

PROPANE COMMISSION ACT

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Senate Bill 1133 (H-1) as reported from House committee

Sponsor: Sen. Ed McBroom

House Committee: Ways and Means

Senate Committee: Energy and Technology

Complete to 12-16-20

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

Senate Bill 1133 would create a new act, the Propane Commission Act, which would create the Propane Commission, create the Propane Commission Fund, require the Michigan Department of Agriculture and Rural Development (MDARD) to call for a referendum among industry members, institute an annual assessment on propane sold and placed into commerce in Michigan if the referendum passes, establish late fees for failure to collect or remit the assessment, allow for a referendum to repeal the act and end the assessments, and charge MDARD with enforcement of the act.

Propane Commission

A six-member Propane Commission would be created in MDARD. Members would include the director of MDARD, or a designee, who would serve as a nonvoting member, and five voting members appointed by the governor with the advice and consent of the Senate. The voting members would serve staggered three-year terms. Commission meetings and documents would be subject, respectively, to the Open Meetings Act and the Freedom of Information Act (FOIA). The bill would provide for election of commission officers, frequency of meetings, and maintenance of books and records of transactions. In addition, the bill would do the following:

- Exempt from FOIA certain information relating to assessments collected or remitted or gallons of propane imported, sold, delivered, or used by a person, but allow a FOIA request for information regarding penalties levied under the act.
- Require commission expenditures to be audited by a certified public accountant at least annually.
- Require the director of MDARD to supervise commission activities to ensure compliance with the act and coordinate administrative activities between the commission and MDARD.

Commission responsibilities

The commission would have to educate residents, business owners, and other propane users on the safe use of propane and promote the use of high-efficiency appliances and equipment through rebate and incentive programs for state residents. The commission could develop procedures and carry out any other activity necessary to accomplish the act's purposes.

In addition, the commission could do any of the following:

- Appoint committees to carry out an authorized project.
- Appoint employees, agents, and representatives.
- Contract with other entities, including the Michigan Propane Gas Association (MPGA) and the national Propane Education and Research Council affiliate in Michigan (MiPERC).
- Incur expenses to carry on promotion activities and otherwise carry out the purposes of the act.
- As a body corporate, sue and be sued and enter into contracts; the bill would grant the commission, as a public body, the powers necessary to effectuate the purposes of the act.

Assessment/Referendum

Beginning January 1 of the year following the bill's effective date, an assessment at the rate of one-tenth of one cent per gallon would be levied on odorized propane sold and placed into commerce in Michigan, subject to a referendum as provided by the bill. The bill would require the commission to determine the assessment rate in subsequent years and notify each wholesale propane distributor and retail propane marketer of the applicable assessment rate for the following year not later than December 1 of each year. The total annual assessment rate levied could not exceed one-half of one cent per gallon.

The assessment would be made and collected by each wholesale propane distributor or other owner of propane at the time of odorization in Michigan based on the volume of odorized propane sold and placed into commerce in the state. Assessments would be remitted quarterly to the commission. The bill would also prescribe reporting requirements and recordkeeping requirements. Records would have to be available to the commission to determine compliance with the act but would be kept confidential and disclosed only to its accountants, attorneys, or financial advisors except under court order.

A person who failed to collect or remit an assessment would have to pay the amount due to the commission, plus a late fee of 10% of the amount due and an additional late fee of 1% of the amount due for each month the payment is overdue.

Within 60 days after the bill's effective date, the director of MDARD would have to hold a referendum on the question of whether the initial assessment described above will be levied. If the initial referendum passes, a subsequent one would be held on the question of whether the assessment will be terminated if the director receives a petition signed by at least one third of all retail propane marketers with customers in the state. If either referendum fails, the commission would have to do all of the following:

- Recommend to the legislature that it repeal this act effective six months after the date of the referendum.
- Phase out the commission's operations during those six months.
- After six months from the date of the referendum, take no further action to further the purposes of the act.

Each retail propane marketer with customers in the state would be entitled to one vote representing a single firm, individual proprietorship, corporation, company, association, partnership, or spouse- or family-owned business, regardless of the number of bulk plants or retail sales outlets owned. Votes would be submitted by mail, and passage of the referendum would require more than 50% of the votes.

Propane Commission Fund

All assessments would be deposited into the Propane Commission Fund created by the bill in the Department of Treasury. The assessments could not be commingled with other funds and would be used by the commission for the purposes of the act. Money or other assets, including private gifts, received by the treasurer would also be deposited into the fund, with interest and earnings from fund investments credited to the fund. Money in the fund at the close of the fiscal year would remain in the fund and not lapse to the general fund. The commission would be the fund administrator for auditing purposes and would expend money from the fund to carry out its responsibilities.

Enforcement of act

MDARD would be charged with enforcing the act and could be reimbursed for costs it incurs for holding referenda, reviewing petitions, and enforcement by the commission. The reimbursement would be allocated for the department's use.

The commission could file a written complaint with the director documenting a failure to collect or remit an assessment or late fee. The director would have to investigate and, if he or she finds the allegation true, could bring an action to recover the unpaid assessments or late fees plus the reasonable costs, including attorney fees, incurred in the action. The director could use assessment funds to cover all reasonable costs and expenses incurred with recovering unpaid assessments and late fees.

Miscellaneous provisions

The state would not be liable for the acts of the commission or its contracts.

With some exceptions, salaries, expenses, obligations, and liabilities of the commission would be payable only from money collected under the act when used for the act's purposes. No more than 10% of money collected through assessments could be used for administrative purposes.

FISCAL IMPACT:

Senate Bill 1133 would impose on MDARD new program responsibilities with respect to the new Propane Commission, including oversight and enforcement responsibilities. Those new responsibilities would likely be carried out with the same staff and resources used in the department's commodity group support program. Direct costs of administering the referendum would be reimbursed from Propane Commission assessment revenue. As a result, the bill would have minimal impact on MDARD costs and revenues.

The Propane Commission that would be established in the bill, and the responsibilities of MDARD with respect to the commission, appear to be modeled after similar provisions of the Agricultural Commodities Marketing Act, 1965 PA 232.¹

There are currently 14 groups established under this act, ranging from relatively large commodity groups for corn, soybeans, wheat, and dry beans, to relatively small commodity groups for specialty crops. These are sometimes described as “check off groups.” After a commodity group is established under the act, it must be reauthorized every five years by referenda. MDARD staff oversee these referenda; the department is then reimbursed by the commodity groups for time and costs associated with running the start-up and renewal referenda. Costs include printing, postage, press releases, and staff time.

The director’s designee attends commodity group meetings. In addition, MDARD staff perform program and oversight audits of commodity groups. The department does not charge the commodity groups for these support functions.

POSITIONS:

The Michigan Propane and Gas Association indicated support for the bill. (12-15-20)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.

¹ <http://legislature.mi.gov/doc.aspx?mcl-Act-232-of-1965>