

1 AN ACT relating to data centers.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔SECTION 1. A NEW SECTION OF SUBCHAPTER 10 OF KRS CHAPTER
4 224 IS CREATED TO READ AS FOLLOWS:

5 *(1) As used in this section, "data center" means a centralized facility that:*

6 *(a) Is used primarily or exclusively for electronic information services,*
7 *including but not limited to the management, storage, processing, and*
8 *dissemination of electronic data and information through the use of*
9 *computer systems, servers, networking equipment, and related components;*

10 *(b) Has electrical load that is either fixed, portable, or distributable, including*
11 *but not limited to structures that are not affixed to the ground or are easily*
12 *removed from a location; and*

13 *(c) Has, along with all loads of affiliated companies and companies with*
14 *common ownership, an actual or expected monthly peak electric load*
15 *requirement of greater than fifty (50) megawatts.*

16 *(2) The requirements of this section shall only apply to a data center that is located*
17 *on land that was valued and taxed as agricultural land under KRS 132.450 at any*
18 *time in the ten (10) years preceding the commencement of the construction of the*
19 *data center.*

20 *(3) Prior to commencing the operation of a data center, its owners shall file with the*
21 *cabinet, in the form and manner as the cabinet may require, a decommissioning*
22 *plan that describes how the data center will be decommissioned and dismantled at*
23 *the end of its useful life, which shall include, at a minimum:*

24 *(a) Removal of all above-ground facilities and any underground components*
25 *and foundations of above-ground facilities to a depth that the cabinet deems*
26 *necessary for the land to be returned to agricultural purposes;*

27 *(b) Returning the land to a substantially similar state as it was prior to the*

- 1 commencement of construction; and
- 2 (c) Securing a bond or other similar security for the project to assure financial
- 3 performance of the decommissioning obligation, provided that:
- 4 1. The amount of the proposed bond or similar security shall be
- 5 determined by an independent, licensed engineer who has no financial
- 6 interest in either the data center or any parcel of land upon which the
- 7 data center is located. The proposed amount of the bond or similar
- 8 security shall be the net present value of the total estimated cost of
- 9 completing the decommissioning plan, less the current net salvage
- 10 value of the data center's components;
- 11 2. The bond or other similar security is provided by an insurance
- 12 company or surety that is approved by the cabinet, and it names the
- 13 cabinet as the primary beneficiary; and
- 14 3. The bond or other similar security provides that at least thirty (30)
- 15 days prior to its cancellation or lapse, the surety shall notify the data
- 16 center owner and the cabinet of the impending cancellation or lapse.
- 17 The notice shall specify the reason for the cancellation or lapse and
- 18 provide the data center owner the opportunity to cure the cancellation
- 19 or lapse prior to it becoming effective. If the data center owner fails to
- 20 cure the cancellation or lapse within fifteen (15) days of receiving the
- 21 notice, or if the data center ceases to operate for thirty (30) or more
- 22 days, the cabinet may make a demand on the bond and initiate and
- 23 complete the decommissioning plan.

24 ➔Section 2. KRS 154.20-229 is amended to read as follows:

25 The authority, with preliminary approval of an eligible company, may execute a

26 memorandum of agreement with the eligible company. The terms and conditions of the

27 memorandum of agreement shall be negotiated between the authority and the company.

1 The terms of the memorandum of agreement shall include but not be limited to the
2 following provisions:

- 3 (1) The estimated capital investment for the qualified data center project;
- 4 (2) That the preliminarily approved company shall provide the authority with all
5 documentation requested in a manner acceptable to the authority and within the
6 timeframes required by the authority related to the minimum capital investment
7 requirement to be used in monitoring compliance of the memorandum of
8 agreement;
- 9 (3) That failure of a preliminarily approved company to meet the minimum capital
10 investment on or before the fifth anniversary of the preliminary approval shall result
11 in cancellation of the memorandum of agreement with the preliminarily approved
12 company;
- 13 (4) The term of the agreement, which shall not exceed:
 - 14 (a) Fifteen (15) years for a qualified data center project of a project organizer; or
 - 15 (b) 1. Fifty (50) years for a qualified data center project having a capital
16 investment of at least four hundred fifty million dollars (\$450,000,000);
17 or
 - 18 2. Twenty-five (25) years for any other qualified data center project;
- 19 (5) A provision requiring the preliminarily approved company to notify the authority
20 immediately if the eligible company sells or otherwise transfers or disposes of the
21 land on which a qualified data center project is located;
- 22 (6) Authorization for the department to issue a certificate of exemption to the
23 preliminarily approved company under KRS 139.499;
- 24 (7) A provision detailing the elimination of the sales and use tax exemption and the
25 notice of assessment by the department provided under KRS 139.499 that shall
26 occur if the preliminarily approved company fails to make the minimum capital
27 investment;

- 1 (8) (a) A statement that the memorandum of agreement may remain in effect, even if
2 there is a future transfer, sale, or disposition, directly or indirectly, of the
3 qualified data center project, upon the adoption of a resolution by the
4 authority to that effect.
- 5 (b) If continuation of the sales and use tax exemption is desired by the subsequent
6 owner:
- 7 1. The memorandum of agreement may be assigned to that owner under
8 paragraph (a) of this subsection provided the subsequent owner assumes
9 the prior owner's obligations under that agreement; or
- 10 2. The subsequent owner shall enter into a memorandum of agreement
11 with the authority for the remainder of the eligibility period.
- 12 (c) The authority shall notify the department regarding the events that transpire
13 under paragraphs (a) and (b) of this subsection;
- 14 (9) That the approved company shall make available to the authority all of its records
15 pertaining to the qualified data center project, including but not limited to records
16 relating to eligible costs and any other records pertaining to the project that the
17 authority may require;
- 18 (10) (a) That the authority may share information with the department; and
19 (b) That the department may share information with the authority;
20 for the purposes of monitoring and enforcing the terms of the memorandum of
21 agreement;
- 22 (11) That, if the preliminarily approved company fails to comply with its obligations
23 under the memorandum of agreement by the fifth anniversary of the preliminary
24 approval, the authority shall:
- 25 (a) Suspend the memorandum of agreement;
26 (b) Terminate the incentives available to the preliminarily approved company
27 under the memorandum of agreement;

- 1 (c) Notify the department of the authority's actions;
- 2 (d) Instruct the department to proceed with the notice of assessment; and
- 3 (e) Pursue any other remedy set forth in the memorandum of agreement or to
- 4 which it may be entitled by law;~~and~~

5 (12) **For any memorandum of agreement executed after the effective date of this Act,**

6 **provisions requiring the preliminarily approved company to engage with local**

7 **officials and members of local government bodies with jurisdiction over the data**

8 **center to:**

9 **(a) Regularly review and adopt practices to improve the energy efficiency of**

10 **their data centers, including through upgrading and consolidating**

11 **technology, managing data center airflow, and adjusting and improving**

12 **heating, ventilation, and air conditioning systems; and**

13 **(b) Take actions to conserve, reuse, and replace water, including but not limited**

14 **to the following:**

15 **1. Using water efficient fixtures and practices;**

16 **2. Treating, infiltrating, and harvesting rainwater;**

17 **3. Recycling water before discharging;**

18 **4. Partnering with local water utilities to use discharged water for**

19 **irrigation and other water conservation purposes;**

20 **5. Using reclaimed water if possible for data center operations; and**

21 **6. Supporting water restoration in local watersheds; and**

22 **(13)** Any other provisions not inconsistent with this subchapter and determined to be

23 necessary or appropriate by the parties to the memorandum of agreement.