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Senate Bill 1133 (as enacted)  
Sponsor: Senator Ed McBroom  
Senate Committee: Energy and Technology  
House Committee Ways and Means

**PUBLIC ACT 332 of 2020**

Date Completed: 4-8-21

**CONTENT**

**The bill enacted 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 educate residents, business owners, and other users of propane on the safe use of propane and promote the use of high efficiency appliances and equipment through rebate and incentive programs.**
- **Subject to a referendum, beginning on January 1, 2021, levy an initial assessment at the rate of 1/10 of one cent per gallon upon odorized propane sold and placed into commerce in the State and require the Commission to determine the assessment rate for subsequent years.**
- **Within 60 days after December 29, 2020, require the Director of MDARD to hold a referendum on the question of whether the initial assessment will be levied.**
- **Entitle each retail propane marketer with customers in the State to one vote representing a single individual or entity, regardless of the number of bulk plants or retail sales outlets owned.**
- **If a referendum passes, require the Director to hold a subsequent referendum on whether to terminate it if the Director receives a petition signed by at least 33-1/3% of all retail propane marketers with customers in the State.**
- **If the initial referendum fails, or if a subsequent referendum to terminate the assessment passes, 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 fails to collect or remit an assessment to pay to the Commission the amount due, plus a late fee of 10% of the amount due and a late fee of 1.0% of the amount due for each month the payment is overdue.**
- **Allow the Commission to file a written complaint with the Director documenting that a person has failed to collect or remit an assessment or to pay a late fee.**

The bill took effect December 29, 2020.

Definitions

"Propane" means a hydrocarbon whose chemical composition is predominantly C<sub>3</sub>H<sub>8</sub>, and includes liquified petroleum gases, renewable propane, and any mixture of both liquified petroleum gases and renewable propane.

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

"MiPERC" means the national Propane Education and Research Council affiliate in the State. "Propane Education and Research Council" means a nonprofit corporation operated by the national propane industry to promote propane education, research, and use. "Education" means 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" means any type of study, investigation, or other activity designed to advance the image, desirability, usage, marketability, efficiency, and safety of propane use equipment and to further the development of information and products related to propane and propane use equipment.

"Wholesale propane distributor" means a person that sells odorized propane to a retail propane marketer. "Retail propane marketer" means a person engaged in the business of selling odorized propane to consumers in containers larger than 240 pounds water capacity or selling odorized propane to retail propane dispensers. "Retail propane dispenser" means a person that sells odorized propane to consumers only in containers of less than 240 pounds water capacity or for use as fuel to power motor vehicles. "Person" means an individual, partnership, corporation, association, cooperative, limited liability company, or any other business entity.

"Financial institution" means a State or nationally chartered bank, member of the farm credit system, savings and loan association, savings bank, or credit union, whose deposits are insured by an agency of the United States government and that maintains a principal or branch office located in the State under State or Federal law.

#### Commission Membership & Meetings

The Act creates the Propane Commission within MDARD and requires the Commission to be composed of the following:

- The Director of MDARD, or an individual designated by the Director from his or her staff, who serves as a nonvoting, ex officio member of the Commission.
- Five members appointed by the Governor with the advice and consent of the Senate.

The Act requires a member appointed by the Governor to be the following:

- A citizen and resident of the State who is 18 years old or older.
- Engaged in the retail propane industry in the State as an employee or owner of a retail propane marketer for at least two years immediately before appointment.

Except as otherwise provided, the term of office of a Commission member appointed by the Governor is three years. The term of an appointed member expires on July 1, except that a term continues until a successor is appointed and qualified for office. A member must vacate the office if he or she ceases to be qualified for office. A member appointed to fill a vacancy serves for the remainder of the unexpired term and until a successor is appointed and qualified.

The Act specifies that of the Commission members initially appointed, one must serve for a term of one year, two must serve for a term of two years, and two must serve for a term of three years. The Act requires the Commission to elect from its members each year a chairperson, a treasurer, and other officers it considers advisable.

A majority of the voting members of the Commission constitutes a quorum for the transaction of business and the carrying out of the duties of the Commission. The Commission must

comply with the Open Meetings Act. The Commission chairperson must call meetings at least annually, and, additionally, must call a meeting on petition of three or more members within seven days after receiving the petition.

The Propane Commission Act requires the Commission to maintain accurate books, records, and accounts of its transactions. The books, records, and accounts must be open to inspection by the public and be subject to audit by the Auditor General or a certified public accountant. Except as otherwise provided below, the Commission must comply with the Freedom of Information Act. The Propane Commission Act specifies that information collected relating to any assessments collected or remitted or gallons of propane imported, sold, delivered, or used by a person is exempt from disclosure under the Freedom of Information Act. This exemption does not include information regarding any penalties levied under the Propane Commission Act.

A certified public accountant must audit the Commission's expenditures at least annually and, within 30 days after the completion of the audit, the certified public accountant must give copies of the audit to the Commission members and the Director. The Commission must publish an activity and financial report annually and make it available to interested parties. The Act requires the Director to supervise Commission activities to ensure compliance with the Act and coordinate administrative activities between the Commission and MDARD. The Director may obtain information necessary to confirm compliance with the Act and may disclose statistical information except for information exempt from disclosure.

#### Commission Duties & Responsibilities

Under the Act, the Commission must educate residents, business owners, and other user of propane on the safe use of propane and promote the use of high efficiency appliance and equipment through rebate and incentive programs for Michigan residents. The Commission may develop procedures and carry out any other activity necessary to accomplish the purposes of the Act.

The Commission may appoint committees to carry out a project authorized under the Act. The Commission also may appoint employees, agent, and representatives. The Commission may contract with other agencies, associations, or organizations including the industry association and MiPERC. The Commission may incur other expenses to carry on the promotion activities for propane and to carry out the purpose of the Act.

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

The Act also specifies that money collected by the Commission must not be 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 is a body corporate and may sue and be sued, plead and be impleaded, contract and be contracted with, and carry out all powers granted to it. The Commission is a public body and has the powers necessary to effectuate the purposes of the Propane Commission Act. A grant of power to the Commission is an extension of the power of the Commission and not a limitation of the power of the Commission.

### Propane Assessment

Under the Act, subject to a referendum described below, beginning on January 1, 2021, an initial assessment at the rate of 1/10 of one cent per gallon is levied upon odorized propane sold and placed into commerce in the State. The Commission must determine the assessment rate for subsequent years subject to the provisions below.

By December 1 of each year, the Commission must notify each wholesale propane distributor and retail propane marketer of the applicable assessment rate for the next year. The total annual assessment rate levied under the bill may not exceed 1/2 of one cent per gallon.

The Act requires 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 in the State, to make and collect an assessment based on the volume of odorized propane sold and placed in commerce in the State. Each wholesale propane distributor must 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" means to bring odorized propane into the State by motor vehicle, marine vessel, pipeline, or any other means. The term does 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 must do the following:

- Remit all assessments to the Commission on a quarterly basis, not later than the 25<sup>th</sup> day of the month following the end of each calendar quarter.
- File a report, on a form provided by the Commission, by the 25<sup>th</sup> 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 is subject to the Act.

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

The Act requires the Commission to deposit the assessments it collects into a financial institution as described below. The Act prohibits the Commission from comingling the assessments with other funds. The Commission must use the assessments it collects for purposes of the Act.

### Deposit of Funds

The Act specifies that money, assets, or other items of value collected or received under the Act, whether collected from assessments, received as grants or gifts or earned from royalties or license fees or derived from any activities performed by an organization, agency, or individual and conducted under the Act, are not State money and must be deposited in a financial institution in the State. The money, assets, or other items of value described above

are allocated to the Commission and must be disbursed by the Commission to carry out its responsibilities under the Act.

### Referendum

Under the Act, within 60 days of December 29, 2020, the Director of MDARD must hold a referendum on the question of whether the initial assessment described above will be levied. The following apply to the referendum:

- Each retail propane marketer with customers in the State is entitled to one vote representing a single firm, individual, proprietorship, corporation, 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.
- Passage of the referendum requires more than 50% of the votes of all the retail propane marketers in the State, as described above.
- The Director may promulgate rules for conducting the referendum.

If the initial referendum passes, notwithstanding any other provision of the Act, the Director must hold a subsequent referendum on the question of whether the assessment will be terminated if the Director receives a petition signed by at least 33-1/3% of all retail propane marketers with customers in the State as described above. If the referendum fails to pass, or if the referendum terminating the assessment passes, the Commission must do the following:

- Recommend to the Legislature that it repeal the Act effective six months after the date of the referendum.
- Phase out its operations in the six months following the date of the referendum.
- After six months from the date of the referendum, take no further action to further the purposes of the Act.

### Failure to Comply

Under the Act, a person that 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 1.0% of the amount due for each month the payment is overdue.

The Act requires MDARD to enforce the provisions of the Act and the Commission to reimburse MDARD for costs it incurs in holding referenda, reviewing petitions, and enforcing the Act. The money received by MDARD must be allocated for its use.

The Act allows the Commission to file a written complaint with the Director documenting that a person has failed to collect or remit an assessment or failed to pay a late fee due to the Commission under the Act. After receiving a complaint, the Director must investigate its allegations. If, after an investigation, the Director finds that the person has failed to collect or remit an assessment or failed to pay a late fee to the Commission, the Director may bring an action to recover unpaid assessments or late fees plus the reasonable costs, including attorney fees, incurred in the action. The Director may use assessment funds to cover all reasonable costs and expenses incurred in connection with the recovery of unpaid assessments and late fees.

MCL 460.621 et al.

## **BACKGROUND**

From February 15, 2021, through February 26, 2021, MDARD held the initial referendum required under the Act. The Department mailed 119 ballots to retail propane marketers and received 65 ballots back. The referendum was approved, with 75% of the returned ballots cast in favor of levying the initial assessment of 1/10 of one cent per gallon upon odorized propane sold and placed into commerce in the State.<sup>1</sup>

Legislative Analyst: Tyler VanHuyse

## **FISCAL IMPACT**

The bill will 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 any costs that MDARD incurs from the operation of the Propane Commission will be supported by fee revenue from the Propane Commission Fund that will be established in the Department of Treasury.

Fiscal Analyst: Bruce Baker  
Cory Savino

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<sup>1</sup> "Propane Industry Votes to Implement, Establish MI Propane Commission", [www.michigan.gov](http://www.michigan.gov). Retrieved on 3-15-2021.

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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.