

11/16/06

A BILL FOR

An Act relating to the establishment of the Iowa propane education and research council, providing for the development of propane-related programs and projects, providing for the levy of an assessment on odorized propane, and providing penalties.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. NEW SECTION. 101B.1 SHORT TITLE.

This chapter shall be known as and may be cited as the "Iowa Propane Education and Research Act".

Sec. 2. NEW SECTION. 101B.2 DEFINITIONS.

As used in this chapter, unless the context otherwise requires:

1. "Council" means the Iowa propane education and research council created pursuant to section 101B.3.
2. "Education" means any action to provide information regarding propane, propane equipment, mechanical and technical practices, and propane uses to consumers and members of the propane industry.
3. "Fire Marshal" has the same meaning as provided in Section 100.1.
4. "Industry" means those persons involved in the production, transportation, and sale of propane, and the manufacture and distribution of propane utilization equipment.
5. "Industry trade association" means an organization exempt from tax under section 501(c)(3) or (6) of the Internal Revenue Code, representing the propane industry.
6. "Odorized propane" means propane which has an odorant added to it.
7. "Propane" means a hydrocarbon whose chemical composition is predominately C₃H₈, whether recovered from natural gas or crude oil, and includes liquefied petroleum gases and mixtures.
8. "Public member" means a member of the council other than representatives of retail marketers representing significant users of propane, public safety officials, state regulatory officials, or other groups knowledgeable about propane.
9. "Qualified industry organization" means the Iowa propane gas association or any other similarly constituted industry trade association recognized by the fire marshal as being representative of the industry.
10. "Research" means any type of study, investigation, program or other activity designed to advance the image, desirability, usage, marketability, efficiency, and safety of propane and to further the development of information related to such activities.
11. "Retail marketer" means a person engaged primarily in the sale of odorized propane to the ultimate consumer or to a retail propane dispenser.
12. "Retail propane dispenser" means a person who sells odorized propane to the ultimate consumer but is not engaged primarily in the business of such sales.

Sec. 3. NEW SECTION. 101B.3 IOWA PROPANE EDUCATION AND RESEARCH COUNCIL ESTABLISHED.

1. The Iowa propane education and research council is established in the office of the state fire marshal. The council shall consist of ten members, nine of whom shall represent retail marketers and one of whom shall be a public member. The qualified industry organizations together shall select all members of the council. A vacancy in the unfinished term of a council member shall be filled for the unfinished term in the same manner as the original appointment was made. Other than the public members, council members shall be full-time employees or owners of a propane industry business or representatives of an agricultural cooperative actively engaged in the propane business. An employee of a qualified industry organization shall not serve as a member of the council and a member of the council shall not serve concurrently as an officer of the board of directors of a qualified industry organization or other industry trade association. The fire marshal may serve as an ex officio, nonvoting member of the council.

2. In selecting members of the council, the qualified industry organizations shall give due regard to selecting council members that are representative of the industry, including representation of all of the following:

- a. Interstate and intrastate operators among retail marketers.
- b. Large and small companies among retail marketers, including agricultural cooperatives.
- c. Diverse geographic regions of the state.

3. A council member, other than a public member, shall not receive compensation for the council member's service, and shall not be reimbursed for expenses relating to the council member's service. The public member shall receive a per diem as specified in section 7E.6 and actual expenses in performing official council functions not to exceed forty days per year. A member of the council shall not be a salaried employee of the council or any organization or agency which is receiving funds from the council.

4. A council member shall serve a term of three years and shall not serve more than two full consecutive terms. A council member filling an unexpired term may serve not more than a total of seven consecutive years. A former council member may be returned to the council if the former member has not been a member for a period of two years. Initial appointments to the council shall be for terms of one, two, and three years, staggered to provide for the selection of at least two members each year. The council shall notify the fire marshal of the name, address, and propane-related affiliation, if any, of a council member within thirty days after the appointment of the member to the council.

5. The council shall develop programs and projects and enter into agreements for administering programs and projects under this chapter, including programs to enhance consumer and employee safety and training, to provide for research and development of clean and efficient propane utilization equipment, to inform and educate the public about safety and other issues associated with the use of propane, and to provide for the payment of the costs with funds collected pursuant to this chapter. The council shall coordinate its programs and projects with industry trade associations and others as appropriate to provide efficient delivery of services and to avoid unnecessary duplication of activities.

6. Issues related to research and development, safety, education, and training shall be given priority by the council in the development of programs and projects.

7. The council shall select a chairperson and other officers as necessary from among the members of the council, may establish committees and subcommittees of the council, and shall adopt rules and bylaws for the conduct of business and the implementation of this chapter. The council shall establish procedures for the solicitation of industry comment and recommendations on any significant plans, programs, and projects to be funded by the council. The council may establish advisory committees of persons other than council members.

8. At the beginning of each fiscal period, the council shall prepare a budget plan for the next fiscal period, including the probable cost of all programs, projects, and contracts and a recommended rate of assessment sufficient to cover such costs. The council shall submit the proposed budget to the fire marshal for review and comment. The fire marshal may recommend programs, projects, and activities considered appropriate.

9. The council shall keep minutes, books, and records that clearly reflect all of the acts and transactions of the council and make public such information. The books of the council shall be audited by a certified public accountant at least once each fiscal year and at such other times as the council may designate. The expense of the audit shall be the responsibility of the council. Copies of the audit shall be provided to all members of the council, all qualified industry organizations, and to other members of the industry upon request.

Sec. 4. NEW SECTION. 101B.4 FUNDING THROUGH ASSESSMENTS.

1. The council and its activities shall be funded through an annual assessment as set forth below. The initial assessment shall be at a rate of one-tenth of one cent per gallon of odorized propane. Thereafter the council shall set the annual assessment at an amount sufficient to cover the cost of the council and its activities provided, however, that the annual assessment shall not exceed one-half cent per gallon of odorized propane unless approved by a majority of those voting in a referendum of retail marketers conducted by an independent auditing firm selected by the council as described in section 101B.5. In no case may the assessment be raised by more than one-tenth of one cent per gallon of odorized propane annually.

2. An owner of odorized propane at the time of odorization or at the time of import of odorized propane shall make the assessment based on the volume of odorized propane sold for use in this state. The assessment, when made, shall be listed as a separate line item on the bill labeled "Iowa propane education and research assessment". An assessment collected by an owner from a purchaser of propane is payable to the council on a monthly basis by the twenty-fifth day of the month following the month of collection. If payment is not made to the council by the due date under this subsection, an interest penalty of one percent of any amount unpaid shall be assessed against the owner for each month or fraction of a month after the due date, until final payment is made.

3. The council may establish an alternative means of collecting the assessment if another means is found to be more efficient and effective. The council may establish a

late payment charge and rate of interest to be imposed on a person who fails to remit or pay the council any amount due under this chapter.

4. Pending disbursement pursuant to a program or project, the council shall invest moneys collected through assessments, and any other moneys received by the council, in any of the following only:

- a. Obligations of the United States or any agency of the United States.
- b. General obligations of any state or political subdivision of any state.
- c. Any interest-bearing account or certificate of deposit of a bank that is a member of the federal reserve system.
- d. Obligations fully guaranteed as to principal and interest by the United States.

Sec. 5. NEW SECTION. 101B.5 REFERENDUM FOR INCREASED ASSESSMENT AND TERMINATION OF THE IOWA PROPANE EDUCATION AND RESEARCH COUNCIL.

1. Qualified industry organizations shall conduct at their own expense a referendum among retail marketers in order to implement an increase in the annual assessment as when required by section 101B.4. The council shall reimburse the qualified industry organizations for the cost of the referendum accounting and documentation. An independent auditing firm agreed to by the qualified industry organizations shall conduct the referendum. The results of the referendum, as certified by the independent auditing firm, shall be submitted to the fire marshal with thirty days of certification. Voting rights in the referendum shall be based on the volume of odorized propane sold in this state by retail marketers in the previous calendar year. All persons voting in the referendum shall certify to the independent auditing firm the volume of propane represented by their vote. Upon approval of those persons representing two-thirds of the total volume of propane voted, the council shall be authorized to levy the new amount of the assessment on odorized propane in accordance with section 101B.4.

2. On the council's own initiative, or on petition to the council by retail marketers representing thirty-five percent of the volume of propane sold in this state, the council shall, at its own expense, hold a referendum to be conducted by an independent auditing firm selected by the council in the same manner as described in subsection 1, to determine whether the industry favors termination or suspension of the council. Termination or suspension shall not be deemed to have passed unless it is approved by persons representing more than one-half of the total volume of odorized propane sold in this state by retail marketers. If a referendum of termination or suspension is passed, the general assembly shall consider the repeal of this Act at its next regular session.

Sec. 6. NEW SECTION. 101B.6 COMPLIANCE.

The district court is vested with the jurisdiction specifically to enforce this chapter and prevent or restrain any person from violating this chapter. A successful action for compliance under this section may also require payment by the defendant of the costs incurred by the council in bringing the action.

Sec. 7. NEW SECTION. 101B.7 LOBBYING RESTRICTIONS.

Moneys collected by the council shall not be used in any manner for influencing legislation or elections, except that the council may recommend to the secretary fire

marshal changes in this chapter or other statutes that would further the purpose of this chapter.

Sec. 8. NEW SECTION. 101B.8 PRICING.

In all cases, the price of propane shall be determined by market forces. Consistent with antitrust laws, the council shall not take any action and this chapter shall not be interpreted as establishing an agreement to pass along to consumers the cost of the assessment provided for in section 101B.5.

Sec. 9. NEW SECTION. 101B.9 RELATION TO OTHER PROGRAMS.

This chapter shall not be construed to preempt or supersede any other program relating to propane education and research organized and operated under the laws of this state. This chapter shall be administered and construed as complimentary to the federal Propane Education and Research Act of 1996, 15 U.S.C. } 6401 et seq.

Sec. 10. NEW SECTION. 101B.10 BOND.

Any person occupying a position of trust under any provision of this chapter shall provide a bond in an amount required by the council. The premium for the bond shall be paid out of council funds.

Sec. 11. NEW SECTION. 101B.11 REPORT.

Each year the council shall prepare and submit a report summarizing the activities of the council under this chapter to the fire marshal and the auditor of state. The report shall show all income, expenses, and other relevant information concerning assessments collected and expended under this chapter.

Sec. 12. NEW SECTION. 101B.12 NOT A STATE AGENCY.

The Iowa propane education and research council, if created, is not a state agency.

Sec. 13. NEW SECTION. 101B.13 PENALTY.

A person who willfully violates this chapter or willfully renders or furnishes a false or fraudulent report, statement, or record required by the fire marshal pursuant to this chapter commits a simple misdemeanor.

EXPLANATION

This bill provides for the creation of the Iowa propane education and research council in the office of the state fire marshal. The council and its activities are funded through an annual assessment of one-tenth of one cent per gallon of odorized propane. The council is to establish an assessment annually at an amount sufficient to cover the cost of the council and its activities provided, however, that the annual assessment shall not exceed one-half cent per gall of odorized propane unless approved by a majority of those voting in a referendum of retail marketers conducted by an independent auditing firm selected by the council. In no case may the assessment be raised by more than one-tenth of one cent per gallon annually.

The bill provides that the council shall consist of ten members selected by the qualified industry organizations with nine members representing retail marketers and one public member. The fire marshal shall serve as an ex officio, nonvoting member. The bill provides that the members shall serve three-year terms and shall not serve more than two full consecutive terms. A former member may serve on the council if the former member has not been a member for a period of two years. The bill provides that public members on the council shall receive a per diem and actual expenses in performing official council functions.

The bill provides that the council shall develop programs and activities relating to the enhancement of consumer and employee safety and training, research and development of clean and efficient propane equipment, and education of the public regarding propane safety and other issues associated with the use of propane. The bill provides that the council may enter into agreements to administer the programs and projects. The bill provides for council recordkeeping requirements, auditing requirements, and reporting requirements.

The bill provides that the district court has jurisdiction for enforcement of the chapter. Moneys collected by the council shall not be used for lobbying. The bill provides that the council is not a state agency and that a bond is required for any person occupying a position of trust under the chapter.

The bill provides that it is a simple misdemeanor for a person to violate any provision of the chapter.

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The Goals of Establishing the Iowa PERC

- A. Develop the position of a full time Director of Safety, Education, and Compliance.
 - 1. This position will assist marketers in coordinating Compliance issues between Marketers and federal and state agencies, as well as local authorities
 - 2. Use existing Education & Training Programs to enhance the safety practices of the industry.
 - 3. Work with Marketers to increase the awareness of safe practices by emergency personal.
 - 4. Assist Marketers with compliance files.
 - 5. Work with state agencies on all issues involving the industry.
- B. Enhance existing consumer awareness programs & develop consumer energy conservation programs.
 - 1. Included in this. Safe uses and practices for consumers.
 - 2. Emergency Education Awareness Protocol.
 - 3. Assist in upgrading & improving consumer systems.
- C. Provide hands on safety training & compliance education.
 - 1. For Marketers.
 - 2. Fire Departments & Emergency Personnel.
 - 3. Local Authorities.
 - 4. HVAC & Plumbing companies.