

**As Reported by the Senate Energy and Public Utilities Committee**

**126th General Assembly**

**Regular Session**

**2005-2006**

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

**Representatives Blessing, Combs, Flowers, Hagan, Martin, Reinhard,**

**Smith, G.**

**Senator Jacobson**

**—**

**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.

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is hereby repealed.

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**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.

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