

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
94th General Assembly
Regular Session, 2023

As Engrossed: H4/3/23
A Bill

HOUSE BILL 1654

By: Representative Pilkington

By: Senator J. Dismang

For An Act To Be Entitled

AN ACT TO PROVIDE SALES AND USE TAX EXEMPTIONS FOR DATA CENTERS; TO PROVIDE A SALES AND USE TAX EXEMPTION FOR DATA CENTER EQUIPMENT, DATA CENTER COSTS, CERTAIN SERVICES PROVIDED TO A DATA CENTER, AND ELECTRICITY USED BY A DATA CENTER; AND FOR OTHER PURPOSES.

Subtitle

TO PROVIDE SALES AND USE TAX EXEMPTIONS FOR DATA CENTERS; AND TO PROVIDE A SALES AND USE TAX EXEMPTION FOR DATA CENTER EQUIPMENT, DATA CENTER COSTS, CERTAIN SERVICES PROVIDED TO A DATA CENTER, AND ELECTRICITY USED BY A DATA CENTER.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 26, Chapter 52, Subchapter 4, is amended to add an additional section to read as follows:

26-52-455. Data centers.

(a) As used in this section:

(1) "Data center equipment" means computer equipment or software purchased or leased for the processing, storage, retrieval, or communication of data, including without limitation:

(A) A server, router, connection, and other enabling machinery, equipment, software, and hardware, regardless of whether the



property is affixed to or incorporated into real property;

(B) Equipment used in the operation of a computer or computer software or for the benefit of a qualified data center, including without limitation a component part, installation, refreshment, replacement, and upgrade, regardless of whether the property is affixed to or incorporated into real property;

(C) Equipment necessary for the transformation, generation, distribution, or management of electricity that is required to operate a computer server, including without limitation a substation, generator, uninterruptible energy equipment, supply, conduit, fuel piping and storage, cabling, duct bank, switch, switchboard, battery, testing equipment, and backup generator;

(D) Equipment necessary to cool and maintain a controlled environment for the operation of the computer servers and other components of the qualified data center, including without limitation a chiller, mechanical equipment, refrigerant piping, fuel piping and storage, adiabatic and free cooling system, cooling tower, water softener, air handling unit, indoor direct exchange unit, fan, ducting, and filter;

(E) Water conservation systems, including without limitation a facility or mechanism that is designed to collect, conserve, and reuse water;

(F) Computer server equipment, chassis, networking equipment, switches, racks, fiber optic and copper cabling, trays, and conduit;

(G) Conduit, ducting, and fiber optic and copper cabling that may be located outside the qualified data center that is directly related to connecting one (1) or more distributed qualified data center locations;

(H) Monitoring equipment and security systems;

(I) Software;

(J) Other tangible personal property and intangible personal property that is essential to the operation of a qualified data center, excluding property used in the administration of the facility;

(K) Modular data centers and preassembled components of an item described in subdivisions (a)(1)(A)-(J) of this section, including without limitation components used in the manufacturing of modular data

centers; and

(L) Labor services to install, apply, repair, service, alter, or maintain items described in subdivisions (a)(1)(A)-(K) of this section;

(2) "Eligible data center costs" means expenditures for the development, acquisition, construction, expansion, renovation, refurbishment, and operation of a qualified data center, including without limitation costs of land, buildings, site improvements, modular data centers, computer data center equipment acquisition and permitting, lease payments, site characterization and assessment, engineering, and design used directly and exclusively in a qualified data center;

(3) "Facility" means one (1) or more contiguous tracts of land in the state and any structure and tangible personal property contained on that land that is for the operation of a qualified data center;

(4) "Qualified data center" means a facility that:

(A) Is developed, acquired, constructed, expanded, rehabilitated, renovated, repaired, or operated to house a group of networked computer servers in one (1) 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;

(B) Is owned or operated by a qualified firm that:

(i) Creates a qualified investment of at least five hundred million dollars (\$500,000,000) within five (5) years of the issuance of a certificate of occupancy by the relevant local building authority; and

(ii) Pays an aggregate annualized compensation of at least one million dollars (\$1,000,000) to employees within the state over the two (2) calendar years following the commencement of operations; and

(C) Has received a positive cost-benefit analysis from the Arkansas Economic Development Commission;

(5) "Qualified firm" means a for-profit business establishment that is:

(A) Subject to state income, sales, or property taxes;

(B) The owner or operator of a qualified data center; and

(C) Engaged in data processing, storage, and dissemination; and

(6) "Qualified investment" means, with respect to a qualified data center, the aggregate nonduplicative eligible data center costs expended by an entity with an interest in a qualified data center in the state.

(b) The gross receipts or gross proceeds from the sale of the following are exempt from the gross receipts tax levied by this chapter and the compensating use tax levied by the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.:

(1) Data center equipment;

(2) Eligible data center costs;

(3) Services purchased for the purpose of and in conjunction with developing, acquiring, constructing, expanding, renovating, refurbishing, and operating a qualified data center; and

(4) Electricity used by a qualified data center.

(c)(1) A qualified firm shall submit an application for the exemption provided under this section for a qualified data center to the commission.

(2) Eligibility for the exemption under this section is dependent on the minimum qualified investment and aggregate compensation stated in subdivision (a)(5) of this section being met within five (5) years from the commencement of construction of the qualified data center.

(3)(A) Within thirty (30) days after receipt of a completed application under this section, the commission shall grant or deny the application in whole or in part.

(B) If an application submitted under this section is denied as incomplete and the qualified firm provides the additional information or documentation required by the commission or otherwise completes its application within fifteen (15) days of the notice of denial, the application shall be considered completed as of the original date of submission.

(C) If a qualified firm fails to provide the information or complete its application within the fifteen-day cure period provided in subdivision (c)(3)(B) of this section, the application shall remain denied and may be resubmitted in full with a new submission date if the qualified firm wants to proceed with the application.

(D) If an application is complete and meets the requirements of this section, the commission shall certify the qualified data center that is eligible for the exemption provided in this section.

(d) Once an application is approved, the commission shall transmit an approved financial incentive certificate to the qualified firm.

(e)(1) After receiving an approved financial incentive certificate from the commission, a qualified firm shall certify annually to the commission the qualified data center's minimum qualified investment and aggregate annualized compensation at the qualified data center during the preceding calendar year for the term of the financial incentive certificate.

(2) All data reported to the commission under this subsection shall be used only to determine eligibility.

SECTION 2. EFFECTIVE DATE. Section 1 of this act is effective on the first day of the calendar quarter following the effective date of this act.

/s/Pilkington