

HOUSE No. 3852

The Commonwealth of Massachusetts

PRESENTED BY:

Tommy Vitolo

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act supporting electrical load aggregation programs in the Commonwealth.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Tommy Vitolo</i>	<i>15th Norfolk</i>	<i>4/7/2023</i>
<i>Samantha Montaño</i>	<i>15th Suffolk</i>	<i>4/10/2023</i>
<i>Francisco E. Paulino</i>	<i>16th Essex</i>	<i>4/13/2023</i>

HOUSE No. 3852

By Representative Vitolo of Brookline, a petition (subject to Joint Rule 12) of Tommy Vitolo, Samantha Montañó and Francisco E. Paulino relative to electrical load aggregation programs. Telecommunications, Utilities and Energy.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Third General Court
(2023-2024)**

An Act supporting electrical load aggregation programs in the Commonwealth.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. It is hereby found and declared that electrical load aggregation programs
2 empower municipalities to create new electricity supply offerings that provide customized
3 solutions addressing their consumers’ needs and reflecting the municipality’s capabilities. Such
4 solutions may provide benefits including, but not limited to, electricity cost control, reduction of
5 greenhouse gas emissions, support for renewable energy development and facilitation of
6 beneficial electrification. Further, electrical load aggregation programs may provide residential
7 and small business consumers access to solutions that they could not find otherwise. For
8 municipalities to effectively offer such solutions, they must be empowered both to create and
9 adapt their electrical load aggregation programs in a timely manner and to communicate with the
10 electricity consumers within their community using methods that reflect local needs and
11 preferences. Therefore, it is found that it is in the public interest to promote electrical load
12 aggregation programs through enactment of the following statutory changes.

13 SECTION 2. Section 1 of chapter 164 of the General Laws, as appearing in the 2022
14 official edition, is hereby amended by inserting the following definition:

15 "Public Aggregator" means a municipality or group of municipalities that groups
16 interested electricity consumers within its municipal boundaries to facilitate or otherwise arrange
17 the purchase and sale of electric energy and energy-related services through an electrical load
18 aggregation program as set forth in section 134.

19 SECTION 3. Section 134 of chapter 164 of the General Laws, as appearing in the 2022
20 official edition, is hereby amended by striking out subsection (a) and inserting in place thereof
21 the following:

22 (a) (1) Any municipality or any group of municipalities acting together within the
23 commonwealth is hereby authorized to aggregate the electrical load of interested electricity
24 consumers within its boundaries on an opt-out basis pursuant to the process described herein;
25 provided, however, that such municipality or group of municipalities shall not aggregate
26 electrical load if such are served by an existing municipal lighting plant. Such public aggregator
27 may group retail electricity consumers to solicit bids, broker, and contract for electric energy and
28 energy-related services for such consumers. Such public aggregator may enter into agreements
29 for services to facilitate the sale and purchase of electric energy and energy-related services
30 including renewable energy certificates, which may be considered contracts for energy or
31 energy-related services under clause (33) of subsection (b) of section 1 of chapter 30B. Such
32 service agreements may be entered into by a single city, town, or by a group of cities or towns.

33 A public aggregator shall not be considered a utility engaging in the wholesale purchase
34 and resale of electric power. Providing electric energy or energy-related services to

35 aggregated consumers within a municipality or group of municipalities shall not be
36 considered a wholesale utility transaction.

37 A town may initiate a process to aggregate electrical load upon authorization by a
38 majority vote of town meeting or town council. A city may initiate a process to authorize
39 electrical load aggregation by a majority vote of the city council, with the approval of the mayor,
40 or the city manager in a Plan D or Plan E city. Two or more municipalities may as a group
41 initiate a process jointly to authorize electrical load aggregation by a majority vote of each
42 particular municipality as herein required.

43 Upon an affirmative vote to initiate said process, a public aggregator establishing an
44 electrical load aggregation program on an opt-out basis pursuant to this subsection shall, in
45 consultation with the department of energy resources pursuant to section 6 of chapter 25A,
46 develop an electrical load aggregation plan for public review.

47 (2) Any electrical load aggregation plan developed pursuant to this subsection shall
48 provide for universal access, reliability, and equitable treatment of all classes of consumers. Said
49 plan shall include the following structural elements: an organizational structure for program
50 management and decision making; its methods of setting and providing funding for program
51 services and administration (provided that all funds collected are used solely for the benefit of
52 program participants); its methods of setting program prices; the rights and responsibilities of
53 program participants; and its method for terminating the program. Recognizing that
54 implementation elements such as specific program practices, offerings, and services to be
55 provided may not be known at the time of plan development and are likely to change over time,

56 the public aggregator may include a description of implementation elements, as further described
57 herein, however specific details, initial or otherwise, shall not be required elements of the plan.

58 (3) Any electrical load aggregation plan developed pursuant to this subsection shall be
59 filed with the department by the public aggregator or an entity acting on its behalf. The
60 department shall approve any plan or revised plan that includes the structural elements described
61 above. Prior to the department's decision, the department shall conduct a public hearing. Failure
62 by the department to approve or reject a plan or revised plan submitted under this subsection
63 within 90 days of its submission date shall constitute approval of the plan. Such constructive
64 approval shall not exempt the public aggregator from complying with the provisions of this
65 subsection. If after review, the department finds that the plan or revised plan does not include the
66 structural elements, it shall reject the plan and send to the public aggregator a denial order
67 containing the reason for the rejection. The public aggregator may revise the plan to address such
68 reasons and, if such revised plan is submitted not more than 30 days after the department's denial
69 order is issued, the public aggregator shall not be required to consult with the department of
70 energy resources regarding the revised plan or submit the revised plan for public review. The
71 department shall review and approve or reject any such revised plan not more than 30 days after
72 receipt of the revised plan. Notwithstanding any provision of this subsection to the contrary, the
73 department shall not direct or otherwise require revisions to, or impose new requirements on, an
74 approved plan without first providing the public aggregator with notice and opportunity for an
75 adjudication pursuant to either section 2 or section 10 of chapter 30A.

76 (4) After obtaining approval of its plan, the public aggregator shall establish and update
77 as necessary all implementation elements of and changes to its program including, but not
78 limited to: rates to support the provision of electric energy and program and energy-related

79 services; supply terms; timing of program start; product offerings both on an opt-out and opt-in
80 basis (if applicable), including any periodic changes in the price or composition of such product
81 offerings; contract terms and conditions for electric energy and energy-related services; the
82 format and mechanisms for delivering all notices to consumers; accommodating consumers with
83 limited English proficiency; and any other specifics of program implementation, consistent with
84 the structural elements of the approved electrical load aggregation plan. Such changes shall not
85 require the public aggregator to file a revision to the approved electrical load aggregation plan
86 with the department; provided, however, that the public aggregator shall document all then-
87 current specifics of program implementation on a public website it maintains. The public
88 aggregator shall submit to the department for approval any revision that the public aggregator
89 seeks to make to the structural elements of an approved plan, in accordance with the department
90 review process described above.

91 (5) The department shall prioritize the duties of public aggregators established in this
92 subsection, including but not limited to program implementation of energy and energy-related
93 services offered on an opt-in basis, and waive department rules, regulations, and directives
94 concerning suppliers, brokers, and the provision of competitive supply that otherwise conflict or
95 overlap.

96 (6) After obtaining approval of its plan, the public aggregator may enroll consumers in
97 the electrical load aggregation program. Participation by any retail consumer in an electrical load
98 aggregation program pursuant to this subsection shall be voluntary. Consumers that are receiving
99 generation service from basic service shall be eligible for automatic enrollment in the opt-out
100 product of the electrical load aggregation program. It shall be the duty of the public aggregator to
101 disclose to eligible consumers in advance of automatic enrollment that they are to be

102 automatically enrolled and that they have the right to opt-out of the program without penalty. In
103 addition, such disclosure shall prominently state all program charges to be made, that the
104 consumer shall remain enrolled in the electrical load aggregation program unless they opt out,
105 that the public aggregator will issue public notice in advance of any price changes, and the basic
106 service rate, how to access it, and the fact that it is available to them without penalty. Such
107 disclosure must be mailed to eligible consumers and provide a period of not less than 30 days for
108 the consumer to opt-out before being automatically enrolled. Consumers may also affirmatively
109 elect to enroll in a product offered by the electrical load aggregation program. The electrical load
110 aggregation program shall allow any retail consumer to opt-out and choose any supplier or
111 provider such retail consumer wishes. Once enrolled in the program via the opt-out process, any
112 consumer choosing to opt-out within 180 days shall do so without penalty and shall be entitled to
113 receive basic service as if the consumer was originally enrolled therein. After the initial
114 automatic enrollment of consumers, the subsequent enrollment of new consumers or accounts in
115 the service territory of the public aggregator shall be governed by the terms for enrollment set
116 forth in the public aggregator's plan. Nothing in this subsection shall be construed as authorizing
117 any city or town or any public aggregator to restrict the ability of retail electric consumers to
118 obtain or receive service from any authorized provider thereof.

119 (7) The public aggregator shall provide public notice 30 days, or as soon as the rate is
120 finalized, in advance of any change in program product, price or content affecting participating
121 consumers. Such notice shall include the new combination(s) of product(s) and price(s) to be
122 offered by the program, and that participating consumers have the right to opt-out of the
123 program. In the event of such changes, participating consumers shall continue to be enrolled in
124 the program unless they opt-out. In addition, at least once every three years, the public

125 aggregator shall disclose by mail to consumers then-participating in any opt-in product of the
126 electrical load aggregation the following information: the price and description of their current
127 product, the price and description of the program's opt-out product, and the website address
128 where they can find all program implementation elements.

129 (8) Except as otherwise provided in this subsection, the public aggregator may deliver
130 consumer disclosures and other communications about the electrical load aggregation program
131 using one or more methods deemed most effective by the public aggregator.

132 (9) After obtaining approval of its plan, the public aggregator may deliver information
133 and educational materials regarding its program to each consumer within the municipality or
134 municipalities. To enable such delivery, the electric distribution company shall provide to such
135 public aggregator a current list of the names, mailing addresses, email addresses, and service
136 addresses of all electric consumers taking distribution service within the municipality or
137 municipalities. To facilitate consumer notification and automatic enrollment via the opt-out
138 process, the electric distribution company shall identify in such data those consumers that are
139 eligible for automatic enrollment on an opt-out basis and provide such additional consumer
140 information necessary for such automatic enrollment. To monitor program participation, the
141 electric distribution company shall identify in such data those consumers that are participating in
142 the electrical load aggregation program. To enable development of and bidding for electric
143 energy and energy-related services, the electric distribution company shall provide all historical
144 usage and demand information, including interval meter data if collected by the consumer's
145 meter, for the preceding 24 months for consumers eligible for automatic enrollment as well as for
146 participating consumers. The public aggregator may use such data only in connection with the
147 aggregation program and for no other purpose. Further, the public aggregator may only use email

148 addresses provided in such data for communications on behalf of the electrical load aggregation
149 program. All data associated with an individual electricity consumer obtained by the public
150 aggregator shall be exempt from the definition of a “public record” under M.G.L. c.4 §7 and the
151 public aggregator shall protect such data as confidential. The public aggregator shall not share,
152 disclose, or otherwise make accessible to any third party such data except where directly
153 necessary in its implementation of the electrical load aggregation program and where subject to
154 non-disclosure requirements.

155 (10) Each public aggregator shall file an annual report with the department that shall be
156 limited to the average number of program participants and energy sales by month by program
157 product. Each such annual report shall prominently identify the location of the public website
158 maintained for the program.

159 SECTION 4. The terms of Sections 2 and 3 shall be applicable to all plans pending
160 before the department as of the effective date and the department’s failure to approve or reject
161 such plans within 90 days of the effective date shall constitute approval of said plans. Public
162 aggregators with plans approved by or pending before the department as of the effective date
163 shall be subject to the terms of Sections 2 and 3 but shall not be required to file amendments to
164 said plans for department review and approval. Public aggregators electing not to file plan
165 amendments with the department shall instead within 90 days of the effective date of this act
166 provide public notice of (i) this act, (ii) any resulting effect on programs, and (iii) the location of
167 the program website. Such public aggregators shall notify the department of completion of such
168 public notice.

169 SECTION 5. The department shall, within 60 days of the effective date of this act, issue
170 an order directing that each electric distribution company shall, upon request of a public
171 aggregator with an approved plan, provide to such public aggregator a current list of the names,
172 mailing addresses, email addresses, and service addresses of all electric consumers taking
173 distribution service within the municipality or municipalities.

174 SECTION 6. Section 7, clause twenty-six of chapter 4 of the General Laws, as appearing
175 in the 2022 official edition, is hereby amended by inserting the following:

176 (w) All data associated with an individual electricity consumer obtained by a public
177 aggregator, as defined in section 1 of Chapter 164.