



February 15, 2019

HOUSE BILL No. 1405

DIGEST OF HB 1405 (Updated February 13, 2019 4:50 pm - DI 134)

Citations Affected: IC 6-1.1; IC 6-2.5.

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. 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 \$25,000,000 to more than \$150,000,000 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.

Effective: July 1, 2019.

Soliday, Pressel, Lehman, Jackson

January 14, 2019, read first time and referred to Committee on Ways and Means.
February 14, 2019, amended, reported — Do Pass.

HB 1405—LS 7399/DI 58



February 15, 2019

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.~~ **Indiana.**
17 (3) The entity, the lessor of qualified property (if the entity is a

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1 lessee), and all lessees of qualified property invest in the
 2 aggregate at least ~~ten million dollars (\$10,000,000)~~ **twenty-five**
 3 **million dollars (\$25,000,000)** in real and personal property at the
 4 facility or data center after June 30, 2012.

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

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

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

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

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

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

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

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

27 (1) is within the corporate limits of a county or municipality; and
 28 (2) has been designated as a high technology district area by the
 29 appropriate designating body under subsection (h):

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

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

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



1 the declaratory resolution with each taxing unit in the county. The
 2 notice must specify a date when the designating body will receive and
 3 hear all remonstrances and objections from interested persons. The
 4 designating body shall file the notice and the declaratory resolution
 5 with the officers of the taxing units who are authorized to fix budgets,
 6 tax rates, and tax levies under IC 6-1.1-17-5 at least ten (10) days
 7 before the date for the public hearing. After the designating body
 8 considers the testimony presented at the public hearing, the designating
 9 body may adopt a second and final resolution before January 1, 2017,
 10 determining whether to designate a high technology district area and
 11 modifying, confirming, or rescinding the declaratory resolution. This
 12 determination 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 **(g) A designating body may** enter into an agreement with an
 16 eligible business to grant the eligible business a property tax
 17 exemption. In the case of a county, the exemption applies only to
 18 qualified property that is located in unincorporated territory of the
 19 county. In the case of a municipality, the exemption applies only to
 20 qualified property that is located in the municipality. The property tax
 21 exemption applies to the qualified property only if the designating body
 22 and the eligible business enter into an agreement concerning the
 23 property tax exemption. The agreement must specify the duration of the
 24 property tax exemption. The agreement may specify that if the
 25 ownership of qualified property is transferred by an eligible business,
 26 the transferee is entitled to the property tax exemption on the same
 27 terms as the transferor. If a designating body ~~adopts a final resolution~~
 28 ~~under subsection (h) and~~ enters into an agreement with an eligible
 29 business, the qualified property owned by the eligible business is
 30 exempt from property taxation as provided in the resolution and the
 31 agreement.

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

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

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

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1 **Sec. 1. As used in this chapter, "data center equipment" means**
2 **computer equipment or software purchased or leased for the**
3 **processing, storage, retrieval, or communication of data. The term**
4 **includes the following:**

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

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

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

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

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

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

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

38 **(8) All monitoring equipment and security systems.**

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

42 **(10) All software.**



1 **(11) Other tangible and intangible personal property that is**
2 **essential to the operations of a data center.**

3 **(12) All electricity used by qualified data center equipment,**
4 **excluding electricity used in the administration of the facility.**

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

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

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

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

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

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

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

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

42 **Sec. 10. As used in this chapter, "qualified data center" means**



1 one (1) or more buildings that:

2 (1) are rehabilitated or constructed to house a group of
3 networked server computers in one physical location in order
4 to centralize the storage, management, and dissemination of
5 data and information pertaining to a particular business,
6 taxonomy, or body of knowledge; and

7 (2) creates a minimum qualified investment on or before the
8 fifth anniversary of the issuance of the specific transaction
9 exemption certificate by the department of at least:

10 (A) one hundred fifty million dollars (\$150,000,000), if it is
11 located in a county having a population greater than one
12 hundred thousand (100,000);

13 (B) one hundred million dollars (\$100,000,000), if it is
14 located in a county having a population greater than fifty
15 thousand (50,000) and not more than one hundred
16 thousand (100,000); or

17 (C) twenty-five million dollars (\$25,000,000), if it is located
18 in a county having a population of not more than fifty
19 thousand (50,000).

20 Sec. 11. As used in this chapter, "qualified data center
21 equipment" means data center equipment located at a qualified
22 data center.

23 Sec. 12. As used in this chapter, "qualified data center user"
24 means an entity that is using qualified data center equipment.

25 Sec. 13. As used in this chapter, "qualified investment" means,
26 with respect to a qualified data center, the aggregate
27 nonduplicative eligible data center costs expended by any entity
28 with an interest in the qualified data center.

29 Sec. 14. (a) A qualified data center user that holds an interest in
30 a qualified data center may request a certificate of eligibility from
31 the IEDC to enable the user to obtain a specific transaction
32 exemption certificate to make purchases that are exempt under this
33 chapter. The request must be on a form prescribed by the IEDC.

34 (b) The IEDC shall confirm that a facility is a qualified data
35 center. The IEDC may not reject any particular request as long as
36 accurate information is submitted by the requester that allows the
37 IEDC to confirm that the facility meets the requirements to be
38 certified as a qualified data center.

39 (c) The IEDC shall issue a certificate of eligibility from
40 sequentially numbered certificates to the requester, not later than
41 sixty (60) days after receiving all information necessary to make a
42 determination under this chapter. The certificate must state that



1 the facility is a qualified data center.

2 (d) The certificate of eligibility issued by the IEDC must be in
3 effect for:

- 4 (1) twenty-five (25) years if the qualified investment is less
5 than seven hundred fifty million dollars (\$750,000,000); or
6 (2) fifty (50) years if the qualified investment is seven hundred
7 fifty million dollars (\$750,000,000) or greater.

8 Upon the expiration of the original certificate of eligibility, the
9 IEDC may, at the agency's discretion, extend the certificate of
10 eligibility for any number of subsequent periods not to exceed ten
11 (10) years, if the data center continues to meet the requirements
12 outlined in this chapter.

13 (e) If the IEDC rejects a request and fails to issue a written
14 statement as to why the facility does not satisfy the criteria
15 required to be a qualified data center, the request is considered
16 approved and the department shall immediately issue a specific
17 transaction exemption certificate to the requester.

18 (f) Proprietary business information contained in a request for
19 a certificate of eligibility provided to the IEDC is confidential and
20 shall not be disclosed to the public except that the information may
21 be transmitted to the department, and upon receipt the department
22 shall treat the information as confidential and shall not disclose it
23 to the public. The IEDC may disclose the name of a qualified data
24 center that has been certified under this section.

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

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

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

34 (b) If:

- 35 (1) the IEDC issues a certificate of eligibility to a taxpayer
36 stating that the taxpayer holds an interest in a qualified data
37 center or if a taxpayer is deemed to hold an interest in a
38 qualified data center; and
39 (2) a qualified investment in the qualified data center is not
40 made within five (5) years after the specific transaction
41 exemption certificate for a qualified data center is issued;

42 the taxpayer's certification of eligibility as a qualified data center



1 may be revoked by the IEDC and the taxpayer may be required to
2 repay to the state any taxes not paid as a result of the exemption
3 provided by this chapter. However, if the taxpayer demonstrates
4 to the IEDC that the taxpayer made every effort to contribute to
5 the qualified investment to the extent feasible and the facility's
6 inability to meet the qualified investment requirements of a
7 qualified data center was beyond the taxpayer's control, the IEDC
8 shall determine, after a public hearing, the amount of taxes that
9 should be repaid to the state. The IEDC, in its determination, shall
10 consider the performance of the facility and the extent to which the
11 inability to meet the qualified investment requirements of a
12 qualified data center was in the control of the taxpayer.

13 (c) The repayment shall be paid within one hundred eighty (180)
14 days following the IEDC's revocation or the issuance of the IEDC's
15 determination, if such a determination is made by the IEDC.

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

23 Sec. 18. For each data center that has received a certificate of
24 eligibility issued by the IEDC, on each ten (10) year anniversary of
25 the issuance of the certificate, the IEDC shall submit to the
26 legislative council an economic and fiscal impact study in an
27 electronic format under IC 5-14-6 for each data center project.

28 Sec. 19. The sale of qualified data center equipment is exempt
29 from the state gross retail tax if the qualified data center
30 equipment:

- 31 (1) is sold to a qualified data center user; and
32 (2) will be located in a qualified data center.



COMMITTEE REPORT

Mr. Speaker: Your Committee on Ways and Means, to which was referred House Bill 1405, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, line 15, strike "Indiana that is located in an area designated as a high".

Page 1, line 16, strike "technology district area." and insert "**Indiana.**".

Page 2, line 2, strike "ten million dollars (\$10,000,000)" and insert "**twenty-five million dollars (\$25,000,000)**".

Page 2, strike lines 24 through 28.

Page 2, line 29, strike "(f)" and insert "(e)".

Page 2, line 31, strike "(g)" and insert "(f)".

Page 2, strike lines 34 through 42.

Page 3, strike lines 1 through 8.

Page 3, line 9, delete "or after June 30, 2019, and before January 1, 2021,".

Page 3, line 9, strike "determining".

Page 3, strike lines 10 through 14.

Page 3, line 15, before "enter" insert "(g) **A designating body may**".

Page 3, line 27, strike "adopts a final resolution under subsection (h) and".

Page 3, line 31, strike "(j)" and insert "(h)".

Page 3, line 31, strike "adopts a final resolution under subsection".

Page 3, line 32, strike "(h) and".

Page 3, line 32, strike "(i)" and insert "(g)".

Page 3, line 34, strike "agreement, notwithstanding the January 1, 2017,".

Page 3, line 35, strike "deadline".

Page 3, line 35, delete "or the January 1, 2021, deadline".

Page 3, line 35, strike "to adopt a final resolution".

Page 3, line 36, strike "under subsection (h)." and insert "**agreement.**".

Page 5, delete lines 2 through 3, begin a new line block indented and insert:

"(12) All electricity used by qualified data center equipment, excluding electricity used in the administration of the facility."

Page 5, delete line 42.

Page 6, line 1, delete "or existing facility that:" and insert "**one (1)**



or more buildings that:"

Page 6, delete lines 2 through 4, begin a new line block indented and insert:

"(1) are rehabilitated or constructed to house a group of networked server computers in one physical location in order to centralize the storage, management, and dissemination of data and information pertaining to a particular business, taxonomy, or body of knowledge; and"

Page 6, line 5, delete "(3)" and insert "(2)".

Page 6, line 8, delete "one hundred million dollars (\$100,000,000)" and insert **"one hundred fifty million dollars (\$150,000,000)"**.

Page 6, line 9, delete "fifty" and insert **"one hundred thousand (100,000);"**

Page 6, delete line 10.

Page 6, line 11, delete "seventy-five million dollars (\$75,000,000)," and insert **"one hundred million dollars (\$100,000,000),"**

Page 6, line 12, delete "thirty" and insert **"fifty thousand (50,000) and not more than one hundred thousand (100,000); or"**

Page 6, delete lines 13 through 14.

Page 6, line 15, delete "fifty million dollars (\$50,000,000)," and insert **"twenty-five million dollars (\$25,000,000),"**

Page 6, line 16, delete "thirty" and insert **"fifty thousand (50,000)."**

Page 6, delete line 17.

Page 6, between lines 41 and 42, begin a new paragraph and insert:
"(d) The certificate of eligibility issued by the IEDC must be in effect for:

(1) twenty-five (25) years if the qualified investment is less than seven hundred fifty million dollars (\$750,000,000); or

(2) fifty (50) years if the qualified investment is seven hundred fifty million dollars (\$750,000,000) or greater.

Upon the expiration of the original certificate of eligibility, the IEDC may, at the agency's discretion, extend the certificate of eligibility for any number of subsequent periods not to exceed ten (10) years, if the data center continues to meet the requirements outlined in this chapter."

Page 6, line 42, delete "(d)" and insert "(e)".

Page 7, line 5, delete "(e)" and insert "(f)".

Page 8, between lines 9 and 10, begin a new paragraph and insert:

"Sec. 18. For each data center that has received a certificate of eligibility issued by the IEDC, on each ten (10) year anniversary of the issuance of the certificate, the IEDC shall submit to the legislative council an economic and fiscal impact study in an



electronic format under IC 5-14-6 for each data center project."

Page 8, line 10, delete "18." and insert "19."

Page 8, delete line 15.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1405 as introduced.)

HUSTON

Committee Vote: yeas 20, nays 0.

