

As Passed by the Senate

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

Am. H. B. No. 85

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

Senators Jacobson, Amstutz, Cates, Mumper, Schuler, Stivers, Harris

—

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. ~~An~~ 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, affirmative consent of 21
each person owning, occupying, controlling, or using an electric 22
load center proposed to be aggregated or will occur automatically 23
for all such persons pursuant to the opt-out requirements of 24
division (D) of this section. The aggregation of mercantile 25
commercial customers shall occur only with the prior, affirmative 26
consent of each such person owning, occupying, controlling, or 27
using an electric load center proposed to be aggregated. Nothing 28
in this division, however, authorizes the aggregation of ~~such~~ the 29
retail electric loads of an electric load center, as defined in 30
section 4933.81 of the Revised Code, that is located in the 31
certified territory of a nonprofit electric supplier under 32
sections 4933.81 to 4933.90 of the Revised Code or an electric 33
load center served by transmission or distribution facilities of a 34
municipal electric utility. 35

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

division. 52

(C) Upon the applicable requisite authority under divisions 53
(A) and (B) of this section, the legislative authority or board 54
shall develop a plan of operation and governance for the 55
aggregation program so authorized. Before adopting a plan under 56
this division, the legislative authority or board shall hold at 57
least two public hearings on the plan. Before the first hearing, 58
the legislative authority or board shall publish notice of the 59
hearings once a week for two consecutive weeks in a newspaper of 60
general circulation in the jurisdiction. The notice shall 61
summarize the plan and state the date, time, and location of each 62
hearing. 63

(D) No legislative authority or board, pursuant to an 64
ordinance or resolution under divisions (A) and (B) of this 65
section that provides for automatic aggregation of customers that 66
are not mercantile commercial customers as described in division 67
(A) of this section, shall aggregate the electrical load of any 68
electric load center located within its jurisdiction unless it in 69
advance clearly discloses to the person owning, occupying, 70
controlling, or using the load center that the person will be 71
enrolled automatically in the aggregation program and will remain 72
so enrolled unless the person affirmatively elects by a stated 73
procedure not to be so enrolled. The disclosure shall state 74
prominently the rates, charges, and other terms and conditions of 75
enrollment. The stated procedure shall allow any person enrolled 76
in the aggregation program the opportunity to opt out of the 77
program every two years, without paying a switching fee. Any such 78
person that opts out of the aggregation program pursuant to the 79
stated procedure shall default to the standard service offer 80
provided under division (A) of section 4928.14 or division (D) of 81
section 4928.35 of the Revised Code until the person chooses an 82
alternative supplier. 83

(E)(1) With respect to a governmental aggregation for a 84
municipal corporation that is authorized pursuant to ~~division~~ 85
divisions (A) to (D) of this section, resolutions may be proposed 86
by initiative or referendum petitions in accordance with sections 87
731.28 to 731.41 of the Revised Code. 88

(2) With respect to a governmental aggregation for a township 89
or the unincorporated area of a county, which aggregation is 90
authorized pursuant to ~~division~~ divisions (A) to (D) of this 91
section, resolutions may be proposed by initiative or referendum 92
petitions in accordance with sections 731.28 to 731.40 of the 93
Revised Code, except that: 94

(a) The petitions shall be filed, respectively, with the 95
township fiscal officer or the board of county commissioners, who 96
shall perform those duties imposed under those sections upon the 97
city auditor or village clerk. 98

(b) The petitions shall contain the signatures of not less 99
than ten per cent of the total number of electors in, 100
respectively, the township or the unincorporated area of the 101
county who voted for the office of governor at the preceding 102
general election for that office in that area. 103

(F) A governmental aggregator under division (A) of this 104
section is not a public utility engaging in the wholesale purchase 105
and resale of electricity, and provision of the aggregated service 106
is not a wholesale utility transaction. A governmental aggregator 107
shall be subject to supervision and regulation by the public 108
utilities commission only to the extent of any competitive retail 109
electric service it provides and commission authority under this 110
chapter. 111

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

noncompetitive retail electric service through transmission or 115
distribution facilities the utility singly or jointly owns or 116
operates. 117

(H) A governmental aggregator shall not include in its 118
aggregation the accounts of any of the following: 119

(1) A customer that has opted out of the aggregation; 120

(2) A customer in contract with a certified competitive 121
retail electric services provider; 122

(3) A customer that has a special contract with an electric 123
distribution utility; 124

(4) A customer that is not located within the governmental 125
aggregator's governmental boundaries; 126

(5) Subject to division (C) of section 4928.21 of the Revised 127
Code, a customer who appears on the "do not aggregate" list 128
maintained under that section. 129

Sec. 4928.21. (A) A customer that desires to remove itself 130
from the pool of customers eligible to participate in governmental 131
aggregation under section 4928.20 of the Revised Code may register 132
with the public utilities commission to appear on the "do not 133
aggregate" list. 134

(B) The commission, by rule, shall establish a "do not 135
aggregate" list. The commission shall maintain the "do not 136
aggregate" list and make it publicly available on the commission's 137
web site. 138

(C) If a customer is enrolled in a governmental aggregation 139
program at the time the customer first appears on the "do not 140
aggregate" list, the governmental aggregator shall remove the 141
customer from the program at the next two-year opt out opportunity 142
that is available to the customer under division (D) of section 143

4928.20 of the Revised Code.

144

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

145

146

Section 3. A mercantile commercial customer that is enrolled
in an automatic governmental aggregation on the effective date of
this act shall remain enrolled in that aggregation program until
the earlier of the customer providing notice and paying any
switching fee that may be required pursuant to rules adopted by
the Public Utilities Commission or until the arrival of the
program's next opt-out opportunity under division (D) of section
4928.20 of the Revised Code as amended by this act. The automatic
enrollment of the mercantile commercial customer in the
governmental aggregation shall then terminate by operation of law.
Thereafter, in accordance with division (A) of that section, the
mercantile commercial customer shall be enrolled in a governmental
aggregation only with the customer's prior, affirmative consent.

147

148

149

150

151

152

153

154

155

156

157

158

159