

CHAPTER 97-105

Committee Substitute for Senate Bill No. 1362

An act relating to propane gas; creating ss. 527.20-527.23, F.S.; creating the Florida Propane Gas Education, Safety, and Research Act; providing a statement of legislative purpose; providing definitions; establishing the Florida Propane Gas Education, Safety, and Research Council; providing for membership, duties, and responsibilities; providing for marketing orders and requirements; providing referendum requirements; providing for industry assessments; providing for rules; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Sections 527.20, 527.21, 527.22, and 527.23, Florida Statutes, are created to read:

527.20 Short title and purpose.—

(1) Sections 527.20-527.23 may be cited as the “Florida Propane Gas Education, Safety, and Research Act.”

(2) It is the finding of the Legislature that:

(a) Educating propane gas producers, distributors, and consumers about propane gas and about the mechanical, technical, and safety practices related to propane gas and propane gas equipment furthers the public interest by reducing accidents and improving safety.

(b) Improved and increased marketing of propane gas will increase the consumption and use of propane gas, thereby furthering the public interest by creating additional employment opportunities in the state and expanding revenue.

(3) The purposes of the act are to:

(a) Establish the Florida Propane Gas Education, Safety, and Research Council to study problems arising in the production, transportation, marketing, and use of propane gas and to formulate and provide to the commissioner recommendations and policy alternatives. The council is to investigate, research, study, or perform other activities in order to advance the safety, efficiency, desirability, usage, and marketability of propane gas and propane-gas-use-equipment.

(b) Provide for education of propane gas producers, distributors, and consumers about:

1. Propane gas and its uses;

2. Safety issues related to propane gas and the mechanical, technical, and safety practices related to propane gas and propane gas equipment; and

3. Other issues related to propane gas which the council determines would be beneficial to producers, distributors, and consumers.

(c) Provide a method of funding for the activities established in the act.

527.21 Definitions.—As used in ss. 527.20-527.23, the term:

(1) “Council” means the Florida Propane Gas Education, Safety, and Research Council created by this act.

(2) “Commissioner” means the Commissioner of Agriculture or the commissioner’s designee.

(3) “Dealer” means a business engaged primarily in selling propane gas and its appliances and equipment to the ultimate consumer or to retail propane gas dispensers.

(4) “Department” means the Department of Agriculture and Consumer Services.

(5) “Education” means any action to provide information to consumers and to members of the propane gas industry concerning propane gas, propane-gas-use equipment, mechanical and technical practices, and propane gas uses.

(6) “Manufacturer and distributor of propane gas use equipment” means any person or firm engaged in manufacturing, assembling, and marketing appliances, containers, and products used in the propane gas industry, and any person or firm engaged in the wholesale marketing of appliances, containers, and products used in the propane gas industry.

(7) “Marketing” means the establishment of plans and programs for advertising, sales promotion, and education to maintain present markets or to create new or larger markets for propane gas without reference to a private brand or trade name.

(8) “Marketing order” means an order issued by the department prescribing rules governing the distribution, or handling in any manner, of propane gas in the state during any specified period or periods.

(9) “Person” means any individual, group of individuals, association, cooperative, corporation, firm, or other entity.

(10) “Producer” means the owner of propane gas at the time it is recovered at a manufacturing facility, irrespective of the state where production occurs.

(11) “Propane” includes propane, butane, mixtures, and liquefied petroleum gas as defined by the National Fire Protection Association Standard 58 For The Storage and Handling of Liquefied Petroleum Gases.

(12) “Public member” means a state resident, citizen-at-large member of the council who is representative of the views of the general public toward propane gas use and selected from among private nonindustrial or noncommercial users of propane gas.

(13) “Qualified industry organization” means the National Propane Gas association, the Florida Propane Gas Association, or a successor association.

(14) “Research” means any type of study, investigation, or other activity designed to advance the image, desirability, usage, marketability, efficiency, and safety of propane gas and propane gas use equipment and to further the development of such information and products.

(15) “Retail marketer class” means those persons who sell or produce propane gas.

(16) “Transporter” means any person involved in the commercial transportation of propane gas by pipeline, truck, rail, or water.

(17) “Wholesaler” or “reseller” means a seller of propane gas who is not a producer and who does not sell propane gas to the ultimate consumer.

527.22 Florida Propane Gas Education, Safety, and Research Council established; membership; duties and responsibilities.—

(1) The Florida Propane Gas Education, Safety, and Research Council is established.

(2)(a) Within 90 days after the effective date of this act, the commissioner shall make a call to qualified industry organizations for nominees to the council. The commissioner shall appoint members of the council from a list of nominees submitted by qualified industry organizations. The commissioner may require such reports or documentation as is necessary to document the nomination process for members of the council. Qualified industry organizations, in making nominations, and the commissioner, in making appointments, shall give due regard to selecting a council that is representative of the industry and the geographic regions of the state. Other than the public member, council members must be full-time employees or owners of propane gas producers or dealers doing business in this state.

(b) The council shall consist of 15 members, as follows:

1. Ten members representing dealers of propane gas, but not more than two dealer members may be from any one company;

2. Two members representing producers of propane gas;

3. Two members representing manufacturers and distributors of propane-gas-use equipment, wholesalers or resellers, and transporters; and

4. One public member.

(c) Council members shall be appointed to staggered terms of 4 years, except that, of the initial members appointed, five shall be appointed for terms of 2 years, five shall be appointed for terms of 3 years, and five shall be appointed for terms of 4 years. Members may serve a maximum of two consecutive full terms. Former council members may be reappointed to the council if they have not been members for a period of 2 years. Vacancies in unexpired terms of council members may be filled by the council subject to

approval of the commissioner. Members filling unexpired terms may serve a maximum of 7 consecutive years.

(d) The council shall elect from among its members a chair, a vice chair, and a secretary, and shall use accepted rules of procedures. The terms of such officers shall be for 1 year.

(3)(a) The council shall meet at least annually. The council shall meet at the call of its chair, at the request of a majority of its membership, at the request of the department, or at such times as may be prescribed by its rules of procedure. The commissioner shall receive notice of all meetings. Meetings of the council are subject to the provisions of chapter 286.

(b) A majority of the members of the council constitutes a quorum for all purposes, and an act by a majority of a quorum at any meeting constitutes an official act of the council.

(c) The council secretary shall keep a complete record of the proceedings of each meeting, which record shall include the names of the members present and the actions taken.

(4) The council shall keep minutes, accounting records, and other records as necessary to clearly reflect all of the acts and transactions of the council and regularly report such information to the commissioner, along with such other information as the commissioner requires. The accounting records 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 or the department designates. Copies of such audit shall be provided to the commissioner, to all members of the council, to each qualified industry organization upon request, and to the Auditor General. Copies shall be provided to other producers and dealers upon request. All records of the council shall be kept on file with the department, and these records and other documents about matters within the jurisdiction of the council shall be subject to inspection by the members of the council. All records of the council are subject to the provisions of s. 119.07.

(5) Council members shall receive no compensation or honorarium for their services, and are authorized to receive only per diem and reimbursement for travel expenses as provided in s. 112.061.

(6) At the beginning of each fiscal period, the council shall prepare and submit to the commissioner for approval a business plan and a budget plan that includes the estimated costs of all recommended programs and projects and states a recommended rate of assessment to cover such costs.

(7) The members and employees of the council shall not be held responsible individually in any way whatsoever to any producer or dealer or any other person for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agency, person, or employee, except for their own individual acts of dishonesty or crime. No such member or employee shall be held responsible individually for any act of any other member of the council.

527.23 Marketing orders; referendum requirements; assessments.—

(1) Subject to the legislative restrictions and limitations set forth in this act, any marketing order issued by the department may contain any or all of the following provisions:

(a) Provisions for the establishment of plans and programs for advertising, sales promotion, and education to maintain present markets or to create new or larger markets for propane gas produced or marketed in the state. The department is authorized to prepare, issue, administer, and enforce plans and programs for promoting the sale of propane gas; however, any plan or program shall be directed toward increasing the sale of the commodity without reference to a private brand or trade name.

(b) Provisions for carrying on research studies in the production, marketing, or distribution of propane gas; for economic research or environmental research related to propane gas; and for the expenditure of moneys for such purposes. In any research carried on pursuant to this paragraph, the department, upon recommendation of the council, shall select the research project or projects to be carried on. These projects may be carried out by any research agency the department chooses, based upon recommendations of the council.

(c) Provisions incidental to and not inconsistent with the terms, conditions, and provisions specified and necessary to effectuate the other provisions of the marketing order.

(2) Upon request of the council, the department shall conduct a referendum of all producers and dealers of propane gas who are in the state to levy an assessment upon producers and dealers of propane gas who are in the state based upon the gallonage of odorized propane gas sold and based upon the rate of assessment recommended by the council.

(3) Due notice of any hearing shall be given to all persons who may be directly affected by any action of the department. These hearings shall be open to the public. All testimony shall be received under oath, and a full and complete record of all proceedings at any hearing shall be made and filed by the department in its office. All interested persons shall have a period of not less than 7 days following the public hearing for filing written briefs with the department concerning such action.

(4) After notice and hearing, the department shall issue a marketing order if it finds and sets forth that the order will tend to accomplish the objectives and purposes of this act.

(5)(a) With respect to any referendum conducted under this act, the department shall, before calling and announcing a referendum, determine and publicly announce, at least 15 days in advance of the date on which ballots and copies of the proposed order are mailed to all producers or dealers of propane gas who are in the state and whose names and addresses are known, the date by which ballots must be returned to the department.

(b) It is the duty of the producers or dealers of propane gas who vote in each referendum to send their marked ballots to the department, which

shall have the ballots counted by qualified and impartial personnel in its office, and the department shall, within 10 days after the closing date for submitting ballots in any referendum, certify in writing and publish the results of such referendum in a newspaper of general circulation in the state and in such other newspapers as the department prescribes.

(6)(a) No marketing order or amendments thereto directly affecting and regulating producers or dealers of propane gas in this state shall become effective unless the department finds that the order has been approved by ballot by persons representing two-thirds of the total gallonage of odorized propane gas voting in the retail marketer class.

(b) All percentages determined by the department as required in this section shall be computed on the basis of persons voting in the referendum.

(7) From assessments collected, the council shall reimburse the department for costs incurred in holding the referendum establishing the council, making appointments to the council, and other expenses directly related to the council, development, marketing, and consumer awareness.

(8) Before issuing any marketing order, or any suspension, amendment, or termination thereof, the department shall provide notice to the producers and dealers affected by the marketing order.

(9)(a) To provide funds to defray the necessary expenses incurred by the department in the formulation, issuance, administration, and enforcement of any marketing order, producers and dealers in propane gas shall pay to the department an assessment, at such times and in such installments as the department prescribes. The department, after receiving the recommendations of the council, shall fix the rate of assessment on propane gas dealers and producers.

(b) The collected assessments shall be deposited into the General Inspection Trust Fund and shall be used for the sole purpose of implementing the marketing order for which the assessment was collected. Three percent of all income of a revenue nature deposited in this fund, including transfers from any subsidiary accounts thereof and any interest income, shall be deposited in the General Revenue Fund pursuant to chapter 215. The department is not subject to the procedures found in s. 287.057 in the expenditure of these funds. However, the director of the Division of Marketing and Development shall file with the internal auditor of the department a certification of conditions and circumstances justifying each contract or agreement entered into without competitive bidding.

(10) The council, or producers or dealers representing 35 percent of the total gallonage of odorized propane gas sold in the state, may petition the commissioner to suspend or terminate an order levying an assessment. The commissioner may not suspend or terminate an order levying the assessment unless the suspension or termination is approved in a referendum by those persons representing more than one-half of the total gallonage of odorized propane gas in the dealer class.

(11) The initial assessment shall be set at no greater than one-tenth of 1 cent per gallon. Thereafter, annual assessments shall be sufficient to cover the costs of the plans and programs developed by the council and approved by the commissioner. The assessment shall not be greater than one-half of 1 cent per gallon of odorized propane gas. The assessment may not be raised by more than one-tenth of 1 cent per gallon annually.

(12) The owner of propane gas immediately prior to odorization in this state or the owner at the time of import into this state of odorized propane gas is responsible for the payment of the assessment on the volume of propane gas at the time of import or odorization, whichever is later. Nonodorized propane gas shall not be subject to assessment until odorized.

(13) The department shall adopt rules necessary for administering, collecting, reporting, and the payment of assessments collected under this act.

Section 2. This act shall take effect upon becoming a law.

Became a law without the Governor's approval May 24, 1997.

Filed in Office Secretary of State May 23, 1997.