

Am. Sub. H.B. 166
As Passed by the Senate
AGRCD19

_____ moved to amend as follows:

In line 151 of the title, after "901.172," insert "936.01, 1
936.02, 936.03, 936.04, 936.05, 936.06, 936.07, 936.08, 936.09, 2
936.10, 936.11, 936.12, 936.13, 936.99" 3

In line 332, after "901.172," insert "936.01, 936.02, 936.03, 4
936.04, 936.05, 936.06, 936.07, 936.08, 936.09, 936.10, 936.11, 5
936.12, 936.13, 936.99" 6

After line 14650, insert: 7

"Sec. 936.01. As used in this chapter: 8

"Education" means any activity designed to provide 9
information regarding propane, propane equipment, mechanical and 10
technical practices, and uses and promotion of propane to 11
consumers and members of the propane industry. 12

"Propane" means liquefied petroleum gas, a material with a 13
vapor pressure not exceeding that of commercial propane composed 14
predominately of the following hydrocarbons or mixtures: 15

(A) Propane; 16

(B) Propylene; 17

(C) Butane; 18

(D) Butylene 19

"Propane council" or "council" means the propane council 20
created under section 936.02 of the Revised Code. 21

"Retailer" means a person engaged primarily in the sale of odorized propane to the ultimate consumer or to a retail propane dispenser. 22
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"Wholesale distributor" means a person whose primary business involves the sale of propane to a retailer. 25
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Sec. 936.02. (A) The director of agriculture shall establish a propane council and adopt rules in accordance with Chapter 119. of the Revised Code necessary to implement this chapter. 27
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(B) The director shall appoint the following members to the council in accordance with this section and rules adopted under it: 30
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(1) Two multi-state propane gas retailers; 33

(2) Two intrastate propane gas retailers; 34

(3) One cooperative propane gas retailer; 35

(4) One wholesale propane gas wholesale distributor; 36

(5) One propane gas equipment dealer; 37

The director of agriculture or the director's designee and the state fire marshal or the fire marshal's designee also shall serve on the council. 38
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(C) The director shall appoint members under divisions (B)(1) through (5) of this section from a list submitted by a qualified statewide propane association. The director shall not appoint a person as a member of the council unless the person is at least twenty-five years old and has at least five years of active experience in the propane gas industry. 41
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(D) Not later than ninety days after the effective date of this section, the director shall make initial appointments to the 47
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council. Members shall serve three-year staggered terms of office 49
in accordance with rules adopted by the director. 50

Sec. 936.03. The propane council shall adopt procedures by 51
which retailers of propane in this state may propose, develop, and 52
operate a marketing program to do all of the following: 53

(A) Promote the safe and efficient use of propane; 54

(B) Demonstrate to the general public the importance and 55
economic significance of propane; 56

(C) Develop new uses and markets for propane and enable 57
engagement in promotional activities that incentivize the use of 58
propane; 59

(D) Support research, training, and educational activities 60
concerning the propane industry; 61

(E) Determine the eligibility of retailers to participate in 62
referendums and other procedures that may be required to establish 63
the marketing program; 64

(F) Establish procedures necessary to implement and 65
administer the marketing program; 66

(G) Enter into contracts with qualified organizations, 67
agencies, individuals, or any combination thereof, to carry out 68
the purpose of the marketing program; 69

(H) Employ staff to carry out the purpose of the marketing 70
program. 71

Sec. 936.04. (A) Retailers in this state may present the 72
propane council with a petition signed by the lesser of 73
twenty-five or ten per cent of all such retailers requesting that 74
the council hold a referendum in accordance with section 936.05 of 75

the Revised Code to establish or amend a marketing program for propane.

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(B) At the time of presentation of the petition to the council under division (A) of this section, the petitioners also shall present the proposed program or amendment, which shall include all of the following:

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(1) The rate of assessment to be made on the volume of odorized propane purchased by a retailer from a wholesale distributor in this state, which shall not exceed five thousandths of a mill per gallon;

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(2) Terms, conditions, limitations, and other eligibility qualifications for assessment;

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(3) Procedures and eligibility requirements for a refund of the assessment.

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(C) Before the council makes a decision to approve or disapprove a proposed program or amendment, the council shall publish in at least two appropriate periodicals designated by the council a notice that the program or amendment has been proposed and informing interested persons of the procedures for submitting comments regarding the proposal. After publishing the notice, the council shall provide interested persons with a copy of the proposed program or amendment and an opportunity to comment on the proposed program or amendment for thirty days after the publication of the notice. The petitioners may make changes to the proposed program or amendment based upon the comments received. The council may make technical changes to the proposal to ensure compliance with this chapter. Subsequent to any changes made by the petitioners or any technical changes made by the council to a proposed program or amendment, the council may approve or disapprove the proposed program or amendment.

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(D) If the council approves the proposed program or amendment, with any changes made under division (C) of this section, the council shall hold a referendum in accordance with section 936.05 of the Revised Code to establish a marketing program for propane or to amend an existing program.

Sec. 936.05. (A) Not later than ninety days after the propane council has approved a marketing program proposed under section 936.04 of the Revised Code, or an amendment to such a program, the council shall determine by a referendum whether the eligible retailers, as determined under section 936.03 of the Revised Code, favor the proposed program or amendment. The council shall cause a ballot request form to be published not less than thirty days before the beginning of the election period established under division (B) of this section in at least two appropriate periodicals designated by the council and shall make the form available for reproduction to any qualified statewide propane association.

(B) In a referendum held under this section, each eligible retailer is entitled to one vote. The council shall establish a three-day period during which eligible retailers may vote either in person during normal business hours at polling places designated by the council or by mailing a ballot to such a polling place. The council shall send a mail-in ballot by first-class mail to any eligible retailer who requests one by sending in the ballot request form provided for in division (A) of this section or by any additional method that the council may provide. A ballot that is returned by mail is not valid if it is postmarked later than the third day of the election period established by the council.

(C) A marketing program or an amendment to a marketing program is favored by retailers if a majority of the retailers who

vote in the referendum vote in favor of the program or amendment. 136

Sec. 936.06. When the retailers who vote in a referendum held 137
under section 936.05 of the Revised Code favor a proposed 138
marketing program, the propane council shall order the program 139
established. 140

Sec. 936.07. The director of agriculture shall monitor the 141
actions of the propane council to ensure all of the following: 142

(A) A marketing program is self-supporting. 143

(B) The council keeps all records that are required for 144
agencies of the state. 145

(C) All program operations are in accord with both of the 146
following: 147

(1) The provisions of the marketing program; 148

(2) This chapter and procedures established under it. 149

Sec. 936.08. (A) For the purpose of a marketing program 150
established under this chapter, the council may levy assessments 151
on retailers at the time of purchase of odorized propane by a 152
retailer from a wholesale distributor. The council shall base the 153
assessments on the volume of odorized propane purchased by the 154
retailer from the wholesale distributor. 155

(B) A marketing program shall require a refund of assessments 156
collected under this section after receiving an application for a 157
refund from a retailer who has been assessed and is eligible for a 158
refund. The retailer shall submit the application for a refund on 159
a form furnished by the council. The council shall ensure that 160
refund forms are available where assessments for its program are 161
withheld. 162

A retailer who desires a refund shall submit a request for a refund not later than thirty days after the end of the month for which the request is submitted. The council shall refund the assessment to the retailer not later than sixty days after the request for the refund is submitted.

(C) The propane council shall not use money from any assessments that it levies for any political or legislative purpose or for preferential treatment of one person to the detriment of another person who is affected by the marketing program that the council administers.

(D) If the propane council requests that a retailer seeking a refund provide additional information to support a refund request, any additional information provided to the council is not a public record under section 149.43 of the Revised Code, is confidential, and the propane council shall treat the information as confidential.

Sec. 936.09. (A) There is hereby established a fund for the marketing program that is established by the propane council under this chapter. The fund shall be in the custody of the treasurer of state, but shall not be part of the state treasury. Except as authorized in division (B) of this section, all money collected pursuant to section 936.08 of the Revised Code for the marketing program shall be paid into the fund for the marketing program and shall be disbursed only pursuant to a voucher signed by the chairperson of the council for use in defraying the costs of administration of the marketing program and for carrying out sections 936.03 and 936.11 of the Revised Code.

(B) In lieu of deposits in the fund established under division (A) of this section, the propane council may deposit all

money collected pursuant to section 936.08 of the Revised Code 192
with a bank as defined in section 1101.01 of the Revised Code. All 193
money collected pursuant to section 936.08 of the Revised Code for 194
the marketing program and deposited pursuant to this division also 195
shall be used only in defraying the costs of administration of the 196
marketing program and for carrying out sections 936.03 and 936.11 197
of the Revised Code. 198

(C) The council shall establish a fiscal year for its 199
marketing program, shall publish an activity and financial report 200
within sixty days of the end of each fiscal year, and shall make 201
the report available to each retailer who pays an assessment or 202
otherwise contributes to the marketing program that the council 203
administers and to other interested persons. 204

(D) In addition to the report required by division (C) of 205
this section, if the council deposits money in accordance with 206
division (B) of this section, the council shall annually submit a 207
financial statement prepared by a certified public accountant 208
holding valid certification from the Ohio board of accountancy 209
issued pursuant to Chapter 4701. of the Revised Code to the 210
department of agriculture. The council shall file the financial 211
statement with the department not more than one hundred fifty days 212
after the end of each fiscal year. 213

(E) The council shall use money in the fund or deposited in a 214
bank to promote the common good, welfare, and advancement of the 215
propane industry, including, but not limited to, all of the 216
following activities and programs: 217

(1) Education; 218

(2) Training; 219

(3) Safety compliance; 220

<u>(4) Advertising;</u>	221
<u>(5) Promotion;</u>	222
<u>(6) Customer rebates to encourage energy efficient appliance</u>	223
<u>and equipment purchases by residential, commercial, or</u>	224
<u>agricultural customers.</u>	225
<u>Sec. 936.10. (A) The director of agriculture temporarily may</u>	226
<u>suspend the operation of a marketing program, or any part of a</u>	227
<u>program, established under this chapter for any reason upon</u>	228
<u>recommendation by the propane council for a period of not more</u>	229
<u>than twelve consecutive months.</u>	230
<u>(B) At least once in each five years of operation, or at any</u>	231
<u>time upon written petition by the lesser of twenty-five or ten per</u>	232
<u>cent of the retailers in this state, the council shall hold a</u>	233
<u>hearing as prescribed in Chapter 119. of the Revised Code to</u>	234
<u>consider the continuation of the program.</u>	235
<u>(C) Not later than thirty days after the close of any hearing</u>	236
<u>to consider the continuation of a marketing program, the council</u>	237
<u>shall recommend continuation or termination of the program, shall</u>	238
<u>give public notice, and shall notify each retailer of record, all</u>	239
<u>parties appearing at the hearing, and other interested parties of</u>	240
<u>the recommendation.</u>	241
<u>(D) When the council recommends termination of a marketing</u>	242
<u>program, within forty-five days the council shall conduct a</u>	243
<u>referendum to determine whether retailers favor the proposed</u>	244
<u>termination. Retailers favor the termination of the program if a</u>	245
<u>majority of the retailers who vote in the referendum vote in favor</u>	246
<u>of termination of the program.</u>	247
<u>Sec. 936.11. (A) When retailers favor termination of a</u>	248

marketing program established under this chapter, the propane 249
council shall terminate all operations of the program. 250

(B)(1) Except as provided in division (B)(2) of this section, 251
upon termination of a program, the council shall return any 252
remaining unobligated money to the retailers who paid the 253
assessments levied under section 936.08 of the Revised Code during 254
the immediately preceding twelve months and shall prorate the 255
money accordingly. 256

(2) If a program is operated by a nonprofit corporation that 257
is organized under Chapter 1702. of the Revised Code for the 258
purpose of carrying out the purposes identified in section 936.03 259
of the Revised Code, and if the nonprofit corporation is exempt 260
from federal income taxation pursuant to section 501(a) of the 261
Internal Revenue Code and is described in section 501(c) (3) of 262
the Internal Revenue Code, upon termination of the program, the 263
nonprofit corporation shall distribute any remaining unobligated 264
money to be used for one or more exempt purposes within the 265
meaning of section 501(c)(3) of the Internal Revenue Code or to 266
the federal, a state, or a local government to be used for a 267
public purpose. If there remains any unobligated money after the 268
distribution by the nonprofit corporation, the court of common 269
pleas of the county in which the principal office of the nonprofit 270
corporation is located shall distribute the remaining unobligated 271
money to be used for one or more exempt purposes within the 272
meaning of section 501(c)(3) of the Internal Revenue Code, to the 273
federal, a state, or a local government to be used for a public 274
purpose, or to one or more organizations that are organized and 275
operated exclusively for one or more of the purposes that are 276
within the meaning of section 501(c)(3) of the Internal Revenue 277
Code, as the court determines is best to accomplish the exempt 278
purposes of the nonprofit corporation. 279

Sec. 936.12. The propane council may institute an action at 280
law or in equity that appears necessary to enforce compliance with 281
this chapter, a procedure established under it, or a marketing 282
program established under it. 283

Sec. 936.13. No retailer shall knowingly fail or refuse to 284
withhold or remit any assessment levied under section 936.08 of 285
the Revised Code. 286

Sec. 936.99. Whoever violates section 936.13 of the Revised 287
Code is guilty of a misdemeanor of the fourth degree." 288

The motion was _____ agreed to.

SYNOPSIS

Propane marketing program 289

R.C. 936.01, 936.02, 936.03, 936.04, 936.05, 936.06, 936.07, 290
936.08, 936.09, 936.10, 936.11, 936.12, 936.13, and 936.99 291

Requires the Director of Agriculture to establish a Propane 292
 Council composed of members appointed by the Director, including 293
 propane retailers (engaged primarily in the sale of odorized 294
 propane to the ultimate consumer or to a retail propane dispenser) 295
 and wholesale distributors. 296

Requires the Council to adopt procedures by which Ohio 297
 propane retailers may propose, develop, and operate a marketing 298
 program to do specified tasks, including promoting the safe and 299
 efficient use of propane and demonstrating to the general public 300
 the importance and economic significance of propane. 301

Establishes requirements and procedures by which propane 302
retailers may create a propane marketing program, including doing 303
both of the following: 304

--Establishing an assessment on the volume of odorized 305
propane purchased by a retailer from a wholesale distributor that 306
is not more than .005 mills per gallon of odorized propane 307
purchased; and 308

--Establishing procedures for retailers to vote on the 309
creation of a marketing program. 310

Requires the Director to perform certain duties and 311
responsibilities, including monitoring the actions of the Council 312
to ensure that a propane marketing program is self-supporting. 313

Establishes procedures for propane retailers to apply for and 314
receive a refund for assessments levied for the propane marketing 315
program. 316

Requires the Council to deposit assessments either in a state 317
fund created by the Council or a private bank account provided 318
that certain requirements are met. 319

Establishes requirements and procedures for the temporary 320
suspension or termination of the propane marketing program. 321

Prohibits a propane retailer from knowingly failing or 322
refusing to withhold or remit any assessment levied by the Council 323
and specifies that a violator is guilty of a fourth degree 324
misdemeanor. 325