

OFFICE OF LEGISLATIVE RESEARCH
PUBLIC ACT SUMMARY



PA 21-1—HB 6514

Emergency Certification

AN ACT CONCERNING INCENTIVES FOR QUALIFIED DATA CENTERS TO LOCATE IN THE STATE

SUMMARY: This act authorizes the Department of Economic and Community Development (DECD) to enter into agreements to provide tax incentives to “qualified data centers” that locate within the state and make a specified minimum investment. Specifically, the act provides for (1) sales and use tax exemptions for certain goods and services purchased or used by the data center and (2) property tax exemptions for certain real property and equipment used by the data center. It also provides an exemption for financial transactions taxes that the state may impose in the future.

Under the act, DECD may enter into tax incentive agreements with qualified data centers for 20- or 30-year terms, depending on the size and location of the data center investment. To be eligible, a data center must agree to make a “qualified investment” of at least (1) \$50 million if the data center is located in an enterprise zone or a federal opportunity zone (see BACKGROUND) or (2) \$200 million if it is located elsewhere. The act also specifies the other provisions that DECD’s agreements with data centers must include (e.g., duration and annual fee).

The act requires owners and developers of qualified data centers, before beginning the capital project, to enter into host municipality fee agreements with the municipalities in which the data center will be located. It also requires that DECD agreements with data centers and host municipality fee agreements include provisions to recoup the taxes exempted under the act if the data center does not meet the agreement’s terms.

The act also establishes an Office of Data Infrastructure Administration and Security within DECD to, among other things, oversee the application process and assist applicants. The office is funded by annual payments from qualified data centers.

EFFECTIVE DATE: July 1, 2021

QUALIFIED DATA CENTER

Under the act, a “qualified data center” is a “facility” that is developed, acquired, constructed, rehabilitated, renovated, repaired, or operated, to house a group of networked computer servers in one physical location or multiple contiguous locations to centralize the storage, management, and dissemination of data and information pertaining to a particular business or classification or body of knowledge. A “facility” is one or more contiguous tracts of land in the state and any structure and personal property contained on that land.

TAX INCENTIVE APPLICATION AND AGREEMENTS

Under the act, any person (individual or various entity types) who anticipates it will own, operate, or be a colocation tenant in a qualified data center may apply to DECD, in a form and manner the commissioner prescribes, to enter into an agreement for the tax exemptions authorized by the act.

An “owner” is a person that holds a leasehold estate in excess of 50 years or a fee title to a facility. An “operator” is a person that contracts with a qualified data center’s owner to operate the data center. And a “colocation tenant” is a person that contracts with a qualified data center’s owner or operator to use or occupy all or part of the center for at least two years.

Applicant Eligibility

Under the act, the applicant must demonstrate to the DECD commissioner’s satisfaction that the (1) facility that will be developed, acquired, constructed, rehabilitated, renovated, repaired, or operated will be used as a qualified data center and (2) data center will make the required qualified investment by the fifth anniversary of the date an agreement is effective.

Qualified Investment. Under the act, the minimum qualified investment is (1) \$50 million if the data center is in an enterprise zone or a federal opportunity zone or (2) \$200 million if it is located elsewhere. “Qualified investment” means the aggregate, nonduplicative “eligible qualified data center costs” spent by a qualified data center’s owner, operator, and colocation tenant. Larger qualified investments may be eligible for a longer agreement duration (see below).

“Eligible qualified data center costs” are expenditures made on or after July 1, 2021, for the development, acquisition, construction, rehabilitation, renovation, repair, or operation of a facility to be used as a qualified data center. The term specifically includes the cost of land, buildings, site improvements, modular data centers, lease payments, site characterization and assessment, engineering services, design services, and data center equipment acquisition and related permitting. It does not include expenditures made in connection with real or personal property located outside the facility’s boundaries.

Agreement Provisions

If the applicant meets the act’s eligibility requirements and the DECD commissioner approves the application, the commissioner must enter into an agreement, which must include terms the act prescribes, as described below.

Agreement’s Duration. The agreement generally must be for a 20-year term from the agreement’s effective date, which may be in the year in which the center’s construction, rehabilitation, renovation, or repair begins. However, the commissioner must extend the term to 30 years if the data center makes a qualified investment of at least (1) \$200 million and the data center is in an enterprise zone or federal opportunity zone or (2) \$400 million and is located

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elsewhere.

Qualifying Period. The agreement must include a five-year qualifying period, starting on the agreement's effective date, for the applicant to reach the applicable qualified investment.

Annual Fee. The agreement must require the data center to pay an annual fee to cover the administrative and operating costs of the Office of Data Infrastructure Administration and Security, which the act establishes (see below). The commissioner sets the fee, which cannot be more than \$50,000. The center must pay the fee during each year of the qualifying period or until the qualified investment is reached, whichever is earlier.

Capital Project Description. The agreement must include a detailed description of the capital projects that are the subject of the agreement.

Application of Terms. The agreement, for its duration, must also apply to any (1) subsequent owner of the data center, (2) operator of that data center or the operator's affiliate, or (3) colocation tenant, as long as the facility continues to be used as a qualified data center.

Clawback Provisions. The agreement must include provisions for the assessment and payment of taxes exempted under the agreement, as well as the rates and amounts of penalties and interest, if the DECD commissioner determines that the agreement's or qualified data center's requirements are not being met or have not been met.

OFFICE OF DATA INFRASTRUCTURE ADMINISTRATION AND SECURITY

The act establishes an Office of Data Infrastructure Administration and Security within DECD. The office must (1) serve as the liaison between applicants and qualified data centers and other state agencies; (2) assist applicants and qualified data centers from the preapplication phase to the post-operational stage; and (3) seek to ensure coordinated, efficient, and timely responses to applicants and qualified data centers.

FINANCIAL TRANSACTION TAX EXEMPTION

The act exempts qualified data centers from any financial transaction tax or fee that Connecticut may impose on trades of stock, bonds, derivatives, and other financial products. (Currently, Connecticut does not impose such a tax or fee.) The exemption applies to data centers that enter into agreements with DECD and make the required investments for a 30-year agreement (i.e., \$200 million or \$400 depending on the center's location), as well as data center operators, affiliates, or colocation tenants.

This exemption applies for a 30-year period starting on the date the construction, rehabilitation, renovation, or repair of a facility is completed. The DECD commissioner may incorporate the act's financial transaction tax exemption into an agreement it enters under the act or amend an existing agreement with a qualified data center to include the exemption.

SALES AND USE TAX EXEMPTIONS

The act authorizes certain sales and use tax exemptions for those that enter into an agreement with DECD. DECD must notify the Department of Revenue Services (DRS) commissioner of any person that has entered into an agreement, and DRS must provide the person with a certificate that exempts the person, and any of their contractors or subcontractors, from the sales and use tax for specified sales and uses. The act specifically authorizes them to use the certificate for eligible sales and uses and allows the seller to rely on the certificate.

Eligible Sales and Uses

Under the act, the exemption applies to:

1. the sale of and the storage, use, or other consumption in the state of “qualified data center equipment” (a) acquired for incorporation into a facility used or to be used as a qualified data center or (b) used and consumed in developing, acquiring, constructing, rehabilitating, renovating, repairing, or operating such a facility;
2. the sale of and the acceptance, use, or consumption in the state of any taxable service that is used and consumed in developing, acquiring, constructing, rehabilitating, renovating, repairing, or operating such a facility; and
3. all electricity used by the qualified data center.

Qualified Data Center Equipment. Under the act, “qualified data center equipment” means computer equipment, software, and hardware purchased or leased for data processing, storage, retrieval, or communication, including:

1. computer servers, routers, connections, chassis, networking equipment, switches, racks, fiber optic and copper cables, trays, conduits, and other enabling machinery, equipment and hardware, regardless of whether they are affixed to or incorporated into real property;
2. equipment used in computer equipment or software operation for a qualified data center’s benefit, including component parts, replacement parts, and upgrades, regardless of whether they are affixed to or incorporated into real property;
3. equipment necessary for electricity transformation, generation, distribution, or management that is required to operate computer servers and related equipment, including substations, generators, uninterruptible energy equipment, supplies, conduits, fuel piping and storage, cabling, duct banks, switches, switchboards, batteries, and testing equipment;
4. equipment needed to cool and maintain a controlled environment for operating computer servers and other qualified data center equipment, including chillers, mechanical equipment, refrigerant piping, fuel piping and storage, adiabatic and free cooling systems, cooling towers, water softeners, air handling units, indoor direct exchange units, fans, ducting, and filters;
5. water conservation systems, including equipment designed to collect,

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- conserve, and reuse water;
6. conduit, ducting, and fiber optic and copper cables located outside the qualified data center that are directly related to connecting one or more qualified data center locations;
 7. monitoring equipment and security systems;
 8. modular data centers and preassembled components of any items described above, including components used in the manufacturing of modular data centers; and
 9. any other personal property, not including motor vehicles, that is essential to qualified data center operations or that is acquired for incorporation into or used or consumed in a center's operation.

Duration and Application of Certificate

The certificate applies for the duration of the agreement to:

1. any additional building or structure at a qualified data center to be developed, acquired, constructed, rehabilitated, renovated, repaired, or operated to house a group of networked computer servers, regardless of whether it was contemplated at the time of entering the agreement and
2. any additional qualified data center equipment, services, and electricity acquired or used by the data center after the agreement was entered into.

Recourse if Agreement Terms are not Met

If the DECD commissioner terminates an agreement entered into under the act because he determines that the requirements of the agreement or of a qualified data center are not being met or have not been met, the commissioner must notify the DRS commissioner.

DRS may then collect the sales and use tax (including penalties or interest) that become due and owing as a result of the agreement's termination by taking any action that he can currently take to collect money owed to the state. He (or another authorized agent) can levy on the property or sign a warrant to seize data center property. Additionally, the attorney general may start civil proceedings to collect the tax.

From the last day of the month preceding the tax's due date until the tax is paid, the tax plus the interest and penalty act as a lien against any of the qualified data center's real estate. The commissioner may record a lien certificate on the land records in the town where the property is located. However, the lien is not effective against a bona fide purchaser or the interest of any qualified encumbrancer. And after the tax has been paid, if any interested party asks, the commissioner must file a certificate discharging the lien on the same land record.

Under the act, the attorney general can foreclose the lien by bringing an action in the Superior Court of the judicial district where the property is located. If located in two or more districts, the attorney general may file suit in either one. The court can limit the redemption period, order the property sold, or issue any other equitable decree.

PROPERTY TAX EXEMPTIONS

The act also provides property tax exemptions for those that enter into an agreement with DECD under the act. The DECD commissioner must notify each municipality in which a facility subject to an agreement is located and identify the person with which the commissioner has entered into an agreement as well as the agreement's effective date and property tax-related terms.

Exempt Property

The property tax exemption applies to (1) real property, buildings, or structures within or at a qualified data center and (2) "enterprise information technology equipment" used by the data center. "Enterprise information technology equipment" means:

1. hardware that supports computing, networking, or data storage functions, including servers and routers;
2. networking systems equipment that supports computing, networking, or data storage functions and has an industry designation as equipment within the enterprise class or data center class of networking systems; and
3. generators and other equipment used to ensure an uninterrupted power supply for these hardware and networking systems.

Duration and Application of Exemption

The exemption applies for the duration of the agreement to:

1. any additional building or structure at a qualified data center to be developed, acquired, constructed, rehabilitated, renovated, repaired, or operated to house a group of networked computer servers, regardless of whether it was contemplated at the time of entering the agreement;
2. any additional enterprise information technology equipment the data center acquires and uses after the agreement was entered into; and
3. any additional facility acquired by the owner of a qualified data center for the development, construction, rehabilitation, renovation, repair, or operation of a qualified data center after the agreement was entered into, as long as the owner enters into a negotiated host municipality fee agreement (see below) for each additional facility.

Host Municipality Fee Agreement

The act prohibits developers and owners from beginning data center facility construction, rehabilitation, renovation, or repair until the owner enters into a negotiated host municipality fee agreement with the municipality in which the facility is located (i.e., the host municipality). The owner must also enter into such an agreement for each additional facility that will become a qualified data center that it acquires. If a facility is in contiguous municipalities, the owner must enter into an agreement with each host municipality.

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Recourse if Fee Agreement Terms Not Met. Each fee agreement must include provisions for assessing and paying property taxes exempted under the DECD agreement if the host municipality's legislative body determines that the fee agreement terms are not being or have not been met. The provisions must include rates or amounts of penalties and interest to be imposed.

If the host municipality's legislative body makes that determination, the host municipality's chief elected official must notify the qualified data center. The data center must cure the noncompliance within 180 days after the notice. If the legislative body determines that the noncompliance has not been cured, the fee agreement is terminated.

Upon the fee agreement's termination, the qualified data center, the owner of the property on which the center is located, or the owner's successors or assigns are subject to property tax and liable for taxes on any property that was exempted under the DECD agreement, from the date of noncompliance or the date the DECD agreement is terminated, as applicable. The liability is attached to the property as a charge thereon, and the tax and any related penalty and interest is due, payable, and collectible as other municipal taxes and subject to the same liens and collection processes.

Termination in Event of DECD Agreement Termination. If the DECD commissioner determines that the requirements of a qualified data center's agreement are not being or have not been met and terminates the agreement, the commissioner must notify the host municipality's chief elected official. Under the act, when DECD terminates its agreement, the host municipality fee agreement is also terminated. The host municipality may then use any remedy authorized by state statutes to secure its interests and recover the amount of any fee, tax, penalty, and interest that become due to the host municipality because of the agreement's termination (see above).

BACKGROUND

Federal Opportunity Zone Program

The federal Opportunity Zone program, created as part of the 2017 federal Tax Cuts and Jobs Act (P.L. 115-97), is designed to spur economic development and job creation in distressed communities by providing federal tax benefits for private investments in the zones. The program's tax benefits are available to investors that reinvest gains earned on prior investments in a qualified opportunity zone fund that invests in zone businesses. Investors may receive additional tax benefits if they hold their investments in the fund for at least five, seven, or 10 years.

Connecticut has 72 opportunity zones in 27 municipalities that were approved by the U.S. Treasury Department in 2018.

Enterprise Zones

The enterprise zone program offers various tax incentives and other benefits

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to businesses that start up in or improve real property in areas designated as enterprise zones. The currently designated enterprise zones are in the following towns: Bridgeport, Bristol, East Hartford, Groton, Hamden, Hartford, Meriden, Middletown, New Britain, New Haven, New London, Norwalk, Norwich, Southington, Stamford, Thomaston, Waterbury, and Windham.