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# OHIO LEGISLATIVE SERVICE COMMISSION

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S.B. 86  
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## Bill Analysis

**Version:** As Introduced

**Primary Sponsor:** Sen. Maharath

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### Summary

#### PUCO jurisdiction

- Grants the Public Utilities Commission (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.
  - A person that charges residential consumers for submetered utility service and (1) the monthly charge for the service is more than \$6.00 above the amount of the purchase price of the service from a utility provider or (2) the person has common ownership in, or is affiliated with, or shares in the revenue or profits of, an entity from which 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 the bill does not prohibit PUCO from determining whether an entity is a public utility if the entity charges a residential consumer for submetered utility service.

#### Reseller certification

- Effective 31 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 30 days for PUCO to take action on a reseller’s certificate application.

- Provides that on the 31<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 on the application within the 30-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, 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 provider's 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 utility provider's allowable residential rate in effect at the time that the consumer executes a property agreement or selects an option upon its renewal or continuation.
- Defines "allowable residential rate" as the total per unit charge for all components of utility service for customers who receive the residential standard service offer (electric utility service), standard choice offer (natural gas utility service), or residential standard rate or offer (water-works or sewage disposal system service) from a PUCO-regulated utility provider.
- Requires a 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 how resellers may charge a residential consumer for utility service to a common area, and requires that charges must appear as a separate line item on the consumer's bill.
- Caps common-area charges for a residential unit at the lesser of the following amounts, equally divided by the number of residential units with access to the area:
  - The total actual cost of providing service to the area;
  - The amount equal to the utility provider's allowable residential rate multiplied by the amount of utility service provided to the area.
- Specifies that the residential consumer charge for a common area shared by residential and commercial consumers be based on the square footage of the common area used by residential consumers and calculated as described above.

## Rules

- Requires PUCO to adopt rules, not later than 180 days after the bill's effective date, for the exclusive purpose of governing resellers operating in Ohio and implementing the reseller law established by the bill.
- Specifies that the rules must address such items as reseller certification, utility charges and common-area charges imposed by a reseller, and violations of, or failures under, the reseller law, a streamlined process for obtaining a certificate to operate in Ohio, residential consumer bill information, dispute resolution, 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 an annual report or other report of the reseller's activities at PUCO.

## Prohibitions

- Prohibits a reseller and the reseller's officers, agents, or employees acting in an official capacity from knowingly violating or willfully failing 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 or compliance failure under the bill and specifies that forfeitures must be deposited to the credit of the General Revenue Fund.
- Authorizes forfeitures to be assessed as follows: (1) not more than \$1,000 for each violation or failure, (2) not more than \$10,000, if the violation or failure 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, if requested to do so by PUCO, the Attorney General must commence and prosecute actions to recover forfeitures.
- Establishes reseller liability for damages if a person is injured due to a reseller's knowing violation of, or willful failure to comply with, the bill or a PUCO order, direction, or requirement or due to a reseller's omission in contradiction to any requirement or prohibition under the bill.
- Provides that monetary damages for reseller liability must equal the amount of damages sustained by the injured person and that recovery for damages does not affect the state's recovery of any forfeiture allowed under the bill.
- 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.

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## Detailed Analysis

### PUCO 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 the Public Utilities Commission (PUCO) with the power and jurisdiction to supervise and regulate resellers but only to the extent permitted in the bill.<sup>1</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>2</sup>

The bill specifies that no provision in the bill prohibits PUCO from determining whether an entity that charges an amount to a residential consumer for utility service, as measured through one or more submeters, is a public utility.<sup>3</sup>

#### Reseller defined

Under the bill, a "reseller" is any person that is not an entity subject to the jurisdiction of PUCO under another chapter of the Revised Code and is not specifically exempt from PUCO jurisdiction under Ohio public utilities law.<sup>4</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 and either of the following applies:

- The charge for the total of all components of a utility service is greater, on a monthly basis, than \$6.00 above the total amount at which the utility service was purchased from the utility provider.
- The person has common ownership in or is affiliated with an entity from which the utility service was purchased or the person shares in the revenue or profits of that entity through a contractual relationship or otherwise.<sup>5</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,

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<sup>1</sup> R.C. 4934.02.

<sup>2</sup> R.C. 4934.30.

<sup>3</sup> R.C. 4934.32.

<sup>4</sup> R.C. 4934.01(C)(1) and (2).

<sup>5</sup> R.C. 4934.01(C)(3).

union, or entity, and the agent of the person.<sup>6</sup> “Utility service” means electric, natural gas, water-works, or sewage disposal system service.<sup>7</sup> “Utility provider” is the entity that charges the proprietor or reseller, as applicable, for utility service, including a competitive supplier of utility service.<sup>8</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 lot located in a manufactured home park. “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>9</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 31 days after the PUCO reselling rules become effective.<sup>10</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 30 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 30 days of an application’s filing date. However, beginning on the 31<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>11</sup>

## 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 provider’s 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

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<sup>6</sup> R.C. 4934.01(B).

<sup>7</sup> R.C. 4934.01(J).

<sup>8</sup> R.C. 4934.01(I).

<sup>9</sup> R.C. 4934.01(D), (E), (G), and (H); R.C. 4781.01(V), 5311.01(CC), and 5321.01(A), not in the bill.

<sup>10</sup> R.C. 4934.05.

<sup>11</sup> R.C. 4934.03(B)(2) and 4934.031.

utility provider's allowable residential rate in effect at the time that the consumer executes the property agreement.<sup>12</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>13</sup> The amounts for both options are based on the "allowable residential rate," which means the following provided by a PUCO-regulated utility provider: (1) the residential standard service offer for *electric utility service*, (2) the standard choice offer for *natural gas utility service*, or (3) the residential standard rate or offer for *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 on a per unit basis.<sup>14</sup>

The consumer must choose the option at the time the consumer executes a property agreement. A "property agreement" is a rental agreement, condominium association agreement, or similar or related agreement under which a residential consumer is charged for the provision of utility service by a reseller.<sup>15</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>16</sup>

### **Common area charges**

Under the bill, residential consumers may be charged for utility service that resellers provide to a common area. If a reseller charges for such service, the common-area charge must appear as a separate line item on the consumer's bill and may not exceed the lesser of the following:

- The total actual cost of providing service to that common area, equally divided by the number of residential units that have access to that common area;
- The amount equal to the utility provider's allowable residential rate multiplied by the amount of utility service provided to that common area, equally divided by the number of residential units that have access to that common area.

If the residential consumers and commercial consumers share a common area, the charge for the residential consumer must be based on the square footage of the common area

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<sup>12</sup> R.C. 4934.07(B) and (C).

<sup>13</sup> R.C. 4934.07(A) and (C).

<sup>14</sup> R.C. 4934.01(A).

<sup>15</sup> R.C. 4934.07(A).

<sup>16</sup> R.C. 4934.07(D).

used by residential consumers.<sup>17</sup> The bill does not address common-area charges for commercial consumers.

## 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 exclusive purpose of governing resellers operating in Ohio and implementing 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 and common-area charges imposed by a reseller;
  - Violations and compliance failures under the bill.
- A streamlined process for a reseller to obtain a certificate to operate in Ohio;
- The items that must be included in residential consumers' bills, including:
  - The amount 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 and PUCO;
  - Any other items that PUCO determines appropriate.
- A dispute resolution process under which a residential consumer 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;
- Consumer protections that include, and are limited to, 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, provided that they are limited to governing protections for residential consumers.<sup>18</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;

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<sup>17</sup> R.C. 4934.09.

<sup>18</sup> R.C. 4934.03(A) and (B).

- Require resellers to file rates, charges, or tariffs at PUCO;
- Require resellers to file an annual report or other report of the reseller's activities at PUCO.<sup>19</sup>

## Prohibitions

The bill prohibits a reseller from knowingly violating or willfully failing to comply 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>20</sup> Each day's continuance of a failure or violation is a separate offense.<sup>21</sup>

## Penalties

### Forfeitures

PUCO must assess a forfeiture against a reseller for each violation of or failure to comply with the bill. All forfeitures collected must be deposited to the credit of the General Revenue Fund.<sup>22</sup>

If directed to do so by PUCO, the Attorney General must commence and prosecute actions to recover forfeitures. The bill requires actions to recover forfeitures to be prosecuted in the name of the state, and permit actions to be brought in the court of common pleas of any county in which the reseller is located.<sup>23</sup>

Forfeitures assessed by PUCO must not be more than \$1,000 for each violation or failure under the bill. The amount of this forfeiture must be commensurate with the severity of the violation or failure.<sup>24</sup> However, in certain cases, the bill requires larger forfeitures as follows:

- If PUCO concludes that the violation or failure 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 or failure.
- 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>25</sup>

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<sup>19</sup> R.C. 4934.03(C).

<sup>20</sup> R.C. 4934.11(A).

<sup>21</sup> R.C. 4934.11(B)(4).

<sup>22</sup> R.C. 4934.11(B)(1)(a) and (5).

<sup>23</sup> R.C. 4934.11(C).

<sup>24</sup> R.C. 4934.11(B)(1)(a).

<sup>25</sup> R.C.4934.11(B)(2) and (3).



## Liability and damages

The bill makes a reseller liable if a person is injured because of the following:

- A reseller’s knowing violation of, or willful failure to comply with, the bill or a PUCO order, direction, or requirement;
- A reseller’s omission in contradiction to any requirement or prohibition under the bill.

Any monetary damages for which the reseller is liable are required to be equal to the amount of damages sustained in consequence of the violation, failure, or omission. Any recovery for damages does not affect the state’s recovery of any forfeiture allowed under the bill.<sup>26</sup>

## Other PUCO action

If a reseller demonstrates a pattern of violations of, or failures to comply with, the provisions of the bill or a PUCO order, direction, or requirement, PUCO may suspend, conditionally suspend, revoke, or refuse to renew the reseller’s certificate to operate. Any action PUCO takes against a reseller’s certificate is in addition to any forfeitures PUCO assesses under the bill.<sup>27</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>28</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>29</sup>

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## History

Action	Date
Introduced	03-06-19

S0086-I-133/ar

<sup>26</sup> R.C. 4934.11(B)(1)(b).

<sup>27</sup> R.C. 4934.11(D).

<sup>28</sup> R.C. 4934.01(F).

<sup>29</sup> R.C. 4934.01(B) and (C) and 4934.11(A) and (B)(1)(b).