

377

2011-2012 Regular Sessions

I N   A S S E M B L Y

(PREFILED)

January 5, 2011

---

Introduced by M. of A. MAGEE, LUPARDO, CAHILL, MORELLE -- Multi-Sponsored by -- M. of A. LATIMER, LENTOL, McENENY -- read once and referred to the Committee on Energy

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;

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

LBD00696-01-1

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

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

7 6. "NYSERDA" MEANS THE NEW YORK STATE ENERGY AND RESEARCH DEVELOPMENT  
8 AUTHORITY;

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

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

13 9. "PROPANE" MEANS A HYDROCARBON WHOSE CHEMICAL COMPOSITION IS PREDOMINATELY C<sub>3</sub>H<sub>8</sub>, WHETHER RECOVERED FROM NATURAL GAS OR CRUDE OIL, AND  
14 INCLUDES LIQUIFIED PETROLEUM GASES AND MIXTURES THEREOF;

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

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

19 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 INFORMATION;

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

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

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

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

1 CLASS AND MORE THAN ONE-HALF THE TOTAL VOLUME OF PROPANE IN THE PRODUCER  
2 CLASS.

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

8 2. IN SELECTING MEMBERS OF THE COUNCIL, THE QUALIFIED INDUSTRY ORGAN-  
9 IZATIONS SHALL GIVE DUE REGARD TO SELECTING A COUNCIL THAT IS REPRESENT-  
10 TATIVE OF THE INDUSTRY, INCLUDING REPRESENTATION OF:

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

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

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

15 (D) DIVERSE GEOGRAPHIC REGIONS OF THE STATE.

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

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

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

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

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

1 8. THE COUNCIL SHALL SELECT FROM AMONG ITS MEMBERS A CHAIRPERSON AND  
2 OTHER OFFICERS AS NECESSARY, MAY ESTABLISH COMMITTEES AND SUBCOMMITTEES  
3 OF THE COUNCIL, AND SHALL ADOPT RULES AND BYLAWS FOR THE CONDUCT OF  
4 BUSINESS AND THE IMPLEMENTATION OF THIS ARTICLE. THE COUNCIL SHALL  
5 ESTABLISH PROCEDURES FOR THE SOLICITATION OF INDUSTRY COMMENT AND RECOM-  
6 MENDATIONS ON ANY SIGNIFICANT PLANS, PROGRAMS, AND PROJECTS TO BE FUNDED  
7 BY THE COUNCIL. THE COUNCIL MAY ESTABLISH ADVISORY COMMITTEES OF PERSONS  
8 OTHER THAN COUNCIL MEMBERS.

9 9. AT THE BEGINNING OF EACH FISCAL PERIOD, THE COUNCIL SHALL PREPARE A  
10 BUDGET PLAN FOR THE NEXT FISCAL PERIOD, INCLUDING THE PROBABLE COST OF  
11 ALL PROGRAMS, PROJECTS, AND CONTRACTS AND A RECOMMENDED RATE OF ASSESS-  
12 MENT SUFFICIENT TO COVER SUCH COSTS. THE COUNCIL SHALL SUBMIT THE  
13 PROPOSED BUDGET TO THE PRESIDENT FOR REVIEW AND COMMENT. THE PRESIDENT  
14 MAY RECOMMEND PROGRAMS AND ACTIVITIES CONSIDERED APPROPRIATE.

15 10. THE COUNCIL SHALL KEEP MINUTES, BOOKS, AND RECORDS THAT CLEARLY  
16 REFLECT ALL OF THE ACTS AND TRANSACTIONS OF THE COUNCIL AND MAKE PUBLIC  
17 SUCH INFORMATION. THE BOOKS OF THE COUNCIL SHALL BE AUDITED BY A CERTI-  
18 FIED PUBLIC ACCOUNTANT AT LEAST ONCE EACH FISCAL YEAR AND AT SUCH OTHER  
19 TIMES AS THE COUNCIL MAY DESIGNATE. THE EXPENSE OF THE AUDIT SHALL BE  
20 THE RESPONSIBILITY OF THE COUNCIL. COPIES OF SUCH AUDIT SHALL BE  
21 PROVIDED TO ALL MEMBERS OF THE COUNCIL, ALL QUALIFIED INDUSTRY ORGANIZA-  
22 TIONS, AND TO OTHER MEMBERS OF THE INDUSTRY UPON REQUEST.

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

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

32 IF PAYMENT IS NOT MADE TO THE COUNCIL BY THE DUE DATE UNDER THIS  
33 SUBDIVISION, AN INTEREST PENALTY OF ONE PERCENT OF ANY AMOUNT UNPAID  
34 SHALL BE ADDED FOR EACH MONTH OR FRACTION OF A MONTH AFTER THE DUE DATE,  
35 UNTIL FINAL PAYMENT IS MADE.

36 3. THE COUNCIL MAY ESTABLISH AN ALTERNATIVE MEANS OF COLLECTING THE  
37 ASSESSMENT IF ANOTHER MEANS IS FOUND TO BE MORE EFFICIENT AND EFFECTIVE.  
38 THE COUNCIL MAY ESTABLISH A LATE PAYMENT CHARGE AND RATE OF INTEREST TO  
39 BE IMPOSED ON ANY PERSON WHO FAILS TO REMIT OR PAY TO THE COUNCIL ANY  
40 AMOUNT DUE UNDER THIS ARTICLE.

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

49 S 14-106. COMPLIANCE. THE SUPREME COURT IS VESTED WITH THE JURISDIC-  
50 TION SPECIFICALLY TO ENFORCE THE PROVISIONS OF THIS ARTICLE, AND PREVENT  
51 OR RESTRAIN ANY PERSON FROM VIOLATING ANY SUCH PROVISION. A SUCCESSFUL  
52 ACTION FOR COMPLIANCE UNDER THIS SECTION MAY ALSO REQUIRE PAYMENT BY THE  
53 DEFENDANT OF THE COSTS INCURRED BY THE COUNCIL IN BRINGING THE ACTION.

54 S 14-107. LOBBYING RESTRICTIONS. NO FUNDS COLLECTED BY THE COUNCIL  
55 SHALL BE USED IN ANY MANNER FOR INFLUENCING LEGISLATION OR ELECTIONS,  
56 EXCEPT THAT THE COUNCIL MAY RECOMMEND TO THE PRESIDENT CHANGES IN THIS

1 ARTICLE OR OTHER STATUTES THAT WOULD FURTHER THE PURPOSE OF THIS ARTI-  
2 CLE.

3 S 14-108. PRICING. IN ALL CASES, THE PRICE OF PROPANE SHALL BE DETER-  
4 MINED BY MARKET FORCES. CONSISTENT WITH THE ANTITRUST LAWS, THE COUNCIL  
5 MAY TAKE NO ACTION, NOR MAY ANY PROVISION OF THIS ARTICLE BE INTERPRETED  
6 AS ESTABLISHING AN AGREEMENT TO PASS ALONG TO CONSUMERS THE COST OF THE  
7 ASSESSMENT PROVIDED FOR IN SECTION 14-105 OF THIS ARTICLE.

8 S 14-109. RELATION TO OTHER PROGRAMS. NOTHING IN THIS ARTICLE MAY BE  
9 CONSTRUED TO PREEMPT OR SUPERSEDE ANY OTHER PROGRAM RELATING TO PROPANE  
10 EDUCATION AND RESEARCH ORGANIZED AND OPERATED UNDER THE LAWS OF THE  
11 STATE OF NEW YORK.

12 S 2. This act shall take effect immediately.