

**As Passed by the House**

**126th General Assembly  
Regular Session  
2005-2006**

**Am. H. B. No. 85**

**Representatives Blessing, Combs, Flowers, Hagan, Martin, Reinhard,  
Smith, G.**

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**A B I L L**

To amend section 4928.20 and to enact section 4928.21 1  
of the Revised Code to limit retail electric 2  
service automatic governmental aggregation and to 3  
create a "Do Not Aggregate" list. 4

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That section 4928.20 be amended and section 5  
4928.21 of the Revised Code be enacted to read as follows: 6

**Sec. 4928.20.** (A) The legislative authority of a municipal 7  
corporation may adopt an ordinance, or the board of township 8  
trustees of a township or the board of county commissioners of a 9  
county may adopt a resolution, under which, on or after the 10  
starting date of competitive retail electric service, it may 11  
aggregate in accordance with this section the retail electrical 12  
loads located, respectively, within the municipal corporation, 13  
township, or unincorporated area of the county and, for that 14  
purpose, may enter into service agreements to facilitate for those 15  
loads the sale and purchase of electricity. The legislative 16  
authority or board also may exercise such authority jointly with 17  
any other such legislative authority or board. Am For customers 18  
that are not mercantile commercial customers, an ordinance or 19

resolution under this division shall specify whether the 20  
aggregation will occur only with the prior consent of each person 21  
owning, occupying, controlling, or using an electric load center 22  
proposed to be aggregated or will occur automatically for all such 23  
persons pursuant to the opt-out requirements of division (D) of 24  
this section. The aggregation of mercantile commercial customers 25  
shall occur only with the prior consent of each person owning, 26  
occupying, controlling, or using an electric load center proposed 27  
to be aggregated. Nothing in this division, however, authorizes 28  
the aggregation of such retail electric loads of an electric load 29  
center, as defined in section 4933.81 of the Revised Code, that is 30  
located in the certified territory of a nonprofit electric 31  
supplier under sections 4933.81 to 4933.90 of the Revised Code or 32  
an electric load center served by transmission or distribution 33  
facilities of a municipal electric utility. 34

(B) If an ordinance or resolution adopted under division (A) 35  
of this section specifies that aggregation of customers that are 36  
not mercantile commercial customers will occur automatically as 37  
described in that division, the ordinance or resolution shall 38  
direct the board of elections to submit the question of the 39  
authority to aggregate to the electors of the respective municipal 40  
corporation, township, or unincorporated area of a county at a 41  
special election on the day of the next primary or general 42  
election in the municipal corporation, township, or county. The 43  
legislative authority or board shall certify a copy of the 44  
ordinance or resolution to the board of elections not less than 45  
seventy-five days before the day of the special election. No 46  
ordinance or resolution adopted under division (A) of this section 47  
that provides for an election under this division shall take 48  
effect unless approved by a majority of the electors voting upon 49  
the ordinance or resolution at the election held pursuant to this 50  
division. 51

(C) Upon the applicable requisite authority under divisions 52  
(A) and (B) of this section, the legislative authority or board 53  
shall develop a plan of operation and governance for the 54  
aggregation program so authorized. Before adopting a plan under 55  
this division, the legislative authority or board shall hold at 56  
least two public hearings on the plan. Before the first hearing, 57  
the legislative authority or board shall publish notice of the 58  
hearings once a week for two consecutive weeks in a newspaper of 59  
general circulation in the jurisdiction. The notice shall 60  
summarize the plan and state the date, time, and location of each 61  
hearing. 62

(D) No legislative authority or board, pursuant to an 63  
ordinance or resolution under divisions (A) and (B) of this 64  
section that provides for automatic aggregation of customers that 65  
are not mercantile commercial customers as described in division 66  
(A) of this section, shall aggregate the electrical load of any 67  
electric load center located within its jurisdiction unless it in 68  
advance clearly discloses to the person owning, occupying, 69  
controlling, or using the load center that the person will be 70  
enrolled automatically in the aggregation program and will remain 71  
so enrolled unless the person affirmatively elects by a stated 72  
procedure not to be so enrolled. The disclosure shall state 73  
prominently the rates, charges, and other terms and conditions of 74  
enrollment. The stated procedure shall allow any person enrolled 75  
in the aggregation program the opportunity to opt out of the 76  
program every two years, without paying a switching fee. Any such 77  
person that opts out of the aggregation program pursuant to the 78  
stated procedure shall default to the standard service offer 79  
provided under division (A) of section 4928.14 or division (D) of 80  
section 4928.35 of the Revised Code until the person chooses an 81  
alternative supplier. 82

(E)(1) With respect to a governmental aggregation for a 83

municipal corporation that is authorized pursuant to ~~division~~ 84  
divisions (A) to (D) of this section, resolutions may be proposed 85  
by initiative or referendum petitions in accordance with sections 86  
731.28 to 731.41 of the Revised Code. 87

(2) With respect to a governmental aggregation for a township 88  
or the unincorporated area of a county, which aggregation is 89  
authorized pursuant to ~~division~~ divisions (A) to (D) of this 90  
section, resolutions may be proposed by initiative or referendum 91  
petitions in accordance with sections 731.28 to 731.40 of the 92  
Revised Code, except that: 93

(a) The petitions shall be filed, respectively, with the 94  
township fiscal officer or the board of county commissioners, who 95  
shall perform those duties imposed under those sections upon the 96  
city auditor or village clerk. 97

(b) The petitions shall contain the signatures of not less 98  
than ten per cent of the total number of electors in, 99  
respectively, the township or the unincorporated area of the 100  
county who voted for the office of governor at the preceding 101  
general election for that office in that area. 102

(F) A governmental aggregator under division (A) of this 103  
section is not a public utility engaging in the wholesale purchase 104  
and resale of electricity, and provision of the aggregated service 105  
is not a wholesale utility transaction. A governmental aggregator 106  
shall be subject to supervision and regulation by the public 107  
utilities commission only to the extent of any competitive retail 108  
electric service it provides and commission authority under this 109  
chapter. 110

(G) This section does not apply in the case of a municipal 111  
corporation that supplies such aggregated service to electric load 112  
centers to which its municipal electric utility also supplies a 113  
noncompetitive retail electric service through transmission or 114

distribution facilities the utility singly or jointly owns or  
operates.

(H) A governmental aggregator shall not include in its  
aggregation the accounts of any of the following:

(1) A customer that has opted out of the aggregation;

(2) A customer in contract with a certified competitive  
retail electric services provider;

(3) A customer that has a special contract with an electric  
distribution utility;

(4) A customer that is not located within the governmental  
aggregator's governmental boundaries;

(5) Subject to division (C) of section 4928.21 of the Revised  
Code, a customer who appears on the "do not aggregate" list  
maintained under that section.

**Sec. 4928.21.** (A) A customer that desires to remove itself  
from the pool of customers eligible to participate in governmental  
aggregation under section 4928.20 of the Revised Code may register  
with the public utilities commission to appear on the "do not  
aggregate" list.

(B) The commission, by rule, shall establish a "do not  
aggregate" list. The commission shall maintain the "do not  
aggregate" list and make it publicly available on the commission's  
web site.

(C) If a customer is enrolled in a governmental aggregation  
program at the time the customer first appears on the "do not  
aggregate" list, the governmental aggregator shall remove the  
customer from the program at the next two-year opt out opportunity  
that is available to the customer under division (D) of section  
4928.20 of the Revised Code.

**Section 2.** That existing section 4928.20 of the Revised Code 144  
is hereby repealed. 145