

**2015 DRAFTING REQUEST**

**Bill**

Received: **9/18/2015** Received By: **mpfotenh**  
 For: **Robert Cowles (608) 266-0484** Same as LRB: **-4234**  
 May Contact: By/Representing: **Heather**  
 Subject: **Trade Regulation - other** Drafter: **mpfotenh**  
 Addl. Drafters:  
 Extra Copies:

Submit via email: **YES**  
 Requester's email: **Sen.Cowles@legis.wisconsin.gov**  
 Carbon copy (CC) to: **mary.pfotenhauer@legis.wisconsin.gov**  
**mark.kunkel@legis.wisconsin.gov**

**Pre Topic:**

No specific pre topic given

**Topic:**

Propane check-off program

**Instructions:**

See attached

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P1	mpfotenh 10/26/2015	eweiss 10/27/2015	_____	sbasford 9/29/2015		
/P2	mpfotenh 11/10/2015	eweiss 11/11/2015	_____	srose 10/27/2015		
/P3	mpfotenh 11/23/2015	eweiss 11/23/2015	_____	sbasford 11/11/2015		

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P4	mpfotenh 12/4/2015	eweiss 12/4/2015	_____	lparisi 11/23/2015		
/P5	mpfotenh 12/15/2015	eweiss 12/15/2015	_____	sbasford 12/4/2015		
/P6	mpfotenh 1/4/2016	kfollett 1/4/2016	_____	lparisi 12/15/2015		
/1			_____	mbarman 1/4/2016	mbarman 1/4/2016	

FE Sent For:

↳ Not  
Needed

<END>

1 Wisconsin Safety, Training & Consumer Education Propane Assessment Program

2

3 The Wisconsin Propane Education and Research Council shall be the organization

4 that administers that administers the Wisconsin Safety, Training and Consumer

5 Education Propane Assessment program. No taxpayers' dollars may be used in

6 any component of this program.

7

8 The circuit court is vested with the jurisdiction specifically to enforce this Act, and

9 prevent or restrain any person from violating any provisions of this Act. A

10 successful action for compliance under this Section may also require payment by

11 the defendant of the costs incurred by the Council in bringing the action.

12

13 Within 120 days of the bill being signed into law, the Wisconsin Propane Gas

14 Association will conduct a referendum of its members to affirm support of the

15 program.

16

Drafting request  
From Heather @  
Sen. Cowles.

-MCP

FOR M.C.P.  
Mirror Fed. \*  
- currently have to  
with Ct  
FOR  
Fed. PROS.

PUBLIC LAW 104-284—OCT. 11, 1996

PROPANE EDUCATION AND RESEARCH ACT  
OF 1996

Public Law 104-284  
104th Congress

An Act

Oct. 11, 1996  
[H.R. 1514]

To authorize and facilitate a program to enhance safety, training, research and development, and safety education in the propane gas industry for the benefit of propane consumers and the public, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

Propane  
Education and  
Research Act of  
1996.  
15 USC 6401  
note.

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Propane Education and Research Act of 1996”.

15 USC 6401.

**SEC. 2. FINDINGS.**

The Congress finds that—

(1) propane gas, or liquefied petroleum gas, is an essential energy commodity providing heat, hot water, cooking fuel, and motor fuel among its many uses to millions of Americans;

(2) the use of propane is especially important to rural citizens and farmers, offering an efficient and economical source of gas energy;

(3) propane has been recognized as a clean fuel and can contribute in many ways to reducing the pollution in our cities and towns; and

(4) propane is primarily domestically produced and its use provides energy security and jobs for Americans.

15 USC 6402.

**SEC. 3. DEFINITIONS.**

For the purposes of this Act—

(1) the term “Council” means a Propane Education and Research Council created pursuant to section 4 of this Act;

(2) the term “industry” means those persons involved in the production, transportation, and sale of propane, and in the manufacture and distribution of propane utilization equipment, in the United States;

(3) the term “industry trade association” means an organization exempt from tax, under section 501(c) (3) or (6) of the Internal Revenue Code of 1986, representing the propane industry;

(4) the term “odorized propane” means propane which has had odorant added to it;

(5) the term “producer” means the owner of propane at the time it is recovered at a gas processing plant or refinery;

(6) the term “propane” means a hydrocarbon whose chemical composition is predominantly C<sup>3</sup>H<sup>8</sup>, whether recovered from natural gas or crude oil, and includes liquefied petroleum gases and mixtures thereof;

(7) the term “public member” means a member of the Council, other than a representative of producers or retail marketers, representing significant users of propane, public safety officials, academia, the propane research community, or other groups knowledgeable about propane;

(8) the term “qualified industry organization” means the National Propane Gas Association, the Gas Processors Association, a successor association of such associations, or a group of retail marketers or producers who collectively represent at least 25 percent of the volume of propane sold or produced in the United States;

(9) the term “retail marketer” means a person engaged primarily in the sale of odorized propane to the ultimate consumer or to retail propane dispensers;

(10) the term “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; and

(11) the term “Secretary” means the Secretary of Energy.

#### SEC. 4. REFERENDA.

15 USC 6403.

(a) CREATION OF PROGRAM.—The qualified industry organizations may conduct, at their own expense, a referendum among producers and retail marketers for the creation of a Propane Education and Research Council. The Council, if established, shall reimburse the qualified industry organizations for the cost of the referendum accounting and documentation. Such referendum shall be conducted by an independent auditing firm agreed to by the qualified industry organizations. Voting rights in such referendum shall be based on the volume of propane produced or odorized propane sold in the previous calendar year or other representative period. Upon approval of those persons representing two-thirds of the total volume of propane voted in the retail marketer class and two-thirds of all propane voted in the producer class, the Council shall be established, and shall be authorized to levy an assessment on odorized propane in accordance with section 6. All persons voting in the referendum shall certify to the independent auditing firm the volume of propane represented by their vote.

(b) TERMINATION.—On the Council’s own initiative, or on petition to the Council by producers and retail marketers representing 35 percent of the volume of propane in each class, the Council shall, at its own expense, hold a referendum, to be conducted by an independent auditing firm selected by the Council, to determine whether the industry favors termination or suspension of the Council. Termination or suspension shall not take effect unless it is approved by persons representing more than one-half of the total volume of odorized propane in the retail marketer class and more than one-half of the total volume of propane in the producer class, or is approved by persons representing more than two-thirds of the total volume of propane in either such class.

#### SEC. 5. PROPANE EDUCATION AND RESEARCH COUNCIL.

15 USC 6404.

(a) SELECTION OF MEMBERS.—The qualified industry organizations shall select all retail marketer, public, and producer members of the Council. The producer organizations shall select the producer members of the Council, the retail marketer organizations shall select retail marketer members, and all qualified industry organizations shall jointly select the public members. Vacancies

in unfinished terms of Council members shall be filled in the same manner as were the original appointments.

(b) REPRESENTATION.—In selecting members of the Council, the qualified industry organizations shall give due regard to selecting a Council that is representative of the industry, including representation of—

- (1) gas processors and oil refiners among producers;
- (2) interstate and intrastate operators among retail marketers;
- (3) large and small companies among producers and retail marketers, including agricultural cooperatives; and
- (4) diverse geographic regions of the country.

(c) MEMBERSHIP.—The Council shall consist of 21 members, with 9 members representing retail marketers, 9 members representing producers, and 3 public members. Other than the public members, Council members shall be full-time employees or owners of businesses in the industry or representatives of agricultural cooperatives. No employee of a qualified industry organization or other industry trade association shall serve as a member of the Council, and no member of the Council may serve concurrently as an officer of the Board of Directors of a qualified industry organization or other industry trade association. Only one person at a time from any company or its affiliate may serve on the Council.

(d) COMPENSATION.—Council members shall receive no compensation for their services, nor shall Council members be reimbursed for expenses relating to their service, except that public members, upon request, may be reimbursed for reasonable expenses directly related to their participation in Council meetings.

(e) TERMS.—Council members shall serve terms of 3 years and may serve not more than 2 full consecutive terms. Members filling unexpired terms may serve not more than a total of 7 consecutive years. Former members of the Council may be returned to the Council if they have not been members for a period of 2 years. Initial appointments to the Council shall be for terms of 1, 2, and 3 years, staggered to provide for the selection of 7 members each year.

Contracts.

(f) FUNCTIONS.—The Council shall develop programs and projects and enter into contracts or agreements for implementing this Act, 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 thereof with funds collected pursuant to this Act. The Council shall coordinate its activities with industry trade association and others as appropriate to provide efficient delivery of services and to avoid unnecessary duplication of activities.

(g) USE OF FUNDS.—Not less than 5 percent of the funds collected through assessments pursuant to this Act shall be used for programs and projects intended to benefit the agriculture industry in the United States. The Council shall coordinate its activities in this regard with agriculture industry trade associations and other organizations representing the agriculture industry. The percentage of funds collected through assessments pursuant to this Act to be used for projects relating to the use of propane as an over-the-road motor fuel shall not exceed the percentage of the

total market for odorized propane that is used as a motor vehicle fuel, based on the historical average of such use over the previous 3-year period.

(h) **PRIORITIES.**—Issues related to research and development, safety, education, and training shall be given priority by the Council in the development of its programs and projects.

(i) **ADMINISTRATION.**—The Council shall select from among its members a Chairman and other officers as necessary, may establish committees and subcommittees of the Council, and shall adopt rules and bylaws for the conduct of business and the implementation of this Act. 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.

(j) **ADMINISTRATIVE EXPENSES.**—(1) The administrative expenses of operating the Council (not including costs incurred in the collection of the assessment pursuant to section 7) plus amounts paid under paragraph (2) shall not exceed 10 percent of the funds collected in any fiscal year.

(2) The Council shall annually reimburse the Secretary for costs incurred by the Federal Government relating to the Council, except that such reimbursement for any fiscal year shall not exceed the amount that the Secretary determines is the average annual salary of two employees of the Department of Energy.

(k) **BUDGET.**—Before August 1 each year, the Council shall publish for public review and comment a budget plan for the next calendar year, including the probable costs of all programs, projects, and contracts and a recommended rate of assessment sufficient to cover such costs. Following this review and comment, the Council shall submit the proposed budget to the Secretary and to the Congress. The Secretary may recommend programs and activities the Secretary considers appropriate.

(l) **RECORDS; AUDITS.**—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. 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. The Secretary shall receive notice of meetings and may require reports on the activities of the Council, as well as reports on compliance, violations, and complaints regarding the implementation of this Act.

(m) **PUBLIC ACCESS TO COUNCIL PROCEEDINGS.**—(1) All meetings of the Council shall be open to the public after at least 30 days advance public notice.

(2) The minutes of all meetings of the Council shall be made available to and readily accessible by the public.

(n) **ANNUAL REPORT.**—Each year the Council shall prepare and make publicly available a report which includes an identification and description of all programs and projects undertaken by the Council during the previous year as well as those planned for the coming year. Such report shall also detail the allocation or planned allocation of Council resources for each such program and project.



15 USC 6405.

**SEC. 6. ASSESSMENTS.**

(a) AMOUNT.—The Council shall set the initial assessment at no greater than one tenth of 1 cent per gallon of odorized propane. Thereafter, annual assessments shall be sufficient to cover the costs of the plans and programs developed by the Council. The assessment shall not be greater than one-half cent per gallon of odorized propane, unless approved by a majority of those voting in a referendum in both the producer and the retail marketer class. In no case may the assessment be raised by more than one tenth of 1 cent per gallon of odorized propane annually.

*include*

(b) OWNERSHIP.—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 and placed into commerce. Assessments collected are payable to the Council on a monthly basis by the 25th of the month following the month of such collection. Propane exported from the United States to another country is not subject to the assessment.

(c) ALTERNATIVE COLLECTION RULES.—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 Act.

(d) INVESTMENT OF FUNDS.—Pending disbursement pursuant to a program, plan, or project, the Council may 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 any 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.

(e) STATE PROGRAMS.—The Council shall establish a program coordinating the operation of the Council with those of any State propane education and research council created by State law or regulation, or similar entity. Such coordination shall include a joint or coordinated assessment collection process, a reduced assessment, or an assessment rebate. A reduced assessment or rebate shall be 20 percent of the regular assessment collected in that State under this section. Assessment rebates shall be paid only to—

(1) a State propane education and research council created by State law or regulation that meets requirements established by the Council for specific programs approved by the Council; or

(2) a similar entity, such as a foundation established by the retail propane gas industry in that State, that meets requirements established by the Council for specific programs approved by the Council.

15 USC 6406.

**SEC. 7. COMPLIANCE.**

The Council may bring suit in Federal court to compel compliance with an assessment levied by the Council under this Act. A successful action for compliance under this section may also require payment by the defendant of the costs incurred by the Council in bringing such action.

**SEC. 8. LOBBYING RESTRICTIONS.**

15 USC 6407.

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 Secretary changes in this Act or other statutes that would further the purposes of this Act.

**SEC. 9. MARKET SURVEY AND CONSUMER PROTECTION.**

15 USC 6408.

(a) **PRICE ANALYSIS.**—Beginning 2 years after establishment of the Council and annually thereafter, the Secretary of Commerce, using only data provided by the Energy Information Administration and other public sources, shall prepare and make available to the Council, the Secretary of Energy, and the public an analysis of changes in the price of propane relative to other energy sources. The propane price analysis shall compare indexed changes in the price of consumer grade propane to a composite of indexed changes in the price of residential electricity, residential natural gas, and refiner price to end users of No. 2 fuel oil on an annual national average basis. For purposes of indexing changes in consumer grade propane, residential electricity, residential natural gas, and end user No. 2 fuel oil prices, the Secretary of Commerce shall use a 5-year rolling average price beginning with the year 4 years prior to the establishment of the Council.

(b) **AUTHORITY TO RESTRICT ACTIVITIES.**—If in any year the 5-year average rolling price index of consumer grade propane exceeds the 5-year rolling average price composite index of residential electricity, residential natural gas, and refiner price to end users of No. 2 fuel oil in an amount greater than 10.1 percent, the activities of the Council shall be restricted to research and development, training, and safety matters. The Council shall inform the Secretary of Energy and the Congress of any restriction of activities under this subsection. Upon expiration of 180 days after the beginning of any such restriction of activities, the Secretary of Commerce shall again conduct the propane price analysis described in subsection (a). Activities of the Council shall continue to be restricted under this subsection until the price index excess is 10.1 percent or less.

**SEC. 10. PRICING.**

15 USC 6409.

In all cases, the price of propane shall be determined by market forces. Consistent with the antitrust laws, the Council may take no action, nor may any provision of this Act be interpreted as establishing an agreement to pass along to consumers the cost of the assessment provided for in section 6.

**SEC. 11. RELATION TO OTHER PROGRAMS.**

15 USC 6410.

Nothing in this Act may be construed to preempt or supersede any other program relating to propane education and research organized and operated under the laws of the United States or any State.

**SEC. 12. REPORTS.**

15 USC 6411.

Within 2 years after the date of enactment of this Act, and at least once every 2 years thereafter, the Secretary of Commerce shall prepare and submit to the Congress and the Secretary a report examining whether operation of the Council, in conjunction with the cumulative effects of market changes and Federal programs, has had an effect on propane consumers, including residential, agriculture, process, and nonfuel users of propane. The

Secretary of Commerce shall consider and, to the extent practicable, shall include in the report submissions by propane consumers, and shall consider whether there have been long-term and short-term effects on propane prices as a result of Council activities and Federal programs, and whether there have been changes in the proportion of propane demand attributable to various market segments. To the extent that the report demonstrates that there has been an adverse effect, the Secretary of Commerce shall include recommendations for correcting the situation. Upon petition by affected parties or upon request by the Secretary of Energy, the Secretary of Commerce may prepare and submit the report required by this section at less than 2-year intervals.

Approved October 11, 1996.

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LEGISLATIVE HISTORY—H.R. 1514:

HOUSE REPORTS: No. 104-655, Pt. 1 (Comm. on Commerce).

CONGRESSIONAL RECORD, Vol. 142 (1996):

Sept. 4, considered and passed House.

Sept. 28, considered and passed Senate.





In 9/24  
State of Wisconsin  
2015 - 2016 LEGISLATURE

Due 9/29

LRB-3296/P1

MCP:..

emw

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

d-note

S.A. ✓  
Kref ✓

1

**AN ACT** ...; **relating to:** authorizing the Propane Education and Research Council

2

to levy an assessment.

***Analysis by the Legislative Reference Bureau***

This bill allows the Wisconsin Propane Education and Research Council to levy an assessment on odorized propane against propane producers and retailers.

The bill requires the Council to conduct a referendum among the members of the Wisconsin Propane Gas Association on the question of whether to allow the Council to levy an assessment on odorized propane. If approved in the referendum, the Council has the authority to levy an assessment of two-tenths of one cent per gallon of odorized propane sold in this state. Under the bill, the person who owns the propane at the time it is odorized, or the person who owns the odorized propane at the time it is imported, is responsible for paying the assessment. The bill also allows the Council to bring an action in circuit court to compel payment of an assessment and allows the Council to recover its costs and disbursements, including reasonable attorney fees, for bringing the action.

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

3

**SECTION 1.** 100.70 of the statutes is created to read:

4

**100.70 Propane Education and Research Council. (1) DEFINITION.** In this

5

section, "council" means the Wisconsin Propane Education and Research Council.

*Move before section 1*

1 **SECTION 2.** 100.26 (1) of the statutes is amended to read:

2 100.26 (1) Any person who violates any provision of this chapter, except s.  
3 100.18, 100.20, 100.206 ~~or~~, 100.51, or 100.70, for which no specific penalty is  
4 prescribed shall be fined not to exceed \$200, or imprisoned in the county jail not more  
5 than 6 months or both.

**History:** 1975 c. 39; 1979 c. 327; 1981 c. 90; 1981 c. 124 s. 9; 1983 a. 500; 1985 a. 288; 1989 a. 31; 1993 a. 414; 1995 a. 27; 1997 a. 55, 111, 201, 253, 283; 1999 a. 32; 2001 a. 16, 109.

6 **(2) REFERENDUM; AUTHORITY TO LEVY ASSESSMENT.** No later than 120 days after  
7 the effective date of this subsection .... [LRB inserts date], the council shall conduct,  
8 at its own expense, a referendum among the members of the Wisconsin Propane Gas  
9 Association on the question of whether to allow the council to levy the assessment  
10 described under sub. (3). Voting rights in the referendum shall be based on the  
11 volume of propane produced or odorized propane sold by those members in the  
12 previous calendar year or other representative period. Upon approval of the  
13 members representing at least two-thirds of the voting rights in the referendum the  
14 council shall be authorized to levy an assessment on odorized propane as provided  
15 under sub. (3).

16 **(3) ASSESSMENT.** The council shall set an assessment approved under sub. (2)  
17 at two-tenths of one cent per gallon on odorized propane sold in this state. The owner  
18 of the odorized propane at the time of odorization, or at the time of import of the  
19 odorized propane, shall pay the assessment to the council based on the volume of  
20 odorized propane sold.

21 **(4) COMPLIANCE.** The council may bring an action in any circuit court of this  
22 state to compel compliance with an assessment levied by the council under this

1 section. Notwithstanding s. 814.04, the council, if successful in its action, shall be  
2 entitled to recover its costs and disbursements, including reasonable attorney fees.

3

(END)

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-3296/P1dn

MCP:...

emw

— Date —

Senator Cowles:

This is a preliminary draft creating a propane check-off program administered by the Wisconsin Propane Education and Research Council.

Please note that, consistent with your request, the majority of the provisions included in the federal propane check-off program are not included in this state program. For example, I have not included any description of what the collected assessments should be used for, or any provision that prohibits the assessments from being passed on to the consumer. If you would like to discuss the differences between the federal program and the program that is created in this bill, or if you would like to include any of the provisions from the federal program under state law, please let me know.

I have made some assumptions that may not be consistent with your intent. In particular, this draft:

1. Requires the referendum approving the assessments to be conducted at the Council's expense (consistent with the federal program).
2. Requires the referendum to be conducted only among members of the Wisconsin Propane Gas Association.
3. States that voting rights in the referendum are to be based on the volume of propane produced or odorized propane sold by members of the Wisconsin Propane Gas Association (consistent with the federal program).
4. Requires two-thirds approval in the referendum to authorize the assessments (consistent with the federal program).
5. Requires the assessments to be paid by the owner of the odorized propane at the time of odorization, or at the time of import of the odorized propane (consistent with the federal program).
6. Includes reasonable attorney fees in the costs and disbursements that the Council may recover in an action to compel compliance.

Are these provisions okay?

Mary Pfothenauer  
Legislative Attorney  
(608) 266-6778  
mary.pfothenauer@legis.wisconsin.gov

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-3296/P1dn  
MCP:emw

September 29, 2015

Senator Cowles:

This is a preliminary draft creating a propane check-off program administered by the Wisconsin Propane Education and Research Council.

Please note that, consistent with your request, the majority of the provisions included in the federal propane check-off program are not included in this state program. For example, I have not included any description of what the collected assessments should be used for, or any provision that prohibits the assessments from being passed on to the consumer. If you would like to discuss the differences between the federal program and the program that is created in this bill, or if you would like to include any of the provisions from the federal program under state law, please let me know.

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1. Requires the referendum approving the assessments to be conducted at the council's expense (consistent with the federal program).
2. Requires the referendum to be conducted only among members of the Wisconsin Propane Gas Association.
3. States that voting rights in the referendum are to be based on the volume of propane produced or odorized propane sold by members of the Wisconsin Propane Gas Association (consistent with the federal program).
4. Requires two-thirds approval in the referendum to authorize the assessments (consistent with the federal program).
5. Requires the assessments to be paid by the owner of the odorized propane at the time of odorization, or at the time of import of the odorized propane (consistent with the federal program).
6. Includes reasonable attorney fees in the costs and disbursements that the council may recover in an action to compel compliance.

Are these provisions okay?

Mary Pfothenauer  
Legislative Attorney  
(608) 266-6778  
mary.pfothenauer@legis.wisconsin.gov



## **Pfotenhauer, Mary**

---

**From:** Moore, Heather  
**Sent:** Wednesday, October 07, 2015 11:49 AM  
**To:** Pfotenhauer, Mary  
**Subject:** LRB-3296  
**Attachments:** WPGA Propane Assessment Bill Draft -Oct 2015.docx

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Hi Mary,

Can we look into making these changes into a 2<sup>nd</sup> P draft?

Thanks,  
Heather Moore  
Sen. Robert Cowles  
608-266-0484

PRELIMINARY DRAFT – NOT READY FOR INTRODUCTION

- 1 AN ACT to amend 100.26 (1); and to create 100.70 of the statutes; relating to:
- 2 authorizing the Wisconsin Propane Education and Research Council to levy an
- 3 assessment.

Analysis by the Legislative Reference Bureau

This bill allows the Wisconsin Propane Education and Research Council to levy an assessment on odorized propane against propane producers and retailers.

The bill requires the council to conduct a referendum among the members of the Wisconsin Propane Gas Association on the question of whether to allow the council to levy an assessment on odorized propane. If approved in the referendum, the council has the authority to levy an assessment of two-tenths of one cent per gallon of odorized propane sold in this state. Under the bill, the person who owns the propane at the time it is odorized, or the person who owns the odorized propane at the time it is imported, is responsible for paying the assessment. The bill also allows the council to bring an action in circuit court to compel payment of an assessment and allows the council to recover its costs and disbursements, including reasonable attorney fees, for bringing the action.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

- 4 SECTION 1. 100.26 (1) of the statutes is amended to read:

- 1 100.26 (1) Any person who violates any provision of this chapter, except s.
- 2 100.18, 100.20, 100.206 or, 100.51, or 100.70, for which no specific penalty is
- 3 prescribed shall be fined not to exceed \$200, or imprisoned in the county jail not more
- 4 than 6 months or both.

- 5 SECTION 2. 100.70 of the statutes is created to read:

- 6 100.70 Propane Education and Research Council. (1) DEFINITION. In this

7 section, "council" means the Wisconsin Propane Education and Research Council, a 501C (3)  
designated organization.

8 (2) REFERENDUM; AUTHORITY TO LEVY ASSESSMENT. No later than 120 days after

9 the effective date of this subsection.... [LRB inserts date], the Wisconsin Propane Gas Association  
council shall conduct,

10 at its own expense, a referendum among the members of the Wisconsin Propane Gas

11 Association on the question of whether to allow the council to levy the assessment

12 described under sub. (3). Voting rights in the referendum shall be based on the

13 ~~volume of propane produced or odorized propane sold by those members in the~~

14 ~~previous membership in the Wisconsin Propane Gas Association in the current calendar year or~~  
~~other representative period.~~ Upon approval of the

15 members representing at least fifty-one percent of those voting, ~~two-thirds of the voting rights~~  
in the referendum, the

16 council shall be authorized to levy an assessment on odorized propane as provided

17 under sub. (3).

18 (3) ASSESSMENT. The council shall set an assessment approved under sub. (2)

19 ~~at two tenths of one cent per gallon~~ of odorized propane sold in this state based on industry  
practices and standards. The owner

20 of the odorized propane at the time of odorization, or at the time of import of the

21 odorized propane, shall pay the assessment to the council based on the volume of

22 odorized propane sold.

23 (4) COMPLIANCE. The council may bring an action in any circuit court of this

24 state to compel compliance with an assessment levied by the council under this

→ 10/23/15 Per Heather @ Cowles:

Use federal language except:

- initial assessment =  $2/10$  ¢.
- if  $> 1/2$  ¢, require approval by referendum of WPGA members and approval by WPGA board.
- don't include limit on yearly assessment increase.

- 1 section. Notwithstanding s. 814.04, the council, if successful in its action, shall be
- 2 entitled to recover its costs and disbursements, including reasonable attorney fees.
- 3 (END)



State of Wisconsin  
2015 - 2016 LEGISLATURE

LRB-3296/P1 -> /P2  
MCP:emw

Due Tues 10/27

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

1 **AN ACT to amend** 100.26 (1); and **to create** 100.70 of the statutes; **relating to:**  
2 authorizing the Wisconsin Propane Education and Research Council to levy an  
3 assessment.

*Wisconsin Propane Gas Association*  
**Analysis by the Legislative Reference Bureau**

This bill allows the Wisconsin Propane Education and Research Council to levy an assessment on odorized propane against propane producers and retailers.

The bill requires the council to conduct a referendum among the members of the Wisconsin Propane Gas Association on the question of whether to allow the council to levy an assessment on odorized propane. If approved in the referendum, the council has the authority to levy an assessment of two-tenths of one cent per gallon of odorized propane sold in this state. Under the bill, the person who owns the propane at the time it is odorized, or the person who owns the odorized propane at the time it is imported, is responsible for paying the assessment. The bill also allows the council to bring an action in circuit court to compel payment of an assessment and allows the council to recover its costs and disbursements, including reasonable attorney fees, for bringing the action.

initial annual

Ins A

at no greater than

**The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:**

4 **SECTION 1.** 100.26 (1) of the statutes is amended to read:

1           100.26 (1) Any person who violates any provision of this chapter, except s.  
 2           100.18, 100.20, 100.206 or, 100.51, or 100.70, for which no specific penalty is  
 3           prescribed shall be fined not to exceed \$200, or imprisoned in the county jail not more  
 4           than 6 months or both.

5           **SECTION 2.** 100.70 of the statutes is created to read:

6           **100.70 Propane Education and Research Council. (1) DEFINITION.** In this  
 7           section, "council" means the <sup>the organization with the name</sup> Wisconsin Propane Education and Research Council. <sup>(S)</sup> <sup>Ins 2-7</sup>

8           **(2) REFERENDUM; AUTHORITY TO LEVY ASSESSMENT.** No later than 120 days after  
 9           the effective date of this subsection ... [LRB inserts date], the <sup>(S)</sup> council shall conduct,

10          at its own expense, a referendum among <sup>its</sup> the members of the Wisconsin Propane Gas  
 11          Association on the question of whether to allow the council to levy the assessment

12          described under sub. (3). Voting rights in the referendum shall be based on the  
 13          volume of propane produced or odorized propane sold by those members in the

14          previous calendar year or other representative period. <sup>Ins 2-14</sup> Upon approval of the  
 15          members <sup>a majority of the</sup> representing at least two-thirds of the voting rights in the referendum, the

16          council shall be authorized to levy an assessment on odorized propane as provided  
 17          under sub. (3). <sup>(S)</sup>

18          **(3) ASSESSMENT.** <sup>(a)</sup> The council shall set an <sup>the initial annual</sup> assessment approved under sub. (2)  
 19          at <sup>no greater than</sup> two-tenths of one cent per gallon of odorized propane sold in this state. <sup>Ins 2-19</sup> The owner

20          of the odorized propane at the time of odorization, or at the time of import of the  
 21          odorized propane, shall pay the assessment <sup>under par. (a)</sup> to the council based on the volume of

22          odorized propane sold. <sup>(S)</sup>  
 23          **(4) COMPLIANCE.** The council may bring an action in any circuit court of this

24          state to compel compliance with an assessment levied by the council under this

1 section. Notwithstanding s. 814.04, the council, if successful in its action, shall be  
2 entitled to recover its costs and disbursements, including reasonable attorney fees.

3 (END)

**2015-2016 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-3296/P1ins  
MCP:emw

1

**INSERT A**

After the initial assessment, the council is required to set annual assessments in an amount sufficient to cover the costs of programs developed by the council, but no assessment may be greater than one-half cent per gallon of odorized propane unless approved in a referendum among members of the Wisconsin Propane Gas Association and approved by the association's board of directors.

2

3

**INSERT 2-7**

4

that is designated as a nonprofit corporation under section 501 (c) (3) of the

5

Internal Revenue Code.

6

7

**INSERT 2-14**

8

Each member shall be entitled to one vote in the referendum.

9

10

**INSERT 2-19**

11

After the initial assessment, the council shall set annual assessments sufficient

12

to cover the costs of the plans and programs developed by the council. An assessment

13

may not be greater than one-half cent per gallon of odorized propane unless

14

approved by a majority of those voting in a referendum among members of the

15

Wisconsin Propane Gas Association and by the board of directors of the Wisconsin

16

Propane Gas Association.



**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-3296/P3dn  
MCP:emw

— Date —

Senator Cowles:

At your request, the analysis in this draft has been changed to state that the council is allowed to levy an assessment against propane “retailers.” This appears to be inconsistent with s. 100.70 (3) (b) in the draft, which requires the assessment to be paid by “the owner of the odorized propane at the time of odorization, or at the time of import of the odorized propane.” Please let me know how you would like to change s. 100.70 (3) (b) so that the draft can be finalized.

↓

Mary Pfothenauer  
Legislative Attorney  
(608) 266-6778  
mary.pfothenauer@legis.wisconsin.gov



State of Wisconsin  
2015 - 2016 LEGISLATURE

LRB-3296/P2 → B3  
MCP:emw

Due 11/11 (Wed.)

Redraft

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

d-note

S.A.V.  
XrefV

- 1 **AN ACT to amend** 100.26 (1); and **to create** 100.70 of the statutes; **relating to:**
- 2 authorizing the Wisconsin Propane Education and Research Council to levy an
- 3 assessment.

*Analysis by the Legislative Reference Bureau*

This bill allows the Wisconsin Propane Education and Research Council to levy an assessment on odorized propane against propane producers and retailers.

The bill requires the Wisconsin Propane Gas Association to conduct a referendum among its members on the question of whether to allow the council to levy an assessment on odorized propane. If approved in the referendum, the council has the authority to levy an initial annual assessment at no greater than two-tenths of one cent per gallon of odorized propane sold in this state. After the initial assessment, the council is required to set annual assessments in an amount sufficient to cover the costs of programs developed by the council, but no assessment may be greater than one-half cent per gallon of odorized propane unless approved in a referendum among members of the Wisconsin Propane Gas Association and approved by the association's board of directors. Under the bill, the person who owns the propane at the time it is odorized, or the person who owns the odorized propane at the time it is imported, is responsible for paying the assessment.

The bill also allows the council to bring an action in circuit court to compel payment of an assessment and allows the council to recover its costs and disbursements, including reasonable attorney fees, for bringing the action.

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1           **SECTION 1.** 100.26 (1) of the statutes is amended to read:

2           100.26 (1) Any person who violates any provision of this chapter, except s.  
3           100.18, 100.20, 100.206 ~~or~~, 100.51, or 100.70, for which no specific penalty is  
4           prescribed shall be fined not to exceed \$200, or imprisoned in the county jail not more  
5           than 6 months or both.

6           **SECTION 2.** 100.70 of the statutes is created to read:

7           **100.70 Propane Education and Research Council.** (1) DEFINITION. In this  
8           section, <sup>Ⓢ (a)</sup> "council" means the organization with the name "Wisconsin Propane  
9           Education and Research Council" that is designated as a nonprofit corporation under  
10          section 501 (c) (3) of the Internal Revenue Code.

Ins 2-10

11          (2) REFERENDUM; AUTHORITY TO LEVY ASSESSMENT. No later than 120 days after  
12          the effective date of this subsection ... [LRB inserts date], the Wisconsin Propane  
13          Gas Association shall conduct, at its own expense, a referendum among its members  
14          on the question of whether to allow the council to levy the assessment described  
15          under sub. (3). Each member <sup>who is a retailer</sup> shall be entitled to one vote in the referendum. Upon  
16          approval of a majority of the members voting in the referendum, the council shall be  
17          authorized to levy an assessment on odorized propane as provided under sub. (3).

18          (3) ASSESSMENT. (a) The council shall set the initial annual assessment at no  
19          greater than two-tenths of one cent per gallon of odorized propane sold in this state.  
20          After the initial assessment, the council shall set annual assessments sufficient to

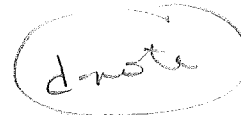
1 cover the costs of the plans and programs developed by the council. An assessment  
2 may not be greater than one-half cent per gallon of odorized propane unless  
3 approved by a majority of those voting in a referendum among members of the  
4 Wisconsin Propane Gas Association <sup>who are retailers</sup> and by the board of directors of the Wisconsin  
5 Propane Gas Association.

6 (b) The owner of the odorized propane at the time of odorization, or at the time  
7 of import of the odorized propane, shall pay the assessment under par. (a) to the  
8 council based on the volume of odorized propane sold.

9 (4) COMPLIANCE. The council may bring an action in any circuit court of this  
10 state to compel compliance with an assessment levied by the council under this  
11 section. Notwithstanding s. 814.04, the council, if successful in its action, shall be  
12 entitled to recover its costs and disbursements, including reasonable attorney fees.

13

(END)

A handwritten note in a circle, possibly indicating a correction or a specific instruction.

**2015-2016 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-3296/P2ins  
MCP:...

1           **INSERT 2-10**

2           (b) "Retailer" means a person who sells propane at retail and is licensed under  
3           s. 101.16 (3g) (a).

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-3296/P3dn  
MCP:emw

November 11, 2015

Senator Cowles:

At your request, the analysis in this draft has been changed to state that the council is allowed to levy an assessment against propane “retailers.” This appears to be inconsistent with s. 100.70 (3) (b) in the draft, which requires the assessment to be paid by “the owner of the odorized propane at the time of odorization, or at the time of import of the odorized propane.” Please let me know how you would like to change s. 100.70 (3) (b) so that the draft can be finalized.

Mary Pfothenauer  
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LRB-3296/PS

11/19/15

Heather @ Sen. Cowles

- p. 3, ln. 11, change "owner of" to "the retailer who owns" ✓
- p. 3, ln. 10, change "Wisconsin Propane Gas Ass'n" to "council" ✓
- change Analysis accordingly

-MCP