Policy Matters Ohio

STATEMENT

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Ben Stein
bstein@policymattersohio.org
304-685-8354

Data center bill falls short

Legislators still have opportunities to make improvements

In a series of hearings beginning today, June 9, the Senate Energy Committee is considering substitute House Bill 646. As introduced, H.B. 646 would have established the Data Center Study Commission to explore the implications and impacts of data center growth in Ohio. Now, the substitute bill adopted by the committee includes a range of measures to regulate Ohio's data center industry.

The Senate Energy Committee is expected to vote H.B. 646 out of committee tomorrow, June 10, during a 9am hearing. If it passes the full Senate, it will then head to the House of Representatives for concurrence with the substitute bill's changes.

While substitute H.B. 646 contains several elements that are a step in the right direction, it falls short of a comprehensive policy and regulatory framework for data center development in Ohio. Specifically, big data center companies will continue to receive giant sales tax breaks, and transparency about new data center development will not be meaningfully improved. The General Assembly could pass H.B. 646 as early as tomorrow. Lawmakers should correct these shortfalls before approval for Gov. DeWine's signature.

Tax abatement reform, a good start but much more is needed

Sub. H.B. 646 would reduce the state sales tax exemption from 100% to 50% for most new projects; Policy Matters Ohio has been calling for a full elimination of these incentives. The amendment does limit new property-tax breaks for data centers to 50%, a positive step, and would require surety bonds to ensure that data centers meet their obligations under local incentives. It also terminates new "megaproject" tax breaks for data centers, though this provision will not affect Amazon's status as a megaproject operator, which is currently the only data center company with this specific designation. Among other things, this allows it to obtain longer property-tax breaks than it would otherwise be eligible for.

While it would be modified for new agreements, the existing sales-tax exemption that cost state and local governments $2 billion last year remains unaffected by the amendment. Amazon, Google and Meta would continue to get giant sales-tax breaks. And instead of ending the break altogether for new agreements, as the General Assembly voted to do last year, the bill would still allow the exemption to continue, with only a 25% reduction if the data center is located in a brownfield and provides its own

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electricity — meaning data centers with onsite generation located on brownfields stand the most to gain, eligible for a 75% sales tax exemption. This is unacceptable.

Improved water & energy use standards, but more needed for ratepayer protections and transparency

H.B. 646 would create statewide standards for data centers' water use, including requirements for data center operators to implement closed-loop water cooling systems or other water conservation measures. Data centers would also have to adhere to water efficiency standards and reporting requirements determined by the Ohio Environmental Protection Agency's (OEPA's) Division of Drinking and Ground Waters. OEPA would also have to create water quality standards, additionally establishing water testing and methodology plans.

The bill also draws from elements of H.B. 706, which would prevent cost-shifting onto other ratepayers by establishing a statewide data center tariff. H.B. 646 would require data center companies to cover the full cost of generation, transmission, and distribution investment necessary for meeting their unique energy needs. It would create a new rate class for data center customers, requiring Ohio utilities to establish data center tariffs to prevent the costs of data centers' substantial energy infrastructure needs from being shifted onto other ratepayers. These tariffs may include minimum billing demand percentages, collateral, contract term lengths, exit and termination fees, or other measures to protect Ohio ratepayers.

Instead of a statewide standard for a data center tariff like the one included in H.B. 706, however, H.B. 646 requires each Ohio utility to file its own respective tariff imposed on data center customers, subject to approval by the Public Utilities Commission of Ohio (PUCO). It also leaves out H.B. 706's provision requiring data center companies to pay for 85% of contracted capacity. Consequently, data center tariff designs could vary widely across Ohio's utilities, risking insufficient, non-comprehensive protections for Ohio ratepayers, depending on their utility provider.

H.B. 646 would also create specific requirements for data centers with monthly demand greater than 250 MW to supply their all of their electricity with new generation resources, or through other supply agreements. Importantly, incentivizing data centers' use of behind-the -meter systems, or onsite generation, on brownfields could have significant consequences for Black and Latine communities, low-income populations, and others who face undue environmental burdens produced by extractive industries. As it stands now, behind the meter projects — which enjoy accelerated permitting timelines, while existing law limits local authority entirely — are overwhelmingly powered by natural gas, which would increase emissions and decrease air quality in surrounding communities.

To enable data center companies to enter into supply agreements with renewable developers to satisfy stipulations imposed on large-scale data centers, legislators must reduce restrictions on renewable energy generation (which are currently more stringent

than those faced by behind-the-meter projects that rely on far more harmful and dangerous energy sources).

Nor does the bill do enough to provide transparency about data center development. It does not significantly limit nondisclosure agreements or end the carve-out that excludes from the public records act information submitted to local governments for economic development assistance.

Lack of robust regulatory framework

Conservation measures, reporting requirements, and water quality standards associated with data centers' water use under H.B. 646, along with ratepayer protections, are critical to protecting Ohio communities from the economic and environmental harms of irresponsible data center development. However, H.B. 646 fails to raise a comprehensive framework for regulating the data center industry's potential impacts on water quality and availability, on the grid, and on the climate.

There are no provisions in H.B. 646 considering data centers' impacts on local wastewater treatment systems, water utility rates, or indirect water use. While closed-loop cooling systems can potentially lead to a significant reduction in data centers' water consumption, they still require regular water replacement and can be energy-intensive, contributing to unprecedented growth in electricity demand driven by data centers. The coolants used in cooling technologies contain PFAS, or forever chemicals, posing long-term risks for human and ecological health without comprehensive regulatory oversight for data centers' wastewater management practices —– which the OEPA is actively trying to roll back by streamlining wastewater permits to enable data centers to discharge wastewater directly to surface waters.

At the same time, vast volumes of water are used in gas extraction and in gas and nuclear power plant operations, which are not accounted for under H.B. 646. Further regulation and reporting requirements are needed to holistically understand and mitigate data centers' impacts on Ohio's natural resources. In addition to establishing stronger regulatory guardrails, lawmakers should incentivize data centers' use of clean energy resources. Data centers' reliance on fossil fuel generation sources warrants consideration of policies to protect communities from harmful air emissions produced by gas-powered generation facilities — particularly in communities hosting a data center with onsite generation.