

## HB 2780 and SB 1481: Oppose Threat to Consumer Choice

- “Opt-out” aggregation is a *negative option marketing program* which would allow a municipality to choose an electric provider and pricing plan and *force its citizens* to use that provider and plan unless the citizen affirmatively opts out.
- **Negative option marketing is illegal under current Texas law.** It is also listed as an example in the law of a deceptive marketing practice. Essentially, it’s government-sponsored “slamming.”
- Today, a customer residing in an area open to retail electric competition can choose the company that will provide the customer with electric service. Opt-out municipal aggregation, however, authorizes municipalities to automatically enroll citizens in an aggregation program that provides electric service, unless the customer objects.

### Texans don’t want “opt-out” aggregation; they want to choose their electric provider

- Recent AECT polling indicates that 82 percent of Texans (83 percent in competitive areas) are opposed to the concept of the government selecting their electricity provider.
- Meanwhile, 84 percent of customers have observably chosen a new retail pricing plan.
- Current law already allows citizens of a municipality to sign up with a municipal aggregator if they believe the aggregator offers better prices and services (i.e., exercise their choice to “opt-in”).

### “Opt-out” aggregation is inconsistent with current law

- “Opt-out” is a negative option, which the legislature specifically considered and expressly prohibited in PURA.
- Negative options have generated huge customer outcry in other industries, leading the Federal Trade Commission to outlaw such negative options in many instances.
- “Opt-out” is directly counter to the Texas Electric Choice Act, which entitles a customer to prevent being “changed without the customer’s informed consent” by a provider.
- If a private company did what this proposal would allow cities to do, it would be a violation of Texas law.

### “Opt-out” aggregation would violate Texans’ privacy

- Retail electric providers (REPs) and transmission and distribution utilities (TDUs) would be required to divulge personal and private information about their customers at the request of the city aggregator. The customer’s consent to the disclosure of this information is expressly not required.
- The city aggregator can provide this collected information to a third party for the purpose of “bidding on” the contract, with none of the customer protections outlined in the legislation.

### “Opt-out” aggregation carries high risks for everyone

- Just like the stock market, energy prices are volatile. City governments on “opt-out” must *time the market* for long term energy purchases, resulting in a good guess or bad guess on pricing. This decision is too important to gamble away. Customer choice provides different rate plans to allow consumers to decide what’s best for them.
- High fuel prices drove up summertime electric prices in 2008; Had HB 2780/SB 1481 been in effect, some municipalities would have aggregated at that time and locked in prices that were in some cases one-third higher than available prices today.
- In 2006, several cities in Ohio utilized opt-out aggregation for the purchase of natural gas for their citizens. While the implementation and the market climate were different, the municipal opt-out program resulted in higher prices than those available in the competitive market. (“Gas-bill savings might be hot air,” *Columbus Dispatch*, 10/21/06)

### Opt-out aggregation undermines competition

- Opt-out municipal aggregation gives municipalities an unreasonable competitive advantage. It eliminates the incentives for REPs to serve those municipal areas and effectively creates municipal monopolies.