

**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) "Import" means to bring odorized propane into this state
11 by motor vehicle, marine vessel, pipeline, or any other means.
12 Import does not include bringing odorized propane into this state
13 in the fuel supply tank of a motor vehicle if the odorized propane
14 is used to power that motor vehicle.

15 (f) "Industry association" means the Michigan Propane Gas
16 Association, a nonprofit corporation of this state.

17 (g) "MiPERC" means the national Propane Education and Research
18 Council affiliate in this state.

19 (h) "Person" means an individual, partnership, corporation,
20 association, cooperative, limited liability company, or any other
21 business entity.

22 (i) "Propane" means a hydrocarbon whose chemical composition
23 is predominantly C₃H₈, and includes liquefied petroleum gases,
24 renewable propane, and any mixture of both liquefied petroleum
25 gases and renewable propane.

26 (j) "Propane Education and Research Council" means a nonprofit
27 corporation operated by the national propane industry to promote
28 propane education, research, and use.

29 (k) "Research" means any type of study, investigation, or

1 other activity designed to advance the image, desirability, usage,
2 marketability, efficiency, and safety of propane and propane use
3 equipment and to further the development of information and
4 products related to propane and propane use equipment.

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

8 (m) "Retail propane marketer" means a person engaged in the
9 business of selling odorized propane to consumers in containers
10 larger than 240 pounds water capacity or selling odorized propane
11 to retail propane dispensers.

12 (n) "Wholesale propane distributor" means a person that sells
13 odorized propane to a retail propane marketer.

14 Sec. 3. (1) The propane commission is created within the
15 department.

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

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

20 (b) Five members appointed by the governor with the advice and
21 consent of the senate, chosen from a list of individuals
22 recommended by the industry association. If the industry
23 association fails to submit a list of nominees to the governor at
24 least 30 days before the term of office of a member expires, or
25 within 30 days after a vacancy occurs, the governor may appoint any
26 individual who is qualified under subsection (3).

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

29 (a) A citizen and resident of this state who is 18 years of

1 age or older.

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

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

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

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

20 (7) A majority of the voting members of the commission
21 constitutes a quorum for the transaction of business and the
22 carrying out of the duties of the commission. The business that the
23 commission may perform must be conducted at a public meeting of the
24 commission held in compliance with the open meetings act, 1976 PA
25 267, MCL 15.261 to 15.275. Public notice of the time, date, and
26 place of the meeting must be given in the manner required by the
27 open meetings act, 1976 PA 267, MCL 15.261 to 15.275. The
28 chairperson shall call meetings of the commission at least annually
29 and, additionally, shall call a meeting on petition of 3 or more

1 members of the commission not later than 7 days after receiving the
2 petition.

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

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

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

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

1 exempt from disclosure as described in subsection (9).

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

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

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

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

28 (5) Money collected by the commission must not be used in any
29 manner for a campaign contribution. As used in this subsection,

1 "contribution" means that term as defined in section 4 of the
2 Michigan campaign finance act, 1976 PA 388, MCL 169.204.

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

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

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

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

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

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

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

19 (7) The commission shall deposit all assessments it collects
20 under this act into the propane commission fund created in section
21 8. The commission shall not commingle the assessments with other
22 funds. The commission shall use the assessments it collects for the
23 purposes of this act.

24 Sec. 8. (1) The propane commission fund is created within the
25 state treasury. All assessments collected by the commission must be
26 deposited with the state treasurer and credited to the propane
27 commission fund.

28 (2) The state treasurer may receive money or other assets from
29 any source for deposit into the fund, including private gifts,

1 bequests, and donations. The state treasurer shall direct the
2 investment of the fund. The state treasurer shall credit to the
3 fund interest and earnings from fund investments.

4 (3) Money in the fund at the close of the fiscal year remains
5 in the fund and does not lapse to the general fund.

6 (4) The commission is the administrator of the fund for
7 auditing purposes.

8 (5) The commission shall expend money from the fund to carry
9 out its responsibilities under this act.

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

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

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

16 Sec. 10. (1) The department shall enforce the provisions of
17 this act. The commission shall reimburse the department for costs
18 incurred by the department in holding referenda, reviewing
19 petitions, and enforcing this act. The money received by the
20 department must be allocated for the department's use.

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

1 The director may use assessment funds to cover all reasonable costs
2 and expenses incurred in connection with the recovery of unpaid
3 assessments and late fees.

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

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

11 (b) Votes must be submitted by mail.

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

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

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

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

26 (4) If the referendum described in subsection (2) fails to
27 pass, or if a referendum terminating the assessment under
28 subsection (3) passes, the commission shall do all of the
29 following:

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

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

5 (c) After 6 months from the date of the referendum, take no
6 further action to further the purposes of this act.