviewing
14 petitions, and enforcing this act. The money received by the
15 department must be allocated for the department's use.

16 (2) The commission may file a written complaint with the
17 director documenting that a person has failed to collect or remit
18 an assessment or failed to pay a late fee due to the commission
19 under this act. On receipt of a complaint, the director shall
20 investigate its allegations. If, after investigation, the director
21 finds that the person has failed to collect or remit an assessment
22 or failed to pay a late fee to the commission, the director may
23 bring an action to recover unpaid assessments or late fees plus the
24 reasonable costs, including attorney fees, incurred in the action.
25 The director may use assessment funds to cover all reasonable costs
26 and expenses incurred in connection with the recovery of unpaid
27 assessments and late fees.

28 Sec. 11. (1) All of the following apply to a referendum held
29 under subsection (2) or (3):

1 (a) Each retail propane marketer with customers in this state
2 is entitled to 1 vote representing a single firm, individual
3 proprietorship, corporation, company, association, partnership, or
4 spouse- or family-owned business, regardless of the number of bulk
5 plants or retail sales outlets owned.

6 (b) Votes must be submitted by mail.

7 (c) Passage of the referendum requires more than 50% of the
8 votes of all of the retail propane marketers with customers in this
9 state, as described in subdivision (a).

10 (d) Subject to subdivisions (a) to (c), the director may
11 promulgate rules for conducting the referendum.

12 (2) Within 60 days after the effective date of this act, the
13 director shall hold a referendum on the question of whether the
14 initial assessment described in section 7(1) will be levied.

15 (3) If the initial referendum under subsection (2) passes,
16 notwithstanding any other provision of this act, the director shall
17 hold a subsequent referendum on the question of whether the
18 assessment will be terminated if the director receives a petition
19 signed by not less than 33-1/3% of all retail propane marketers
20 with customers in this state, as described in subsection (1)(a).

21 (4) If the referendum described in subsection (2) fails to
22 pass, or if a referendum terminating the assessment under
23 subsection (3) passes, the commission shall do all of the
24 following:

25 (a) Recommend to the legislature that it repeal this act
26 effective 6 months after the date of the referendum.

27 (b) Phase out the commission's operations in the 6 months
28 following the date of the referendum.

29 (c) After 6 months from the date of the referendum, take no

1 further action to further the purposes of this act.