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FISCAL IMPACT REPORT

ORIGINAL DATE 03/02/09

SPONSOR Lovejoy LAST UPDATED _____ HB _____

SHORT TITLE Propane Dealer Regulation SB 493

ANALYST Lucero

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$400.0	\$400.0	\$1,200.0	Recurring	General Fund and Utilities Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Regulation Commission (PRC)

Estimates provided by PRC Staff

SUMMARY

Synopsis of Bill

Senate Bill 493 enacts a new section of the Public Regulation Commission Act to require the regulation of propane sales by the Public Regulation Commission (PRC). The bill requires a propane advisory committee be appointed and include propane consumer representation equal to or greater than the proportion of propane industry representation.

The bill requires propane dealers to provide propane consumers:

1. that the PRC will receive and review consumer complaints;
2. that the consumer is obligated to attempt to remedy complaints with the dealership;
3. the propane dealer shall respond to complaints within one billing cycle or thirty days;
4. PRC contact information and a description of the complaint process;
5. the average pricing alterations and variations applied to present and future billing cycles;
6. price ranges to the customer base;
7. a short description defining the justifications for the price variations;
8. propane industry pricing averages in the consumer's region of service;
9. all price alterations that will have an impact, including increases or decrease, on consumer's present or future billing cycle;

10. justification for any pricing alterations, prior to changes, or by special notification, if changes will affect the current billing cycle;
11. conversion formulas for a unit of propane to gallons, cubic feet or thermal units;
12. the dealership's participation in the Low Income Home Energy Assistance Program (LIHEAP);
13. criteria for qualifying for LIHEAP; and
14. tank rental fee and any changes in that fee.

Additional requirements include a disconnection process, the right to change propane dealerships without financial or service-related penalties, and pricing must be made available in English and Spanish and or any other format to meet the needs of a consumer.

During an emergency, a propane dealer shall not charge additional fees or penalties, provide a minimal level of services to consumers of a competitor dealership if the competitor is unable to do so, and not charge more than the competitor would charge. Dealers participating in LIHEAP shall be subject to the winter moratorium program.

Consumers may own their own propane tank or rent a tank. In the case of service termination, the consumer has the right to be present when the dealership measures the remaining volume and receive a refund for any unused propane. Dealers shall recover proprietary tanks within thirty days of service termination.

Dealership employees or agents must be licensed.

FISCAL IMPLICATIONS

According to the PRC, implementation of the Act, especially verifying and enforcing compliance with the proposed rules, would require the establishment of a new bureau within the PRC, comprising an engineer, an accountant and an economist. In addition, the PRC's Legal Division would need a full time attorney to represent the bureau. Also the PRC's Consumer Relations Division would need to add an employee to deal with the complaint process set forth in the bill. The fiscal impact includes these five FTE's and corresponding support staff and resources.

SIGNIFICANT ISSUES

Currently the liquefied petroleum gases (LPG) and compressed natural gases (CNG) – LPG and CNG Act, (NMSA Sections 70-5-1 et seq) provides for regulation and licensing of persons selling or transporting or installing equipment or containers to be used with "liquefied petroleum gasses", which by definition includes propane. See NMSA Section 70-5-1A. The Construction Industries Division of the Regulation and Licensing Department (RLD) has adopted rules regulating that industry. NMAC 19.15.40. Those rules also adopt the national 2004 Liquid Petroleum Gas Code, NFPA 58. See NMAC 19.50.40.24B. The industry is heavily regulated within this state.

The bill focuses on the relationship between propane dealers and consumers. It does not provide for price regulation as such, but it does require a number of disclosures by dealers as a component of monthly billing statements, effectively providing a basis for consumer complaints to the commission. The bill addresses change of service, disconnection or discontinuation of service, extreme weather and emergency conditions, tank ownership and transfer, refunds and licensing of personnel.

The bill provides that dealerships receiving funds from the low income home energy assistance program shall be subject to the moratorium on winter disconnection.

Prices and price justifications are to be filed with the commission, but there is no provision for the review of those rates or jurisdiction to approve them.

PERFORMANCE IMPLICATIONS

The bill would require the PRC to adopt rules rapidly, and establish a new bureau to carry out the purposes of the Act. It is not clear how this bureau would interface with other aspects of the agency, or how the proposed rules would be enforced. There are many provisions in the bill unlike any other regulation presently performed by the PRC

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB 468 and its companion HB 512 propose the same list of rules, but assign responsibility to the construction industries licensing commission. Those bills also provide for administrative penalties, which this bill does not.

TECHNICAL ISSUES

The bill does not appear to be related to any other statute that the PRC is charged with regulating, such as the Public Utility Act. Paragraph N specifies a method of refunding unused propane upon termination of service that could be more equitable if it's possible to use a weighted average cost of gas instead of just the cost of gas at the last tank fill. It might be more appropriate to specify that the refunding mechanism will be worked out in the rules to be developed.

Employees of propane dealerships are already required to be licensed under the LPG and CNG Act, NMSA Section 70-5-6. The meaning of the term “agent” is unclear.

There are a number of places where the language in the bill is quite general and subject to interpretation:

1. Page 1 lines 22-24—there is no enumeration of the members of the advisory committee or state function of the committee;
2. Page 2 lines 14-15—“average pricing alterations and variations” are not defined, and future billing cycles are unlimited.”
3. Page 3 lines 14-18—no criteria are provided to determine whether a customer is “justly dissatisfied.”
4. Page 4 lines 4-5---no criteria are provided to determine what “minimally necessary services” should be provided during an emergency.

Section 1 subsection (G) provides that propane dealerships must service customers of other dealers during emergencies. It is expressly prohibited by Section 70-5-23 NMSA for a non-owner dealer to fill the tank of the owner-dealer unless the owner gives the non-owner permission to do so.

ALTERNATIVES

According to the RLD, the LP Gas bureau has been working with the industry on a “consumer bill of rights” which will address many of the problems this bill is apparently concerned with. This process will result in a more effective way to resolve consumer issues because it will be based on a cooperative effort using industry, regulatory and consumer expertise.

DL/svb