

SENATE BILL NO. 1133

September 22, 2020, Introduced by Senator MCBROOM and referred to the Committee on Energy and Technology.

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 make and supplement appropriations; 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
5 section 3.

6 (b) "Department" means the department of agriculture and rural
7 development.

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

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

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

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

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

23 (h) "Person" means an individual, partnership, corporation,
24 association, cooperative, limited liability company, or any other
25 business entity.

26 (i) "Propane" means a hydrocarbon whose chemical composition
27 is predominantly C₃H₈, and includes liquefied petroleum gases,
28 renewable propane, and any mixture of both liquefied petroleum
29 gases and renewable propane.

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

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

9 (l) "Retail propane dispenser" means a person that sells
10 odorized propane to consumers but is not engaged primarily in the
11 business of selling odorized propane to consumers.

12 (m) "Retail propane marketer" means a person engaged primarily
13 in the business of selling odorized propane to consumers or to
14 retail propane dispensers.

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

17 Sec. 3. (1) The propane commission is created within the
18 department.

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

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

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

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

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

5 (b) Engaged in the retail propane industry in this state for
6 not less than 2 years as a retail propane marketer immediately
7 before appointment.

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

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

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

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

1 open meetings act, 1976 PA 267, MCL 15.261 to 15.275. The
2 chairperson shall call meetings of the commission at least annually
3 and, additionally, shall call a meeting on petition of 3 or more
4 members of the commission not later than 7 days after receiving the
5 petition.

6 (8) The commission shall maintain accurate books, records, and
7 accounts of its transactions. The books, records, and accounts must
8 be open to inspection by the public and are subject to audit by the
9 auditor general or a certified public accountant. Except as
10 otherwise provided in subsection (9), a document prepared, owned,
11 used, in the possession of, or retained by the commission in the
12 performance of an official function must be made available to the
13 public in compliance with the freedom of information act, 1976 PA
14 442, MCL 15.231 to 15.246.

15 (9) Information collected under this act relating to any
16 assessments collected or remitted or gallons of propane imported,
17 sold, delivered, or used by a person is exempt from disclosure
18 under the freedom of information act, 1976 PA 442, MCL 15.231 to
19 15.246. This exemption does not include information regarding any
20 penalties levied under this act.

21 (10) The commission shall annually prepare a financial report
22 and shall make that financial report available upon request.

23 (11) The director may obtain information necessary to confirm
24 compliance with this act and may disclose statistical information
25 as long as information as described in subsection (9) is not
26 disclosed.

27 Sec. 5. (1) The commission shall foster, develop, and promote
28 the sale and safe use of propane in this state through research,
29 promotion, advertising, market expansion, development of new

1 markets, education, publicity programs, and the development and
2 dissemination of market and industry information. The commission
3 may develop procedures and carry out any other activity necessary
4 to accomplish the purposes of this act.

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

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

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

24 (5) Money collected by the commission must not be used in any
25 manner for a campaign contribution. As used in this subsection,
26 "contribution" means that term as defined in section 4 of the
27 Michigan campaign finance act, 1976 PA 388, MCL 169.204.

28 Sec. 6. The commission is a body corporate and may sue and be
29 sued, plead and be impleaded, contract and be contracted with, and

1 carry out all powers granted to it. The commission is a public body
2 and has the powers necessary to effectuate the purposes of this
3 act. A grant of power to the commission is an extension of the
4 power of the commission and not a limitation of the power of the
5 commission.

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

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

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

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

28 (5) Each person responsible for collecting the assessment
29 shall remit all assessments to the commission on a quarterly basis,

1 not later than the 25th day of the month following the end of each
2 calendar quarter. Each person responsible for collecting the
3 assessment shall file a report, on a form provided by the
4 commission, not later than the 25th day of the month following the
5 end of the calendar quarter regardless of the amount due.

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

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

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

26 (2) The state treasurer may receive money or other assets from
27 any source for deposit into the fund, including private gifts,
28 bequests, and donations. The state treasurer shall direct the
29 investment of the fund. The state treasurer shall credit to the

1 fund interest and earnings from fund investments.

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

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

6 (5) The commission shall expend money from the fund, upon
7 appropriation, to carry out its responsibilities under this act.

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

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

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

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

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

1 and expenses incurred in connection with the recovery of unpaid
2 assessments and late fees.

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

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

10 (b) Votes must be submitted by mail.

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

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

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

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

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

29 (a) Recommend to the legislature that it repeal this act

1 effective 6 months after the date of the referendum.

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

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