

As Introduced

**130th General Assembly
Regular Session
2013-2014**

H. B. No. 136

Representative Schuring

**Cosponsors: Representatives Grossman, Cera, Duffey, Fedor, Lynch,
Henne, Clyde, Stinziano, Adams, J., Smith, Antonio, Rosenberger, Hagan, C.,
Gonzales, O'Brien, Butler, Romanchuk, Celebrezze**

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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 or a nonpublic university or college. 24

(4) "Nonpublic university or college" has the same meaning as 25
in section 3333.71 of the Revised Code. 26

(5) "State institution of higher education" has the same 27
meaning as in section 3345.011 of the Revised Code. 28

(B) The data center development grant program is hereby 29
created to promote the establishment of data centers in the state. 30
The third frontier commission shall award grants on a competitive 31
basis to eligible partnerships for the establishment and operation 32
of data centers. The amount awarded to a single eligible 33
partnership shall not exceed five million dollars. The total 34
amount of grants awarded under the program shall not exceed fifty 35
million dollars. Grants shall be made from the third frontier 36
research and development fund created under section 184.19 of the 37
Revised Code. 38

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

dollars. Grants shall be made from the third frontier research and development fund created under section 184.19 of the Revised Code. 48
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(D) The third frontier commission shall adopt rules under Chapter 119. of the Revised Code that are necessary for the administration of the data center development grant program and the data center high speed fiber optic network grant program. The rules shall establish all of the following: 50
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(1) Specific eligibility criteria for grant applicants; 55

(2) A definition of what constitutes "high speed fiber optics" for purposes of the data center high speed fiber optic network grant program; 56
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(3) Forms and procedures by which eligible applicants may apply for grants under this section; 59
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(4) Criteria for reviewing, evaluating, and ranking applications, and for approving applications from eligible applicants that best serve the goals of the data center development grant program and the data center high speed fiber optic network grant program; 61
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(5) Reporting requirements and monitoring procedures; 66

(6) Any other rules necessary to implement and administer the grant programs. 67
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(E) An eligible applicant that receives a grant under the data center development grant program or the data center high speed fiber optic network grant program is not precluded from being considered for or participating in other financial assistance programs offered by the department of development. 69
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Sec. 184.19. The third frontier research and development fund is hereby created in the state treasury. The fund shall consist of the net proceeds of the obligations issued and sold by the issuing authority pursuant to sections 151.01 and 151.10 of the Revised 74
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Code. Investment earnings of the fund shall be credited to the 78
fund. Moneys in the fund shall be used in accordance with sections 79
184.05, 184.10 to 184.18, and 184.20 of the Revised Code and for 80
associated administrative expenses. 81

Sec. 5727.81. (A) For the purpose of raising revenue for 82
public education and state and local government operations, an 83
excise tax is hereby levied and imposed on an electric 84
distribution company for all electricity distributed by such 85
company at the following rates per kilowatt hour of electricity 86
distributed in a thirty-day period by the company through a meter 87
of an end user in this state: 88

KILOWATT HOURS DISTRIBUTED	RATE PER	89
TO AN END USER	KILOWATT HOUR	90
For the first 2,000	\$.00465	91
For the next 2,001 to 15,000	\$.00419	92
For 15,001 and above	\$.00363	93

If no meter is used to measure the kilowatt hours of 94
electricity distributed by the company, the rates shall apply to 95
the estimated kilowatt hours of electricity distributed to an 96
unmetered location in this state. 97

The electric distribution company shall base the monthly tax 98
on the kilowatt hours of electricity distributed to an end user 99
through the meter of the end user that is not measured for a 100
thirty-day period by dividing the days in the measurement period 101
into the total kilowatt hours measured during the measurement 102
period to obtain a daily average usage. The Except as provided in 103
division (E) of this section, the tax shall be determined by 104
obtaining the sum of divisions (A)(1), (2), and (3) of this 105
section and multiplying that amount by the number of days in the 106
measurement period: 107

(1) Multiplying \$0.00465 per kilowatt hour for the first	108
sixty-seven kilowatt hours distributed using a daily average;	109
(2) Multiplying \$0.00419 for the next sixty-eight to five	110
hundred kilowatt hours distributed using a daily average;	111
(3) Multiplying \$0.00363 for the remaining kilowatt hours	112
distributed using a daily average.	113
Except as provided in division (C) of this section, the	114
electric distribution company shall pay the tax to the tax	115
commissioner in accordance with section 5727.82 of the Revised	116
Code, unless required to remit each tax payment by electronic	117
funds transfer to the treasurer of state in accordance with	118
section 5727.83 of the Revised Code.	119
Only the distribution of electricity through a meter of an	120
end user in this state shall be used by the electric distribution	121
company to compute the amount or estimated amount of tax due. In	122
the event a meter is not actually read for a measurement period,	123
the estimated kilowatt hours distributed by an electric	124
distribution company to bill for its distribution charges shall be	125
used.	126
(B) Except as provided in division (C) of this section, each	127
electric distribution company shall pay the tax imposed by this	128
section in all of the following circumstances:	129
(1) The electricity is distributed by the company through a	130
meter of an end user in this state;	131
(2) The company is distributing electricity through a meter	132
located in another state, but the electricity is consumed in this	133
state in the manner prescribed by the tax commissioner;	134
(3) The company is distributing electricity in this state	135
without the use of a meter, but the electricity is consumed in	136
this state as estimated and in the manner prescribed by the tax	137

commissioner. 138

(C)(1) As used in division (C) of this section: 139

(a) "Total price of electricity" means the aggregate value in 140
money of anything paid or transferred, or promised to be paid or 141
transferred, to obtain electricity or electric service, including 142
but not limited to the value paid or promised to be paid for the 143
transmission or distribution of electricity and for transition 144
costs as described in Chapter 4928. of the Revised Code. 145

(b) "Package" means the provision or the acquisition, at a 146
combined price, of electricity with other services or products, or 147
any combination thereof, such as natural gas or other fuels; 148
energy management products, software, and services; machinery and 149
equipment acquisition; and financing agreements. 150

(c) "Single location" means a facility located on contiguous 151
property separated only by a roadway, railway, or waterway. 152

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

to that meter or location during the registration year, and a 169
percentage of the total price of all electricity distributed to 170
that meter or location equal to three and one-half per cent. For 171
the meter reading period including January 1, 2011, and 172
thereafter, such a purchaser may elect to self-assess the excise 173
tax imposed by this section at the rate of \$.00257 per kilowatt 174
hour for the first five hundred million kilowatt hours, and 175
\$.001832 per kilowatt hour for each kilowatt hour in excess of 176
five hundred million kilowatt hours, distributed to that meter or 177
location during the registration year. 178

A qualified end user that receives electricity through a 179
meter of an end user in this state or through more than one meter 180
at a single location in this state and that consumes, over the 181
course of the previous calendar year, more than forty-five million 182
kilowatt hours in other than its qualifying manufacturing process, 183
may elect to self-assess the tax as allowed by this division with 184
respect to the electricity used in other than its qualifying 185
manufacturing process. 186

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

distributed. If a self-assessing purchaser's receipt of 201
electricity is not subject to the tax as measured under this 202
division, the tax on the receipt of such electricity shall be 203
measured and paid as provided in division (A) of this section. 204

(3) In the case of the acquisition of a package, unless the 205
elements of the package are separately stated isolating the total 206
price of electricity from the price of the remaining elements of 207
the package, the tax imposed under this section applies to the 208
entire price of the package. If the elements of the package are 209
separately stated, the tax imposed under this section applies to 210
the total price of the electricity. 211

(4) Any electric supplier that sells electricity as part of a 212
package shall separately state to the purchaser the total price of 213
the electricity and, upon request by the tax commissioner, the 214
total price of each of the other elements of the package. 215

(5) The tax commissioner may adopt rules relating to the 216
computation of the total price of electricity with respect to 217
self-assessing purchasers, which may include rules to establish 218
the total price of electricity purchased as part of a package. 219

(6) An annual application for registration as a 220
self-assessing purchaser shall be made for each qualifying meter 221
or location on a form prescribed by the tax commissioner. The 222
registration year begins on the first day of May and ends on the 223
following thirtieth day of April. Persons may apply after the 224
first day of May for the remainder of the registration year. In 225
the case of an applicant applying on the basis of an estimated 226
consumption of forty-five million kilowatt hours over the course 227
of the succeeding twelve months, the applicant shall provide such 228
information as the tax commissioner considers to be necessary to 229
estimate such consumption. At the time of making the application 230
and by the first day of May of each year, a self-assessing 231
purchaser shall pay a fee of five hundred dollars to the tax 232

commissioner, or to the treasurer of state as provided in section 233
5727.83 of the Revised Code, for each qualifying meter or 234
location. The tax commissioner shall immediately pay to the 235
treasurer of state all amounts that the tax commissioner receives 236
under this section. The treasurer of state shall deposit such 237
amounts into the kilowatt hour excise tax administration fund, 238
which is hereby created in the state treasury. Money in the fund 239
shall be used to defray the tax commissioner's cost in 240
administering the tax owed under section 5727.81 of the Revised 241
Code by self-assessing purchasers. After the application is 242
approved by the tax commissioner, the registration shall remain in 243
effect for the current registration year, or until canceled by the 244
registrant upon written notification to the commissioner of the 245
election to pay the tax in accordance with division (A) of this 246
section, or until canceled by the tax commissioner for not paying 247
the tax or fee under division (C) of this section or for not 248
meeting the qualifications in division (C)(2) of this section. The 249
tax commissioner shall give written notice to the electric 250
distribution company from which electricity is delivered to a 251
self-assessing purchaser of the purchaser's self-assessing status, 252
and the electric distribution company is relieved of the 253
obligation to pay the tax imposed by division (A) of this section 254
for electricity distributed to that self-assessing purchaser until 255
it is notified by the tax commissioner that the self-assessing 256
purchaser's registration is canceled. Within fifteen days of 257
notification of the canceled registration, the electric 258
distribution company shall be responsible for payment of the tax 259
imposed by division (A) of this section on electricity distributed 260
to a purchaser that is no longer registered as a self-assessing 261
purchaser. A self-assessing purchaser with a canceled registration 262
must file a report and remit the tax imposed by division (A) of 263
this section on all electricity it receives for any measurement 264
period prior to the tax being reported and paid by the electric 265

distribution company. A self-assessing purchaser whose 266
registration is canceled by the tax commissioner is not eligible 267
to register as a self-assessing purchaser for two years after the 268
registration is canceled. 269

(7) If the tax commissioner cancels the self-assessing 270
registration of a purchaser registered on the basis of its 271
estimated consumption because the purchaser does not consume at 272
least forty-five million kilowatt hours of electricity over the 273
course of the twelve-month period for which the estimate was made, 274
the tax commissioner shall assess and collect from the purchaser 275
the difference between (a) the amount of tax that would have been 276
payable under division (A) of this section on the electricity 277
distributed to the purchaser during that period and (b) the amount 278
of tax paid by the purchaser on such electricity pursuant to 279
division (C)(2) of this section. The assessment shall be paid 280
within sixty days after the tax commissioner issues it, regardless 281
of whether the purchaser files a petition for reassessment under 282
section 5727.89 of the Revised Code covering that period. If the 283
purchaser does not pay the assessment within the time prescribed, 284
the amount assessed is subject to the additional charge and the 285
interest prescribed by divisions (B) and (C) of section 5727.82 of 286
the Revised Code, and is subject to assessment under section 287
5727.89 of the Revised Code. If the purchaser is a qualified end 288
user, division (C)(7) of this section applies only to electricity 289
it consumes in other than its qualifying manufacturing process. 290

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

where the qualified end user uses more than three million kilowatt 298
hours per day in a qualifying manufacturing process. 299

(E)(1) As used in this division: 300

(a) "Qualified data center" means a data center established 301
with the assistance of a grant awarded under the data center 302
development grant program authorized by section 184.05 of the 303
Revised Code. 304

(b) "Discounted rate" means a rate charged to a qualified 305
data center for retail electric service, as defined in section 306
4928.01 of the Revised Code, pursuant to a reasonable arrangement 307
between the electric distribution company and the qualified data 308
center under section 4905.31 of the Revised Code that is less than 309
the unvaried rate. 310

(c) "Unvaried rate" means the rate that would be charged a 311
qualified data center for retail electric service in the absence 312
of a reasonable arrangement. 313

(d) "Discount ratio" means the amount obtained by dividing 314
the discounted rate by the unvaried rate. 315

(2) The monthly tax on the kilowatt hours of electricity 316
distributed at a discounted rate to a qualified data center shall 317
be determined by obtaining the sum of divisions (A)(1), (2), and 318
(3) of this section and multiplying that sum by the discount ratio 319
and by the number of days in the measurement period. 320

On request of the tax commissioner, an electric distribution 321
company that charges a discounted rate to a qualified data center 322
shall provide any information that, in the tax commissioner's 323
opinion, is necessary to establish the discount ratio or the 324
amount of tax due under this division. 325

Section 2. That existing sections 184.19 and 5727.81 of the 326
Revised Code are hereby repealed. 327

Section 3. The amendment by this act of section 5727.81 of	328
the Revised Code applies to measurement periods beginning on or	329
after the effective date of this act.	330