



Senate Bill 1133 (as introduced 9-22-20)
Sponsor: Senator Ed McBroom
Committee: Energy and Technology

Date Completed: 9-29-20

CONTENT

The bill would enact the "Propane Commission Act" to do the following:

- **Create the Propane Commission within the Michigan Department of Agriculture and Rural Development (MDARD) and prescribe the Commission's membership.**
- **Require the Commission to foster, develop, and promote the sale and safe use of propane in the State through research, promotion, advertising, market expansion, development of new markets, education, publicity programs, and the development and dissemination of market and industry information.**
- **Subject to a referendum, levy an initial assessment at the rate of 1/10 of one cent per gallon on odorized propane sold and placed into commerce in the State and require the Commission to determine the assessment rate for subsequent years.**
- **Create the Propane Commission Fund within the State Treasury and require the Commission to deposit all assessments collected by the Commission with the State Treasurer.**
- **Within 60 days after the Act's effective date, require the Director of MDARD to hold a referendum on the question of whether the initial assessment would be levied.**
- **Entitle each retail propane marketer with customers in the State 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.**
- **If a referendum passed, require the Director to hold a subsequent referendum on the question of whether to terminate it if the Director received a petition signed by at least 33-1/3% of all retail propane marketers with customers in the State.**
- **If the initial referendum failed, or if a subsequent referendum to terminate the assessment passed, require the Commission to phase out its operations in the six months following the date of the referendum, among other things.**
- **Require a person who failed to collect or remit an assessment to pay the Commission the amount due, plus a 10% late fee and an additional late fee of 1.0% of the amount due for each month the payment was overdue.**
- **Allow the Commission to file a written complaint with the Director documenting that a person had failed to collect or remit an assessment or a late fee.**

Definitions

"Propane" would mean a hydrocarbon whose chemical composition is predominantly C₃H₈, and include liquified petroleum gases, and any mixture of both liquified petroleum gases and renewable propane.

"Industry association" would mean the Michigan Propane Gas Association, a nonprofit corporation of the State.

"MiPERC" would mean the National Propane Education and Research Council affiliate in the State. "Propane Education and Research Council" would mean a nonprofit corporation operated by the national propane industry to promote education, research, and use. "Education" would mean any action to provide propane consumers or members of the propane industry with information regarding the safe use and handling of propane, the proper use and handling of propane equipment, and the proper mechanical and technical practices when using and handling propane. "Research" would mean any type of study, investigation, or other activity designed to advance the image, desirability, usage, marketability, efficiency, and safety of propane and propane use equipment and to further the development of information and products related to propane and propane use equipment.

"Wholesale propane distributor" would mean a person that sells odorized propane to a retail propane marketer. "Retail propane marketer" would mean a person engaged primarily in the business of selling odorized propane to consumers or to retail propane dispensers. "Retail propane dispenser" would mean a person that sells odorized propane to consumers but is not engaged primarily in the business of selling it to consumers.

Commission Membership & Meetings

The proposed Act would create the Propane Commission within MDARD. The Commission would have to be composed of the following:

- The Director of MDARD, or an individual designated by the Director from his or her staff, who would serve as a nonvoting, ex officio member of the Commission.
- Five members appointed by the Governor with the advice and consent of the Senate, chosen from a list of individuals recommended by the industry association.

If the industry association failed to submit a list of nominees to the governor at least 30 days before a member's term of office expired, or within 30 days after a vacancy occurred, the Governor could appoint any individual who was qualified as described below.

A member appointed by the Governor would have to be the following:

- A citizen and a State resident who was 18 years of age or older.
- Engaged in the retail propane industry in Michigan for at least two years as a retail propane marketer immediately before appointment.

The term of office for a Commission member appointed by the Governor would be three years. The term of an appointed member would expire on July 1, except that a term would continue until a successor was appointed and qualified. A member would have to vacate the office if the member ceased to be qualified. A member appointed to fill a vacancy would have to serve for the remainder of the unexpired term and until a successor was appointed and qualified.

Of the Commission members initially appointed by the Governor, one would have to serve for one year, two would have to serve for two years, and two would have to serve for three years. The Commission would have to elect annually from its members a chairperson, a treasurer, and other officers it considered advisable.

The Act specifies that a majority of the voting members of the Commission would constitute a quorum for the transaction of business and the carrying out of the Commission's duties. The Commission chairperson would have to call meetings at least annually and on petition of three or more Commission members within seven days after receiving the petition.

The bill also would require the Commission to maintain accurate books, records, and accounts of its transactions, which would have to be open to public inspection and would be subject to audit by the Auditor General or a certified public accountant. The Commission would be subject to the Open Meetings Act and the Freedom of Information Act. The proposed Act would exempt from disclosure information collected relating to any assessments collected or remitted or gallons of propane imported, sold, delivered, or used by a person, but the exemption would not include information regarding penalties levied under the Act.

The Commission would have to prepare an annual financial report and make it available upon request. The bill would allow the Director of MDARD to obtain information necessary to confirm compliance with the Act and to disclose statistical information as long as information exempted from disclosure was not disclosed.

Commission Duties & Responsibilities

The Act would require the Commission to foster, develop, and promote the sale and safe use of propane in the State through research, promotion, advertising, market expansion, development of new markets, education, publicity programs, and the development and dissemination of market and industry information.

The Commission could develop procedures and carry out any other activity necessary to accomplish the Act's purposes. The Commission could appoint committees to carry out an authorized project. The Commission could appoint employees, agents, and representatives, contract with other agencies, associations, or organizations including the industry association and MiPERC, and could incur other expenses to carry on promotion activities for propane and to otherwise carry out the Act's purposes.

The Act specifies that the State would not be liable for the Commission's acts or contracts. A member, employee, agent, or representative of the Commission would not be personally liable for the Commission's contracts. All salaries, expenses, obligations, and liabilities incurred by the Commission would be payable only from money collected under the Act when used for its purposes, except that any money obtained through donations and gifts or provided by a governmental agency could be used within limits stipulated by the donor or governmental agency. No more than 10% of the money collected through assessments could be used for administrative expenses.

The Act also would prohibit money the Commission collected from being used in any manner for a campaign contribution as that term is defined in Section 4 of the Michigan Campaign Finance Act: a payment, gift, subscription, assessment, expenditure, contract, payment for services, dues, advance, forbearance, loan, or donation of money or anything of ascertainable monetary value, or a transfer of anything of ascertainable monetary value to a person, made for the purpose of influencing the nomination or election of a candidate, for the qualification, passage, or defeat of a ballot question, or for the qualification of a new political party.

The Commission would be a body corporate and could sue and be sued, plead and be impleaded, contract, and be contracted with, and carry out all powers granted to it. Also, the Commission would be a public body and would have the powers necessary to effectuate the bill's purposes. A grant of power to the Commission would be an extension of the Commission's power and not a limitation of its power.

Propane Assessment

Under the proposed Act, subject to a referendum (described below), beginning January 1 of the year following the Act's effective date, an initial assessment at the rate of 1/10 of one cent per gallon would be levied upon odorized propane sold and placed into commerce in the

State. The Commission would have to determine the assessment rate for subsequent years subject to the provisions below.

Not later than December 1 of each year, the Commission would have to notify each wholesale propane distributor and retail propane marketer of the applicable assessment rate for the next year. The total annual assessment rate levied could not exceed 1/2 of one cent per gallon.

The Act would require each wholesale propane distributor or other owner of propane at the time of odorization in the State, or at the time of import of odorized propane into the State, to make and collect an assessment based on the volume of odorized propane sold and placed into commerce in the State. Each retail propane maker would have to pay the assessment on each gallon of propane purchased from a wholesale propane distributor. Each wholesale propane distributor would have to separately identify and itemize the assessment on an invoice, bill of sale, or other similar billing document given to a retail propane marketer for the sale of odorized propane. "Import" would mean to bring odorized propane into the State by motor vehicle, marine vessel, pipeline, or any other means, but would not include bringing odorized propane into the State in the fuel supply tank of a motor vehicle if the odorized propane is used to power that motor vehicle.

Each person responsible for collecting the assessment would have to do the following:

- Remit all assessments to the Commission on a quarterly basis, not later than the 25th day of the month following the end of each calendar quarter.
- File a report, on a form provided by the Commission, not later than the 25th day of the month following the end of the calendar quarter regardless of the amount due.
- Keep records of the volume of odorized propane the person imported, sold, delivered, or used in the State, including the number of gallons, name of purchaser, and rate of assessment with respect to odorized propane that was subject to the Act.

All records made or kept as required above would have to be made available to the Commission upon its written request to determine compliance with the Act. The Commission would have to keep the records confidential and could not disclose them except to its accountants, attorneys, or financial advisors without a court order directing it to do so.

The bill would require the Commission to deposit all assessments it collects into the Propane Commission Fund. The Commission could not commingle the assessments with other funds and, subject to appropriation, would have to use the assessments it collected for the Act's purposes.

Propane Commission Fund

The bill would create the Propane Commission Fund within the State Treasury and require the Commission to deposit all assessments collected with the State Treasurer. The assessments would have to be credited to the Fund. The State Treasurer could receive money or other assets from any source for deposit into the Fund, including private gifts, bequests, and donations. The State Treasurer also would have to direct the Fund's investment and credit to it interest and earnings from the investments.

Money in the Fund at the close of the fiscal year would remain in the Fund and would not lapse to the General Fund. The bill also specifies that the Commission would be the administrator of the Propane Commission Fund for auditing purposes and that it would have to spend money from the Fund, upon appropriation, to carry out its responsibilities under the Act.

Referendum

The proposed Act would require the Director of MDARD, within 60 days after the Act's effective date, to hold a referendum on the question of whether the initial assessment described above would be levied. The following would apply to the referendum:

- 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 have to be submitted by mail.
- Passage of the referendum would require more than 50% of the votes of all of the retail propane marketers with customers in the State as described above.
- The Director could promulgate rules for conducting the referendum.

If the initial referendum passed, notwithstanding any other provision of the Act, the Director would have to hold a subsequent referendum on the question of whether the assessment would be terminated if the Director received a petition signed by at least 33-1/3% of all retail propane marketers with customers in the State.

If the referendum failed to pass, or if a referendum terminating the assessment passed, the Commission would have to do all the following:

- Recommend to the Michigan Legislature that it repeal the bill's provisions effective six months after the referendum.
- Phase out the Commission's operations in the six months following the referendum.
- After six months from the referendum, take no further action to further the Act's purposes.

Failure to Comply

Under the Act, a person who failed to collect or remit an assessment would have to pay the Commission the amount due, plus a late fee of 10% of the amount due and an additional late fee of 1.0% of the amount due for each month the payment was overdue. The Department of Agriculture and Rural Development would have to enforce the Act. The Commission would have to reimburse MDARD for costs it incurred in holding referenda, reviewing petitions, and enforcing the Act. Any money that MDARD received, subject to appropriation, would have to be allocated for its use.

The Commission could file a complaint with the Director documenting that a person had failed to collect or remit an assessment or failed to pay a late fee due to the Commission. After receiving a complaint, the Director would have to investigate its allegations. If, after investigation, the Director found that the person had failed to collect or remit an assessment or failed to pay a late fee to the Commission, the Director could bring an action to recover 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 uncured in connection with the recovery of unpaid assessment and late fees.

Legislative Analyst: Tyler VanHuyse

FISCAL IMPACT

The bill would have a negligible fiscal impact on MDARD. The Department has existing staff who have the responsibility to provide administrative support for several boards and commissions, and, should the proposed referendum result in the levy of a propane industry assessment, any costs that MDARD incurred from the operation of the proposed Propane

Commission would be supported by fee revenue from the Propane Commission Fund that would be established in the Department of Treasury.

The bill would have a minimal fiscal impact on the Department of Treasury. The Department of Treasury would manage the Propane Commission Fund, which would include accounting and directing the investment of funds. The costs for these activities would be minimal and within current appropriations.

Fiscal Analyst: Bruce Baker
Cory Savino

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.