

As Introduced

**129th General Assembly
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H. B. No. 534

Representative Schuring

**Cosponsors: Representatives Henne, Stebelton, Fende, Sprague, Kozlowski,
Hagan, C., Yuko**

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A B I L L

To amend sections 184.19 and 5727.81 and to enact 1
section 184.05 of the Revised Code to authorize 2
the Third Frontier Commission to award grants 3
related to the establishment and operation of data 4
centers and the development of a high speed fiber 5
optic network in the state, and to authorize a 6
kilowatt-hour excise tax reduction for electric 7
distribution companies supplying such centers at a 8
discounted rate. 9

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

Section 1. That sections 184.19 and 5727.81 be amended and 10
section 184.05 of the Revised Code be enacted to read as follows: 11

Sec. 184.05. (A) As used in this section: 12

(1) "Data center" means a facility that is primarily used to 13
house tangible personal property that is or will be used in 14
providing data center services. 15

(2) "Data center services" means electronic information 16
services as defined in section 5739.01 of the Revised Code or any 17
similar services, as may be further determined by the third 18

frontier commission. "Data center services" does not include 19
electronic publishing as defined in section 5739.01 of the Revised 20
Code. 21

(3) "Eligible partnership" means a partnership between a 22
for-profit business entity and a state institution of higher 23
education. 24

(4) "State institution of higher education" has the same 25
meaning as in section 3345.011 of the Revised Code. 26

(B) The data center development grant program is hereby 27
created to promote the establishment of data centers in the state. 28
The third frontier commission shall award grants on a competitive 29
basis to eligible partnerships for the establishment and operation 30
of data centers. The amount awarded to a single eligible 31
partnership shall not exceed five million dollars. The total 32
amount of grants awarded under the program shall not exceed fifty 33
million dollars. Grants shall be made from the third frontier 34
research and development fund created under section 184.19 of the 35
Revised Code. 36

(C) The data center high speed fiber optic network grant 37
program is hereby created to promote the development of a high 38
speed fiber optic network in the state and to assist in the 39
provision of high speed fiber optics to data centers. The third 40
frontier commission shall award grants to persons that provide 41
high speed fiber optics to a data center that has been or will be 42
established in this state with the assistance of a grant awarded 43
under division (B) of this section. The total amount of grants 44
awarded under the program shall not exceed twenty-five million 45
dollars. Grants shall be made from the third frontier research and 46
development fund created under section 184.19 of the Revised Code. 47

(D) The third frontier commission shall adopt rules under 48
Chapter 119. of the Revised Code that are necessary for the 49

administration of the data center development grant program and 50
the data center high speed fiber optic network grant program. The 51
rules shall establish all of the following: 52

(1) Specific eligibility criteria for grant applicants; 53

(2) A definition of what constitutes "high speed fiber 54
optics" for purposes of the data center high speed fiber optic 55
network grant program; 56

(3) Forms and procedures by which eligible applicants may 57
apply for grants under this section; 58

(4) Criteria for reviewing, evaluating, and ranking 59
applications, and for approving applications from eligible 60
applicants that best serve the goals of the data center 61
development grant program and the data center high speed fiber 62
optic network grant program; 63

(5) Reporting requirements and monitoring procedures; 64

(6) Any other rules necessary to implement and administer the 65
grant programs. 66

(E) An eligible applicant that receives a grant under the 67
data center development grant program or the data center high 68
speed fiber optic network grant program is not precluded from 69
being considered for or participating in other financial 70
assistance programs offered by the department of development. 71

Sec. 184.19. The third frontier research and development fund 72
is hereby created in the state treasury. The fund shall consist of 73
the net proceeds of the obligations issued and sold by the issuing 74
authority pursuant to sections 151.01 and 151.10 of the Revised 75
Code. Investment earnings of the fund shall be credited to the 76
fund. Moneys in the fund shall be used in accordance with sections 77
184.05, 184.10 to 184.18, and 184.20 of the Revised Code and for 78
associated administrative expenses. 79

Sec. 5727.81. (A) For the purpose of raising revenue for public education and state and local government operations, an excise tax is hereby levied and imposed on an electric distribution company for all electricity distributed by such company at the following rates per kilowatt hour of electricity distributed in a thirty-day period by the company through a meter of an end user in this state:

KILOWATT HOURS DISTRIBUTED TO AN END USER	RATE PER KILOWATT HOUR
For the first 2,000	\$.00465
For the next 2,001 to 15,000	\$.00419
For 15,001 and above	\$.00363

If no meter is used to measure the kilowatt hours of electricity distributed by the company, the rates shall apply to the estimated kilowatt hours of electricity distributed to an unmetered location in this state.

The electric distribution company shall base the monthly tax on the kilowatt hours of electricity distributed to an end user through the meter of the end user that is not measured for a thirty-day period by dividing the days in the measurement period into the total kilowatt hours measured during the measurement period to obtain a daily average usage. The Except as provided in division (E) of this section, the tax shall be determined by obtaining the sum of divisions (A)(1), (2), and (3) of this section and multiplying that amount by the number of days in the measurement period:

(1) Multiplying \$0.00465 per kilowatt hour for the first sixty-seven kilowatt hours distributed using a daily average;

(2) Multiplying \$0.00419 for the next sixty-eight to five hundred kilowatt hours distributed using a daily average;

(3) Multiplying \$0.00363 for the remaining kilowatt hours

distributed using a daily average. 111

Except as provided in division (C) of this section, the 112
electric distribution company shall pay the tax to the tax 113
commissioner in accordance with section 5727.82 of the Revised 114
Code, unless required to remit each tax payment by electronic 115
funds transfer to the treasurer of state in accordance with 116
section 5727.83 of the Revised Code. 117

Only the distribution of electricity through a meter of an 118
end user in this state shall be used by the electric distribution 119
company to compute the amount or estimated amount of tax due. In 120
the event a meter is not actually read for a measurement period, 121
the estimated kilowatt hours distributed by an electric 122
distribution company to bill for its distribution charges shall be 123
used. 124

(B) Except as provided in division (C) of this section, each 125
electric distribution company shall pay the tax imposed by this 126
section in all of the following circumstances: 127

(1) The electricity is distributed by the company through a 128
meter of an end user in this state; 129

(2) The company is distributing electricity through a meter 130
located in another state, but the electricity is consumed in this 131
state in the manner prescribed by the tax commissioner; 132

(3) The company is distributing electricity in this state 133
without the use of a meter, but the electricity is consumed in 134
this state as estimated and in the manner prescribed by the tax 135
commissioner. 136

(C)(1) As used in division (C) of this section: 137

(a) "Total price of electricity" means the aggregate value in 138
money of anything paid or transferred, or promised to be paid or 139
transferred, to obtain electricity or electric service, including 140

but not limited to the value paid or promised to be paid for the 141
transmission or distribution of electricity and for transition 142
costs as described in Chapter 4928. of the Revised Code. 143

(b) "Package" means the provision or the acquisition, at a 144
combined price, of electricity with other services or products, or 145
any combination thereof, such as natural gas or other fuels; 146
energy management products, software, and services; machinery and 147
equipment acquisition; and financing agreements. 148

(c) "Single location" means a facility located on contiguous 149
property separated only by a roadway, railway, or waterway. 150

(2) Division (C) of this section applies to any commercial or 151
industrial purchaser's receipt of electricity through a meter of 152
an end user in this state or through more than one meter at a 153
single location in this state in a quantity that exceeds 154
forty-five million kilowatt hours of electricity over the course 155
of the preceding calendar year, or any commercial or industrial 156
purchaser that will consume more than forty-five million kilowatt 157
hours of electricity over the course of the succeeding twelve 158
months as estimated by the tax commissioner. The tax commissioner 159
shall make such an estimate upon the written request by an 160
applicant for registration as a self-assessing purchaser under 161
this division. For the meter reading period including July 1, 162
2008, through the meter reading period including December 31, 163
2010, such a purchaser may elect to self-assess the excise tax 164
imposed by this section at the rate of \$.00075 per kilowatt hour 165
on the first five hundred four million kilowatt hours distributed 166
to that meter or location during the registration year, and a 167
percentage of the total price of all electricity distributed to 168
that meter or location equal to three and one-half per cent. For 169
the meter reading period including January 1, 2011, and 170
thereafter, such a purchaser may elect to self-assess the excise 171
tax imposed by this section at the rate of \$.00257 per kilowatt 172

hour for the first five hundred million kilowatt hours, and 173
\$.001832 per kilowatt hour for each kilowatt hour in excess of 174
five hundred million kilowatt hours, distributed to that meter or 175
location during the registration year. 176

A qualified end user that receives electricity through a 177
meter of an end user in this state or through more than one meter 178
at a single location in this state and that consumes, over the 179
course of the previous calendar year, more than forty-five million 180
kilowatt hours in other than its qualifying manufacturing process, 181
may elect to self-assess the tax as allowed by this division with 182
respect to the electricity used in other than its qualifying 183
manufacturing process. 184

Payment of the tax shall be made directly to the tax 185
commissioner in accordance with divisions (A)(4) and (5) of 186
section 5727.82 of the Revised Code, or the treasurer of state in 187
accordance with section 5727.83 of the Revised Code. If the 188
electric distribution company serving the self-assessing purchaser 189
is a municipal electric utility and the purchaser is within the 190
municipal corporation's corporate limits, payment shall be made to 191
such municipal corporation's general fund and reports shall be 192
filed in accordance with divisions (A)(4) and (5) of section 193
5727.82 of the Revised Code, except that "municipal corporation" 194
shall be substituted for "treasurer of state" and "tax 195
commissioner." A self-assessing purchaser that pays the excise tax 196
as provided in this division shall not be required to pay the tax 197
to the electric distribution company from which its electricity is 198
distributed. If a self-assessing purchaser's receipt of 199
electricity is not subject to the tax as measured under this 200
division, the tax on the receipt of such electricity shall be 201
measured and paid as provided in division (A) of this section. 202

(3) In the case of the acquisition of a package, unless the 203
elements of the package are separately stated isolating the total 204

price of electricity from the price of the remaining elements of 205
the package, the tax imposed under this section applies to the 206
entire price of the package. If the elements of the package are 207
separately stated, the tax imposed under this section applies to 208
the total price of the electricity. 209

(4) Any electric supplier that sells electricity as part of a 210
package shall separately state to the purchaser the total price of 211
the electricity and, upon request by the tax commissioner, the 212
total price of each of the other elements of the package. 213

(5) The tax commissioner may adopt rules relating to the 214
computation of the total price of electricity with respect to 215
self-assessing purchasers, which may include rules to establish 216
the total price of electricity purchased as part of a package. 217

(6) An annual application for registration as a 218
self-assessing purchaser shall be made for each qualifying meter 219
or location on a form prescribed by the tax commissioner. The 220
registration year begins on the first day of May and ends on the 221
following thirtieth day of April. Persons may apply after the 222
first day of May for the remainder of the registration year. In 223
the case of an applicant applying on the basis of an estimated 224
consumption of forty-five million kilowatt hours over the course 225
of the succeeding twelve months, the applicant shall provide such 226
information as the tax commissioner considers to be necessary to 227
estimate such consumption. At the time of making the application 228
and by the first day of May of each year, a self-assessing 229
purchaser shall pay a fee of five hundred dollars to the tax 230
commissioner, or to the treasurer of state as provided in section 231
5727.83 of the Revised Code, for each qualifying meter or 232
location. The tax commissioner shall immediately pay to the 233
treasurer of state all amounts that the tax commissioner receives 234
under this section. The treasurer of state shall deposit such 235
amounts into the kilowatt hour excise tax administration fund, 236

which is hereby created in the state treasury. Money in the fund 237
shall be used to defray the tax commissioner's cost in 238
administering the tax owed under section 5727.81 of the Revised 239
Code by self-assessing purchasers. After the application is 240
approved by the tax commissioner, the registration shall remain in 241
effect for the current registration year, or until canceled by the 242
registrant upon written notification to the commissioner of the 243
election to pay the tax in accordance with division (A) of this 244
section, or until canceled by the tax commissioner for not paying 245
the tax or fee under division (C) of this section or for not 246
meeting the qualifications in division (C)(2) of this section. The 247
tax commissioner shall give written notice to the electric 248
distribution company from which electricity is delivered to a 249
self-assessing purchaser of the purchaser's self-assessing status, 250
and the electric distribution company is relieved of the 251
obligation to pay the tax imposed by division (A) of this section 252
for electricity distributed to that self-assessing purchaser until 253
it is notified by the tax commissioner that the self-assessing 254
purchaser's registration is canceled. Within fifteen days of 255
notification of the canceled registration, the electric 256
distribution company shall be responsible for payment of the tax 257
imposed by division (A) of this section on electricity distributed 258
to a purchaser that is no longer registered as a self-assessing 259
purchaser. A self-assessing purchaser with a canceled registration 260
must file a report and remit the tax imposed by division (A) of 261
this section on all electricity it receives for any measurement 262
period prior to the tax being reported and paid by the electric 263
distribution company. A self-assessing purchaser whose 264
registration is canceled by the tax commissioner is not eligible 265
to register as a self-assessing purchaser for two years after the 266
registration is canceled. 267

(7) If the tax commissioner cancels the self-assessing 268
registration of a purchaser registered on the basis of its 269

estimated consumption because the purchaser does not consume at 270
least forty-five million kilowatt hours of electricity over the 271
course of the twelve-month period for which the estimate was made, 272
the tax commissioner shall assess and collect from the purchaser 273
the difference between (a) the amount of tax that would have been 274
payable under division (A) of this section on the electricity 275
distributed to the purchaser during that period and (b) the amount 276
of tax paid by the purchaser on such electricity pursuant to 277
division (C)(2) of this section. The assessment shall be paid 278
within sixty days after the tax commissioner issues it, regardless 279
of whether the purchaser files a petition for reassessment under 280
section 5727.89 of the Revised Code covering that period. If the 281
purchaser does not pay the assessment within the time prescribed, 282
the amount assessed is subject to the additional charge and the 283
interest prescribed by divisions (B) and (C) of section 5727.82 of 284
the Revised Code, and is subject to assessment under section 285
5727.89 of the Revised Code. If the purchaser is a qualified end 286
user, division (C)(7) of this section applies only to electricity 287
it consumes in other than its qualifying manufacturing process. 288

(D) The tax imposed by this section does not apply to the 289
distribution of any kilowatt hours of electricity to the federal 290
government, to an end user located at a federal facility that uses 291
electricity for the enrichment of uranium, to a qualified 292
regeneration meter, or to an end user for any day the end user is 293
a qualified end user. The exemption under this division for a 294
qualified end user only applies to the manufacturing location 295
where the qualified end user uses more than three million kilowatt 296
hours per day in a qualifying manufacturing process. 297

(E)(1) As used in this division: 298

(a) "Qualified data center" means a data center established 299
with the assistance of a grant awarded under the data center 300
development grant program authorized by section 184.05 of the 301

Revised Code. 302

(b) "Discounted rate" means a rate charged to a qualified data center for retail electric service, as defined in section 4928.01 of the Revised Code, pursuant to a reasonable arrangement between the electric distribution company and the qualified data center under section 4905.31 of the Revised Code that is less than the unvaried rate. 303
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(c) "Unvaried rate" means the rate that would be charged a qualified data center for retail electric service in the absence of a reasonable arrangement. 309
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(d) "Discount ratio" means the amount obtained by dividing the discounted rate by the unvaried rate. 312
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(2) The monthly tax on the kilowatt hours of electricity distributed at a discounted rate to a qualified data center shall be determined by obtaining the sum of divisions (A)(1), (2), and (3) of this section and multiplying that sum by the discount ratio and by the number of days in the measurement period. 314
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On request of the tax commissioner, an electric distribution company that charges a discounted rate to a qualified data center shall provide any information that, in the tax commissioner's opinion, is necessary to establish the discount ratio or the amount of tax due under this division. 319
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Section 2. That existing sections 184.19 and 5727.81 of the Revised Code are hereby repealed. 324
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Section 3. The amendment by this act of section 5727.81 of the Revised Code applies to measurement periods beginning on or after the effective date of this act. 326
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