

HOUSE BILL No. 1405

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-1.1-10-44; IC 6-2.5-15.

Synopsis: Taxation of data centers. Provides that a county or municipal fiscal body may designate an area in which a property tax exemption will be provided for certain enterprise information technology equipment. Specifies that the resolution making the designation must be adopted before January 1, 2021. (The window for making the designation for the exemption in current law closed December 31, 2016.) Provides a state sales and use tax exemption (exemption) for the purchase of certain data center equipment that is located in a data center that results in a minimum qualified investment within five years, ranging from at least \$50,000,000 to more than \$100,000,000 depending on the population of the county in which the data center is located. Requires the Indiana economic development corporation to take requests to certify qualified data centers eligible for the exemption. Expires the exemption June 30, 2026.

Effective: July 1, 2019.

Soliday

January 14, 2019, read first time and referred to Committee on Ways and Means.



First Regular Session of the 121st General Assembly (2019)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2018 Regular and Special Session of the General Assembly.

HOUSE BILL No. 1405



A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 6-1.1-10-44, AS AMENDED BY P.L.158-2012,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2019]: Sec. 44. (a) As used in this section, "designating body"
4 means the fiscal body of:
5 (1) a county that does not contain a consolidated city; or
6 (2) a municipality.
7 (b) As used in this section, "eligible business" means an entity that
8 meets the following requirements:
9 (1) The entity is engaged in a business that:
10 (A) operates; or
11 (B) leases qualified property for use in;
12 one (1) or more facilities or data centers dedicated to computing,
13 networking, or data storage activities.
14 (2) The entity's qualified property is located at a facility or data
15 center in Indiana that is located in an area designated as a high
16 technology district area.
17 (3) The entity, the lessor of qualified property (if the entity is a



1 lessee), and all lessees of qualified property invest in the
 2 aggregate at least ten million dollars (\$10,000,000) in real and
 3 personal property at the facility or data center after June 30, 2012.

4 (4) The average wage of employees who are located in the county
 5 or municipality and engaged in the operation of the facility or data
 6 center is at least one hundred twenty-five percent (125%) of the
 7 county average wage for the county in which the facility or data
 8 center operates.

9 (c) As used in this section, "enterprise information technology
 10 equipment" means the following:

11 (1) Hardware supporting computing, networking, or data storage
 12 functions, including servers and routers.

13 (2) Networking systems having an industry designation as
 14 equipment within the "enterprise" or "data center" class of
 15 networking systems that support the computing, networking, or
 16 data storage functions.

17 (3) Generators and other equipment used to ensure an
 18 uninterrupted power supply to equipment described in subdivision
 19 (1) or (2).

20 The term does not include computer hardware designed for single user,
 21 workstation, or departmental level use.

22 (d) As used in this section, "fiscal body" has the meaning set forth
 23 in IC 36-1-2-6.

24 (e) As used in this section, "high technology district area" means all
 25 or any part of the area that:

26 (1) is within the corporate limits of a county or municipality; and

27 (2) has been designated as a high technology district area by the
 28 appropriate designating body under subsection (h).

29 (f) As used in this section, "municipality" has the meaning set forth
 30 in IC 36-1-2-11.

31 (g) As used in this section, "qualified property" means enterprise
 32 information technology equipment purchased after June 30, 2012, and
 33 any additions to or replacements to such property.

34 (h) Before adopting a final resolution to designate a high technology
 35 district area, a designating body must first adopt a declaratory
 36 resolution provisionally finding that all or a part of the area within the
 37 designating body's jurisdiction is a high technology district area. The
 38 declaratory resolution must include a description of the affected area
 39 and must be filed with the county assessor. The designating body shall
 40 then publish notice of the adoption and the substance of the declaratory
 41 resolution in accordance with IC 5-3-1 and file a copy of the notice and
 42 the declaratory resolution with each taxing unit in the county. The



1 notice must specify a date when the designating body will receive and
 2 hear all remonstrances and objections from interested persons. The
 3 designating body shall file the notice and the declaratory resolution
 4 with the officers of the taxing units who are authorized to fix budgets,
 5 tax rates, and tax levies under IC 6-1.1-17-5 at least ten (10) days
 6 before the date for the public hearing. After the designating body
 7 considers the testimony presented at the public hearing, the designating
 8 body may adopt a second and final resolution before January 1, 2017,
 9 **or after June 30, 2019, and before January 1, 2021**, determining
 10 whether to designate a high technology district area and modifying,
 11 confirming, or rescinding the declaratory resolution. This determination
 12 of the designating body is final.

13 (i) A designating body may, after adopting a final resolution under
 14 subsection (h) designating an area as a high technology district area,
 15 enter into an agreement with an eligible business to grant the eligible
 16 business a property tax exemption. In the case of a county, the
 17 exemption applies only to qualified property that is located in
 18 unincorporated territory of the county. In the case of a municipality, the
 19 exemption applies only to qualified property that is located in the
 20 municipality. The property tax exemption applies to the qualified
 21 property only if the designating body and the eligible business enter
 22 into an agreement concerning the property tax exemption. The
 23 agreement must specify the duration of the property tax exemption. The
 24 agreement may specify that if the ownership of qualified property is
 25 transferred by an eligible business, the transferee is entitled to the
 26 property tax exemption on the same terms as the transferor. If a
 27 designating body adopts a final resolution under subsection (h) and
 28 enters into an agreement with an eligible business, the qualified
 29 property owned by the eligible business is exempt from property
 30 taxation as provided in the resolution and the agreement.

31 (j) If a designating body adopts a final resolution under subsection
 32 (h) and enters into an agreement under subsection (i) to provide a
 33 property tax exemption, the property tax exemption continues for the
 34 period specified in the agreement, notwithstanding the January 1, 2017,
 35 deadline **or the January 1, 2021, deadline** to adopt a final resolution
 36 under subsection (h).

37 SECTION 2. IC 6-2.5-15 IS ADDED TO THE INDIANA CODE
 38 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 39 JULY 1, 2019]:

40 **Chapter 15. Gross Retail and Use Tax Exemption For Data**
 41 **Center Equipment**

42 **Sec. 1. As used in this chapter, "data center equipment" means**



1 computer equipment or software purchased or leased for the
2 processing, storage, retrieval, or communication of data. The term
3 includes the following:

4 (1) Servers, routers, connections, monitoring and security
5 systems, and other enabling machinery, equipment, and
6 hardware, regardless of whether the property is affixed to or
7 incorporated into real property.

8 (2) Equipment used in the operation of computer equipment
9 or software or for the benefit of the qualified data center,
10 including component parts, installations, refreshments,
11 replacements, and upgrades, regardless of whether the
12 property is affixed to or incorporated into real property.

13 (3) All equipment necessary for the transformation,
14 generation, distribution, or management of electricity that is
15 required to operate computer server equipment, including
16 substations, generators, uninterruptible energy equipment,
17 supplies, conduit, fuel piping and storage, cabling, duct banks,
18 switches, switchboards, batteries, testing equipment, and
19 backup generators.

20 (4) All equipment necessary to cool and maintain a controlled
21 environment for the operation of the computer servers and
22 other components of the data center, including chillers,
23 mechanical equipment, refrigerant piping, fuel piping and
24 storage, adiabatic and free cooling systems, cooling towers,
25 water softeners, air handling units, indoor direct exchange
26 units, fans, ducting, and filters.

27 (5) All water conservation systems, including facilities or
28 mechanisms that are designed to collect, conserve, and reuse
29 water.

30 (6) All computer server equipment, chassis, networking
31 equipment, switches, racks, fiber optic and copper cabling,
32 trays, and conduit.

33 (7) All conduit, ducting, and fiber optic and copper cabling
34 that may be located outside the data center, directly related to
35 connecting one (1) or more distributed qualified data center
36 locations.

37 (8) All monitoring equipment and security systems.

38 (9) Modular data centers and preassembled components of
39 any item described in this section, including components used
40 in the manufacturing of modular data centers.

41 (10) All software.

42 (11) Other tangible and intangible personal property that is



1 essential to the operations of a data center.

2 (12) All electricity used by servers and computers in data
3 management in a qualified data center.

4 Sec. 2. As used in this chapter, "eligible data center costs"
5 means expenditures for the development, acquisition, construction,
6 and operation of a facility to be used as a qualified data center,
7 including costs of land, buildings, site improvements, modular data
8 centers, computer data center equipment acquisition and
9 permitting, lease payments, site characterization and assessment,
10 engineering, and design used directly and exclusively in a qualified
11 data center.

12 Sec. 3. As used in this chapter, "entity" means an individual, an
13 estate, a trust, a receiver, a cooperative association, a corporation,
14 a company, a firm, a partnership, a limited liability company, a
15 limited liability partnership, or a joint venture.

16 Sec. 4. As used in this chapter, "facility" means one (1) or more
17 tracts of land in Indiana and any structures and personal property
18 contained on the land for the operation of a data center in either a
19 single location or multiple distributed locations.

20 Sec. 5. As used in this chapter, "IEDC" refers to the Indiana
21 economic development corporation established by IC 5-28-3-1.

22 Sec. 6. As used in this chapter, "interest in a qualified data
23 center" means an entity that is the owner, operator, or qualified
24 colocation tenant in a qualified data center.

25 Sec. 7. As used in this chapter, "operator" means an entity,
26 other than an owner or a qualified colocation tenant, operating a
27 data center pursuant to a lease or other contract with the owner or
28 a lessor. The term "operator" includes a licensed property
29 management company, a property lessor, or any other individual
30 or entity responsible for the control, oversight, or maintenance of
31 a facility. The term "operator" also includes an affiliate of an
32 operator.

33 Sec. 8. As used in this chapter, "owner" means an entity holding
34 fee title to a facility. The term "owner" also includes an affiliate of
35 an owner.

36 Sec. 9. As used in this chapter, "qualified colocation tenant"
37 means an entity that contracts with the owner or operator of a
38 qualified data center that is certified under this chapter to use or
39 occupy all or part of the data center for a period of two (2) or more
40 years.

41 Sec. 10. As used in this chapter, "qualified data center" means
42 construction, redevelopment, or expansion of all or part of a new



1 or existing facility that:

- 2 (1) is composed of one (1) or more buildings;
- 3 (2) is or will be predominantly used to house data center
- 4 equipment; and
- 5 (3) creates a minimum qualified investment on or before the
- 6 fifth anniversary of the issuance of the specific transaction
- 7 exemption certificate by the department of at least:
- 8 (A) one hundred million dollars (\$100,000,000), if it is
- 9 located in a county having a population greater than fifty
- 10 thousand (50,000);
- 11 (B) seventy-five million dollars (\$75,000,000), if it is located
- 12 in a county having a population greater than thirty
- 13 thousand (30,000) and not more than fifty thousand
- 14 (50,000); or
- 15 (C) fifty million dollars (\$50,000,000), if it is located in a
- 16 county having a population of not more than thirty
- 17 thousand (30,000).

18 Sec. 11. As used in this chapter, "qualified data center

19 equipment" means data center equipment located at a qualified

20 data center.

21 Sec. 12. As used in this chapter, "qualified data center user"

22 means an entity that is using qualified data center equipment.

23 Sec. 13. As used in this chapter, "qualified investment" means,

24 with respect to a qualified data center, the aggregate

25 nonduplicative eligible data center costs expended by any entity

26 with an interest in the qualified data center.

27 Sec. 14. (a) A qualified data center user that holds an interest in

28 a qualified data center may request a certificate of eligibility from

29 the IEDC to enable the user to obtain a specific transaction

30 exemption certificate to make purchases that are exempt under this

31 chapter. The request must be on a form prescribed by the IEDC.

32 (b) The IEDC shall confirm that a facility is a qualified data

33 center. The IEDC may not reject any particular request as long as

34 accurate information is submitted by the requester that allows the

35 IEDC to confirm that the facility meets the requirements to be

36 certified as a qualified data center.

37 (c) The IEDC shall issue a certificate of eligibility from

38 sequentially numbered certificates to the requester, not later than

39 sixty (60) days after receiving all information necessary to make a

40 determination under this chapter. The certificate must state that

41 the facility is a qualified data center.

42 (d) If the IEDC rejects a request and fails to issue a written



1 statement as to why the facility does not satisfy the criteria
2 required to be a qualified data center, the request is considered
3 approved and the department shall immediately issue a specific
4 transaction exemption certificate to the requester.

5 (e) Proprietary business information contained in a request for
6 a certificate of eligibility provided to the IEDC is confidential and
7 shall not be disclosed to the public except that the information may
8 be transmitted to the department, and upon receipt the department
9 shall treat the information as confidential and shall not disclose it
10 to the public. The IEDC may disclose the name of a qualified data
11 center that has been certified under this section.

12 Sec. 15. (a) The IEDC has exclusive authority over issues related
13 to issuing a certificate of eligibility, including determinations of
14 whether a data center has satisfied the requirements of this
15 chapter.

16 (b) The IEDC shall adopt rules governing the procedures for
17 administering this chapter. A certificate of eligibility may not be
18 delayed because of any delay in adopting rules and procedures.

19 Sec. 16. (a) This section does not apply to a taxpayer that is a
20 qualified colocation tenant.

21 (b) If:

22 (1) the IEDC issues a certificate of eligibility to a taxpayer
23 stating that the taxpayer holds an interest in a qualified data
24 center or if a taxpayer is deemed to hold an interest in a
25 qualified data center; and

26 (2) a qualified investment in the qualified data center is not
27 made within five (5) years after the specific transaction
28 exemption certificate for a qualified data center is issued;

29 the taxpayer's certification of eligibility as a qualified data center
30 may be revoked by the IEDC and the taxpayer may be required to
31 repay to the state any taxes not paid as a result of the exemption
32 provided by this chapter. However, if the taxpayer demonstrates
33 to the IEDC that the taxpayer made every effort to contribute to
34 the qualified investment to the extent feasible and the facility's
35 inability to meet the qualified investment requirements of a
36 qualified data center was beyond the taxpayer's control, the IEDC
37 shall determine, after a public hearing, the amount of taxes that
38 should be repaid to the state. The IEDC, in its determination, shall
39 consider the performance of the facility and the extent to which the
40 inability to meet the qualified investment requirements of a
41 qualified data center was in the control of the taxpayer.

42 (c) The repayment shall be paid within one hundred eighty (180)



1 days following the IEDC's revocation or the issuance of the IEDC's
2 determination, if such a determination is made by the IEDC.

3 Sec. 17. Except as provided in section 16 of this chapter, if a
4 data center has received a certificate of eligibility, the certification
5 of the qualified data center remains in effect, even if there is a
6 future transfer, sale, or disposition, directly or indirectly, of the
7 qualified data center. A subsequent owner is entitled to receive a
8 specific transaction exemption certificate for the remainder of the
9 eligibility period.

10 Sec. 18. The sale of qualified data center equipment is exempt
11 from the state gross retail tax if the qualified data center
12 equipment:

13 (1) is sold to a qualified data center user; and

14 (2) will be located in a qualified data center.

15 Sec. 19. This chapter expires June 30, 2026.

