

PROPANE COMMISSION ACT

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Senate Bill 1133 as enacted
Public Act 332 of 2020
Sponsor: Sen. Ed McBroom
House Committee: Ways and Means
Senate Committee: Energy and Technology
Revised 3-6-21

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

SUMMARY:

Senate Bill 1133 creates a new act, the Propane Commission Act, which creates the Propane Commission, requires the Michigan Department of Agriculture and Rural Development (MDARD) to call for a referendum among propane industry members, institutes an annual assessment on propane sold and placed in commerce in Michigan if the referendum passes, establishes late fees for failure to collect or remit the assessment, allows for a referendum to repeal the act and end the assessment, and charges MDARD with enforcement of the act.

Propane Commission

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

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

Commission responsibilities

The commission must 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 may develop procedures and carry out activities necessary to accomplish the purposes of the new act.

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

- Appoint employees, agents, and representatives.
- Appoint committees to carry out an authorized project.

- Incur expenses to carry on promotion activities and otherwise carry out the purposes of the new act.
- As a body corporate, sue and be sued and enter into contracts. The bill grants the commission, as a public body, the powers necessary to effectuate the purposes of the new act.
- Contract with other entities, including the Michigan Propane Gas Association (MPGA) and the national Propane Education and Research Council affiliate in Michigan (MiPERC).

Assessment/Referendum

Beginning January 1, 2021,¹ subject to a referendum as described below, an assessment at the rate of one-tenth of one cent per gallon must be levied on odorized propane sold and placed into commerce in Michigan. The commission must determine the assessment rate in subsequent years and, by December 1 of each year, notify each wholesale propane distributor and retail propane marketer of the following year's rate. The total annual assessment rate levied cannot exceed one-half of one cent per gallon.

The assessment must 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 must be remitted quarterly to the commission. The bill prescribes reporting and recordkeeping requirements. Records must be available to the commission to determine compliance with the new act but must be kept confidential and, except under court order, disclosed only to its accountants, attorneys, or financial advisors.

A person who fails to collect or remit an assessment must pay to the commission the amount due, 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.

By February 27, 2021 (within 60 days after the bill's effective date), the director of MDARD must hold a referendum on the question of whether the initial assessment described above will be levied. If the initial referendum passes, a subsequent one must 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 Michigan. If either referendum fails, the commission must 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.

¹ The bill, which took effect December 29, 2020, specifies "January 1 of the year following the effective date of this act."

Each retail propane marketer with customers in the state is 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 must be submitted by mail, and passage of the referendum requires more than 50% of the votes.²

Money collected under the act

Money, assets, or other items of value collected or received under the new act are not state money and must be deposited in a *financial institution* located in Michigan. This applies to money collected from assessments, received as grants or gifts, earned from royalties or license fees, or derived from any activities performed by an organization, agency, or individual and conducted under the act. Money collected must be allocated to and disbursed by the commission to carry out its responsibilities under the act.

Financial institution means a state or nationally chartered bank, member of the farm credit system, savings and loan association, savings bank, or credit union that maintains a principal or branch office in Michigan under state and federal laws and whose deposits are federally insured.

Enforcement of act

MDARD must enforce the new act and may be reimbursed by the commission for its costs in holding referenda, reviewing petitions, and enforcement activities. The reimbursement must be allocated for MDARD's use.

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

Miscellaneous provisions

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

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

The bill took effect December 29, 2020.

MCL 460.621 to 460.631

² The referendum was conducted from February 15 to February 26, 2021, and the initial assessment was approved. See the March 5, 2021, order of the director of MDARD: https://www.michigan.gov/documents/mdard/Propane_Commission_Referendum_Order_718412_7.pdf

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 232.³

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.

Legislative Analyst: Susan Stutzky
Fiscal Analyst: William E. Hamilton

■ 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.

³ <http://legislature.mi.gov/doc.aspx?mcl-Act-232-of-1965>