

The Senate Committee on Agriculture and Consumer Affairs offered the following substitute to HB 512:

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 8 of Title 2 of the Official Code of Georgia Annotated, relating to  
2 agricultural commodities promotion, so as to provide for an Agricultural Commodity  
3 Commission for Propane; to provide for definitions; to provide for composition and powers  
4 and terms of office of the commission; to provide for representation of the commission by  
5 the Attorney General of Georgia; to provide for funds to be held in trust; to provide for  
6 bonding of those handling trust funds; to provide for liability of members and employees of  
7 the commission; to provide for marketing orders and hearings regarding same; to provide for  
8 referenda and items included in the referenda regarding the effectiveness of marketing  
9 orders; to render unlawful certain activities regarding performance noncompliance or  
10 violations of marketing orders; to provide for civil penalties and injunctive relief; to  
11 authorize promulgation of regulations; to provide for nonapplicability of article to the  
12 Agricultural Commodity Commission for Propane; to provide for related matters; to repeal  
13 conflicting laws; and for other purposes.

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

15 **SECTION 1.**

16 Chapter 8 of Title 2 of the Official Code of Georgia Annotated, relating to agricultural  
17 commodities promotion, is amended by adding a new article to read as follows:

18 "ARTICLE 6

19 2-8-200.

20 As used in this article, the term:

21 (1) 'Commission' means the Agricultural Commodity Commission for Propane created  
22 under this article.

23 (2) 'Dealer' means any person to whom the office of the Commissioner of Insurance  
24 issues a liquid propane license. The term shall not include any person who offers for

25 retail sale propane in containers of less than 50 pounds water capacity and whose  
26 business does not involve the filling or transportation of such containers.

27 (3) 'Distributor' means any person engaged in the business of selling propane to a dealer  
28 in the state.

29 (4) 'Marketing order' means an order issued pursuant to this article establishing an  
30 assessment for financing the programs established under this article.

31 (5) 'Person' means an individual, sole proprietorship, partnership, limited partnership,  
32 firm, corporation, limited liability company, association, or any other business entity, or  
33 any combination thereof.

34 2-8-201.

35 The Agricultural Commodity Commission for Propane is hereby created. The commission  
36 shall be organized and constituted, have corporate existence, possess powers and duties,  
37 and be governed and controlled as provided in this article.

38 2-8-202.

39 (a) The commission shall be composed of:

40 (1) Three members elected by the House Committee on Agriculture and Consumer  
41 Affairs with a quorum present and a majority of those present concurring, each of whom  
42 shall be a dealer or distributor and shall not be a member of the General Assembly;

43 (2) Three members elected by the Senate Agriculture and Consumer Affairs Committee  
44 with a quorum present and a majority of those present concurring, each of whom shall be  
45 a dealer or distributor and shall not be a member of the General Assembly; and

46 (3) One member elected by a majority of the members of the commission as specified  
47 in paragraphs (1) and (2) of this subsection, who shall be a dealer or distributor and shall  
48 not be a member of the General Assembly.

49 (b) Vacancies in the membership of the commission shall be filled in the same manner as  
50 that of the original election of such members. Any person selected to fill a vacancy shall  
51 serve for the remainder of the unexpired term.

52 (c) There shall be no compensation or reimbursement of expenses for members of the  
53 commission.

54 (d) It shall be the duty of the commission to certify to the Secretary of State the  
55 membership of the commission and each change in membership as the same occurs.

56 (e) The commission shall name its chairperson and determine a quorum for the transaction  
57 of business.

58 2-8-203.

59 (a) The commission is authorized to appoint advisory boards, special committees, and  
60 individuals, including technical and clerical personnel, to advise, aid, and assist the  
61 commission in the performance of its duties. Compensation for such services shall be fixed  
62 by the commission and shall be paid from the funds of the commission.

63 (b) The Attorney General shall represent the commission in legal matters and shall be the  
64 attorney for the commission. If the Attorney General determines that outside legal counsel  
65 is necessary or desirable in connection with any legal matter of the commission, he or she  
66 shall so inform the commission and, upon approval of the commission, shall employ such  
67 outside counsel. Compensation for such outside counsel shall be agreed upon between  
68 such counsel and the Attorney General, subject to the approval of the commission. Such  
69 compensation shall be paid from the funds of the commission. Neither Code  
70 Section 16-10-9 nor any other law shall prohibit or be applicable to the employment of  
71 such counsel.

72 (c) The commission is authorized to accept donations, gifts, and other property and to use  
73 the same for commission purposes.

74 (d) The commission is authorized to acquire, lease as lessee, purchase, hold, own, and use  
75 any franchise or real or personal property, whether tangible or intangible, or any interest  
76 therein and, whenever the same is no longer required for purposes of the commission, to  
77 sell, lease as lessor, transfer, or dispose thereof or exchange the same for other property or  
78 rights which are useful for its purposes.

79 2-8-204.

80 The commission shall be a public corporation and an instrumentality of the State of  
81 Georgia. By that name, style, and title, the commission may contract and be contracted  
82 with, implead and be impleaded, and complain and defend in all courts. The commission  
83 shall assume the duties and exercise the authority provided in this article without further  
84 formality than that provided in this article. Each member of the commission shall be a  
85 public officer and shall take an oath of office to faithfully perform his or her duties. Such  
86 oath shall be administered by the Governor or some other person qualified to administer  
87 oaths.

88 2-8-205.

89 The commission is authorized, and it shall be its duty to receive, collect, and disburse the  
90 funds of the commission.

91 2-8-206.

92 Funds received by the commission under this article shall be held in trust for the  
93 commission. Such funds shall be deposited, accounted for, and disbursed in the same  
94 manner as that of the funds of this state but shall not be required to be deposited in the state  
95 treasury and appropriated therefrom. It is the express intent and purpose of this article to  
96 authorize the receipt, collection, and disbursement by the commission of such funds as trust  
97 funds of the commission without complying with the requirement applicable to funds  
98 collected for the use and benefit of the state.

99 2-8-207.

100 Any persons who handle funds under this article shall be bonded with good and sufficient  
101 surety in an amount determined by the commission for the accounting of such funds. All  
102 checks, drafts, and negotiable instruments which are drawn on or payable from the funds  
103 of the commission shall be signed by the chairperson of the commission.

104 2-8-208.

105 The members and employees of the commission shall not be held individually responsible  
106 to any dealer or distributor or to any other person for errors in judgment, mistakes, or other  
107 acts as principal, agent, person, or employee, except for their own individual acts of  
108 dishonesty or crime. No such member, person, or employee shall be held individually  
109 responsible for any act or omission of any other member of the commission. The liability  
110 of the members of the commission shall be several and not joint, and no member shall be  
111 liable for the default of any other member.

112 2-8-209.

113 (a) The commission is authorized to issue, administer, and enforce marketing orders.

114 (b)(1) Whenever the commission has reason to believe that the issuance of a marketing  
115 order will tend to effectuate the declared policy of this article with respect to propane, it  
116 shall give due notice of and an opportunity for a public hearing thereon.

117 (2) Notice of any hearing called for such purpose shall be given by the commission by  
118 publishing a notice of such hearing for a period of not less than five days in a newspaper  
119 of general circulation published in the City of Atlanta and in such other newspapers as  
120 the commission may prescribe. No such public hearing shall be held prior to five days  
121 after the last day of such period of publication. The commission shall also mail a copy  
122 or communicate electronically such notice of hearing and a copy of such proposed  
123 marketing order or proposed amendments to all dealers and distributors of propane whose  
124 names and addresses are on file with the commission. Such notice of hearing shall in all

125 respects comply with the requirements of Chapter 13 of Title 50, the 'Georgia  
126 Administrative Procedure Act.'

127 (3) The hearing shall be public, and all testimony shall be received under oath. A full  
128 and complete record of the proceedings at such hearing shall be made and maintained on  
129 file in the office of the commission. The hearing shall, in all respects, be conducted in  
130 accordance with Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.' The  
131 hearing may be conducted by the commission or by a member of the commission, as may  
132 be designated by the commission in each instance, but no decision shall be made based  
133 on hearings conducted other than by the commission itself, at which a majority of the  
134 members thereof are present, until the members of the commission have been afforded  
135 an opportunity to review the hearing record. When the commission conducts hearings,  
136 its recommendation shall be based on the findings reached after a review of the record  
137 of such hearings.

138 2-8-210.

139 If, upon the basis of the record of testimony and documentary evidence received at the  
140 hearing as provided for in Code Section 2-8-209 and the facts officially noticed therein  
141 from official publications or institutions of recognized standing, the commission  
142 determines that the issuance of a marketing order will tend to effectuate the intent and  
143 purpose of this article, it may recommend the promulgation of a marketing order with  
144 respect to the matters specified in the hearing notice and supported by the record; such  
145 order shall account for provisions to promote propane education, training, safety  
146 compliance, equipment replacement for low-income customers, marketing, advertising,  
147 promotion, and customer rebates to encourage energy-efficient appliance and equipment  
148 purchases by residential, commercial, industrial, motor fuel or agricultural consumers. No  
149 funds collected pursuant to this article shall be used in any manner for lobbying or for  
150 influencing state or federal legislation. No more than 10 percent of the funds collected and  
151 no less than the actual administrative expense pursuant to this article shall be used for  
152 administrative expenses relating to the expenditure of the funds. The commission may  
153 advance costs of conducting referenda pursuant to this article and reimburse those costs  
154 from the assessment funds.

155 2-8-211.

156 (a)(1) No marketing order issued pursuant to this article shall be made effective by the  
157 commission until a referendum thereon is held.

158 (2) The commission shall determine:

159 (A) The amount of the proposed assessment established by the marketing order;

- 160 (B) The time and place of the referendum;
- 161 (C) Procedures for conducting the referendum and the counting of votes;
- 162 (D) The proposed effective date for the imposition of the assessment established by the  
163 marketing order, which shall be no be less than 90 days from the date the referendum  
164 ballot is required to be returned to the commission in order to be considered on the  
165 question presented; and
- 166 (E) Any other matters pertaining to the referendum.
- 167 (b) The amount of the proposed assessment established by the marketing order shall be  
168 stated on the referendum ballot. The amount may not exceed four-tenths of one cent for  
169 each gallon of propane sold in this state by distributors to dealers.
- 170 (c) All dealers may vote in the referendum. Each dealer shall have one vote. Any dispute  
171 over eligibility to vote or any other matter relating to the referendum shall be resolved by  
172 the commission. The commission shall make reasonable efforts to provide all dealers with  
173 notice of the referendum and an opportunity to vote.
- 174 (d) A proposed assessment shall become effective if more than 50 percent of the eligible  
175 dealers in the state vote and more than 50 percent of the eligible votes cast by the dealers  
176 are cast in favor of the assessment. If the assessment is approved by the referendum, then  
177 the commission shall notify the department of the amount and the effective date of the  
178 assessment. The department shall notify all dealers of the assessment.
- 179 (e)(1) Each distributor, as the owner of propane at the time of odorization, or at the time  
180 of import of odorized propane, shall make the assessment based on the volume of  
181 odorized propane sold in this state and placed in commerce in this state.
- 182 (2) Each distributor shall collect the assessment from the dealer to whom the sale is made  
183 and shall remit to the commission the sum of the amount of the assessment multiplied by  
184 the number of gallons of propane sold to any dealer during the assessment period.
- 185 (f) A distributor shall keep records of the number of gallons of propane sold to dealers.  
186 All documents or records regarding purchases and sales shall be made available to the  
187 commission upon its written request for the purpose of determining the distributor's  
188 compliance with the provisions of this article. The commission shall keep the records  
189 confidential and shall not disclose the records except to its accountants, attorneys, or  
190 financial advisors without a court order directing it to do so.
- 191 2-8-212.
- 192 A dealer can opt out of this article only once per year between September 1 and  
193 September 30. Any dealer who opts out of this article in accordance with this subsection  
194 shall not be eligible to receive the benefit of any marketing order for a period of one year

195 following the date of his or her request to opt out under this Code section and shall not be  
196 entitled to the payment of any interest by the commission on the amount refunded.

197 2-8-213.

198 A referendum shall be held once every five years to vote on the continuation of the  
199 commission. For the results to be valid, at least 50 percent of the eligible dealers in this  
200 state must vote, and if more than 50 percent of the dealers voting vote in favor of  
201 continuing the commission, then the commission will continue for another five years.

202 2-8-214.

203 (a) Any assessment established in accordance with this article shall constitute a personal  
204 debt of every person so assessed and shall be due and payable to the commission when  
205 payment is called for by the commission. If such person fails to pay any such assessment,  
206 the commission may file an action against such person in a court of competent jurisdiction  
207 for the collection thereof.

208 (b) In the event that any person duly assessed pursuant to this article fails to pay to the  
209 commission the amount so assessed, the commission shall be authorized to add to such  
210 unpaid assessment an amount not exceeding 10 percent of such unpaid assessment to  
211 defray the cost of enforcing the collection of the unpaid assessment.

212 (c) The provisions of this Code section shall be cumulative, and any other remedies may  
213 be pursued concurrently until satisfaction is obtained. Any penalty recovered shall become  
214 a part of the principal assessment levied and shall be for the use of the commission.

215 2-8-215.

216 (a) Any person who violates any provision of this article or any marketing order duly  
217 issued and effective under this article shall be civilly liable to the commission for a penalty  
218 in an amount not to exceed \$500.00 for each and every violation thereof, the amount of  
219 such penalty to be fixed by the commission after notice and hearing as provided by  
220 Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' for contested cases and  
221 recoverable by a civil action brought in the name of the commission. Any moneys  
222 recovered pursuant to this Code section shall be applied for the use of the commission.

223 2-8-216.

224 (a) The Attorney General of this state shall, upon complaint by the commission, or may,  
225 after examining the complaint and the evidence and believing that a violation has occurred,  
226 bring an action in the superior court in the name of the commission for civil penalties or

227 for injunctive relief, including the specific performance of any marketing order duly issued  
228 by the commission under this article.

229 (b) If there is an application for a preliminary injunction, a hearing of any order to show  
230 cause why such injunction should not be issued, or a hearing of any motion for a  
231 preliminary injunction suggesting that, or if the court finds in any such action that a  
232 defendant therein is violating or has violated any provision of this article or of any  
233 marketing order duly issued by the commission under this article, then the court shall  
234 enjoin the defendant from committing further violations and may compel specific  
235 performance of any obligation imposed by a marketing order issued by the commission  
236 under this article. It shall not be necessary in such event to allege or prove lack of an  
237 adequate remedy at law.

238 (c) In any action brought by the Attorney General to enforce any of the provisions of this  
239 article or of any marketing order issued by the commission and effective under this article  
240 or of any rule or regulation issued by the commission pursuant to any marketing order, a  
241 judgment in favor of the commission may provide that the defendant pay the commission  
242 the costs it incurred in the prosecution of such action.

243 2-8-217.

244 (a) The commission on its own motion or upon the complaint of any interested party may  
245 refer to the Attorney General of this state or to any prosecuting attorney of this state any  
246 charges of a violation of any provision of this article or of any marketing order or any rule  
247 or regulation issued by the commission and effective under this article for the institution  
248 of legal proceedings thereupon or, if the commission deems it necessary or advisable,  
249 immediately call an administrative hearing, pursuant to the provisions of Chapter 13 of  
250 Title 50, the 'Georgia Administrative Procedure Act,' governing contested cases, to  
251 consider the charges set forth in such verified complaint.

252 (b) In case the matter is referred directly by the commission to the Attorney General or any  
253 prosecuting attorney, it shall be the duty of such officer, if after examination of the  
254 complaint and the evidence he or she believes that a violation has occurred, to bring an  
255 appropriate action or actions in a court or courts of competent jurisdiction.

256 (c) After an administrative hearing, if the commission finds that a violation has occurred,  
257 it shall enter its findings and notify the parties to such complaint. In its discretion, the  
258 commission shall either refer the matter to the Attorney General for the institution of legal  
259 proceedings or notify such parties to cease and desist from further violation. Upon the  
260 refusal or failure of such parties to comply or if the commission finds that the facts or  
261 circumstances warrant immediate prosecution, the commission shall file a complaint with  
262 the Attorney General or with any prosecuting attorney of this state, requesting that such

263 officer commence any or all actions authorized in this article against such respondent or  
 264 respondents in a court of competent jurisdiction.

265 2-8-218.

266 (a) Any person who willfully renders or furnishes a false or fraudulent report, statement,  
 267 or record required pursuant to this article or any marketing order effective under this article  
 268 shall be guilty of a misdemeanor.

269 (b) Any person who violates any provision of this article or any provision of any  
 270 marketing order duly issued by the commission under this article shall be guilty of a  
 271 misdemeanor.

272 (c) The penalties and remedies prescribed in this article with respect to any violation  
 273 mentioned shall be concurrent and alternative. Neither singly nor combined shall such  
 274 penalties and remedies be exclusive; rather, either singly or combined, such penalties and  
 275 remedies shall be cumulative with any and all other civil, criminal, or alternative rights,  
 276 remedies, forfeitures, or penalties provided or allowed by law with respect to any such  
 277 violation.

278 2-8-219.

279 The department shall promulgate rules for the administration and enforcement of this  
 280 article. The promulgation, adoption, and amendment of rules and regulations by the  
 281 commission shall be subject to the requirements of Chapter 13 of Title 50, the 'Georgia  
 282 Administrative Procedure Act'."

283 **SECTION 2.**

284 Said chapter is further amended by revising Code Section 2-8-10, relating to nonapplicability  
 285 of article to Agricultural Commodity Commission for Peanuts, Agricultural Commodity  
 286 Commission for Equines, or Agricultural Commodity Commission for Georgia Grown  
 287 Products, as follows:

288 "2-8-10.

289 This article shall not apply to the Agricultural Commodity Commission for Peanuts  
 290 provided for in Article 3 of this chapter, except as provided in Code Section 2-8-13; nor  
 291 shall this article apply to the Agricultural Commodity Commission for Equines provided  
 292 for in Article 5 of this chapter; nor shall this article apply to the Agricultural Commodity  
 293 Commission for Georgia Grown Products provided for in Article 4 of this chapter; nor shall  
 294 this article apply to the Agricultural Commodity Commission for Propane provided for in  
 295 Article 6 of this chapter."

296

**SECTION 3.**

297 All laws and parts of laws in conflict with this Act are repealed.