SENATE DOCKET, NO. 1199 FILED ON: 1/19/2023

SENATE . . . . . No. 1958

The Commonwealth of Massachusetts

PRESENTED BY:

John C. Velis

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to qualified data centers in the Commonwealth.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
John C. Velis	*Hampden and Hampshire*	
Kelly W. Pease	*4th Hampden*	*1/31/2023*

SENATE DOCKET, NO. 1199 FILED ON: 1/19/2023

SENATE . . . . . No. 1958

By Mr. Velis, a petition (accompanied by bill, Senate, No. 1958) of John C. Velis and Kelly W. Pease for legislation relative to qualified data centers in the Commonwealth. Revenue.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Third General Court
(2023-2024)

An Act relative to qualified data centers in the Commonwealth.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Chapter 23A of the General Laws, as so appearing in the 2022 Official Edition, is hereby amended by adding the following section:-

Section 70. (a) The terms defined in paragraph (yy) of section 6 of chapter 64H shall apply to this section unless the context clearly requires otherwise.

(b) The secretary of the executive office of housing and economic development, in consultation with the commissioner of revenue, shall determine qualifications for qualified data centers, to qualify for a sales and use tax exemption pursuant to said paragraph (yy) of said section 6 of said chapter 64H.

(c) To apply for the sales and use tax exemption pursuant to paragraph (yy) of said section 6 of said chapter 64H, the owner or operator of a data center shall submit to the secretary of housing and economic development an application on a form prescribed by the commissioner of revenue that shall include:

(i) the name, address and telephone number of the owner or operator;

(ii) the address of the site where the qualified data center is or will be located, including, but not limited to, information sufficient to identify the facility composing the data center, and the expected commercial operations date of each data center building that will be located at the data center facility;

(iii) the anticipated aggregate square feet of the qualified data center for which the sales and use tax exemption is being sought; provided, that in determining whether the facility has the required square footage, the total square footage of the data center facility shall include the space that houses the computer information technology equipment, networking, data processing or data storage, including, but not limited to, servers and routers, and the following spaces that support the operation of enterprise information technology equipment including, but not limited to, office space, meeting space, loading dock space and mechanical and other support facilities.

(iv) the anticipated investment associated with the qualified data center for which the sales and use tax exemption is being sought;

(v) the anticipated number of jobs that the data center will create and maintain within 1 year, 5 years and 10 years of operations after certification; and

(vi) an affirmation, signed by an authorized executive representing the owner or operator, that the data center is expected to satisfy the certification requirements in this section as a qualified data center.

(d)(i) Within 60 days after receiving a completed application, the secretary of housing and economic development shall review the application submitted by the owner or operator of a

data center and certify the data center as a certified qualified data center if the data center meets all requirements of this section.

(ii) The secretary shall issue a written certification that the data center qualifies for the sales and use tax exemption or provide written reasons for its denial and an opportunity for the applicant to cure any deficiencies.

(iii) Failure to approve or deny the application within 60 days after the date the owner or operator submits the application to the secretary shall constitute approval of the qualified data center, and the secretary shall issue written certification to the owner or operator within 14 days.

(iv) The certification shall provide the following information related to each data center:

(A) the effective date of the certification;

(B) the total square footage of the qualified data center;

(C) the total amount of land costs, construction costs, refurbishment costs and eligible data center equipment; and

(D) the beginning and ending date of the sales and use tax exemption for the first data center building, which shall begin on the effective date of the certification and be valid for qualification period, and for a qualified data center that is comprised of more than 1 data center building, the expected commercial operations dates and expected qualification periods for subsequent data center buildings expected to be located at the qualified data center.

(v) The secretary shall send a copy of the certification to the commissioner of revenue.

(e) The effective date of the certification shall be the date on which the application was submitted to the secretary or a prospective date stated in the application that does not exceed 5 years after the date on which the application was submitted; provided, that the certification shall be valid through the qualification period.

(f) The secretary and commissioner shall review the certification after 10 years.

(g)(i) For the purposes of this section, the term "material noncompliance" shall mean the failure of a qualified data center to substantially achieve the investment requirements and minimum number of jobs pursuant to paragraph (yy) of section 6 of chapter 64H.

(ii) The secretary may revoke the certification of a qualified data center after an investigation by the executive office of housing and economic development, in consultation with the department of revenue, and a written determination that the qualified data center is in material noncompliance with this section, paragraph (yy) of section 6 of chapter 64H or the certification.

(iii) Revocation shall take effect on the first day of the tax year in which the executive office of housing and economic development determines the qualified data center to be in material noncompliance. The commissioner of revenue shall, as of the effective date of the revocation, disallow any credits, exemptions or other tax benefits allowed by the original certification of tax benefits pursuant to paragraph (yy) of section 6 of chapter 64H.

(h) Each qualified data center shall file a report with the secretary and commissioner prior to the end of the tenth year of the qualification period detailing whether it has met the specific investment requirements pursuant to paragraph (yy) of section 6 of chapter 64H.

(i) The secretary, in consultation with the commissioner of revenue, shall promulgate regulations and shall issue instructions or forms necessary for the implementation of this section.

SECTION 2. Section 6 of said chapter 64H of the General Laws, as so appearing in the 2020 Official Edition, is hereby amended by inserting, after paragraph (xx), the following 2 paragraphs:-

(yy)(1) Sale of: (A) eligible data center equipment for use in a qualified data center; (B) computer software for use in a qualified data center; (C) electricity for use or consumption in the operation of a qualified data center; or (D) construction costs incurred for the construction, renovation or refurbishment of a qualified data center.

(2) If secretary revokes the certification of a qualified data center the commissioner shall, as of the effective date of the revocation, disallow any credits, exemptions or other tax benefits allowed by the original certification of tax benefits under this paragraph.

(3) If the qualified data center is sold to a new owner prior to the expiration of the exemption, tax benefits under this paragraph shall remain in effect and apply to a subsequent owner for the remaining duration of the 20-year qualification period.

(4) As used in this paragraph, the following words shall, unless the context clearly otherwise requires, have the following meanings:

“Colocation tenant”, a person, partnership, company, corporation or other entity that contracts with or leases from the owner or operator of a qualified data center to use or occupy all or part of a qualified data center.

"Computer software", software purchased, leased, utilized or loaded at a qualified data center, including, but not limited to, maintenance, licensing and software customization.

"Construction costs", costs of materials, labor, services and equipment purchased or leased to construct a qualified data center facility, including, but not limited to, data center building costs, accessory building costs and building improvement costs, land development and site improvement costs, site utility infrastructure costs, building materials, steel, concrete, gravel, engineering services, heavy equipment, cranes, transportation equipment, excavation costs, storm water system and management costs, access roads, bridges, fencing, lighting, landscaping and other costs to construct the facility.

"Eligible data center equipment", computers and equipment supporting computing, networking, data processing or data storage, including, but not limited to, servers and routers; computer servers, routers, connections, chassis, networking equipment, switches, racks, fiber optic and copper cables, trays, conduits and other enabling machinery, equipment and hardware; component parts, replacement parts and upgrades; cooling systems, cooling towers, chillers, mechanical equipment, HVAC equipment, refrigerant piping, fuel piping and storage, adiabatic and free cooling systems, water softeners, air handling units, indoor direct exchange units, fans, ducting, filters and other temperature control infrastructure; power infrastructure for transformation, generation, distribution, or management of electricity used for the operations and maintenance of a qualified data center, including, but not limited to, substations, switchyards, transformers, generators, uninterruptible power supplies, backup power generation systems, battery systems, energy efficiency measures, supplies, fuel piping and storage, duct banks, switches, switchboards, testing equipment and related utility infrastructure; monitoring and security equipment; water conservation systems, including, but not limited to, equipment

designed to collect, conserve and reuse water; modular data center equipment and preassembled components of any item described in this paragraph, including, but not limited to, components used in the manufacturing of modular data centers; and any other personal property or equipment that is used or consumed in the operation and maintenance of the qualified data center.

"Qualified data center costs", expenditures made for the construction, refurbishment, renovation or improvement of a facility to be used as a qualified data center, including, but not limited to, the cost of land, land development and site improvement costs, site utility infrastructure costs, construction costs, data center building costs, accessory building costs and building improvement costs, and eligible data center equipment.

"Qualified data center", a facility in the commonwealth that:

(A) is owned or leased by: (i) the operator of the data center facility; or (ii) a person, partnership, company, corporation or other entity under common ownership of the operator of the data center facility;

(B) is comprised of 1 or more data center buildings that consist in the aggregate of not less than 100,000 square feet, and that are located on a single parcel, or on contiguous parcels, where the total eligible qualified data center costs of the data center facility are at least $50,000,000 within a 10-year period from the effective date of the certification by the secretary as a qualified data center facility;

(C) is constructed or substantially refurbished; and

(D) is used to house computer information technology equipment, networking, data processing or data storage, including, but not limited to, servers and routers for the storage,

management, and dissemination of data and information where the facility has the following characteristics: (i) uninterruptible power supplies, generator backup power, or both; (ii) sophisticated fire suppression and prevention systems; and (iii) enhanced security; provided, that a qualified data center shall be considered to have enhanced security if it has restricted access to the facility to selected personnel, permanent security guards, video camera surveillance, an electronic system requiring pass codes, keycards or biometric scans or similar security features.

"Qualification period", a 20-year period of time beginning on the effective date of the certification by the secretary of the qualified data center for the first data center building, and expiring at the end of the twentieth full calendar year following the calendar year in which the certification became effective; provided, that if the qualified data center is comprised of more than 1 data center building, the qualification period for each subsequent data center building that is constructed at the qualified data center facility shall start when each data center building begins commercial operations, as evidenced by receipt of a certificate of occupancy, and shall continue for a period of 20 full calendar years, expiring at the end of the twentieth full calendar year following the calendar year each respective data center building began commercial operations.

"Secretary", the secretary of the executive office of housing and economic development.

"Substantially refurbished", a rebuild, modification or construction of not less than 100,000 square feet of an existing facility that is a qualified data center where the total eligible qualified data center costs are not less than $50,000,000 within a 10-year period from the effective date of the certification by the secretary as a qualified data center facility, including, but not limited to: (i) installation of computer information technology equipment, networking, data

processing or data storage, including servers and routers, environmental control, computer software and energy efficiency improvements; and (ii) building improvements.

(3) The commissioner shall promulgate regulations necessary for the administration of this paragraph.