GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

SESSION LAW 2013-299
SENATE BILL 378

AN ACT TO AUTHORIZE A REFERENDUM OF PROPANE DEALERS AND DISTRIBUTORS REGARDING A VOLUNTARY ASSESSMENT ON PROPANE TO PROVIDE FUNDING FOR PROMOTIONAL, EDUCATIONAL, AND OTHER PROGRAMS OF THE INDUSTRY.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 119 of the General Statutes is amended by adding a new Article 5A to read as follows:

"Article 5A.
"Propane Assessment Act.

"**§ 119-63.1. Title.**

This Article shall be known as the "Propane Assessment Act."

"**§ 119-63.2. Purpose.**

It is in the public interest for the State to enable dealers and distributors of propane to assess the product in order to raise funds for the purposes of promoting the common good, welfare, and advancement of the propane industry.

"**§ 119-63.3. Definitions.**

The following definitions apply in this Article:

(1) Association. – The North Carolina Propane Gas Association, Inc., a North Carolina nonprofit corporation.

(2) Commissioner. – The Commissioner of Agriculture or his or her designee.

(3) Dealer. – Any person who is registered with the Commissioner pursuant to G.S. 119-56 to engage in:

a. The business of selling or otherwise dealing in liquefied petroleum gases requiring handling, storing, measuring, transporting, or distributing liquefied petroleum gas; or

b. The business of installing, servicing, repairing, adjusting, connecting or disconnecting containers, equipment, or appliances using liquefied gas. A person who engages in any of the aforementioned activities only in connection with his or her employer's use of liquefied petroleum gas and not as a business shall not be deemed to be a "dealer" for the purposes of this Article.

Any person who retails liquefied petroleum gas in containers of less than 50 pounds water capacity and whose retail business does not involve the filling or transportation of such containers is not a "dealer" for purposes of this Article.

(4) Department. – The North Carolina Department of Agriculture and Consumer Services.

(5) Distributor. – A person whose primary business involves the sale of liquefied petroleum gas to a dealer.

(6) Liquefied petroleum gas. – Any material which is composed predominantly of any of the following hydrocarbons or mixtures of the same: propane, propylene, butanes (normal butanes or isobutane), and butylenes.

(7) Foundation. – North Carolina Propane Education & Research Foundation, a North Carolina nonprofit corporation that is tax exempt under section 501(c)(3) of the Internal Revenue Code.

(8) Person. – An individual, a partnership, a firm, or a corporation.

(9) Propane. – A liquefied petroleum gas.

"**§ 119-63.4. Referendum.**

(a) The Foundation may from time to time conduct referenda among dealers and distributors in this State upon the question of whether an assessment shall be levied on propane sold in this State.

(b) The Foundation, upon prior consultation with the Association, shall determine:

(1) The amount of the proposed assessment.

(2) The time and place of the referendum.

(3) Procedures for conducting the referendum and counting of votes.

(4) The proposed effective date for the imposition of the assessment, which shall not be less than 180 days from the date the referendum ballot is required to be returned to the Foundation in order to be considered on the question presented.

(5) Any other matters pertaining to the referendum.

(c) The amount of the proposed assessment shall be stated on the referendum ballot. The amount may not exceed the maximum allowable rate of two-tenths of one cent ($.002) for each gallon of propane sold in this State by distributors to dealers.

(d) All dealers and distributors may vote in the referendum. Each distributor and each dealer shall have one vote regardless of the number of bulk plants or retail sales outlets owned. Any dispute over eligibility to vote or any other matter relating to the referendum shall be resolved by the Foundation. The Foundation shall make reasonable efforts to provide all dealers and distributors with notice of the referendum and an opportunity to vote.

(e) Prior to conducting any referenda, the Foundation shall request a list of dealers and their addresses from the Department, and the Department shall provide such information to the Foundation. In order to be eligible to vote, a distributor shall provide the Foundation with a written statement signed by an authorized individual containing its corporate name, address, and the individual authorized to cast a ballot on its behalf, which statement shall be effective until revoked or modified in like manner.

(f) A proposed assessment shall become effective if more than fifty percent (50%) of the eligible votes cast by dealers in the referendum are cast in favor of the assessment and if more than fifty percent (50%) of the eligible votes cast by distributors in the referendum are cast in favor of the assessment. If the assessment is approved by the referendum, then the Foundation shall notify the Department and the Association of the amount of the assessment and the effective date of the assessment. The Department shall notify all distributors and dealers of the assessment.

"**§ 119-63.5. Payment and collection of assessment; refunds.**

(a) Each distributor, as the owner of propane at the time of odorization, or at the time of import of odorized propane, shall make the assessment based on the volume of odorized propane sold and placed into commerce in this State. Each dealer must pay the assessment on each gallon of propane purchased from a distributor. The assessment charge shall be identified and listed as a separate line item on each distributor's invoice to a dealer for the sale of odorized propane.

(b) Each distributor shall collect the assessment from the dealer to whom the sale is made. Each distributor shall remit to the Foundation the sum of the amount of the assessment multiplied by the number of gallons of propane sold to any dealer during the preceding quarter not later than the 25th day of the month following the end of the prior quarter. The Foundation shall provide forms to the distributors for reporting the assessment. Each distributor shall file the report not later than the 25th day of the month following the end of the prior quarter regardless of the amount due.

(c) A distributor shall keep records of the number of gallons of propane sold to dealers, including number of gallons, name of dealer, and rate of assessment. All documents or records regarding purchases and sales that are made or kept as required by this subsection or subsection (d) of this section shall be made available to the Foundation upon its written request from time to time for the purpose of determining the distributor's compliance with the provisions of this Article. The Foundation shall keep the records confidential and shall not disclose the records except to its accountants, attorneys, or financial advisors without a court order directing it to do so.

(d) The Foundation may bring an action to recover any unpaid assessments plus the reasonable costs, including attorneys' fees, incurred in the action and may use assessment funds

to cover all reasonable costs and expenses incurred in connection with recovery of any unpaid assessment.

(e) A dealer may request a refund of the assessment collected from the dealer in the prior month by submitting a written request for a refund to the Foundation no later than 30 days after the end of the month for which the refund is requested. The refund request shall state specifically the period of time for which a refund is requested, the amount of the refund, the distributors to whom the dealer paid assessments, and the amount of each assessment paid and shall be accompanied by proof of payment of the assessment satisfactory to the Foundation. The Foundation shall mail a refund to the dealer within 30 days of receipt of a properly documented refund request, provided that the Foundation shall have no obligation to make a refund to a dealer of assessments that are not yet paid to the Foundation by the distributor. Any dealer who requests and is paid a refund in accordance with this subsection shall not be eligible to receive the benefit of any consumer rebate programs for a period of one year following the date of a refund request under this subsection and shall not be entitled to the payment of any interest by the Foundation on the amount refunded.

"**§ 119-63.6. Use of assessments; reporting.**

(a) The Foundation shall use the funds to promote the common good, welfare, and advancement of the propane industry, including, but not limited to, the following activities and programs: education, training, safety compliance, equipment replacement for low-income customers, marketing, advertising, promotion, and customer rebates to encourage energy-efficient appliance and equipment purchases by residential, commercial, or agricultural consumers. The Foundation shall consult with the Association regarding its proposed use of the funds. In addition, the Foundation shall consult with agricultural industry trade associations and other organizations representing agricultural consumers of propane to ensure that some programs and activities benefit the agriculture industry.

(b) No funds collected pursuant to this Article shall be used in any manner for influencing State or federal legislation or for lobbying.

(c) No more than ten percent (10%) of the funds collected pursuant to this Article shall be used by the Foundation for administrative expenses relating to the expenditure of the funds. The Foundation may advance costs of conducting referenda pursuant to this Article and reimburse those costs from the assessment funds. Costs of conducting referenda, litigation expenses incurred in connection with actions authorized by G.S. 119-63.5, and the cost of the audit required by subsection (e) of this section are not administrative expenses.

(d) All funds received by the Foundation pursuant to this Article shall be kept in separate accounts from other Foundation funds. The Foundation shall keep minutes, books, and records that clearly reflect all of the acts and transactions of the Foundation with respect to use and expenditure of the funds. The Foundation shall submit a written report annually, not later than March 31 of each year, to the Commissioner on the use and expenditure of the funds received pursuant to this Article.

(e) The books and records of the Foundation shall be audited by a certified public accountant each fiscal year with respect to the receipt and use of the funds. Copies of such audit shall be provided to the Commissioner, to the Association, and to any other interested party upon written request. The Foundation may pay for the audit from the assessment funds.

"**§ 119-63.7. Termination of assessment.**

(a) Upon the Commissioner's receipt of a petition signed by at least ten percent (10%) of the dealers requesting a referendum pursuant to this section, or a receipt of a petition signed by at least fifty percent (50%) of the distributors requesting a referendum pursuant to this section, the Department shall notify the Foundation, and the Foundation shall, within six months, conduct a referendum upon the question of continuing the assessment. If a majority of the votes eligible to be cast by dealers in the referendum are cast against continuing the assessment then in effect and a majority of the votes eligible to be cast by distributors in the referendum are cast against continuing the assessment then in effect, or if the Foundation fails to conduct a referendum within the six-month period, the assessment expires at the end of the year that follows the year in which the Commissioner received a petition pursuant to this section. If more than two-thirds of the eligible votes cast by dealers and more than two-thirds of the eligible votes cast by distributors in the referendum conducted pursuant to this section are in favor of continuing the assessment, then no subsequent referendum shall be required to be conducted pursuant to this section for a period of at least three years from the date the petition was received by the Commissioner.

(b) The Foundation may, on its own initiative, conduct a referendum at any time upon the question of continuing the assessment. If a majority of the votes eligible to be cast by dealers in the referendum are cast against continuing the assessment and if a majority of the votes eligible to be cast by distributors in the referendum are cast against continuing the assessment, the assessment then in effect expires at the end of the year that follows the year in which the referendum was conducted.

(c) The Foundation shall certify to the Department the election results of any referendum conducted pursuant to this Article and shall provide the Department, upon written request, with any documents, papers, tallies, or other information related to the conduct of any referendum conducted by the Foundation.

"**§ 119-63.8. Association activities deemed not in restraint of trade; pricing.**

(a) No meeting or activity undertaken by the Association or the Foundation in pursuance of the provisions of this Article shall be considered illegal under antitrust law or a restraint of trade.

(b) In all cases, the price of propane shall be determined by market forces. Neither the Foundation nor the Association may take any action nor shall any provision of this Article be interpreted as establishing an agreement to pass along to consumers the cost of any assessment provided for by this Article."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 11th day of July, 2013.

s/ Daniel J. Forest
President of the Senate

s/ Thom Tillis
Speaker of the House of Representatives

s/ Pat McCrory
Governor

Approved 6:17 p.m. this 18th day of July, 2013