

**Unofficial Draft Copy**

As of: November 15, 2002 (10:53am)

LC9001

\*\*\*\* Bill No. \*\*\*\*

Introduced By \*\*\*\*\*

By Request of the Transition Advisory Committee on Electric  
Utility Industry Restructuring

A Bill for an Act entitled: "An Act allowing local governments to automatically aggregate retail electric customers within their jurisdictions under the electric utility restructuring laws; requiring voter approval of the aggregation; allowing retail electric customers to opt-out of the aggregation; establishing procedures for the development of an aggregation plan; requiring public service commission approval of the plan; allowing local governments to solicit competitive bids for the supply of electricity and to award contracts under the plan; allowing the public service commission to suspend contract awards under certain conditions; requiring the public service commission to provide information about other available supply options; requiring the public service commission to promulgate rules for obtaining certain information from the distribution services provider; and providing an effective date."

Be it enacted by the Legislature of the State of Montana:

NEW SECTION. **Section 1. Aggregation of electricity supply by local governments -- voter approval -- exception.** (1)(a) Except as provided subsection (5), the governing body of a local government that is licensed as an electricity supplier may adopt

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an ordinance or resolution to aggregate one or more classes of retail electric customers within its jurisdiction and to enter into service agreements to facilitate for those customers the sale and purchase of electricity.

(b) A local government may aggregate customers jointly with other local governments.

(c) For the purposes of [sections 1 through 3], "local government" means a city or town, county, or consolidated government.

(2) Subject to voter approval under subsection (3), the ordinance or resolution must specify that aggregation will occur automatically for all retail customers pursuant to the opt-out requirements of subsection (4).

(3) (a) An ordinance or resolution adopted under this section to aggregate retail customers automatically must be submitted to the electors of the local government.

(b) An election conducted pursuant to this section may be held in conjunction with a regular or primary election or may be a special election. Notice of the election must be prepared by the governing body and given as provided by law. The form of the ballot must reflect the content of the ordinance or resolution to aggregate retail electric customers.

(c) If the majority within the local government jurisdiction voting on the question are in favor of aggregation, the governing body is authorized to develop an aggregation plan, to solicit competitive bids, and to award contracts as provided in [sections 2 and 3].

(4) (a) The governing body of a local government that has adopted an aggregation program pursuant to [sections 1 through 3], may not aggregate retail customers located within its jurisdiction unless the governing body in advance clearly discloses to the customer that the customer will be enrolled automatically in the aggregation program and will remain enrolled unless the customer affirmatively elects by a stated procedure not to be enrolled.

(b) The disclosure must state prominently the rates, charges, and other terms and conditions of enrollment. The stated procedure must allow a person enrolled in the aggregation program the opportunity to opt-out of the program every 2 years, without paying a switching fee. A person who leaves the aggregation program pursuant to the stated procedure must be served by the default supplier until the person chooses an alternative supplier.

(5) [Sections 1 through 3] do not apply to customers of a cooperative utility that has filed notice of exemption under 69-8-311.

**NEW SECTION. Section 2. Governing body to adopt aggregation plan -- procedure -- commission approval required.** (1) If the ordinance or resolution is approved by the voters under [section 1], the governing body of the local government shall develop a plan of operation and governance for the aggregation program as provided in this section.

(2) Before adopting a plan under this section, the governing body shall hold at least two public hearings on the plan. Before the first hearing, the governing body shall publish notice of the

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hearings once a week for two consecutive weeks in a newspaper of general circulation in the jurisdiction. The notice must summarize the plan and state the date, time, and location of each hearing.

(3)(a) A local government or group of local governments establishing aggregation pursuant to [sections 1 through 3] shall, in consultation with the commission, develop a plan, for review by its citizens, detailing the process and consequences of aggregation.

(b) The plan must identify which classes of customers may participate.

(4) An aggregation plan established pursuant to this section must provide for universal access and the equitable treatment of all customers identified in subsection (3)(b). The plan must meet any requirements established by law or by the commission concerning aggregated service.

(5) The plan must be filed with the commission for its final review and approval. The plan must include, but is not limited to:

(a) the organizational structure of the program,

(b) the operations and funding of the program;

(c) the methods for informing retail electric customers of the aggregation plan and the opt-out provisions of the plan;

(d) the methods for solicitation of competitive bids for the supply of electricity;

(e) the methods of establishing rates and allocating costs among customers;

(f) the methods for obtaining an emergency supply of electricity and related services in the event of nonperformance by

the supplier of electricity;

(g) the methods for entering into and terminating agreements with other entities;

(h) the rights and responsibilities of program participants;

(i) the procedures for allowing a retail customer to opt-out of the aggregation program;

(j) the terms and conditions under which retail customers who have chosen to opt-out of the aggregated service may take service from the aggregated entity; and

(k) the conditions under which the program may be terminated.

(6) Prior to its decision, the commission shall conduct a public hearing.

**NEW SECTION. Section 3. Solicitation of bids -- commission review -- customers allowed to opt-out.** (1) Following approval of the plan under [section 2], the governing body may solicit bids from nonregulated power producers or other electricity suppliers pursuant to the methods established by the plan.

(2) (a) The governing body shall report the results of the solicitation and proposed contract awards to the commission. The commission has 5 business days in which it may suspend the awards if the solicitation or awards are not in conformance with the plan or if the cost for energy would in the first year exceed the cost of electricity supplied by the default supplier for retail customers within the jurisdiction of the local government or group of local governments, unless the local government can demonstrate

that the cost of energy under the aggregation plan will be lower than the default electricity supply price in the subsequent years or the local government can demonstrate that the excess cost is due to the purchase of renewable energy.

(b) If the commission does not suspend the proposed contract awards within 5 business days of filing, the governing body may award the proposed contracts.

(3) (a) A retail customer within a local government jurisdiction with an approved aggregation plan may elect instead to receive retail supply from another licensed electricity supplier or from the default supplier. Within 30 days of the date the aggregated entity is fully operational, a retail customer who has not affirmatively chosen another authorized supplier must be transferred to the aggregated entity subject to the opt-out provisions provided for in this subsection (3).

(b) The program must allow a retail customer to opt-out of the aggregation and choose another supplier or provider. A local government may not restrict the ability of retail electric customers to obtain or receive service from any authorized supplier or provider.

(c) A local government acting as an aggregator shall fully disclose to a customer in advance of automatic enrollment that the customer is to be automatically enrolled and that the customer has the right to opt-out of the aggregated entity without penalty. The disclosure must prominently state all charges to be made and shall include full disclosure of the default supply rate, how to access it, and the fact that it is available to them without penalty, if

they are currently served by the default supplier.

(4) (a) The commission shall furnish, without charge, to any customer a list of all other available supply options in a meaningful format that enables the comparison of price and product.

(b) The commission shall promulgate rules by which the governing body may request information from the distribution services provider whose customers would be included in its plan. The rules must ensure that municipalities have reasonable and timely access to information pertinent to the formation of the plan and solicitation of bids to serve customers, that confidentiality of individuals is protected, that charges for production of the data are reasonable and not unduly burdensome to the governing body.

NEW SECTION. **Section 4. {standard} Codification instruction.** [Sections 1 through 3] are intended to be codified as an integral part of Title 69, chapter 8, part 4, and the provisions of Title 69, chapter 8, part 4, apply to [sections 1 through 3].

NEW SECTION. **Section 5. {standard} Effective date.** [This act] is effective July 1, 2003.

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