

Calendar No. 473

104TH CONGRESS
2^D SESSION

S. 1646

[Report No. 104-298]

A BILL

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.

JUNE 27, 1996

Reported with an amendment

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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.

IN THE SENATE OF THE UNITED STATES

MARCH 27 (legislative day, MARCH 26), 1996

Mr. DOMENICI (for himself, Mr. FORD, Mr. DOLE, Mr. LOTT, Mr. HEFLIN, Mr. SHELBY, Mr. FAIRCLOTH, Mr. SIMPSON, Mr. COCHRAN, Mr. INHOFE, Mr. WARNER, Mr. HELMS, Mr. MCCONNELL, Mr. THURMOND, Mr. BURNS, Mr. JOHNSTON, Mr. BINGAMAN, Mr. NICKLES, Mr. LUGAR, Mrs. KASSEBAUM, Mr. COATS, Mr. GRAMS, Mr. KYL, Mr. COVERDELL, Mr. PRYOR, Mr. BOND, Mr. BUMPERS, Mr. HARKIN, Mr. THOMAS, Mr. GREGG, Mr. SMITH, and Mrs. HUTCHISON) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

JUNE 27, 1996

Reported by Mr. MURKOWSKI, with an amendment

[Insert the part printed in *italic*]

A BILL

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.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

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

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

8 (1) propane gas (also known as liquefied petro-
9 leum gas) is an essential energy commodity that pro-
10 vides heat, hot water, cooking fuel, and motor fuel,
11 and has many other uses to millions of Americans;

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

15 (3) propane has been recognized as a clean fuel
16 and can contribute in many ways to reducing pollu-
17 tion in cities and towns of the United States; and

18 (4) propane is primarily domestically produced,
19 and the use of propane provides energy security and
20 jobs for Americans.

21 **SEC. 3. DEFINITIONS.**

22 In this Act:

23 (1) COUNCIL.—The term “Council” means a
24 Propane Education and Research Council estab-
25 lished under section 4.

1 (2) INDUSTRY.—The term “industry” means
2 persons involved in the United States in—

3 (A) the production, transportation, and
4 sale of propane; and

5 (B) the manufacture and distribution of
6 propane utilization equipment.

7 (3) INDUSTRY TRADE ASSOCIATION.—The term
8 “industry trade association” means an organization
9 exempt from tax, under paragraph 3 or 6 of section
10 501(c) of the Internal Revenue Code of 1986, that
11 represents the propane industry.

12 (4) ODORIZED PROPANE.—The term “odorized
13 propane” means propane that has had odorant
14 added to it.

15 (5) PRODUCER.—The term “producer” means
16 the owner of propane at the time at which the pro-
17 pane is recovered at a gas processing plant or refin-
18 ery.

19 (6) PROPANE.—The term “propane”—

20 (A) means a hydrocarbon, the chemical
21 composition of which is predominantly C^3H^8 ,
22 whether recovered from natural gas or from
23 crude oil; and

24 (B) includes liquefied petroleum gas or a
25 mixture of liquefied petroleum gases.

1 (7) PUBLIC MEMBER.—The term “public mem-
2 ber” means a member of the Council, other than a
3 representative of producers or retail marketers, rep-
4 resenting significant users of propane, public safety
5 officials, academia, the propane research community,
6 or other groups knowledgeable about propane.

7 (8) QUALIFIED INDUSTRY ORGANIZATION.—The
8 term “qualified industry organization” means the
9 National Propane Gas Association, the Gas Proc-
10 essors Association, a successor of the National Pro-
11 pane Gas Association or the Gas Processors Associa-
12 tion, or a group of retail producers or marketers
13 that collectively represent at least 25 percent of the
14 volume of propane produced or sold, respectively, in
15 the United States.

16 (9) RETAIL MARKETER.—The term “retail mar-
17 keter” means a person engaged primarily in the sale
18 of odorized propane to ultimate consumers or to re-
19 tail propane dispensers.

20 (10) RETAIL PROPANE DISPENSER.—The term
21 “retail propane dispenser” means a person that
22 sells, but is not engaged primarily in the business of
23 selling odorized propane to ultimate consumers.

24 (11) SECRETARY.—The term “Secretary”
25 means the Secretary of Energy.

1 **SEC. 4. REFERENDA.**

2 (a) CREATION OF PROGRAM.—

3 (1) IN GENERAL.—The qualified industry orga-
4 nizations may conduct a referendum among produc-
5 ers and retail marketers for the creation of a Pro-
6 pane Education and Research Council.

7 (2) EXPENSES.—A referendum under para-
8 graph (1) shall be conducted at the expense of the
9 qualified industry organizations.

10 (3) REIMBURSEMENT.—The Council, if estab-
11 lished, shall reimburse the qualified industry organi-
12 zations for the cost of the referendum accounting
13 and documentation.

14 (4) INDEPENDENT AUDITING FIRM.—The ref-
15 erendum shall be conducted by an independent au-
16 diting firm agreed to by the qualified industry orga-
17 nizations.

18 (5) VOTING RIGHTS.—Voting rights in the ref-
19 erendum shall be based on the volume of propane
20 produced or odorized propane sold in the calendar
21 year previous to the year in which the referendum
22 is conducted, or other representative period agreed
23 to by the qualified industry organizations.

24 (6) CERTIFICATION OF VOLUME OF PRO-
25 PANE.—All persons voting in the referendum shall

1 certify to the independent auditing firm the volume
2 of propane the person represents.

3 (7) APPROVAL.—On the approval of persons
4 representing $\frac{2}{3}$ of the total volume of propane voted
5 in the retail marketer class and $\frac{2}{3}$ of all propane
6 voted in the producer class, the Council shall be es-
7 tablished.

8 (b) TERMINATION OR SUSPENSION.—

9 (1) REFERENDUM.—On the Council's initiative,
10 or on petition to the Council by producers and retail
11 marketers representing 35 percent of the volume of
12 propane produced and sold, respectively, in the Unit-
13 ed States, the Council shall conduct a referendum to
14 determine whether the industry favors termination
15 or suspension of the Council.

16 (2) EXPENSE.—A referendum under paragraph
17 (1) shall be conducted at the expense of the Council.

18 (3) INDEPENDENT AUDITING FIRM.—The ref-
19 erendum shall be conducted by an independent au-
20 diting firm selected by the Council.

21 (4) TERMINATION OR SUSPENSION.—Termi-
22 nation or suspension shall take effect if approved
23 by—

24 (A) persons representing more than $\frac{1}{2}$ of
25 the total volume of odorized propane in the pro-

1 ducer class and more than $\frac{1}{2}$ of the total vol-
2 ume of propane in the retail marketer class; or

3 (B) persons representing more than $\frac{2}{3}$ of
4 the total volume of propane in produced or sold
5 in the United States.

6 **SEC. 5. PROPANE EDUCATION AND RESEARCH COUNCIL.**

7 (a) SELECTION OF MEMBERS.—

8 (1) SELECTION BY QUALIFIED INDUSTRY ORGA-
9 NIZATIONS.—The qualified industry organizations
10 shall select all retail marketer, public, and producer
11 members of the Council.

12 (2) ALLOCATION.—The producer organizations
13 shall select the producer members of the Council,
14 the retail marketer organizations shall select retail
15 marketer members, and all qualified industry organi-
16 zations shall select the public members.

17 (3) VACANCIES.—Vacancies in unfinished terms
18 of Council members shall be filled in the same man-
19 ner as original appointments.

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

24 (1) gas processors and oil refiners among pro-
25 ducers;

1 (2) interstate and intrastate operators among
2 retail marketers;

3 (3) large and small companies among producers
4 and retail marketers, including agricultural coopera-
5 tives; and

6 (4) all geographic regions of the country.

7 (c) MEMBERSHIP.—

8 (1) IN GENERAL.—The Council shall consist of
9 21 members, including—

10 (A) 9 members representing retail market-
11 ers;

12 (B) 9 members representing producers;
13 and

14 (C) 3 public members.

15 (2) QUALIFICATIONS.—Each Council member
16 representing retail marketers or producers shall be a
17 full-time employee or owner of a business in the in-
18 dustry that the member represents or a representa-
19 tive of an agricultural cooperative.

20 (3) DISQUALIFICATION.—No employee of a
21 qualified industry organization or other industry
22 trade association shall serve as a member of the
23 Council, and no member of the Council may serve
24 concurrently as an officer of the board of directors

1 of a qualified industry organization or other industry
2 trade association.

3 (4) LIMITED COMPANY REPRESENTATION.—Not
4 more than 1 person from any company (or affiliate
5 of the company) may serve on the Council at any
6 given time.

7 (d) COMPENSATION.—

8 (1) IN GENERAL.—Subject to paragraph (2),
9 Council members shall receive no compensation for
10 services performed or reimbursement for expenses
11 relating to services performed.

12 (2) EXCEPTION FOR PUBLIC MEMBERS.—A
13 public member may, on request, be reimbursed for
14 reasonable expenses directly related to participation
15 by the member in Council meetings.

16 (e) TERMS.—

17 (1) LENGTH OF TERMS.—A Council member
18 shall serve a term of 3 years.

19 (2) NUMBER OF TERMS.—A Council member
20 may not serve more than 2 full consecutive terms.

21 (3) MAXIMUM CONSECUTIVE YEARS.—A mem-
22 ber filling an unexpired term may serve not more
23 than 7 consecutive years.

24 (4) RETURN OF FORMER MEMBERS.—A former
25 member of the Council may return to the Council

1 only if the member has not been a member for a pe-
2 riod of 2 years.

3 (5) INITIAL APPOINTMENTS.—Initial appoint-
4 ments to the Council shall be for terms of 1, 2, and
5 3 years, and shall be staggered to provide for the se-
6 lection of 7 members each year.

7 (f) FUNCTIONS.—

8 (1) IN GENERAL.—The Council shall develop
9 programs and projects and enter into contracts or
10 agreements for implementing this Act, including pro-
11 grams to—

12 (A) enhance consumer and employee safety
13 and training;

14 (B) provide for research and development
15 of clean and efficient propane utilization equip-
16 ment;

17 (C) inform and educate the public about
18 safety and other issues associated with the use
19 of propane; and

20 (D) provide for the payment of the costs of
21 implementing subparagraphs (A) through (C)
22 with funds collected under this Act.

23 (2) COORDINATION.—The Council shall coordi-
24 nate activities with industry trade associations and
25 others as appropriate to provide efficient delivery of

1 services and to avoid unnecessary duplication of ac-
2 tivities.

3 (g) USE OF FUNDS.—

4 (1) UNITED STATES AGRICULTURE INDUS-
5 TRY.—Not less than 5 percent of the funds collected
6 through assessments under this Act shall be used for
7 programs and projects intended to benefit the agri-
8 culture industry in the United States.

9 (2) COORDINATION.—The Council shall coordi-
10 nate the use of funds under paragraph (1) with agri-
11 culture industry trade associations and other organi-
12 zations representing the agriculture industry.

13 (3) USE OF PROPANE AS AN OVER-THE-ROAD
14 MOTOR FUEL.—The percentage of funds collected
15 through assessments under this Act to be used in
16 any year for projects relating to the use of propane
17 as an over-the-road motor fuel shall not exceed the
18 percentage of the total market for odorized propane
19 that is used as an over-the-road motor fuel, based on
20 an historical average of the use of propane as an
21 over-the-road motor fuel during the 3-year period
22 preceding the year in which the funds are used.

23 (h) PRIORITIES.—Issues related to research and de-
24 velopment, safety, education, and training shall be given

1 priority by the Council in the development of programs
2 and projects.

3 (i) ADMINISTRATION.—

4 (1) CHAIRMAN.—The Council shall select a
5 Chairman from among the members of the Council.

6 (2) OFFICERS.—The Council shall select from
7 among the members of the Council such officers as
8 the Council considers necessary.

9 (3) COMMITTEES.—The Council may establish
10 committees and subcommittees of the Council.

11 (4) RULES AND BYLAWS.—The Council shall
12 adopt rules and bylaws for the conduct of business
13 and the implementation of this Act.

14 (5) INDUSTRY COMMENT AND RECOMMENDA-
15 TIONS.—The Council shall establish procedures for
16 the solicitation of industry comment and rec-
17 ommendations on any significant plan, program, or
18 project to be funded by the Council.

19 (6) ADVISORY COMMITTEES.—The Council may
20 establish advisory committees of persons other than
21 Council members.

22 (j) ADMINISTRATIVE EXPENSES.—

23 (1) LIMITATION ON EXPENSES.—The adminis-
24 trative expenses of operating the Council (not in-
25 cluding costs incurred in the collection of the assess-

1 ment under section 6) plus amounts paid under
2 paragraph (2) shall not exceed 10 percent of the
3 funds collected by the Council in any fiscal year.

4 (2) REIMBURSEMENT.—The Council shall an-
5 nually reimburse the Secretary for costs incurred by
6 the United States relating to the Council.

7 (3) LIMITATION ON REIMBURSEMENT.—A reim-
8 bursement under paragraph (2) for any fiscal year
9 shall not exceed the amount that the Secretary de-
10 termines is *twice* the average annual salary of em-
11 ployees of the Department of Energy.

12 (k) BUDGET.—

13 (1) REVIEW AND COMMENT.—Prior to August
14 1 of each year, the Council shall publish for public
15 review and comment a budget plan for the next cal-
16 endar year, including the probable costs of all pro-
17 grams, projects, and contracts and a recommended
18 rate of assessment sufficient to cover the costs.

19 (2) SUBMISSION.—Following review and com-
20 ment under paragraph (1), the Council shall submit
21 the proposed budget to the Secretary and to Con-
22 gress.

23 (3) RECOMMENDATIONS BY SECRETARY.—The
24 Secretary may recommend any program or activity
25 that the Secretary considers appropriate.

1 (l) RECORDS.—

2 (1) IN GENERAL.—The Council shall keep min-
3 utes, books, and records that clearly reflect all of the
4 actions of the Council.

5 (2) PUBLIC AVAILABILITY.—The Council shall
6 make the minutes, books, and records available to
7 the public.

8 (3) AUDIT.—The Council shall have the books
9 audited by a certified public accountant at least once
10 each fiscal year and at such other times as the
11 Council may determine.

12 (4) COPIES.—Copies of an audit under para-
13 graph (3) shall be provided to all members of the
14 Council, all qualified industry organizations, and any
15 other member of the industry on request.

16 (5) NOTICE.—The Council shall provide the
17 Secretary with notice of meetings.

18 (6) ADDITIONAL REPORTS.—The Secretary may
19 require the Council to provide reports on the activi-
20 ties of the Council and on compliance, violations,
21 and complaints regarding the implementation of this
22 Act.

23 (m) PUBLIC ACCESS TO COUNCIL PROCEEDINGS.—

24 (1) IN GENERAL.—All meetings of the Council
25 shall be open to the public.

1 (2) NOTICE.—The Council shall provide the
2 public at least 30 days' notice of Council meetings.

3 (3) MINUTES.—The minutes of all meetings of
4 the Council shall be made readily available to the
5 public.

6 (n) ANNUAL REPORT.—

7 (1) IN GENERAL.—Each year the Council shall
8 prepare and make publicly available a report that in-
9 cludes an identification and description of all pro-
10 grams and projects undertaken by the Council dur-
11 ing the previous year and those planned for the up-
12 coming year.

13 (2) RESOURCES.—The report shall detail the
14 allocation and planned allocation of Council re-
15 sources for each program and project.

16 **SEC. 6. ASSESSMENTS.**

17 (a) IN GENERAL.—The Council may levy an assess-
18 ment on odorized propane in accordance with this section.

19 (b) AMOUNT.—

20 (1) INITIAL ASSESSMENT.—The Council shall
21 set the initial assessment at no greater than $\frac{1}{10}$
22 cent per gallon of odorized propane sold and placed
23 into commerce.

24 (2) SUBSEQUENT ASSESSMENTS.—Subsequent
25 to the initial assessment, annual assessments shall

1 be sufficient to cover the costs of the plans and pro-
2 grams developed by the Council.

3 (3) ASSESSMENT MAXIMUM.—An assessment
4 shall not be greater than $\frac{1}{2}$ cent per gallon of odor-
5 ized propane, unless approved by a majority of those
6 voting in a referendum in the producer class and the
7 retail marketer class.

8 (4) MAXIMUM INCREASE.—An assessment may
9 not be raised by more than $\frac{1}{10}$ cent per gallon of
10 odorized propane annually.

11 (5) OWNERSHIP.—The owner of odorized pro-
12 pane at the time of odorization, or at the time of im-
13 port of odorized propane, shall make the assessment
14 based on the volume of odorized propane sold and
15 placed into commerce.

16 (6) DUE DATE.—Assessments shall be payable
17 to the Council on a monthly basis not later than the
18 25th of the month following the month in which the
19 assessment is made.

20 (7) EXPORTED PROPANE.—Propane exported
21 from the United States is not subject to the assess-
22 ment.

23 (8) LATE FEE.—The Council may establish a
24 late payment charge and rate of interest to be im-

1 posed on a person that fails to remit or pay to the
2 Council any amount due under this Act.

3 (c) ALTERNATIVE COLLECTION RULES.—The Coun-
4 cil may establish an alternative means of collecting the as-
5 sessment if the Council determines that the alternative
6 means is more efficient and effective.

7 (d) INVESTMENT OF FUNDS.—Pending disbursement
8 pursuant to a program, plan, or project, the Council may
9 invest funds collected through assessments, and any other
10 funds received by the Council, only in—

11 (1) obligations of the United States or an agen-
12 cy of the United States;

13 (2) general obligations of a State or political
14 subdivision of a State;

15 (3) an interest-bearing account or certificate of
16 deposit of a bank that is a member of the Federal
17 Reserve System; or

18 (4) obligations fully guaranteed as to principal
19 and interest by the United States.

20 (e) STATE PROGRAMS.—

21 (1) IN GENERAL.—The Council shall establish a
22 program coordinating the operation of the Council
23 with the programs of any State propane education
24 and research council created by State law, or any
25 similar entity.

1 (2) COORDINATION.—The coordination shall in-
2 clude a joint or coordinated assessment collection
3 process, a reduced assessment, or an assessment re-
4 bate.

5 (3) REDUCED ASSESSMENT OR REBATE.—A re-
6 duced assessment or rebate shall be 20 percent of
7 the regular assessment collected in a State under
8 this section.

9 (4) PAYMENT OF ASSESSMENT REBATES.—An
10 assessment rebate may be paid only to—

11 (A) a State propane education and re-
12 search council created by State law or regula-
13 tion that meets requirements established by the
14 Council for specific programs approved by the
15 Council; or

16 (B) a similar entity, such as a foundation
17 established by the retail propane gas industry
18 in a State that meets requirements established
19 by the Council for specific programs approved
20 by the Council.

21 **SEC. 7. COMPLIANCE.**

22 (a) IN GENERAL.—The Council may bring a civil ac-
23 tion in a United States district court to compel compliance
24 with an assessment levied by the Council under this Act.

1 (b) COSTS.—A successful action for compliance under
2 this section may require payment by the defendant of the
3 costs incurred by the Council in bringing the compliance
4 action.

5 **SEC. 8. LOBBYING RESTRICTIONS.**

6 No funds collected by the Council shall be used in
7 any manner to influence legislation or an election, but the
8 Council may recommend to the Secretary changes in this
9 Act or other statutes that would further the purposes of
10 this Act.

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

12 (a) PRICE ANALYSIS.—

13 (1) IN GENERAL.—Not later than 2 years after
14 establishment of the Council and annually there-
15 after, the Secretary of Commerce, using only data
16 provided by the Energy Information Administration
17 and other public sources, shall prepare and make
18 available to the Council, the Secretary, and the pub-
19 lic an analysis of changes in the price of propane rel-
20 ative to other energy sources.

21 (2) METHODOLOGY.—

22 (A) IN GENERAL.—The propane price
23 analysis shall compare indexed changes in the
24 price of consumer grade propane to a composite
25 of indexed changes in the price of residential

1 electricity, residential natural gas, and refiner
2 price to end-users of number 2 fuel oil on an
3 annual national average basis.

4 (B) ROLLING AVERAGE PRICE.—For pur-
5 poses of indexing changes in consumer grade
6 propane, residential electricity, residential natu-
7 ral gas, and end-user number 2 fuel oil prices,
8 the Secretary of Commerce shall use a 5-year
9 rolling average price beginning with the year 4
10 years prior to the establishment of the Council.

11 (b) AUTHORITY TO RESTRICT ACTIVITIES.—

12 (1) IN GENERAL.—If in any year the 5-year av-
13 erage rolling price index of consumer grade propane
14 exceeds the 5-year rolling average price composite
15 index of residential electricity, residential natural
16 gas, and refiner price to end-users of number 2 fuel
17 oil in an amount greater than 10.1 percent, the ac-
18 tivities of the Council shall be restricted to research
19 and development, training, and safety matters.

20 (2) NOTIFICATION.—The Council shall inform
21 Congress and the Secretary of Energy of any restric-
22 tion of activities under this subsection.

23 (3) REANALYSIS.—On the expiration of each
24 180-day period beginning on the date on which ac-
25 tivities are restricted under paragraph (1), the Sec-

1 retary of Commerce shall conduct a new propane
2 price analysis described in subsection (a).

3 (4) **END OF RESTRICTION.**—Activities of the
4 Council shall continue to be restricted under this
5 subsection until the percentage described in para-
6 graph (1) is 10.1 percent or less.

7 **SEC. 10. PRICING.**

8 Notwithstanding any other provision of this Act, the
9 price of propane shall be determined by market forces.
10 The Council shall take no action, and no provision of this
11 Act shall establish an agreement to, pass along to consum-
12 ers the cost of the assessment provided for in section 6.

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

14 Nothing in this Act shall preempt or supersede any
15 other program relating to propane education and research
16 organized and operated under the laws of the United
17 States or any State.

18 **SEC. 12. REPORTS.**

19 (a) **IN GENERAL.**—Not later than 2 years after the
20 date of enactment of this Act, and not less than once every
21 2 years thereafter, the Secretary of Commerce shall pre-
22 pare and submit to Congress and the Secretary a report
23 examining whether operation of the Council, in conjunc-
24 tion with the cumulative effects of market changes and
25 Federal programs, has had an effect on propane consum-

1 ers, including residential, agriculture, process, and nonfuel
2 users of propane.

3 (b) CONSIDERATION BY THE SECRETARY OF COM-
4 MERCE.—The Secretary of Commerce shall—

5 (1) consider and, to the extent practicable, in-
6 clude in the report submissions by propane consum-
7 ers;

8 (2) consider whether there have been long-term
9 and short-term effects on propane prices as a result
10 of Council activities and Federal programs; and

11 (3) consider whether there have been changes in
12 the proportion of propane demand attributable to
13 various market segments.

14 (c) RECOMMENDATIONS.—To the extent that the re-
15 port demonstrates that there has been an adverse effect
16 on propane prices, the Secretary of Commerce shall in-
17 clude recommendations for reversing or mitigating the ef-
18 fect.

19 (d) FREQUENT REPORTS.—On petition by an af-
20 fected party or on request by the Secretary of Energy,
21 the Secretary of Commerce may prepare and submit the
22 report required by this section at less than 2-year inter-
23 vals.