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Bill Analysis

Version: As Introduced

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SUMMARY

- Prohibits the state and local governments from awarding economic development assistance to new data centers.
- Prohibits a new data center from being constructed on the following properties:
 - Prime farmland, unless the land is voluntarily sold and the board of county commissioners adopts a resolution authorizing the construction;
 - Public land;
 - Land located within a platted residential neighborhood.
- Prohibits the use of eminent domain to acquire property for use as a new data center.
- Prohibits a new data center from being approved, permitted, or interconnected to receive utility service unless it demonstrates to the Public Utilities Commission (PUCO) that its electric load will not result in increased electricity rates for residential, agricultural, or small business customers, and specifies conditions for PUCO to make such a determination.
- Requires all generation, transmission, distribution, capacity, congestion, and ancillary service costs attributable to a new data center to be fully borne by the developer and prohibits cross-subsidization or cost shifting to other customer classes.
- Requires PUCO to mandate enforceable financial assurances sufficient to fully protect ratepayers in the event that projected cost neutrality is not achieved.

DETAILED ANALYSIS

New data center definition

The bill imposes various requirements and restrictions concerning new data centers. “New data center” is defined by the bill as a facility that meets both of the following:

- The facility consists of one or more buildings dedicated to housing computer systems, servers, storage, and network equipment to collect, process, store, and distribute large amounts of data.
- Both¹ of the following are met as of the bill’s effective date:
 - Construction of the facility has not commenced;
 - No final local, zoning, or land use approval regarding the facility has been issued.²

Incentives for new data centers

The bill prohibits the state, and all political subdivisions in the state, from awarding incentives for the construction or operation of new data centers. An incentive is defined in the bill as a tax credit, grant, loan, economic development assistance, or other funding from the state, a state agency, a political subdivision of the state, any taxing authority, or JobsOhio. Economic development assistance is, itself, broadly defined in current law. It includes numerous programs including tax increment financing arrangements as well as any program or assistance administered by the Department of Development. Notably, that seemingly includes a sales and use tax exemption for data center equipment administered by the Tax Credit Authority under the Department of Development.³

The bill also requires each state agency and political subdivision that awards incentives to adopt procedures for the review of complaints regarding violations of the ban on data center incentives. If the state or a political subdivision determines that an incentive has been awarded in violation of that ban, the entity that received the incentive must refund it according to the procedures adopted by the state agency or political subdivision that awarded the incentive.⁴

New data center construction limited on certain properties

The bill prohibits the construction of a new data center on the following properties:

¹ The bill includes a spacing error with division R.C. 9.71(B)(1) being located in the same line as R.C. 9.71(A)(4). A technical amendment has been prepared to correct this issue.

² R.C. 9.71(A)(4).

³ R.C. 9.66 and 122.175, not in the bill.

⁴ R.C. 9.71

- Prime farmland, unless both: (1) the prime farmland is voluntarily sold, and (2) the board of county commissioners adopts a resolution authorizing the construction of a new data center on the prime farmland;
- Public land;
- Land located within a platted residential neighborhood.

For purposes of this provision of the bill, “political subdivision” is defined as a county, township, or any other body corporate and politic that is responsible for government activities in a geographic area smaller than that of the state, except for a municipal corporation. Additionally, “public land” is defined by the bill as including real property located in Ohio that is owned by Ohio or a political subdivision.

Continuing law, unchanged by the bill, defines “prime farmland” as having the same meanings as that previously prescribed by the U.S. Secretary of Agriculture as published in the Federal Register on August 23, 1977, or subsequent revisions thereof, on the basis of such factors as moisture availability, temperature regime, chemical balance, permeability, surface layer composition, susceptibility to flooding, and erosion characteristics and that historically has been used for intensive agricultural purposes, and as published in the rules adopted pursuant to the Coal Surface Mining Law.⁵

Eminent domain

The bill prohibits the use of eminent domain to acquire property for use as a new data center. The Ohio Constitution empowers the state to seize private property for “public use,” provided that the property owner is justly compensated by the state. This power generally is known as the “eminent domain” power and is referred to in the Revised Code as the “appropriation of property.” Such appropriations are alternatively and often referred to as “takings.”⁶

Under continuing provisions of the Revised Code, a public or private agency may appropriate real property by showing, by a preponderance of evidence, that the taking is necessary for a public use. The term “public use” thus acts as a boundary on the state’s authority to appropriate land and is defined in the Revised Code to include and exclude certain uses. The bill adds language specifying that the term “public use” does not include a taking to acquire property for use as a new data center and so prevents an agency from using eminent domain to seize property for that purpose.⁷

⁵ R.C. 9.711; R.C. 1513.01, not in the bill

⁶ Ohio Constitution, Article I, Section 19; R.C. 163.01; R.C. 163.02 through 163.22, not in the bill.

⁷ R.C. 163.01; R.C. 163.02, not in the bill.

Utility service requirements

PUCO approval required

Under the bill, no new data center can be approved, permitted, or interconnected to receive utility service unless the new data center developer demonstrates to the satisfaction of the Public Utilities Commission (PUCO) that the data center’s electric load will not result in increased electricity rates for residential, agricultural, or small business customers. Compliance with this requirement is achieved as follows:

- Compliance must be conclusively presumed if the new data center developer constructs or contractually secures newly constructed nuclear or natural gas-fired electric generation capacity equal to 100% of the new data center’s projected peak electric load.
- If the new data center is not utilizing nuclear or natural gas-fired generation, upon PUCO’s affirmative finding supported by substantial evidence that the new data center will comply with the “**Electricity costs responsibility**” provision below.⁸

Electricity costs responsibility

The bill requires all generation,⁹ transmission, distribution, capacity, congestion, and ancillary service costs attributable to a new data center to be fully borne by the developer and prohibits cross-subsidization or cost shifting to other customer classes.¹⁰

Financial assurances

Under the bill, PUCO must require enforceable financial assurances, including performance bonds, letters of credit, or escrowed security, sufficient to fully protect ratepayers in the event that projected cost neutrality under the “**Utility service requirements**” is not achieved.¹¹

HISTORY

Action	Date
Introduced	02-24-26

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⁸ R.C. 4933.71(A) to (D).

⁹ The bill omits a comma between “generation” and “transmission.” A technical amendment is necessary to correct this.

¹⁰ R.C. 4933.71(E).

¹¹ R.C. 4933.71(F).