



# Ohio Legislative Service Commission

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## Fiscal Note & Local Impact Statement

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**Bill:** H.B. 534 of the 129th G.A.

**Date:** November 27, 2012

**Status:** As Introduced

**Sponsor:** Rep. Schuring

**Local Impact Statement Procedure Required:** Yes

**Contents:** To authorize the Third Frontier Commission to award grants related to the establishment and operation of data centers and the development of a high speed fiber optic network in the state, and to authorize a kilowatt-hour excise tax reduction for electric distribution companies supplying such centers at a discounted rate

### State Fiscal Highlights

- The bill authorizes the Third Frontier Commission to establish two new grant programs to promote the establishment and operation of data centers and the development of a high speed fiber optic network in the state. The bill specifies that funding for the new programs are to be disbursed from the Third Frontier Research and Development Fund (Fund 7011), an existing funding source that awards various grants under the Third Frontier Grant Program.
- The bill allows a kilowatt-hour (KWh) excise tax reduction for electric companies supplying electricity at a discounted rate to qualified data centers. This provision would reduce KWh tax revenues. The timing and the magnitude of such revenue loss would be contingent upon both the negotiated discount rate and the amount of electricity consumed by qualified data centers. Currently, 88.0% of KWh tax revenue is deposited into the state's General Revenue Fund, 9.0% is deposited into the School District Property Tax Replacement Fund (Fund 7053), and 3.0% is deposited into the Local Government Property Tax Replacement Fund (Fund 7054). Any decrease in GRF KWh tax revenue would also reduce the amount distributed to the Local Government Fund (LGF) and the Public Library Fund (PLF).

### Local Fiscal Highlights

- The provision allowing a KWh tax reduction for electric companies supplying electricity at a discounted rate to qualified data centers would reduce KWh tax revenues. Currently, 88.0% of KWh tax revenue is deposited into the state's GRF, 9.0% is deposited into Fund 7053, and 3.0% is deposited into Fund 7054. Any decrease in GRF KWh tax receipts would also reduce the amount distributed to the LGF and the PLF, thereby reducing the allocations to various libraries and local government entities.

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## **Detailed Fiscal Analysis**

The bill authorizes the Third Frontier Commission to award grants related to the establishment and operation of "data centers" and the development of a high speed fiber optic network in the state. The bill also allows a public utility to charge a discounted retail electric service based on a "reasonable" arrangement to qualified data centers. The bill defines "data center" as a facility that is primarily used to house tangible personal property that is or will be used in providing data center services.

### **Third Frontier Grant Program**

The Ohio Third Frontier Commission within the Development Services Agency awards grants to public and private entities, and any collaborating partnerships, in support of various technology research and development projects under 13 specific award programs. The bill creates two new sub-programs under the Third Frontier initiative: (1) the Data Center Development Grant Program, to promote the establishment and operation of data centers in the state, and (2) the Data Center High Speed Fiber Optic Network Grant Program, to assist in the development of a high speed fiber optic network in the state.

The bill limits the total amount that may be awarded under the Data Center Development Grant Program to \$50 million, with a cap of \$5 million per eligible partnership between a for-profit business and a state institution of higher education. The bill limits the total amount that may be awarded under the Data Center High Speed Fiber Optic Network Grant Program to \$25 million. As with other types of grants awarded by the Third Frontier Commission, these amounts can be distributed over time, such as one fiscal year to the next. Awards for various grants under the Third Frontier Grant Program are disbursed from the Third Frontier Research and Development Fund (Fund 7011). Approximately \$133.9 million is appropriated to Fund 7011 line item 795687, Third Frontier Research and Development Projects for awards in FY 2013. Up to \$175 million may be awarded in both FY 2014 and FY 2015 for Third Frontier projects, plus any funds not awarded in prior fiscal years, as authorized by Article VIII, Section 2p of the Ohio Constitution.

### **Kilowatt-hour tax on a sale of electricity to qualified data centers**

The bill allows electric companies to reduce the rate that would be charged to a qualified data center for a discounted retail electric service negotiated under a "reasonable" arrangement. Under continuing law, electricity may be provided at a discounted rate under a reasonable arrangement between a public utility and a customer, such as a data center. The bill also reduces the calculation of the kilowatt-hour (KWh) tax in proportion to the discount given by such electric companies. For example, if a data center receives a 10% discount on retail electric service under the arrangement, the KWh tax on the electricity is required to be 90% of the tax that would

normally apply. The tax discount applies to tax measurement periods beginning on or after the bill's effective date.

Any KWh tax reduction for electric distribution companies supplying a discounted electric service to qualified data centers would reduce KWh tax revenues. However, the timing and the magnitude of KWh tax revenue loss would be contingent upon both the discount rate negotiated under the arrangement and the amount of electricity provided by the utility and consumed by such data centers.<sup>1</sup> Currently, 88.0% of KWh tax revenue is deposited into the state's GRF, 9.0% of the revenue is deposited into the School District Property Tax Replacement Fund (Fund 7053), and the remaining 3.0% is deposited into the Local Government Property Tax Replacement Fund (Fund 7054).

Any decrease in GRF KWh tax receipts would also reduce the amount distributed to the Local Government Fund (LGF) and the Public Library Fund (PLF). Under permanent law, a portion of GRF tax receipts are subsequently transferred to the LGF and the PLF. Am. Sub. H.B. 153 (the operating budget act for FYs 2012 and 2013) fixed the LGF and PLF transfer amounts at predetermined levels so that any increase (or decrease) in tax receipts during the biennium will affect the GRF only. For FY 2014 and subsequent years, transfers to the LGF and the PLF will resume based on a fixed percentage, but the applicable percentage is not yet known. The Tax Commissioner will determine, by July 5, 2013, the ratio of FY 2013 transfers to the respective funds to total FY 2013 GRF tax revenues. Subsequent transfers to the LGF and the PLF will be based on those respective ratios.

Assuming ten data centers qualify for the reduction, each using four million megawatt hours of power per year and receiving a 1% discount on electric service, the estimated KWh tax revenue loss would be \$1.6 million annually. The state GRF would bear up to \$1.4 million of such revenue loss while funds 7053 and 7054 would bear the remaining \$0.2 million annually.

The bill requires an electric company that provides a discounted electric service to a qualified data center to provide any necessary information related to such sales of discounted electric service as requested by the Tax Commissioner. This provision may increase the Department of Taxation's administrative costs.

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<sup>1</sup> According to a report published by the U.S. Environmental Protection Agency ENERGY STAR Program, during peak load, data centers' power usage can range from tens of kilowatts (KWs) for a small facility, to tens of megawatts (MWs) for the largest data centers. *Report to Congress on Server and Data Center Energy Efficiency Public Law 109-431*, U.S. Environmental Protection Agency, August 2, 2007.