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(Original Signature of Member)

119TH CONGRESS
2D SESSION

H. R. _____

To amend the Clean Air Act to require the Environmental Protection Agency to impose and collect a charge on the total annual electricity consumption by certain facilities from the owners or operators of such facilities.

IN THE HOUSE OF REPRESENTATIVES

Mr. TONKO introduced the following bill; which was referred to the Committee
on _____

A BILL

To amend the Clean Air Act to require the Environmental Protection Agency to impose and collect a charge on the total annual electricity consumption by certain facilities from the owners or operators of such facilities.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Data Center Fairness
5 Fee Act of 2026”.

1 **SEC. 2. CHARGE ON DATA CENTER ELECTRICITY USE.**

2 Part A of title I of the Clean Air Act (42 U.S.C. 7401
3 et seq.) is amended by adding at the end the following:

4 **“SEC. 139. ELECTRICITY CHARGE ON APPLICABLE FACILI-**
5 **TIES.**

6 “(a) APPLICABLE FACILITY ELECTRICITY
7 CHARGE.—

8 “(1) IN GENERAL.—For each calendar year, be-
9 ginning with calendar year 2027, the Administrator
10 shall impose and collect a charge on the total elec-
11 tricity consumption for such calendar year by an ap-
12 plicable facility from the owner or operator of such
13 applicable facility.

14 “(2) CHARGE AMOUNT.—The amount of a
15 charge imposed and collected under paragraph (1)
16 for a calendar year for an applicable facility shall be
17 equal to the product obtained by multiplying—

18 “(A) the number of kilowatt-hours of elec-
19 tricity consumed by the applicable facility dur-
20 ing the calendar year, including electricity con-
21 sumed from electricity generation assets located
22 behind the power meter of the applicable facil-
23 ity; and

24 “(B) \$0.01.

25 “(b) ADDITIONAL CHARGE FOR HIGH-POLLUTION
26 APPLICABLE FACILITIES.—

1 “(1) IN GENERAL.—For each calendar year, be-
2 ginning with calendar year 2028, the Administrator
3 shall, in addition to the charge imposed and col-
4 lected under subsection (a), impose and collect a
5 charge on each applicable facility that consumes
6 electricity that has an average carbon intensity
7 greater than 0.10, from the owner or operator of
8 such applicable facility.

9 “(2) CHARGE AMOUNT.—The amount of a
10 charge imposed and collected under paragraph (1)
11 for a calendar year for an applicable facility shall be
12 equal to the product obtained by multiplying—

13 “(A) the number of kilograms of green-
14 house gas emissions, measured in carbon diox-
15 ide equivalent emissions, associated with the
16 total electricity consumed by the applicable fa-
17 cility, measured in kilowatt-hours, during the
18 calendar year; and

19 “(B) \$0.05.

20 “(3) CALCULATION OF GREENHOUSE GAS EMIS-
21 SIONS.—

22 “(A) REQUIREMENTS.—The Administrator
23 shall determine the requirements and methods
24 for monitoring, reporting, and calculating the

1 greenhouse gas emissions associated with the
2 electricity consumed by each applicable facility.

3 “(B) INCLUSIONS.—The Administrator
4 shall ensure that requirements and methods de-
5 termined under subparagraph (A) address and
6 account for the total annual electricity con-
7 sumption by the applicable facility and the
8 greenhouse gas emissions associated with elec-
9 tricity consumed by the applicable facility, in-
10 cluding addressing and accounting for the fol-
11 lowing:

12 “(i) Electricity produced at the appli-
13 cable facility or provided directly to the ap-
14 plicable facility.

15 “(ii) Electricity produced by the
16 owner or operator of the applicable facility,
17 or a third-party under a power purchase
18 agreement or bilateral agreement with the
19 owner or operator of the applicable facility,
20 provided that such electricity is—

21 “(I) time-matched to the elec-
22 tricity consumed by the applicable fa-
23 cility;

1 “(II) located in the same region
2 as the applicable facility, as deter-
3 mined by the Administrator; and

4 “(III) produced by an electric
5 generating unit that was placed into
6 service not more than two years be-
7 fore the applicable facility was placed
8 into service.

9 “(iii) Electricity supplied to the appli-
10 cable facility through the electric grid, ac-
11 counting for the time-matched, average
12 carbon intensity of all electricity trans-
13 mitted through the electric grid in the re-
14 gion in which the applicable facility is lo-
15 cated, as determined by the Administrator.

16 “(4) INCOMPLETE OR UNVERIFIED DATA.—In
17 instances where the Administrator is unable to verify
18 reported data provided by the owner or operator of
19 an applicable facility to ensure such data are accu-
20 rate, complete, and consistent, the Administrator
21 shall assume that the carbon intensity of an electric
22 generating unit supplying the applicable facility elec-
23 tricity is equal to the highest carbon intensity of an
24 electric generating unit operating in the United
25 States in the relevant calendar year.

1 “(c) REPORTING.—Not later than 1 year after the
2 date of enactment of this section, the Administrator shall
3 issue regulations establishing an applicable facility report-
4 ing program, which shall require monitoring, reporting,
5 and recordkeeping by owners and operators of applicable
6 facilities in a manner prescribed by the Administrator that
7 ensures the completeness, consistency, transparency, accu-
8 racy, precision, and reliability of data related to electricity
9 consumption (including electricity consumption from elec-
10 tricity generation units located behind the power meter of
11 the applicable facility), water consumption, greenhouse
12 gas emissions, and other metrics determined appropriate
13 by the Administrator related to such applicable facilities.

14 “(d) USE OF FUNDS.—

15 “(1) IN GENERAL.—Charges collected pursuant
16 to this section shall be allocated by the Adminis-
17 trator to each State and Indian Tribe.

18 “(2) ALLOCATION TO STATES AND INDIAN
19 TRIBES.—The Administrator, in consultation with
20 the Secretary of Energy, shall allocate funds made
21 available under this subsection in accordance with
22 the distribution formula used to distribute amounts
23 made available to carry out part D of title III of the
24 Energy Policy and Conservation Act.

1 “(3) ELIGIBLE USES OF FUNDS.—Funding allo-
2 cated to each State or Indian Tribe under this sec-
3 tion shall be used for—

4 “(A) a program administered by such
5 State or Indian Tribe pursuant to the Low-In-
6 come Home Energy Assistance Act of 1981 (42
7 U.S.C. 8621 et seq.);

8 “(B) a program administered by such
9 State or Indian Tribe as described in section
10 50121(c) or section 50122(c) of Public Law
11 117–169 (commonly known as the ‘Inflation
12 Reduction Act’);

13 “(C) a program administered by such
14 State or Indian Tribe pursuant to part A of
15 title IV of the Energy Conservation and Pro-
16 duction Act (42 U.S.C. 6861 et seq.); or

17 “(D) a program administered by such
18 State or Indian Tribe, as approved by the Ad-
19 ministrator, that reduces peak electricity de-
20 mand, improves energy efficiency, including the
21 efficiency of transmission and distribution grid
22 infrastructure, or reduces residential utility
23 bills.

24 “(e) DEFINITIONS.—For purposes of this section:

1 “(1) APPLICABLE FACILITY.—The term ‘appli-
2 cable facility’ means any facility located in the
3 United States, or 2 or more facilities owned or oper-
4 ated by the same entity or group of entities that are
5 located in the United States within 10 miles of each
6 other, that—

7 “(A) in the aggregate have more than 50
8 megawatts of installed information technology
9 nameplate capacity; and

10 “(B)(i) primarily contain electronic equip-
11 ment used to process, store, and transmit dig-
12 ital information, each of which may be—

13 “(I) a free-standing structure; or

14 “(II) a facility within a larger struc-
15 ture, that uses environmental control
16 equipment to maintain the proper condi-
17 tions for the operation of electronic equip-
18 ment; or

19 “(ii) is or are used to mine or create
20 cryptocurrencies or other blockchain based dig-
21 ital assets, each of which may be—

22 “(I) a freestanding structure; or

23 “(II) a facility within a larger struc-
24 ture that uses environmental control equip-

1 ment to maintain the proper conditions for
2 the operation of electronic equipment.

3 “(2) CARBON DIOXIDE EQUIVALENT EMIS-
4 SIONS.—The term ‘carbon dioxide equivalent emis-
5 sions’ means, with respect to a greenhouse gas, the
6 number of metric tons of carbon dioxide emissions
7 with the same global warming potential over a 20-
8 year period as 1 metric ton of emissions of the
9 greenhouse gas, as determined by the Administrator
10 taking into consideration relevant methods and in-
11 formation described in assessment reports prepared
12 by the Intergovernmental Panel on Climate Change.

13 “(3) CARBON INTENSITY.—The term ‘carbon
14 intensity’ means the carbon dioxide equivalent emis-
15 sions released into the atmosphere from the genera-
16 tion of 1 megawatt-hour of electricity by an electric
17 generating unit, as determined by the Administrator.

18 “(4) GREENHOUSE GAS.—The term ‘greenhouse
19 gas’ means the air pollutants carbon dioxide,
20 hydrofluorocarbons, methane, nitrous oxide,
21 perfluorocarbons, and sulfur hexafluoride.”.