As Introduced

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S. B. No. 297

Senators Craig, Smith

To amend sections 4905.02 and 4928.53 and to enact sections 4933.51, 4933.52, 4933.53, 4933.54, 4933.55, 4933.57, and 4933.58 of the Revised Code to exempt electric submetering companies from classification as a public utility, to impose various requirements on such companies, and to extend eligibility for the percentage of income payment plan program to certain electric submetering company customers.

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

Section 1. That sections 4905.02 and 4928.53 be amended and sections 4933.51, 4933.52, 4933.53, 4933.54, 4933.55, 4933.57, and 4933.58 of the Revised Code be enacted to read as follows:

Sec. 4905.02. (A) As used in this chapter, "public utility" includes every corporation, company, copartnership, person, or association, the lessees, trustees, or receivers of the foregoing, defined in section 4905.03 of the Revised Code, including any public utility that operates its utility not for profit, except the following:

(1) An electric light company that operates its utility

not for profit;

(2) A public utility, other than a telephone company, that is owned and operated exclusively by and solely for the utility's customers, including any consumer or group of consumers purchasing, delivering, storing, or transporting, or seeking to purchase, deliver, store, or transport, natural gas exclusively by and solely for the consumer's or consumers' own intended use as the end user or end users and not for profit;

(3) A public utility that is owned or operated by any municipal corporation;

(4) A railroad as defined in sections 4907.02 and 4907.03 of the Revised Code;

(5) Any provider, including a telephone company, with respect to its provision of any of the following:

(a) Advanced services as defined in 47 C.F.R. 51.5;

(b) Broadband service, however defined or classified by the federal communications commission;

(c) Information service as defined in the "Telecommunications Act of 1996," 110 Stat. 59, 47 U.S.C. 153(20);

(d) Subject to division (A) of section 4927.03 of the Revised Code, internet protocol-enabled services as defined in section 4927.01 of the Revised Code;

(e) Subject to division (A) of section 4927.03 of the Revised Code, any telecommunications service as defined in section 4927.01 of the Revised Code to which both of the following apply:

(i) The service was not commercially available on September 13, 2010, the effective date of the amendment of this section by S.B. 162 of the 128th general assembly.

(ii) The service employs technology that became available for commercial use only after September 13, 2010, the effective date of the amendment of this section by S.B. 162 of the 128th general assembly.

(6)(a) An electric submetering company.

(b) As used in this division, "electric submetering company" means a person, business, or other entity that, either on its own behalf or under a contract with a property owner, provides, constructs, or installs facilities for the resale of electricity to a tenant's dwelling unit by a landlord or the landlord's agent that is based on metered consumption at a point after services provided by an electric light company under section 4905.03 of the Revised Code that is a public utility are delivered to the company's metered points of delivery at the customers' locations.

(B)(1) "Public utility" includes a for-hire motor carrier even if the carrier is operated in connection with an entity described in division (A)(1), (2), (4), or (5) of this section.

(2) Division (A) of this section shall not be construed to relieve a private motor carrier, operated in connection with an entity described in division (A)(1), (2), (4), or (5) of this section, from compliance with either of the following:

(a) Chapter 4923. of the Revised Code;

(b) Rules governing unified carrier registration adopted under section 4921.11 of the Revised Code.

(C) As used in division (A)(6) of this section, "dwelling unit," "landlord," and "tenant" have the same meanings as in section 5321.01 of the Revised Code.

Sec. 4928.53. (A) Beginning July 1, 2000, the director of development is hereby authorized to administer the low-income customer assistance programs. For that purpose, the public utilities commission shall cooperate with and provide such assistance as the director requires for administration of the low-income customer assistance programs. The director shall consolidate the administration of and redesign and coordinate the operations of those programs within the department to provide, to the maximum extent possible, for efficient program administration and a one-stop application and eligibility determination process at the local level for consumers.

(B)(1) Not later than March 1, 2000, the director, in accordance with Chapter 119. of the Revised Code, shall adopt rules to carry out sections 4928.51 to 4928.58 of the Revised Code and ensure the effective and efficient administration and operation of the low-income customer assistance programs. The rules shall take effect on July 1, 2000.

(2) The director's authority to adopt rules under this division for the Ohio energy credit program shall be subject to such rule-making authority as is conferred on the director by sections 5117.01 to 5117.12 of the Revised Code, as amended by Sub. S.B. No. 3 of the 123rd general assembly, except that rules initially adopted by the director for the Ohio energy credit program shall incorporate the substance of those sections as they exist on the effective date of this section.

(3) The director's authority to adopt rules under this division for the percentage of income payment plan program shall

include authority to adopt rules prescribing criteria for customer eligibility and policies regarding payment and crediting arrangements and responsibilities, procedures for verifying customer eligibility, procedures for disbursing public funds to suppliers and otherwise administering funds under the director's jurisdiction, and requirements as to timely remittances of revenues described in division (B) of section 4928.51 of the Revised Code. The rules shall prohibit the imposition of a waiting period before enrolling an eligible customer in the percentage of income payment plan. The director's authority in division (B)(3) of this section excludes authority to prescribe service disconnection and customer billing policies and procedures and to address complaints against suppliers under the percentage of payment plan program, which excluded authority shall be exercised by the public utilities commission, in coordination with the director. Rules adopted by the director under this division for the percentage of income payment plan program shall specify a level of payment responsibility to be borne by an eligible customer based on a percentage of the customer's income. Rules initially adopted by the director for the percentage of income payment plan program shall incorporate the eligibility criteria and payment arrangement and responsibility policies set forth in rule 4901:1-18-04(B) of the Ohio Administrative Code in effect on the effective date of this section.

Rules adopted by the director under this division shall extend eligibility for the percentage of income plan program to residential customers of an electric submetering company, as defined in section 4905.02 of the Revised Code, who meet other generally applicable customer eligibility criteria.

Sec. 4933.51. As used in sections 4933.51 to 4933.58 of the Revised Code:

(A) "Competitive retail electric service" has the same meaning as in section 4928.01 of the Revised Code.

(B) "Dwelling unit" and "tenant" have the same meanings as in section 5321.01 of the Revised Code.

(C) "Electric light company" means an electric light company under section 4905.03 of the Revised Code that is a public utility under section 4905.02 of the Revised Code.

(D) "Electric submetering company" has the same meaning as in section 4905.02 of the Revised Code.

Sec. 4933.52. No electric submetering company shall charge a tenant more than the bill for the standard service offer and all riders that the electric light company, in whose certified territory the dwelling unit is located, would charge its residential customers for electric service.

Sec. 4933.53. An electric submetering company shall do the following:

(A) Register with the public utilities commission every two years and comply with the rules adopted pursuant to section 4933.54 of the Revised Code;

(B) At a minimum, comply with the requirements for the disconnection of electric service established in sections 4933.121 to 4933.123 of the Revised Code and the rules adopted pursuant to those sections, as applicable;

(C) Provide a separate disclosure and a report of pricing to its tenants solely for purposes of compliance with the pricing requirement for resale of electricity under section 4933.52 of the Revised Code;

(D) Disclose its process and procedures for the disconnection of electric service.

Sec. 4933.54. (A) The public utilities commission shall adopt rules to implement the requirements of section 4933.53 of the Revised Code. The rules shall require the electric submetering company to disclose the company's name, business address, telephone number, and regulatory contact. The rules also shall include other disclosure requirements as prescribed by the commission.

(B) Rules under this section, including any requirements regarding classifications, procedures, terms, and conditions, shall be reasonable and shall not confer any undue economic, competitive, or market advantage or preference upon any electric light company, electric submetering company, or competitive retail electric service provider.

(C) The commission may charge electric submetering companies a registration processing fee of not more than two hundred dollars per biennial registration.

(D) Notwithstanding any provision of section 121.95 of the Revised Code to the contrary, a regulatory restriction contained in rules adopted under sections 4933.51 to 4933.58 of the Revised Code is not subject to sections 121.95 to 121.953 of the Revised Code.

Sec. 4933.55. No electric submetering company shall operate in this state without first being registered with the public utilities commission.

Sec. 4933.57. (A) Any person, firm, or corporation, or the public utilities commission upon its initiative, may file a written complaint against any electric submetering company for a failure to comply with, or a violation of, any requirements under sections 4933.52 to 4933.55 of the Revised Code.

If it appears that reasonable grounds for complaint are stated, the commission shall provide notice of probable noncompliance to the electric submetering company and grant the company sixty days to cure the noncompliance. If such noncompliance is not cured during the sixty-day cure period, the commission may open an investigation of the company's compliance with the requirements under sections 4933.52 to 4933.55 of the Revised Code.

(B) The parties to a complaint investigation under this section shall be entitled to be heard, represented by counsel, and to have a process to enforce the attendance of witnesses.

Sec. 4933.58. Any electric submetering company that the public utilities commission determines, after reasonable notice and a hearing, and by a preponderance of the evidence, has violated, or failed to comply with, the requirements under sections 4933.52 to 4933.55 of the Revised Code, is liable to the state for a forfeiture of not more than one hundred dollars for each violation or compliance failure, unless the violation or failure is cured within sixty days after the date of the determination. If the violation or compliance failure is cured within that time period, the commission shall issue an order relieving the company from that liability.

Forfeitures shall be recovered by action prosecuted in the name of the state and may be brought in the court of common pleas of any county in which the company who committed the violation or failed to comply is located. The action shall be commenced and prosecuted by the attorney general when directed by the public utilities commission. All forfeitures are cumulative, and an action for recovery of one does not bar the recovery of another. Forfeitures collected under this section shall be credited to the general revenue fund.

Section 2. That existing sections 4905.02 and 4928.53 of the Revised Code are hereby repealed.