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I N S E N A T E

May 20, 2010

Introduced by Sen. MAZIARZ -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications

AN ACT to amend the energy law, in relation to implementing the empire propane education and research act

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The energy law is amended by adding a new article 14 to
2 read as follows:

3 ARTICLE 14

4 EMPIRE PROPANE EDUCATION AND RESEARCH ACT

5 SECTION 14-101. SHORT TITLE.

6 14-102. DEFINITIONS.

7 14-103. REFERENDUM; CREATION AND TERMINATION OF A PROGRAM.

8 14-104. EMPIRE PROPANE EDUCATION AND RESEARCH COUNCIL.

9 14-105. ASSESSMENTS.

10 14-106. COMPLIANCE.

11 14-107. LOBBYING RESTRICTIONS.

12 14-108. PRICING.

13 14-109. RELATION TO OTHER PROGRAMS.

14 S 14-101. SHORT TITLE. THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS
15 THE EMPIRE PROPANE EDUCATION AND RESEARCH ACT.

16 S 14-102. DEFINITIONS. FOR PURPOSES OF THIS ARTICLE, UNLESS THE
17 CONTEXT OTHERWISE REQUIRES:

18 1. "COUNCIL" MEANS AN EMPIRE PROPANE EDUCATION AND RESEARCH COUNCIL
19 CREATED PURSUANT TO SECTION 14-104 OF THIS ARTICLE;

20 2. "PRESIDENT" MEANS THE CHAIRMAN OF NYSERDA OR HIS OR HER DESIGNEE;

21 3. "EDUCATION" MEANS ANY ACTION TO PROVIDE INFORMATION REGARDING
22 PROPANE, PROPANE EQUIPMENT, MECHANICAL AND TECHNICAL PRACTICES, AND
23 PROPANE USES TO CONSUMERS, AND MEMBERS OF THE PROPANE INDUSTRY;

24 4. "INDUSTRY" MEANS THOSE PERSONS INVOLVED IN THE PRODUCTION, TRANS-
25 PORTATION, AND SALE OF PROPANE, AND THE MANUFACTURE AND DISTRIBUTION OF
26 PROPANE UTILIZATION EQUIPMENT;

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 5. "INDUSTRY TRADE ASSOCIATION" MEANS AN ORGANIZATION EXEMPT FROM TAX,
2 UNDER SECTION 501(C)(3) OR 501(C)(6) OF THE INTERNAL REVENUE CODE OF
3 1986, REPRESENTING THE PROPANE INDUSTRY;

4 6. "NYSERDA" MEANS THE NEW YORK STATE ENERGY AND RESEARCH DEVELOPMENT
5 AUTHORITY;

6 7. "ODORIZED PROPANE" MEANS PROPANE WHICH HAS AN ODORANT ADDED TO IT;

7 8. "PRODUCER" MEANS THE OWNER OF PROPANE AT THE TIME IT IS RECOVERED
8 AT A GAS PROCESSING PLANT OR REFINERY; IRRESPECTIVE OF THE STATE WHERE
9 PRODUCTION OCCURS;

10 9. "PROPANE" MEANS A HYDROCARBON WHOSE CHEMICAL COMPOSITION IS PREDOMINATELY C₃H₈, WHETHER RECOVERED FROM NATURAL GAS OR CRUDE OIL, AND
11 INCLUDES LIQUIFIED PETROLEUM GASES AND MIXTURES THEREOF;

12 10. "PUBLIC MEMBER" MEANS A DESIGNEE OF THE PRESIDENT OF THE NEW YORK
13 STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY;

14 11. "QUALIFIED INDUSTRY ORGANIZATION" MEANS THE NEW YORK PROPANE GAS
15 ASSOCIATION, THE NATIONAL PROPANE GAS ASSOCIATION, A SUCCESSOR ASSOCIATION OF THESE ASSOCIATIONS, OR ANY OTHER PROPANE INDUSTRY ORGANIZATION;

16 12. "RESEARCH" MEANS ANY TYPE OF STUDY, INVESTIGATION OR OTHER ACTIVITIES DESIGNED TO ADVANCE THE IMAGE, DESIRABILITY, USAGE, MARKETABILITY, EFFICIENCY, AND SAFETY OF PROPANE AND TO FURTHER THE DEVELOPMENT OF SUCH
17 INFORMATION;

18 13. "RETAIL MARKETER" MEANS A PERSON ENGAGED PRIMARILY IN THE SALE OF
19 ODORIZED PROPANE TO THE ULTIMATE CONSUMER OR TO RETAIL PROPANE DISPENSERS; AND

20 14. "RETAIL PROPANE DISPENSER" MEANS A PERSON WHO SELLS ODORIZED
21 PROPANE TO THE ULTIMATE CONSUMER BUT IS NOT ENGAGED PRIMARILY IN THE
22 BUSINESS OF SUCH SALES.

23 S 14-103. REFERENDUM; CREATION AND TERMINATION OF A PROGRAM. 1. QUALIFIED INDUSTRY ORGANIZATIONS SHALL CONDUCT AT THEIR OWN EXPENSE, A
24 REFERENDUM AMONG PRODUCERS AND RETAIL MARKETERS FOR THE CREATION OF AN
25 EMPIRE PROPANE EDUCATION AND RESEARCH COUNCIL. THE COUNCIL, IF ESTABLISHED, SHALL REIMBURSE THE QUALIFIED INDUSTRY ORGANIZATIONS FOR THE
26 COST OF THE REFERENDUM ACCOUNTING AND DOCUMENTATION. THE REFERENDUM
27 SHALL BE CONDUCTED BY AN INDEPENDENT AUDITING FIRM AGREED TO BY THE
28 QUALIFIED INDUSTRY ORGANIZATIONS. THE RESULTS, AS CERTIFIED BY AN INDEPENDENT AUDITING FIRM, SHALL BE SUBMITTED TO THE PRESIDENT WITHIN THIRTY
29 DAYS OF CERTIFICATION. VOTING RIGHTS IN THE REFERENDUM SHALL BE BASED ON
30 THE VOLUME OF PROPANE PRODUCED OR ODORIZED PROPANE SOLD IN THE PREVIOUS
31 CALENDAR YEAR. UPON APPROVAL OF THOSE PERSONS REPRESENTING TWO-THIRDS OF
32 THE TOTAL VALUE OF PROPANE VOTED IN THE RETAIL MARKETER CLASS AND
33 TWO-THIRDS OF ALL PROPANE VOTED IN THE PRODUCER CLASS, THE COUNCIL SHALL
34 BE ESTABLISHED, AND SHALL BE AUTHORIZED TO LEVY AN ASSESSMENT ON ODORIZED PROPANE IN ACCORDANCE WITH SECTION 14-105 OF THIS ARTICLE. ALL
35 PERSONS VOTING IN THE REFERENDUM SHALL CERTIFY TO THE INDEPENDENT AUDITING FIRM THE VOLUME OF PROPANE REPRESENTED BY THEIR VOTE.

36 2. ON THE COUNCIL'S OWN INITIATIVE, OR ON PETITION TO THE COUNCIL BY
37 PRODUCERS AND RETAIL MARKETERS REPRESENTING THIRTY-FIVE PERCENT OF THE
38 VOLUME OF PROPANE IN EACH CLASS, THE COUNCIL SHALL, AT ITS OWN EXPENSE,
39 HOLD A REFERENDUM TO BE CONDUCTED BY AN INDEPENDENT AUDITING FIRM
40 SELECTED BY THE COUNCIL, TO DETERMINE WHETHER THE INDUSTRY FAVORS TERMINATION OR SUSPENSION OF THE COUNCIL. TERMINATION OR SUSPENSION SHALL NOT
41 TAKE EFFECT UNLESS IT IS APPROVED BY PERSONS REPRESENTING MORE THAN
42 ONE-HALF OF THE TOTAL VOLUME OF ODORIZED PROPANE IN THE RETAIL MARKETER
43 CLASS AND MORE THAN ONE-HALF THE TOTAL VOLUME OF PROPANE IN THE PRODUCER
44 CLASS.

1 S 14-104. EMPIRE PROPANE EDUCATION AND RESEARCH COUNCIL. 1. THE QUALI-
2 FIED INDUSTRY ORGANIZATIONS SHALL SELECT ALL RETAIL MARKETERS MEMBERS
3 AND PRODUCER MEMBERS OF THE COUNCIL. THE PRESIDENT SHALL DESIGNATE ONE
4 PUBLIC MEMBER. VACANCIES IN THE UNFINISHED TERMS OF COUNCIL MEMBERS
5 SHALL BE FILLED IN THE SAME MANNER AS WERE THE ORIGINAL APPOINTMENTS.

6 2. IN SELECTING MEMBERS OF THE COUNCIL, THE QUALIFIED INDUSTRY ORGAN-
7 IZATIONS SHALL GIVE DUE REGARD TO SELECTING A COUNCIL THAT IS REPRESENTATIVE
8 OF THE INDUSTRY, INCLUDING REPRESENTATION OF:

9 (A) GAS PROCESSORS AND OIL REFINERS AMONG PRODUCERS;

10 (B) INTERSTATE AND INTRASTATE OPERATORS AMONG RETAIL MARKETERS;

11 (C) LARGE AND SMALL COMPANIES AMONG PRODUCERS AND RETAIL MARKETERS,
12 INCLUDING AGRICULTURAL COOPERATIVES; AND

13 (D) DIVERSE GEOGRAPHIC REGIONS OF THE STATE.

14 3. THE COUNCIL SHALL CONSIST OF NO LESS THAN FIVE AND UP TO SEVEN
15 MEMBERS, WITH NO LESS THAN FOUR AND UP TO SIX MEMBERS REPRESENTING
16 RETAIL MARKETERS AND PRODUCERS, AND ONE PUBLIC MEMBER. OTHER THAN THE
17 PUBLIC MEMBER, COUNCIL MEMBERS SHALL BE FULL-TIME EMPLOYEES OR OWNERS OF
18 BUSINESSES IN THE INDUSTRY OR REPRESENTATIVES OF AGRICULTURAL COOPER-
19 ATIVES. NO EMPLOYEE OF A QUALIFIED INDUSTRY ORGANIZATION SHALL SERVE AS
20 A MEMBER OF THE COUNCIL, AND NO MEMBER OF THE COUNCIL MAY SERVE CONCUR-
21 RENTLY AS AN OFFICER OF THE BOARD OF DIRECTORS OF A QUALIFIED INDUSTRY
22 ORGANIZATION OR OTHER TRADE ASSOCIATION. ONLY ONE PERSON AT A TIME FROM
23 ANY COMPANY OR ITS AFFILIATE MAY SERVE ON THE COUNCIL. THE PRESIDENT MAY
24 SERVE AS AN EX-OFFICIO NON-VOTING MEMBER OF THE COUNCIL.

25 4. COUNCIL MEMBERS SHALL RECEIVE NO COMPENSATION FOR THEIR SERVICES,
26 NOR SHALL COUNCIL MEMBERS BE REIMBURSED FOR EXPENSES RELATING TO THEIR
27 SERVICE, EXCEPT THAT PUBLIC MEMBERS, UPON REQUEST, MAY BE REIMBURSED FOR
28 REASONABLE EXPENSES DIRECTLY RELATED TO THEIR PARTICIPATION IN COUNCIL
29 MEETINGS.

30 5. COUNCIL MEMBERS SHALL SERVE TERMS OF THREE YEARS AND MAY NOT SERVE
31 MORE THAN TWO FULL CONSECUTIVE TERMS. MEMBERS FILLING UNEXPIRED TERMS
32 MAY SERVE NOT MORE THAN A TOTAL OF SEVEN CONSECUTIVE YEARS. FORMER
33 MEMBERS OF THE COUNCIL MAY BE RETURNED TO THE COUNCIL IF THEY HAVE NOT
34 BEEN MEMBERS FOR A PERIOD OF TWO YEARS. INITIAL APPOINTMENTS TO THE
35 COUNCIL SHALL BE FOR TERMS OF ONE, TWO, AND THREE YEARS STAGGERED TO
36 PROVIDE FOR THE SELECTION OF FOUR MEMBERS EACH YEAR. THE COUNCIL SHALL
37 NOTIFY THE PRESIDENT OF THE NAME, ADDRESS, AND PROPANE-RELATED AFFIL-
38 IATION, IF ANY, OF A COUNCIL MEMBER WITHIN THIRTY DAYS AFTER THE
39 APPOINTMENT OF THE MEMBER TO THE COUNCIL.

40 6. THE COUNCIL SHALL DEVELOP PROGRAMS AND PROJECTS AND ENTER INTO
41 CONTRACTS OR AGREEMENTS FOR IMPLEMENTING THIS ARTICLE, INCLUDING
42 PROGRAMS TO ENHANCE CONSUMER AND EMPLOYEE SAFETY AND TRAINING, TO
43 PROVIDE FOR RESEARCH AND DEVELOPMENT OF CLEAN AND EFFICIENT PROPANE
44 UTILIZATION EQUIPMENT, TO INFORM AND EDUCATE THE PUBLIC ABOUT SAFETY AND
45 OTHER ISSUES ASSOCIATED WITH THE USE OF PROPANE, AND TO PROVIDE FOR THE
46 PAYMENT OF THE COSTS THEREOF WITH FUNDS COLLECTED PURSUANT TO THIS ARTI-
47 CLE. THE COUNCIL SHALL COORDINATE ITS ACTIVITIES WITH INDUSTRY TRADE
48 ASSOCIATIONS, HUDSON VALLEY COMMUNITY COLLEGE, OTHER COMMUNITY COLLEGES
49 AND OTHERS AS APPROPRIATE TO PROVIDE EFFICIENT DELIVERY OF SERVICES AND
50 TO AVOID UNNECESSARY DUPLICATION OF ACTIVITIES.

51 7. ISSUES RELATED TO RESEARCH AND DEVELOPMENT, SAFETY, EDUCATION, AND
52 TRAINING SHALL BE GIVEN PRIORITY BY THE COUNCIL IN THE DEVELOPMENT OF
53 ITS PROGRAMS AND PROJECTS.

54 8. THE COUNCIL SHALL SELECT FROM AMONG ITS MEMBERS A CHAIRPERSON AND
55 OTHER OFFICERS AS NECESSARY, MAY ESTABLISH COMMITTEES AND SUBCOMMITTEES
56 OF THE COUNCIL, AND SHALL ADOPT RULES AND BYLAWS FOR THE CONDUCT OF

BUSINESS AND THE IMPLEMENTATION OF THIS ARTICLE. 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.

9. 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 PRESIDENT FOR REVIEW AND COMMENT. THE PRESIDENT MAY RECOMMEND PROGRAMS AND ACTIVITIES CONSIDERED APPROPRIATE.

10. 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 SUCH AUDIT SHALL BE PROVIDED TO ALL MEMBERS OF THE COUNCIL, ALL QUALIFIED INDUSTRY ORGANIZATIONS, AND TO OTHER MEMBERS OF THE INDUSTRY UPON REQUEST.

S 14-105. ASSESSMENTS. 1. THE COUNCIL SHALL SET THE ASSESSMENT AT NO GREATER THAN ONE-TENTH OF ONE CENT PER GALLON OF ODORIZED PROPANE.

2. THE OWNER OF ODORIZED PROPANE AT THE TIME OF ODORIZATION, OR THE TIME OF IMPORT OF ODORIZED PROPANE SHALL MAKE THE ASSESSMENT BASED ON THE VOLUME OF ODORIZED PROPANE SOLD. THE ASSESSMENT, WHEN MADE, SHALL BE LISTED AS A SEPARATE LINE ITEM ON THE BILL LABELED "EMPIRE PROPANE EDUCATION AND RESEARCH ASSESSMENT". ASSESSMENTS COLLECTED FROM PURCHASERS OF PROPANE ARE PAYABLE TO THE COUNCIL ON A MONTHLY BASIS BY THE TWENTY-FIFTH OF THE MONTH FOLLOWING THE MONTH OF COLLECTION.

IF PAYMENT IS NOT MADE TO THE COUNCIL BY THE DUE DATE UNDER THIS SUBDIVISION, AN INTEREST PENALTY OF ONE PERCENT OF ANY AMOUNT UNPAID SHALL BE ADDED 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 ANY PERSON WHO FAILS TO REMIT OR PAY TO THE COUNCIL ANY AMOUNT DUE UNDER THIS ARTICLE.

4. PENDING DISBURSEMENT PURSUANT TO A PROGRAM, PLAN, OR PROJECT, THE COUNCIL SHALL INVEST FUNDS COLLECTED THROUGH ASSESSMENTS, AND ANY OTHER FUNDS RECEIVED BY THE COUNCIL, ONLY IN OBLIGATIONS OF THE UNITED STATES OR ANY AGENCY THEREOF, IN GENERAL OBLIGATIONS OF ANY STATE OR POLITICAL SUBDIVISION THEREOF, IN ANY INTEREST-BEARING ACCOUNT OR CERTIFICATE OF DEPOSIT OF A BANK THAT IS A MEMBER OF THE FEDERAL RESERVE SYSTEM, OR IN OBLIGATIONS FULLY GUARANTEED AS TO PRINCIPAL AND INTEREST BY THE UNITED STATES.

S 14-106. COMPLIANCE. THE SUPREME COURT IS VESTED WITH THE JURISDICTION SPECIFICALLY TO ENFORCE THE PROVISIONS OF THIS ARTICLE, AND PREVENT OR RESTRAIN ANY PERSON FROM VIOLATING ANY SUCH PROVISION. 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.

S 14-107. LOBBYING RESTRICTIONS. NO FUNDS COLLECTED BY THE COUNCIL SHALL BE USED IN ANY MANNER FOR INFLUENCING LEGISLATION OR ELECTIONS, EXCEPT THAT THE COUNCIL MAY RECOMMEND TO THE PRESIDENT CHANGES IN THIS ARTICLE OR OTHER STATUTES THAT WOULD FURTHER THE PURPOSE OF THIS ARTICLE.

1 S 14-108. PRICING. IN ALL CASES, THE PRICE OF PROPANE SHALL BE DETER-
2 MINED BY MARKET FORCES. CONSISTENT WITH THE ANTITRUST LAWS, THE COUNCIL
3 MAY TAKE NO ACTION, NOR MAY ANY PROVISION OF THIS ARTICLE BE INTERPRETED
4 AS ESTABLISHING AN AGREEMENT TO PASS ALONG TO CONSUMERS THE COST OF THE
5 ASSESSMENT PROVIDED FOR IN SECTION 14-105 OF THIS ARTICLE.
6 S 14-109. RELATION TO OTHER PROGRAMS. NOTHING IN THIS ARTICLE MAY BE
7 CONSTRUED TO PREEMPT OR SUPERSEDE ANY OTHER PROGRAM RELATING TO PROPANE
8 EDUCATION AND RESEARCH ORGANIZED AND OPERATED UNDER THE LAWS OF THE
9 STATE OF NEW YORK.
10 S 2. This act shall take effect immediately.