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# OHIO LEGISLATIVE SERVICE COMMISSION

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**S.B. 95**  
**134th General Assembly**

## Bill Analysis

**Version:** As Introduced

**Primary Sponsor:** Sen. Maharath

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### Summary

#### Refunds of public utility charges

- Requires the prompt refund of all public utility charges paid by customers that are found to be unreasonable, unlawful, imprudent, or otherwise improper by the Public Utilities Commission (PUCO), the Supreme Court, or other authority.
- Specifies that PUCO must order the refunds to be allocated to customer classes in the same proportion as the charges were originally collected.

#### PUCO utility service jurisdiction

- Grants PUCO the power and jurisdiction to supervise and regulate resellers of “utility service” (defined as electric, natural gas, water-works, and sewage disposal system service), but limits it to the authority established in the bill.
- Specifies that a “reseller” is any person not specifically exempt from PUCO jurisdiction under Ohio’s public utility law and that is not an entity subject to PUCO jurisdiction under another Ohio law.
- Further specifies that a “reseller” is a person that charges residential consumers for submetered utility service, whether or not the person supplies the service, and either of the following applies:
  - The monthly charge for all components of the service exceeds the actual cost of the utility service delivered to the landlord’s or reseller’s meter and purchased from an entity (including a competitive utility service supplier, a public utility regulated by PUCO, or a municipal or a not for profit utility);
  - The person has common ownership in, or is affiliated with, or shares in the revenue or profits of, an entity from which any component of the service was purchased.

- Prohibits PUCO from requiring a public utility to permit the resale of utility service in its certified territory, unless provided for in the terms of the utility's resale tariff.
- Specifies that if, on the effective date of this section, the resale of natural gas utility service is prohibited by a natural gas company's tariff, the bill does not permit the resale of the natural gas company's utility service while that tariff is in effect.
- Prohibits PUCO from determining whether a person that sells utility service as measured through one or more submeters, is a public utility, if the person is (1) a reseller with a current and valid certificate to operate or (2) not required to have a certificate, but otherwise does not prohibit PUCO from making such a determination for sellers of submetered utility service.

### **Reseller certification**

- Effective 91 days after PUCO rules under the bill take effect, prohibits a reseller from operating in Ohio without having a current, valid certificate to operate from PUCO.
- Requires PUCO to adopt rules for a "streamlined" application review process allowing 90 days for PUCO to take action on a reseller's certificate application.
- Provides that on the 91<sup>st</sup> day after its filing date, an application will be deemed approved and the reseller deemed to have a valid certificate to operate, if PUCO fails to take action to reject or approve the application within the 90-day review period.

### **Utility service charge options**

- Prohibits a reseller from charging a residential consumer (condominium unit owner, resident of a manufactured home park, or tenant) more for utility service than the rate specified in the rate option selected by the consumer.
- Regarding monthly utility usage charges for utility service from a reseller at the consumer's residential unit, requires residential consumers to choose between the following options, which must be designated in a property agreement:
  - An amount that is not more than the amount the consumer would have been charged for the same month for the same usage under the allowable residential rate;
  - For a period of not more than 12 months, a set rate that is not more than the amount the consumer would have been charged for the same usage under the allowable residential rate in effect at the time that the consumer executes the property agreement or selects an option upon its renewal or continuation.
- Defines "allowable residential rate" as all charges for all components of utility service for customers receiving the residential standard service offer (electric utility service), standard choice offer (natural gas utility service), or water-works or sewage disposal system service from the utility or company in the customer's immediate service area for the same service delivered to the residential consumer.

- Requires a residential consumer to select one of the rate options (described above) at the time a property agreement is executed with the reseller and specifies that the consumer also must select an option at the end of the initial 12-month period and every subsequent 12-month period, if the consumer's property agreement is renewed or continued.
- Specifies that if the residential consumer fails to select an option by the time prescribed for either option, the consumer must be charged an amount that is not more than the amount the consumer would have been charged for the first option described above.

### **Utility service standards**

- Requires a reseller that charges residential consumers for utility service, at a minimum, to adopt and adhere to utility service standards for the provision of that service and specifies that the standards must be at least as stringent as PUCO rules for utility service and any PUCO winter reconnection order.

### **Intervention**

- Allows the Office of the Consumers' Counsel (OCC) to (1) represent a residential consumer receiving utility service under the bill and (2) exercise the right to intervene and be heard in its own right in PUCO proceedings and court cases regarding resellers.

### **Rules**

- Requires PUCO to adopt rules, not later than 180 days after the bill's effective date, for the purpose of governing resellers operating in Ohio and effectuating the reseller law established by the bill.
- Requires the rules to address such items as reseller requirements and certification; utility charges; violations, failures, or omissions under the bill; a streamlined process for obtaining a certificate; OCC intervention; residential consumer bill information; dispute resolution; a public process for adopting service standards; and consumer protections.
- Prohibits PUCO from adopting rules that (1) regulate a reseller's rates or charges (except as the bill authorizes), (2) require resellers to file rates, charges, or tariffs at PUCO, or (3) require resellers to file, at PUCO, an annual report of the reseller's activities.

### **Prohibitions**

- Prohibits a reseller and the reseller's officers, agents, or employees acting in an official capacity from violating, or failing (including by omission) to comply with, the provisions of the bill or any PUCO order, direction, or requirement made under the authority granted to PUCO under the bill.

### **Penalties**

- Establishes forfeitures that PUCO must assess against a reseller for each violation, compliance failure, or compliance failure by omission under the bill and specifies that each day's continuance is a separate offense.

- Authorizes forfeitures to be assessed as follows: (1) not more than \$1,000 for each violation, failure, or omission, (2) not more than \$10,000, if the violation, failure, or omission was the result of the reseller engaging in deception, fraud, or endangering public health or safety, or (3) \$10,000, if a reseller operates in Ohio without a current valid PUCO-issued certificate.
- Specifies that forfeitures must be deposited to the credit of the General Revenue Fund.
- Specifies that the Attorney General must commence and prosecute actions to recover forfeitures on behalf of residential consumers injured by resellers' actions or inaction, if directed by PUCO, and specifies that actions may be instituted by OCC.
- Allows a residential consumer, OCC, or the Attorney General to bring an action to recover damages from a reseller that is required to be certified under the bill.
- Permits OCC to (1) at the discretion of the Consumers' Counsel, represent any and all consumers the reseller serves or (2) exercise the right to intervene or be heard in its own right.
- Establishes that, for each violation, failure, or omission, a reseller is liable to the person or residential consumer injured for treble the damages sustained as a result, plus reasonable attorney fees, and that such damages are in addition to, and not a replacement of, the forfeitures under the bill.
- Provides that monetary damages for reseller liability also must include the return of improper or unlawful charges collected from the consumer.
- In addition to assessing any forfeiture, permits PUCO to suspend, conditionally suspend, revoke, or refuse to renew a reseller's certificate to operate if the reseller demonstrates a pattern of violations or compliance failures.

## **PUCO reports**

- Requires PUCO, after consultation with the Consumers' Counsel, to submit a report to the General Assembly regarding the efficacy of the bill not later than 1½ years after the bill's effective date and another report 2½ years after its effective date.

Specifies that the reports must address utility service provided under the bill and PUCO findings regarding price, quality of service, and the protection of the interests of residential consumers.

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## Detailed Analysis

### Refunds of public utility charges

The bill requires all charges paid by customers to a public utility to be promptly refunded to the customers who paid the charges if the charges are later found to be unreasonable, unlawful, imprudent, or otherwise improper by the Public Utilities Commission (PUCO), the Ohio Supreme Court, or other authority. Under the bill, PUCO must order the refunds in a manner designed to allocate the refunds to customer classes in the same proportion as the charges were originally collected. The refunds must be made notwithstanding any provision of the law.<sup>1</sup>

Current law prohibits a public utility from (1) charging or collecting a different “rate, rental, toll, or charge” except as specified in the utility’s schedule filed with PUCO or (2) refunding or remitting all or any part of the rate, rental, toll, or charge, except such as specified in the schedule and extended to all under like circumstances for like, or substantially similar, service.<sup>2</sup> In addition, the Ohio Supreme Court has found that under this law, “a utility has no option but to collect the rates set by the commission and is clearly forbidden to refund any part of the rates so collected.”<sup>3</sup>

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<sup>1</sup> R.C. 4903.191.

<sup>2</sup> R.C. 4905.32, not in the bill.

<sup>3</sup> *Keco Industries, Inc. v. Cincinnati & Suburban Bell Tel. Co.*, 166 Ohio St. 254, 257 (1957).

## **PUCO utility service jurisdiction**

### **Jurisdiction over resellers of utility service**

The bill enacts a new chapter of the Revised Code that governs resellers of electric, natural gas, water-works, and sewage disposal system service. The bill vests PUCO with the power and jurisdiction to supervise and regulate resellers but only to the extent permitted in the bill.<sup>4</sup>

### **Other jurisdiction provisions**

Under the bill, PUCO may not require a public utility to permit the resale of utility service in its certified territory unless provided for in the terms of the utility's resale tariff.<sup>5</sup>

With two exceptions, no provision in the bill prohibits PUCO from determining whether a person that sells utility service to a residential consumer, as measured through one or more submeters, is a public utility. Under the bill's exceptions, PUCO may not determine that a person selling utility service to a residential consumer is a public utility if the person (1) is a reseller with a current and valid PUCO certificate to operate as a reseller or (2) is not required to have a certificate.<sup>6</sup> See "**Reseller certification**" below.

### **Natural gas tariff**

The bill specifies that if, on the bill's effective date, the terms of an existing natural gas tariff prohibit the resale of natural gas utility service, nothing in the bill permits the resale of such service for the period during which the tariff is in effect.<sup>7</sup>

### **Reseller defined**

Under the bill, a "reseller" is any person that is not an entity subject to PUCO jurisdiction under another chapter of the Revised Code and is not specifically exempt from PUCO jurisdiction under Ohio public utilities law.<sup>8</sup> In addition, a "reseller" is a person that charges an amount to a residential consumer for utility service as measured through one or more submeters, whether or not the person supplies the utility service, and either of the following applies:

- The monthly charge for the total of all components of a utility service exceeds the actual cost of the utility service (1) delivered to the landlord's or reseller's meter and (2) purchased from an entity that charges the proprietor or reseller, as applicable, for the utility service, including from any entity that is a competitive supplier of utility service, a public utility under PUCO jurisdiction, a municipal utility, or a not for profit utility.

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<sup>4</sup> R.C. 4934.02.

<sup>5</sup> R.C. 4934.30.

<sup>6</sup> R.C. 4934.32.

<sup>7</sup> R.C. 4934.31.

<sup>8</sup> R.C. 4934.01(D)(1) and (2).

- The person has common ownership in or is affiliated with an entity from which any component of the utility service was purchased or the person shares in the revenue or profits of that entity through a contractual relationship or otherwise.<sup>9</sup>

### Other definitions

A “person” means, if capable of suing or being sued in an Ohio court of record, an individual, firm, partnership, limited liability partnership or company, corporation, association, union, or entity, and the agent of the person.<sup>10</sup> “Utility service” means electric, natural gas, water-works, or sewage disposal system service.<sup>11</sup>

“Residential consumer” is a resident, tenant, or unit owner. A “resident” is a person entitled under a rental agreement to the use and occupancy of a lot located in a manufactured home park. “Landlord” is the owner, lessor, or sublessor of a residential dwelling unit, the landlord’s agent, or any person authorized by the landlord to manage the premises or to receive rent from a tenant under a rental agreement. “Tenant” is a person entitled under a rental agreement to the use and occupancy of a residential dwelling unit. “Unit owner” means a person who owns a condominium ownership interest in a residential, water slip, or commercial unit.<sup>12</sup>

### Reseller certification

The bill prohibits a reseller from operating in Ohio without having a current, valid certificate to operate in Ohio from PUCO. This prohibition takes effect 91 days after the PUCO reselling rules become effective.<sup>13</sup> See “**Rules**,” below.

Although the bill does not expressly state that a reseller must apply to PUCO for a reseller’s certificate, the requirement is implied because PUCO has 90 days after the completed application is filed to reject or approve it. PUCO rules must include a “streamlined” certification process that includes an expedited application review by PUCO to enable issuance of a certification within 90 days of an application’s filing date unless PUCO suspends the application. However, beginning on the 91<sup>st</sup> day, if PUCO fails to reject or approve the application, then the application is considered approved, and the reseller is deemed to have a valid certificate to operate from PUCO.<sup>14</sup>

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<sup>9</sup> R.C. 4934.01(D)(3).

<sup>10</sup> R.C. 4934.01(C).

<sup>11</sup> R.C. 4934.01(I).

<sup>12</sup> R.C. 4934.01(B), (E), (F), and (H); R.C. 4781.01(V), 5311.01(CC), and 5321.01(A) and (B), not in the bill.

<sup>13</sup> R.C. 4934.05.

<sup>14</sup> R.C. 4934.03(B)(2) and 4934.031.

## Utility service charge options

Under the bill, if a reseller provides utility service to a residential consumer, the residential consumer must choose one of two options indicating how the reseller may charge the consumer for the service. A reseller is prohibited from charging more than the amount chosen by the consumer. A consumer must choose to be charged either of the following:

- **First option:** An amount that is not more than the amount the consumer would have been charged for the same month for the same usage under the allowable residential rate;
- **Second option:** For a period of not more than 12 months, an amount that is not more than the amount the consumer would have been charged for the same usage under the allowable residential rate in effect at the time that the consumer executes the property agreement.<sup>15</sup>

For each option, the charge for utility service is an amount, as designated in a property agreement, for the monthly utility usage at the consumer's residential unit.<sup>16</sup> The amounts for both options are based on the "allowable residential rate," which means all charges, including fixed and per unit charges, for the following: (1) the residential standard service offer for *electric utility service*, (2) the standard choice offer for *natural gas utility service*, or (3) *water-works or sewage disposal system service*. The "allowable residential rate" for each of those services is the total charge for all components of the service from the electric distribution utility, natural gas company water-works or sewage disposal system company in the customer's immediate service area for the same type of service and quantity delivered to the residential consumer.<sup>17</sup>

The consumer must choose the option at the time the consumer executes a property agreement. A "property agreement" is a rental agreement, unit owners association agreement, or similar or related agreement under which a residential consumer is charged for the provision of utility service by a reseller.<sup>18</sup>

The consumer must select one of the options described above at the end of the initial 12-month period and at the end of every subsequent 12-month period, if the consumer's property agreement is renewed or continues past 12 months. If the consumer chooses the second option, the rate cap is the allowable residential rate in effect at the time the consumer chooses the option at the time of a property agreement renewal or continuation.<sup>19</sup>

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<sup>15</sup> R.C. 4934.07(B) and (C).

<sup>16</sup> R.C. 4934.07(A) and (C).

<sup>17</sup> R.C. 4934.01(A).

<sup>18</sup> R.C. 4934.07(A).

<sup>19</sup> R.C. 4934.07(D).



Under the bill, if the consumer fails to select either option described above by the required time, the consumer must be charged under the first option for the following 12-month period.<sup>20</sup>

Under the bill, the definition of “reseller” includes as one factor to being a reseller, that the person, whether or not the person supplies the utility service, charges a residential consumer a monthly charge for the total cost for all components of the submetered utility service that *exceeds* the actual cost of the utility service delivered to the meter and purchased by the proprietor or reseller. However, the provision regarding options a residential consumer may choose for monthly utility service charges specifies that a reseller may charge *not more than* what the consumer would have been charged under the allowable residential rate, which is all charges for all components of utility service from the electric distribution utility, natural gas company water-works or sewage disposal system company in the customer’s immediate service area for the same type of service and quantity delivered to the residential consumer. The different charge allowed in these provisions may affect the bill’s clarity regarding what residential consumers may be charged and the application of the definition of “reseller.”<sup>21</sup>

### **Utility service standards**

The bill requires a reseller to adopt and adhere to utility service standards that are, at a minimum, at least as stringent as the service standards for public utility service adopted by PUCO by administrative rule and any PUCO winter reconnect order.<sup>22</sup>

Service standard rules address various service-related topics such as customer rights and responsibilities, customer complaint handling procedures, billing adjustments, and disconnection procedures.<sup>23</sup>

In its latest winter reconnect order, PUCO ordered that for the 2020-2021 winter heating season, gas and electric utilities must reconnect the services of those who have had their services disconnected for nonpayment, maintain services for those receiving a disconnection notice for nonpayment, and establish service for customers requesting new service. The finding and order specifies that this be done during the period of October 5, 2020, through April 15, 2021, in accordance with the order’s terms.<sup>24</sup>

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<sup>20</sup> R.C. 4934.07(E).

<sup>21</sup> R.C. 4934.01(D)(3)(a) and 4934.07(B) and (C).

<sup>22</sup> R.C. 4934.04.

<sup>23</sup> O.A.C. Chapter 4901:1, not in the bill.

<sup>24</sup> PUCO Docketing System, PUCO Finding and Order, [Case No. 20-1252-GE-UNC](https://dis.puc.state.oh.us/DocumentRecord.aspx?DocID=903f0211-491b-4229-b0cf-80c47cf3dfa8), paragraphs 37 to 41, available at: <http://dis.puc.state.oh.us/DocumentRecord.aspx?DocID=903f0211-491b-4229-b0cf-80c47cf3dfa8>, accessed on March 26, 2021.

## Intervention and representation

Under the bill, the Office of the Consumers' Counsel (OCC) may represent a residential consumer receiving utility service from a reseller. And, at the discretion of the Consumers' Counsel, OCC may exercise the right to intervene in a PUCO proceeding for a reseller's certificate, forfeiture assessments, or recovery of damages. The bill also specifies that OCC may exercise the right to be heard in its own right at these proceedings.<sup>25</sup>

### Rules

Not later than 180 days after the bill's effective date, PUCO must adopt rules under Chapter 119 of the Revised Code for the purpose of governing resellers operating in Ohio and effectuating the reseller provisions the bill establishes. Specifically, PUCO rules must include provisions that govern all of the following:

- The enforcement of the provisions regarding:
  - Reseller certification;
  - Utility charges imposed by a reseller;
  - Violations and compliance failures and omissions under the bill.
- A streamlined process for a reseller to obtain a certificate to operate in Ohio and that grants OCC the right to intervene in the process;
- The items that must be included in each residential consumer's bill, including:
  - The amount and time period of the consumer's usage;
  - The per unit rate for the consumer's usage;
  - The due date of the consumer's bill;
  - Contact information for the reseller, OCC, and PUCO;
  - Any other items that PUCO determines appropriate.
- The requirements a reseller must meet to qualify for certification, including (1) the technical, managerial, and financial capabilities to provide utility service to residential consumers and assume all duties, responsibilities, and obligations of a reseller and (2) the ability to comply with PUCO orders and rules;
- A dispute resolution process under which a residential consumer or OCC may file a complaint with PUCO for any act or omission of a reseller in contradiction to any requirement or prohibition of the bill or the rules;
- A public process, including a hearing and the opportunity for public comment, for the adoption of utility service standards;

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<sup>25</sup> R.C. 4934.10.

- Residential consumer protections that include protections against unjust, unreasonable, or deceptive policies or practices regarding connecting to, maintaining, or terminating utility service;
- Any other processes, requirements, restrictions, or other items that PUCO determines to be necessary to protect residential consumers.<sup>26</sup>

### **Rule limitations**

The bill provides, however, that PUCO may not adopt rules that do any of the following:

- Regulate a reseller's rates or charges, except as specifically authorized under the bill;
- Require resellers to file rates, charges, or tariffs at PUCO;
- Require resellers to file at PUCO an annual report of the reseller's activities.<sup>27</sup>

## **Prohibitions**

The bill prohibits a reseller from violating, or failing to comply (or failing to comply by omission) with, the provisions of the bill or any PUCO order, direction, or requirement made under the authority that the bill grants to PUCO. These prohibitions also apply to the reseller's officers, agents, or employees acting in an official capacity.<sup>28</sup> Each day's continuance of a failure, violation, or omission is a separate offense.<sup>29</sup>

## **Penalties**

### **Forfeitures**

PUCO must assess a forfeiture against a reseller for each violation of, or failure (including by omission) to comply with, the bill. All forfeitures collected must be deposited to the credit of the General Revenue Fund.<sup>30</sup>

The Attorney General must commence and prosecute actions to recover forfeitures, if directed to do so by PUCO, or actions may be instituted by OCC. The bill requires actions to recover forfeitures to be prosecuted in the name of the state on behalf of residential consumers injured by resellers' actions or inaction, and permits actions to be brought in the court of common pleas of any county in which the reseller is located.<sup>31</sup>

Forfeitures assessed by PUCO must not be more than \$1,000 for each violation, failure, or omission under the bill. The amount of this forfeiture must be commensurate with the

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<sup>26</sup> R.C. 4934.03(A) and (B).

<sup>27</sup> R.C. 4934.03(C).

<sup>28</sup> R.C. 4934.11(A).

<sup>29</sup> R.C. 4934.11(C)(4).

<sup>30</sup> R.C. 4934.11(C)(1) and (5).

<sup>31</sup> R.C. 4934.11(D).

severity of the violation, failure, or omission.<sup>32</sup> However, in certain cases, the bill requires larger forfeitures as follows:

- If PUCO concludes that the violation, failure, or omission was the result of the reseller engaging in deception, fraud, or endangering public health or safety, PUCO must assess a forfeiture of not more than \$10,000 for each violation, failure, or omission.
- If a reseller operates in Ohio without a current valid certificate to operate, PUCO must assess a \$10,000 forfeiture against the reseller for each violation.<sup>33</sup>

### **Liability and damages**

The bill makes a reseller liable in the amount of treble the damages sustained, plus reasonable attorney fees, for each violation, failure, or omission under the bill, if a person or residential consumer is injured in consequence of a violation, failure, or omission.

A residential consumer, OCC, or the attorney general may bring an action to recover damages from a reseller that is required to be certified. At the discretion of the Consumers' Counsel, OCC may represent any or all residential consumers served by the reseller in an action or OCC may exercise the right to intervene and be heard in its own right.<sup>34</sup>

Any monetary damages must include the following:

- An award to a residential customer that must include:
  - The return of improper or unlawful charges collected from the consumer;
  - An amount equal to treble the amount of damages sustained in consequence of the failure, violation, or omission;
- Reasonable attorney fees for the representative of the consumer or, if applicable, OCC.<sup>35</sup>

Any recovery for damages (as described above) are in addition to, and not a replacement for any forfeiture assessed under the bill.<sup>36</sup>

### **Other PUCO action**

The bill permits PUCO to suspend, conditionally suspend, revoke, or refuse to renew a reseller's certificate to operate, if the reseller demonstrates a pattern of violations, failures, or omissions under the bill's provisions or with regard to a PUCO order, direction, or requirement.

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<sup>32</sup> R.C. 4934.11(C)(1).

<sup>33</sup> R.C. 4934.11(C)(2) and (3).

<sup>34</sup> R.C. 4934.11(B)(1) and (2).

<sup>35</sup> R.C. 4934.11(B)(3) and (4).

<sup>36</sup> R.C. 4934.11(B)(5).

Any action PUCO takes against a reseller's certificate is in addition to any forfeitures PUCO assesses under the bill.<sup>37</sup>

### **PUCO reports**

The bill requires PUCO to submit two reports to the General Assembly regarding the effectiveness of the utility services provided to residential consumers under the provisions of the bill. PUCO must consult with OCC before submitting the reports, and both reports must also include PUCO's findings regarding whether:

- The price and quality of the utility service provided protects the interests of residential consumers;
- The quality of service provided is at least at the same quality level as the consumer would receive from a public utility for that service;
- The price for utility service provided is comparable to the price the consumer would otherwise pay a public utility for that service.

The first report must be submitted not later than 1½ years after the bill's effective date and the second report must be submitted not later than 2½ years after that date.<sup>38</sup>

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## **COMMENT**

1. The bill defines "submetering infrastructure" as including "submeters and the wires or pipes that connect submeters to master meters." But, that term does not appear in the bill.<sup>39</sup>

2. It is not clear whether officers, agents, or employees of a reseller acting in an official capacity would be liable for injury damages to a person resulting from violations or compliance failures under the bill. The definition of person includes "the agent of a person," and the term "reseller" includes a "person" that meets the qualifications of a reseller. However, because the bill includes "every officer, agent, or employee of a reseller acting in an official capacity" in the bill's forfeiture provision but not in the damage liability provision, it is not clear how broadly the damage liability provision would be applied.<sup>40</sup>

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## **History**

Action	Date
Introduced	02-24-21

S0095-I-134/ec

<sup>37</sup> R.C. 4934.11(E).

<sup>38</sup> R.C. 4934.35.

<sup>39</sup> R.C. 4934.01(G).

<sup>40</sup> R.C. 4934.01(C) and (D) and 4934.11(A) and (B).