



Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

January 30, 2008

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Assembly Bill 515 and Senate Bill 273: Regulation of Suppliers of Liquefied Petroleum Gas

Assembly Bill 515 and Senate Bill 273 would make several changes related to the regulation of certain suppliers of liquefied petroleum gas (LPG) and the applicability of the statewide system for notification of the location of transmission facilities (known as the "diggers hotline").

SB 273 was introduced on September 25, 2007, and referred to the Senate Committee on Commerce, Utilities and Rail. On November 30, 2007, the Committee on Commerce, Utilities and Rail took executive action to recommend adoption of Senate Substitute Amendment 1, as amended by Senate Amendment 1, by a vote of 7-0, and to recommend passage as amended by a vote of 7-0. On December 5, 2007, SB 273 was referred to the Joint Committee on Finance.

AB 515 was introduced on September 27, 2007, and referred to the Assembly Committee on Energy and Utilities. On January 22, 2008, the Committee on Energy and Utilities took executive action to recommend adoption of Assembly Substitute Amendment 1 by a vote of 10-0, and to recommend passage as amended by a vote of 10-0. On January 25, 2008, AB 515 was referred to the Joint Committee on Finance.

The remainder of this memorandum describes the amended versions of the Senate and Assembly bills. Most, but not all, of the provisions of SSA 1 to SB 273, as amended by SA 1, and ASA 1 to AB 515, are the same. Some provisions related to penalties differ in the two versions. This bill summary describes the provisions that are the same in both versions, and describes where the Senate bill and Assembly bill differ. SA 1 to SSA 1 to SB 273 includes two technical corrections that are also included in ASA 1 to AB 515 that would: (a) delete duplicative language in the definition of liquefied petroleum gas; and (b) delete an effective date reference to creation of a section, because the section is included in amended sections.

CURRENT LAW

The Department of Commerce (Commerce) promulgates administrative rules for the design, construction, location, installation, operation, repair, and maintenance of equipment for storage, handling, use, and transportation by tank truck or tank trailer, of liquefied petroleum gas (LPG). Liquefied petroleum gas includes any material which is composed predominantly of the following hydrocarbons or mixtures of hydrocarbons: (a) propane; (b) propylene; (c) butanes; (d) normal butane or isobutane; and (e) butylenes.

Installers of equipment that uses LPG for fuel purposes are currently required to furnish the customer or user a statement showing that the design, construction, location and installation of the equipment conforms with the Commerce rules. Any person who violates the Commerce rules related to LPG fuel may be fined from \$25 to \$100, or can be imprisoned for between 30 days and six months.

Owners of transmission facilities of electricity, gases, water, and other energy or telecommunication sources are required to be members of a statewide communication system commonly known as the "diggers hotline." The diggers hotline is a nonprofit organization comprised of the transmission facility members. It operates a one-call system that receives notices of proposed excavation and transmits certain information to the transmission facility owners affected by the notices. Before a person excavates or digs, the excavator must provide a notice of at least three working days to the diggers hotline. The local utilities send locators to the property to determine and mark the location of underground transmission facilities before excavation occurs. Currently, propane and other fuel storage tanks and pipelines are excluded from the definition of transmission facilities if they do not cross public rights-of-way and if they are located on property that is leased or owned by the owners of the tanks and pipelines. Thus, these propane and other fuel storage tanks and pipelines are not subject to the notification and excavation requirements of the statewide system.

SUMMARY OF BILLS

Liquefied Petroleum Gas Retail Supplier Licenses

SB 273 and AB 515 would require a retail supplier of LPG to obtain a license issued by Commerce. A retail supplier would mean a person engaged in the business of filling containers that have a water capacity of at least four pounds with LPG that is intended to be used directly from the containers as fuel. A retail supplier would not include a person who fills such containers with LPG for the person's own use. The bills would delete normal butane or isobutane from the current definition of LPG.

Commerce would be required to promulgate rules to issue a license to retail suppliers of LPG. Retail suppliers of LPG would have to pay a license fee and provide proof of financial responsibility. Commerce would have to set license fees at an amount which, as closely as possible, equals the cost of issuing the license. However, the bills would set a statutory annual

license fee of \$20 for a retail supplier who only fills Department of Transportation cylinders, which would be defined as containers that hold LPG and that meet the specifications established by the U.S. Department of Transportation (such as a 20-pound propane tank used to fuel a barbeque grill). Licenses would have a term to be set by Commerce, not to exceed two years. Commerce would be required to publish an annual list of all retail suppliers of LPG holding valid licenses.

LPG Supplier Proof of Financial Responsibility

The bills would require that a retail supplier with a license would have to maintain proof of financial responsibility of \$1,000,000 per occurrence with an annual aggregate of \$2,000,000 for compensating third parties for bodily injury and property damages for incidents associated with the release of LPG. A retail supplier who only fills DOT cylinders or who only fills containers for engine and recreational vehicle fueling systems would have to maintain proof of financial responsibility of \$500,000 per occurrence with an annual aggregate of \$1,000,000 for compensating third parties for bodily injury and property damages for incidents associated with the release of LPG.

A retail supplier of LPG could obtain any of the following in order to provide the required proof of financial responsibility: (a) a surety bond that is issued by a surety company that is listed as an acceptable surety for federal bonds on the date that the surety bond is obtained in the most recently published U.S. Department of the Treasury's Circular 570; (b) an irrevocable letter of credit that is issued by a financial institution that is authorized to do business in Wisconsin or that is federally chartered, with the letter of credit having an initial period of at least one year; or (c) commercial general liability insurance as an endorsement to an existing policy or as a separate policy from an insurer, or a risk retention group, that is licensed to transact the business of insurance in Wisconsin or that is eligible to provide insurance as a surplus lines insurer in one or more states.

A retail supplier could only distribute LPG as long as the retail supplier maintains proof of financial responsibility. A retail supplier would have to file the proof of financial responsibility with Commerce.

If a person issues a surety bond, letter of credit, or general liability insurance to a retail supplier for purposes of providing the required proof of financial responsibility, the person would be required to provide written notice to the retail supplier and to Commerce at least 60 days before canceling, revoking, suspending, or failing to renew the bond, letter, or insurance. A financial institution that issues an irrevocable letter of credit to a retail supplier for the required proof of financial responsibility would be required to automatically renew the letter unless the financial institution gives the required 60 day notice.

If a retail supplier cancels or fails to renew a surety bond, letter of credit, or general liability insurance, the retail supplier would be required to notify Commerce at least 60 days before canceling or failing to renew the bond, letter, or insurance. When Commerce receives such a notice from a retail supplier, the Department would be required to revoke the retail supplier's license.

Supplier and Customer Notice Requirements

The bills would require any person who owns, leases, or uses a propane gas system and who is a customer of a retail supplier to notify the retail supplier of propane gas for the propane gas system of any interruption in the operation of the propane gas system due to the replacement, modification, repair, or servicing of the propane gas system by any person other than the retail supplier. A propane gas system would be defined as an assembly consisting of one or more containers that has a total water capacity of at least 100 gallons and a means of conveying propane gas from the container or containers to a point of connection with devices used to consume the propane gas. A propane gas system would include all piping and other components associated with the assembly that are used to control the quantity, flow, pressure, and physical state of the propane gas. The customer would be required to provide the notice to the retail supplier at least seven days in advance of the interruption in the operation of the propane gas system. However, if the interruption would be due to emergency repair or servicing, the customer would be required to provide the notice to the retail supplier as soon as possible and no later than 24 hours after the repair or servicing is completed. The retail supplier, or the person replacing, modifying, repairing, or servicing the propane gas system, would be required to perform a check for leaks or other defects in the propane gas system before placing the propane gas system back into operation in the manner required by rule.

Each retail supplier that fills a container that is part of a propane gas system would be required to provide written notice to each customer of the customer's duty to notify the retail supplier in advance of any interruption in operation of the propane gas system. The retail supplier would have to provide the notice before the retail supplier's first delivery of propane gas to the customer, and would be required to provide subsequent notices on an annual basis. The notice provided by the retail supplier would have to include all of the following information: (a) the name, address, and telephone number of the retail supplier; (b) the purpose of giving the notification to the retail supplier; (c) a description of the type of propane gas system that is subject to the notification requirement; (d) a description of the types of activities that constitute a replacement, modification, repair, or servicing of a propane gas system; and (e) a copy of the provisions that require a customer to notify the retail supplier of interruptions in operation of the propane gas system.

Other Supplier Requirements

The bills would authorize a retail supplier of LPG to evacuate (empty) a LPG container not under its ownership in order to transfer the remaining LPG from that container into a container that is under its ownership.

If a licensed retail supplier suffers damages caused by the filling of a container that is not a DOT cylinder by an unlicensed retail supplier, the licensed retail supplier may bring an action against the unlicensed retail supplier to do any of the following: (a) enjoin the unlicensed retail supplier from distributing LPG at retail until the retail supplier receives the required license; or (b) receive monetary damages equal to three times the amount of any monetary loss sustained or \$2,000, whichever is greater, multiplied by each day that the unlicensed supplier is not licensed. A

retail supplier who prevails in an action under this provision would be awarded reasonable attorney fees. An action would have to begin within 180 days after the cause of action accrues or be barred.

Penalties

Both bills would limit criminal penalties for violations of Commerce rules for the design, construction, location, installation, operation, repair, and maintenance for the storage, handling, use, and transportation by tank truck or tank trailer of LPG to intentional violations, and would increase the maximum fine to \$2,000 (from \$100). Both bills would specify that the new requirements related to filling, evacuating, and using LPG containers, and providing notice, would also be subject to the criminal penalties for intentional violations, and a maximum fine of \$2,000. Both bills would also establish civil forfeitures of not less than \$10 and not more than \$1,000 for violations of these rules and requirements. For each of these three penalty provisions, both bills specify that each day of violation would constitute a separate offense, but the wording is slightly different in each bill.

Under both bills, a retail supplier who violates the licensing requirements would be subject to a civil forfeiture of not less than \$500 and not more than \$1,000 for the first offense, and not less than \$2,000 nor more than \$5,000 for each subsequent offense. The Assembly bill, but not the Senate bill, would also specify that these civil forfeitures would also apply to retail suppliers who violate the financial responsibility provisions of the bill, and would specify that each day of violation of the licensing or financial responsibility provisions would constitute a separate offense.

Under both bills, if a retail supplier only fills DOT cylinders or containers for engine and recreational vehicle fueling systems, the retail supplier who violates licensing requirements would forfeit not less than \$200 and not more than \$400 for the first offense, and not less than \$800 nor more than \$2,000 for each subsequent offense. The Assembly bill, but not the Senate bill, would also specify that: (a) these civil forfeitures would also apply to retail suppliers who violate the financial responsibility provisions of the bill; and (b) these civil penalties would not apply to intentional violations of the licensing or financial responsibility provisions. The Assembly bill, but not the Senate bill, would also provide a penalty for retail suppliers who only fill DOT cylinders or containers, for intentional violations of the licensing or financial responsibility provisions. The Assembly criminal penalty could include imprisonment of not less than 30 days and not more than six months or the specified fine (same as the forfeiture amounts identified above).

Both bills would require that if a retail supplier is found in violation of the licensing requirements, the court would require that the retail supplier cease distributing LPG at retail until the retail supplier is issued the required license. The Assembly bill, but not the Senate bill, would also apply this provision to violations of the financial responsibility requirements.

Commerce Rules and Effective Dates

Commerce would be required to submit proposed administrative rules to implement the bills to the Legislative Council staff no later than the first day of the sixth month beginning after the

effective date of the bills. The Department of Administration would not be allowed to require Commerce to prepare an economic impact report for the rules.

The bills would create several delayed effective dates. The creation of the requirement that customers of a retail supplier notify the retail supplier of any interruption in the operation of the propane gas system, and that the retail supplier provide notice to the customers of the customer's notification responsibilities would take effect on the first day of the sixth month beginning after publication of the act.

Creation of the following provisions would take effect on the first day of the 16th month beginning after publication of the act: (a) the retail supplier licensing requirements; (b) the financial responsibility requirements; (c) the authority for licensed retail suppliers to bring action against unlicensed retail suppliers for damages; and (d) the penalty provisions.

Diggers Hotline Changes

The bills would create a definition of "private transmission facilities" to mean transmission facilities that are owned by a person, other than a governmental unit, and that are located on private property owned or leased by that person and that do not cross a public right-of-way. Under the bill, as under current law, "transmission facilities" would be subject to the diggers hotline one-call notification system, and would include all pipes, pipelines, wires, cables, ducts, wirelines and associated facilities, whether underground or aboveground, regardless of the nature of their transmittants or of their in-service application. The term includes, but is not restricted to, utility facilities, government-owned facilities, facilities transporting hazardous materials, communications and data facilities, drainage and water facilities and sewer systems. The term does not include culverts. The bills would repeal the exclusion from the definition of "transmission facilities" for a fuel storage tank and fuel storage pipeline, if the pipeline does not cross a public right-of-way and if the tank and pipeline are located on property that is owned or leased by the user of the tank and pipeline. Examples of private transmission facilities would be underground lines from a principal building to a garage or barn, or an underground sprinkler system.

The bills would require owners of transmission facilities, other than private transmission facilities, to be members of the system. They would allow, but not require, owners of private transmission facilities, to be members. Owners of private transmission facilities would be exempt from the requirements that owners of transmission facilities must currently meet regarding marking the location of transmission facilities. Owners of private transmission facilities who receive a notice of possible damage would be required to inspect the facilities for damage within six hours after receipt of the notice if there is risk of personal injury or loss of life, or within 24 hours otherwise, and to repair any damage found as soon as practicable. (This is the current law requirement for owners of transmission facilities.)

The diggers hotline one-call notification system would be required to tell persons who provide notice of planned excavation that the one-call system does not include private transmission facilities. The system would also be required to ensure, through information distributed by phone,

Internet, or printed materials, that a person providing notice on intended excavation activity is informed that private transmission facilities are not subject to the one-call system, and that the person providing notice is referred to other entities to be contacted by the person for determining the location of private transmission facilities. The system would be required to specifically use the term "propane" in describing the type of private transmission facilities that are not subject to the one-call notification system.

Commerce would be authorized to promulgate an administrative rule that requires retail suppliers of propane to inform their customers each year of the obligation of owners of transmission facilities under the Diggers Hotline provisions.

The bills would also create an exception to the requirement for a minimum clearance of 18 inches between an unexposed marked underground transmission facility and the cutting edge or point of any power-operated excavating or earth moving equipment. The exception would allow the clearance to be as necessary at the beginning of the excavation process to penetrate and remove pavement, rock, or other hard materials. Currently, if the transmission facility is exposed, the excavator may reduce the clearance to two times the known limit of control of the cutting edge or point of the equipment or 12 inches, whichever is greater. Under the bills, this clearance would be allowed if an underground transmission facility becomes exposed, or if the transmission facility is already exposed.

The diggers hotline provisions would take effect on the first day of the 13th month beginning after publication of the act. However, the exception to the requirement for a minimum clearance would go into effect upon publication.

FISCAL EFFECT

SB 273 / AB 515 do not appropriate funds or authorize positions to implement the provisions of the bill. Commerce submitted a fiscal estimate which indicates the Department would incur one-time costs of \$26,500 to promulgate administrative rules to implement the provisions of the bills. Under the bills, these costs would be absorbed within the Department's existing budget. Commerce also estimates workload would increase by less than 50 hours annually to license approximately 600 retail suppliers of LPG, and indicates this workload could be absorbed within current resources.

Commerce estimates it would receive additional revenue of approximately \$11,000 annually in license fees from retail suppliers of LPG. Revenues would be deposited in the Safety and Buildings Division program revenue (PR) appropriation for general operations. Revenues deposited in the safety and buildings appropriation are provided from several plan review and inspection activities related to construction such as commercial buildings, multi-family and manufactured dwellings, plumbing, private sewage systems, electrical and heating systems, and elevators.

Prepared by: Kendra Bonderud