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Office of Research and Drafting

Legislative Budget Office

H.B. 646
136th General Assembly

Fiscal Note & Local Impact Statement

Click here for H.B. 646's Bill Analysis

Version: As Reported by Senate Energy

Primary Sponsors: Reps. Click and Deeter

Local Impact Statement Procedure Required: No

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Highlights

- The bill creates a comprehensive regulatory framework for data centers, limiting tax incentives, establishing a separate electricity rate class, and adding water usage and wastewater requirements.
- State and local tax revenues may increase due to reduced exemptions and stricter limits on abatements, though overall fiscal impact remains uncertain as it depends on future data center investment decisions.
- New data center operators must solely bear all electricity-related costs, resulting in no direct fiscal impact for state and local governments.
- The bill allows the Ohio Department of Natural Resources to establish a nonrefundable fee to accompany each annual water use report, and if imposed, the fee must be credited to the Water Management Fund (Fund 5160).
- The bill requires the Ohio Environmental Protection Agency to establish an annual fee to offset agency costs to implement the bill and requires that fee to be deposited to the Environmental Protection Fund (Fund 5BC0).

Detailed Analysis

The bill establishes a comprehensive regulatory, taxation, and public utility service framework for data centers in Ohio. The following sections provide a detailed analysis of the bill's major provisions.

Tax incentives

The bill makes several major changes to state and local tax incentives available to data centers. It modifies the state sales and use tax (SUT) exemption for data center equipment by reducing the maximum exemption level from 100% to 50% for eligible data centers. If a data center has an aggregate monthly maximum demand that is greater than 250 megawatts (MWs), the data center must offset its consumption from the electrical grid, in order to qualify for the exemption.

The bill also limits local property tax exemptions for data center projects by capping abatements of no more than 50% of the increased value of the property. Political subdivisions granting incentives must obtain performance security for the agreement, which entails enforcing the terms of the tax incentive agreement. The Department of Development (DEV) must post online resources for local governments related to data center tax abatement authorization. In addition, the bill excludes data centers from qualifying as megaprojects under the Job Creation Tax Credit Program.

The bill's provisions apply to prospective agreements and resolutions regarding data centers. The preexisting agreements continue to be subject to the law that existed when they entered into their tax incentive agreements.

Fiscal effect

These changes are expected to increase the state and local government tax revenues by restricting various tax incentives available to data centers. State SUT revenue may increase for future data center projects since their exemptions will be capped at lower levels than under the current law.

It is difficult to forecast future data center projects, but past activity can provide insights into potential future behavior. According to DEV, 18 data center projects are currently approved for SUT exemptions, with one to two projects approved per year in recent years. The Department of Taxation (TAX) estimates foregone SUT revenue of $555 million in calendar year (CY) 2024 and $1.57 billion in CY 2025, reflecting rapid growth in data center construction and equipment purchasing.

Excluding data centers from megaproject eligibility under the Job Creation Tax Credit may increase state tax revenues by preventing future data centers from accessing credits against several state taxes such as the commercial activity tax, personal income tax, financial institutions tax, or petroleum activity tax. Local property tax revenues may increase due to the 50% abatement cap and the performance security requirement. The requirement for DEV to post website resources for local governments is expected to result in minimal administrative cost.

However, the overall fiscal impact of restricting data center tax incentives would be uncertain, as it depends on future data center investment decisions. Restricting incentives may raise tax collections but could also make it less competitive for attracting new data center projects. Consequently, the net revenue effect will depend on the number and size of data center investments that choose to locate in Ohio.

Electricity cost

The bill requires electric distribution utilities (EDUs) to file a data center tariff classifying data centers as a separate rate class and allocating all data center-related electricity costs

recovered solely to data center operators. Within 60 days of the bill's effective date, any EDU that does not have a tariff approved by the Public Utilities Commission of Ohio (PUCO) with distinct terms and conditions for data center operators must submit a new tariff to PUCO. The tariff may include minimum requirements. Data center operators that have existing contracts with an electric utility prior to the bill's effective date remain exempt from the new requirements.

Each new data center with an aggregate monthly maximum demand of 250 MWs or more must be supplied either: (1) by one or more electric generating facilities constructed for the data center or (2) through qualifying power supply arrangements, including mercantile self-power systems, customer-generator projects, co-located load arrangements, purchase power agreements, or qualified PJM market solutions.

Fiscal effect

Under the bill, all data center-related electricity costs, including any standard service offer or generation, transmission, and distribution costs, must be recovered solely from data center operators, with no cost-shifting to other ratepayers. As a result, these provisions are expected to have no direct fiscal impact on state or local expenditures for electricity. PUCO may incur administrative costs to review and enforce the required tariff filings.

Water quality and water usage

The bill establishes water withdrawal, consumption, and water quality requirements for data centers or major utility facilities. Data center operators must measure and report water use. Owners of a data center or a major utility facility that solely supplies power to a data center must report water usage data and water conservation practices to the Ohio Department of Natural Resources (ODNR) by February 1 each year.

The Chief of ODNR's Division of Water Resources may adopt rules establishing water use measurement standards and a nonrefundable fee to accompany each annual report, receive annual reports from data centers, and submit an annual compiled report to legislative leadership and relevant committees. If ODNR imposes a fee, it must be credited to the Water Management Fund (Fund 5160).

The Ohio Environmental Protection Agency (OEPA) Director must adopt rules establishing wastewater testing and reporting requirements for data centers. Data center operators must file quarterly wastewater quality reports with the OEPA Director, and OEPA must submit an annual compiled report to relevant legislative committees. The bill requires OEPA to establish an annual fee to be paid by data center owners and requires that fee to be deposited to the Environmental Protection Fund (Fund 5BC0) to offset the agency's costs to implement the bill's requirements. The bill is silent as to the amount of the fee. Presumably, OEPA will set the amount at a level commensurate to cover the costs of implementing the administrative duties assigned to them under the bill.

Fiscal effect

The bill's water-usage and water-quality provisions are expected to create additional administrative costs for ODNR and OEPA, including rulemaking and reviewing reports submitted by data centers. These costs to ODNR are dependent on future data center projects but could be offset by the fee authorized by the bill. Additional costs to OEPA for rulemaking, monitoring, and reporting can be expected to be offset by the fee required to be established under the bill.