

HOUSE No. 2792

The Commonwealth of Massachusetts

PRESENTED BY:

Michael J. Finn and Kelly W. Pease

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:	DATE ADDED:
<i>Michael J. Finn</i>	<i>6th Hampden</i>	<i>1/20/2023</i>
<i>Kelly W. Pease</i>	<i>4th Hampden</i>	<i>1/26/2023</i>
<i>Patricia A. Duffy</i>	<i>5th Hampden</i>	<i>1/25/2023</i>
<i>Brian M. Ashe</i>	<i>2nd Hampden</i>	<i>2/9/2023</i>

HOUSE No. 2792

By Representatives Finn of West Springfield and Pease of Westfield, a petition (accompanied by bill, House, No. 2792) of Michael J. Finn, Kelly W. Pease and others relative to qualified data centers and providing for sales and use tax exemptions for data centers. 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:

1 SECTION 1. Chapter 23A of the General Laws, as so appearing in the 2020 Official
2 Edition, is hereby amended by adding the following section:-

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

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

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

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

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

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

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

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

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

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

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

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

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

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

43 (A) the effective date of the certification;

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

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

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

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

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

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

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

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

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

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

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

76 SECTION 2. Section 6 of said chapter 64H of the General Laws, as so appearing in the
77 2020 Official Edition, is hereby amended by inserting, after paragraph (xx), the following 2
78 paragraphs:-

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

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

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

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

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

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

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

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

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

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

126 “Qualified data center”, a facility in the commonwealth that:

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

130 (B) is comprised of 1 or more data center buildings that consist in the aggregate of not
131 less than 100,000 square feet, and that are located on a single parcel, or on contiguous parcels,
132 where the total eligible qualified data center costs of the data center facility are at least
133 \$50,000,000 within a 10-year period from the effective date of the certification by the secretary
134 as a qualified data center facility;

135 (C) is constructed or substantially refurbished; and

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

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

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

154 “Secretary”, the secretary of the executive office of housing and economic development.

155 “Substantially refurbished”, a rebuild, modification or construction of not less than
156 100,000 square feet of an existing facility that is a qualified data center where the total eligible
157 qualified data center costs are not less than \$50,000,000 within a 10-year period from the
158 effective date of the certification by the secretary as a qualified data center facility, including, but
159 not limited to: (i) installation of computer information technology equipment, networking, data

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

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