



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

SB2188

Introduced 2/26/2021, by Sen. Elgie R. Sims, Jr.

SYNOPSIS AS INTRODUCED:

20 ILCS 605/605-1025
20 ILCS 607/3-20
20 ILCS 663/25
20 ILCS 663/45
20 ILCS 663/50

Amends the Department of Commerce and Economic Opportunity Law of the Civil Administrative Code of Illinois. Provides that a qualifying Illinois data center is a place, among other criteria, that within 2 years (currently, 90 days) after being placed in service, certifies that it is carbon neutral or has attained other specified certification. Amends the Brownfields Redevelopment and Intermodal Promotion Act. Extends the use of the South Suburban Brownfields Redevelopment Fund. Amends the New Markets Development Program Act. Modifies provisions concerning certification of qualified equity investments and allocation thereof. Provides further rulemaking requirements. Provides that for fiscal years following fiscal year 2026 (currently, 2021), qualified equity investments under the Act shall not be made unless reauthorization is made. Makes other changes. Effective immediately.

LRB102 17105 RJF 22534 b

1 AN ACT concerning State government.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Department of Commerce and Economic
5 Opportunity Law of the Civil Administrative Code of Illinois
6 is amended by changing Section 605-1025 as follows:

7 (20 ILCS 605/605-1025)

8 Sec. 605-1025. Data center investment.

9 (a) The Department shall issue certificates of exemption
10 from the Retailers' Occupation Tax Act, the Use Tax Act, the
11 Service Use Tax Act, and the Service Occupation Tax Act, all
12 locally-imposed retailers' occupation taxes administered and
13 collected by the Department, the Chicago non-titled Use Tax,
14 and a credit certification against the taxes imposed under
15 subsections (a) and (b) of Section 201 of the Illinois Income
16 Tax Act to qualifying Illinois data centers.

17 (b) For taxable years beginning on or after January 1,
18 2019, the Department shall award credits against the taxes
19 imposed under subsections (a) and (b) of Section 201 of the
20 Illinois Income Tax Act as provided in Section 229 of the
21 Illinois Income Tax Act.

22 (c) For purposes of this Section:

23 "Data center" means a facility: (1) whose primary

1 services are the storage, management, and processing of
2 digital data; and (2) that is used to house (i) computer
3 and network systems, including associated components such
4 as servers, network equipment and appliances,
5 telecommunications, and data storage systems, (ii) systems
6 for monitoring and managing infrastructure performance,
7 (iii) Internet-related equipment and services, (iv) data
8 communications connections, (v) environmental controls,
9 (vi) fire protection systems, and (vii) security systems
10 and services.

11 "Qualifying Illinois data center" means a new or
12 existing data center that:

13 (1) is located in the State of Illinois;

14 (2) in the case of an existing data center, made a
15 capital investment of at least \$250,000,000
16 collectively by the data center operator and the
17 tenants of the data center over the 60-month period
18 immediately prior to January 1, 2020 or committed to
19 make a capital investment of at least \$250,000,000
20 over a 60-month period commencing before January 1,
21 2020 and ending after January 1, 2020; or

22 (3) in the case of a new data center, or an
23 existing data center making an upgrade, makes a
24 capital investment of at least \$250,000,000 over a
25 60-month period beginning on or after January 1, 2020;
26 and

1 (4) in the case of both existing and new data
2 centers, results in the creation of at least 20
3 full-time or full-time equivalent new jobs over a
4 period of 60 months by the data center operator and the
5 tenants of the data center, collectively, associated
6 with the operation or maintenance of the data center;
7 those jobs must have a total compensation equal to or
8 greater than 120% of the average wage paid to
9 full-time employees in the county where the data
10 center is located, as determined by the U.S. Bureau of
11 Labor Statistics; and

12 (5) within 2 years ~~90 days~~ after being placed in
13 service, certifies to the Department that it is carbon
14 neutral or has attained certification under one or
15 more of the following green building standards:

16 (A) BREEAM for New Construction or BREEAM
17 In-Use;

18 (B) ENERGY STAR;

19 (C) Envision;

20 (D) ISO 50001-energy management;

21 (E) LEED for Building Design and Construction
22 or LEED for Operations and Maintenance;

23 (F) Green Globes for New Construction or Green
24 Globes for Existing Buildings;

25 (G) UL 3223; or

26 (H) an equivalent program approved by the

1 Department of Commerce and Economic Opportunity.

2 "Full-time equivalent job" means a job in which the
3 new employee works for the owner, operator, contractor, or
4 tenant of a data center or for a corporation under
5 contract with the owner, operator or tenant of a data
6 center at a rate of at least 35 hours per week. An owner,
7 operator or tenant who employs labor or services at a
8 specific site or facility under contract with another may
9 declare one full-time, permanent job for every 1,820 man
10 hours worked per year under that contract. Vacations, paid
11 holidays, and sick time are included in this computation.
12 Overtime is not considered a part of regular hours.

13 "Qualified tangible personal property" means:
14 electrical systems and equipment; climate control and
15 chilling equipment and systems; mechanical systems and
16 equipment; monitoring and secure systems; emergency
17 generators; hardware; computers; servers; data storage
18 devices; network connectivity equipment; racks; cabinets;
19 telecommunications cabling infrastructure; raised floor
20 systems; peripheral components or systems; software;
21 mechanical, electrical, or plumbing systems; battery
22 systems; cooling systems and towers; temperature control
23 systems; other cabling; and other data center
24 infrastructure equipment and systems necessary to operate
25 qualified tangible personal property, including fixtures;
26 and component parts of any of the foregoing, including

1 installation, maintenance, repair, refurbishment, and
2 replacement of qualified tangible personal property to
3 generate, transform, transmit, distribute, or manage
4 electricity necessary to operate qualified tangible
5 personal property; and all other tangible personal
6 property that is essential to the operations of a computer
7 data center. "Qualified tangible personal property" also
8 includes building materials physically incorporated in to
9 the qualifying data center.

10 To document the exemption allowed under this Section, the
11 retailer must obtain from the purchaser a copy of the
12 certificate of eligibility issued by the Department.

13 (d) New and existing data centers seeking a certificate of
14 exemption for new or existing facilities shall apply to the
15 Department in the manner specified by the Department. The
16 Department shall determine the duration of the certificate of
17 exemption awarded under this Act. The duration of the
18 certificate of exemption may not exceed 20 calendar years. The
19 Department and any data center seeking the exemption,
20 including a data center operator on behalf of itself and its
21 tenants, must enter into a memorandum of understanding that at
22 a minimum provides:

23 (1) the details for determining the amount of capital
24 investment to be made;

25 (2) the number of new jobs created;

26 (3) the timeline for achieving the capital investment

1 and new job goals;

2 (4) the repayment obligation should those goals not be
3 achieved and any conditions under which repayment by the
4 qualifying data center or data center tenant claiming the
5 exemption will be required;

6 (5) the duration of the exemption; and

7 (6) other provisions as deemed necessary by the
8 Department.

9 (e) Beginning July 1, 2021, and each year thereafter, the
10 Department shall annually report to the Governor and the
11 General Assembly on the outcomes and effectiveness of Public
12 Act 101-31 that shall include the following:

13 (1) the name of each recipient business;

14 (2) the location of the project;

15 (3) the estimated value of the credit;

16 (4) the number of new jobs and, if applicable,
17 retained jobs pledged as a result of the project; and

18 (5) whether or not the project is located in an
19 underserved area.

20 (f) New and existing data centers seeking a certificate of
21 exemption related to the rehabilitation or construction of
22 data centers in the State shall require the contractor and all
23 subcontractors to comply with the requirements of Section
24 30-22 of the Illinois Procurement Code as they apply to
25 responsible bidders and to present satisfactory evidence of
26 that compliance to the Department.

1 (g) New and existing data centers seeking a certificate of
2 exemption for the rehabilitation or construction of data
3 centers in the State shall require the contractor to enter
4 into a project labor agreement approved by the Department.

5 (h) Any qualifying data center issued a certificate of
6 exemption under this Section must annually report to the
7 Department the total data center tax benefits that are
8 received by the business. Reports are due no later than May 31
9 of each year and shall cover the previous calendar year. The
10 first report is for the 2019 calendar year and is due no later
11 than May 31, 2020.

12 To the extent that a business issued a certificate of
13 exemption under this Section has obtained an Enterprise Zone
14 Building Materials Exemption Certificate or a High Impact
15 Business Building Materials Exemption Certificate, no
16 additional reporting for those building materials exemption
17 benefits is required under this Section.

18 Failure to file a report under this subsection (h) may
19 result in suspension or revocation of the certificate of
20 exemption. Factors to be considered in determining whether a
21 data center certificate of exemption shall be suspended or
22 revoked include, but are not limited to, prior compliance with
23 the reporting requirements, cooperation in discontinuing and
24 correcting violations, the extent of the violation, and
25 whether the violation was willful or inadvertent.

26 (i) The Department shall not issue any new certificates of

1 exemption under the provisions of this Section after July 1,
2 2029. This sunset shall not affect any existing certificates
3 of exemption in effect on July 1, 2029.

4 (j) The Department shall adopt rules to implement and
5 administer this Section.

6 (Source: P.A. 101-31, eff. 6-28-19; 101-604, eff. 12-13-19.)

7 Section 10. The Brownfields Redevelopment and Intermodal
8 Promotion Act is amended by changing Section 3-20 as follows:

9 (20 ILCS 607/3-20)

10 Sec. 3-20. South Suburban Brownfields Redevelopment Fund;
11 eligible projects. In State fiscal years 2015 through 2031
12 ~~2021~~, all moneys in the South Suburban Brownfields
13 Redevelopment Fund shall be held solely to fund eligible
14 projects undertaken pursuant to the provisions of Section 3-35
15 of this Act and performed either directly by Cook County
16 through a development agreement with the Department, by an
17 entity designated by Cook County through a development
18 agreement with the Department to perform specific tasks, or by
19 an Eligible Developer or an Eligible Employer through a
20 development agreement. All Eligible Projects are subject to
21 review and approval by the Managing Partner and by the
22 Department. The life span of the Fund may be extended past 2036
23 ~~2026~~ by law.

24 (Source: P.A. 101-275, eff. 8-9-19.)

1 Section 15. The New Markets Development Program Act is
2 amended by changing Sections 25, 45, and 50 as follows:

3 (20 ILCS 663/25)

4 Sec. 25. Certification of qualified equity investments.

5 (a) A qualified community development entity that seeks to
6 have an equity investment or long-term debt security
7 designated as a qualified equity investment and eligible for
8 tax credits under this Section shall apply to the Department.
9 The qualified community development entity must submit an
10 application on a form that the Department provides that
11 includes:

12 (1) The name, address, tax identification number of
13 the entity, and evidence of the entity's certification as
14 a qualified community development entity.

15 (2) A copy of the allocation agreement executed by the
16 entity, or its controlling entity, and the Community
17 Development Financial Institutions Fund.

18 (3) A certificate executed by an executive officer of
19 the entity attesting that the allocation agreement remains
20 in effect and has not been revoked or cancelled by the
21 Community Development Financial Institutions Fund.

22 (4) A description of the proposed amount, structure,
23 and purchaser of the equity investment or long-term debt
24 security.

1 (5) The name and tax identification number of any
2 taxpayer eligible to utilize tax credits earned as a
3 result of the issuance of the qualified equity investment.

4 (6) Information regarding the proposed use of proceeds
5 from the issuance of the qualified equity investment.

6 (7) A nonrefundable application fee of \$5,000. This
7 fee shall be paid to the Department and shall be required
8 of each application submitted.

9 (8) With respect to qualified equity investments made
10 on or after January 1, 2017, the amount of qualified
11 equity investment authority the applicant agrees to
12 designate as a federal qualified equity investment under
13 Section 45D of the Internal Revenue Code, including a copy
14 of the screen shot from the Community Development
15 Financial Institutions Fund's Allocation Tracking System
16 of the applicant's remaining federal qualified equity
17 investment authority.

18 (b) (Blank). ~~Within 30 days after receipt of a completed~~
19 ~~application containing the information necessary for the~~
20 ~~Department to certify a potential qualified equity investment,~~
21 ~~including the payment of the application fee, the Department~~
22 ~~shall grant or deny the application in full or in part. If the~~
23 ~~Department denies any part of the application, it shall inform~~
24 ~~the qualified community development entity of the grounds for~~
25 ~~the denial. If the qualified community development entity~~
26 ~~provides any additional information required by the Department~~

1 ~~or otherwise completes its application within 15 days of the~~
2 ~~notice of denial, the application shall be considered~~
3 ~~completed as of the original date of submission. If the~~
4 ~~qualified community development entity fails to provide the~~
5 ~~information or complete its application within the 15 day~~
6 ~~period, the application remains denied and must be resubmitted~~
7 ~~in full with a new submission date.~~

8 (c) (Blank). ~~If the application is deemed complete, the~~
9 ~~Department shall certify the proposed equity investment or~~
10 ~~long term debt security as a qualified equity investment that~~
11 ~~is eligible for tax credits under this Section, subject to the~~
12 ~~limitations contained in Section 20. The Department shall~~
13 ~~provide written notice of the certification to the qualified~~
14 ~~community development entity. The notice shall include the~~
15 ~~names of those taxpayers who are eligible to utilize the~~
16 ~~credits and their respective credit amounts. If the names of~~
17 ~~the taxpayers who are eligible to utilize the credits change~~
18 ~~due to a transfer of a qualified equity investment or a change~~
19 ~~in an allocation pursuant to Section 15, the qualified~~
20 ~~community development entity shall notify the Department of~~
21 ~~such change.~~

22 (d) (Blank). ~~With respect to applications received before~~
23 ~~January 1, 2017, the Department shall certify qualified equity~~
24 ~~investments in the order applications are received by the~~
25 ~~Department. Applications received on the same day shall be~~
26 ~~deemed to have been received simultaneously. For applications~~

1 ~~received on the same day and deemed complete, the Department~~
2 ~~shall certify, consistent with remaining tax credit capacity,~~
3 ~~qualified equity investments in proportionate percentages~~
4 ~~based upon the ratio of the amount of qualified equity~~
5 ~~investment requested in an application to the total amount of~~
6 ~~qualified equity investments requested in all applications~~
7 ~~received on the same day.~~

8 (d-5) (Blank). ~~With respect to applications received on or~~
9 ~~after January 1, 2017, the Department shall certify~~
10 ~~applications by applicants that agree to designate qualified~~
11 ~~equity investments as federal qualified equity investments in~~
12 ~~accordance with item (8) of subsection (a) of this Section in~~
13 ~~proportionate percentages based upon the ratio of the amount~~
14 ~~of qualified equity investments requested in an application to~~
15 ~~be designated as federal qualified equity investments to the~~
16 ~~total amount of qualified equity investments to be designated~~
17 ~~as federal qualified equity investments requested in all~~
18 ~~applications received on the same day.~~

19 (d-10) (Blank). ~~With respect to applications received on~~
20 ~~or after January 1, 2017, after complying with subsection~~
21 ~~(d-5), the Department shall certify the qualified equity~~
22 ~~investments of all other applicants, including the remaining~~
23 ~~qualified equity investment authority requested by applicants~~
24 ~~not designated as federal qualified equity investments in~~
25 ~~accordance with item (8) of subsection (a) of this Section, in~~
26 ~~proportionate percentages based upon the ratio of the amount~~

1 ~~of qualified equity investments requested in the applications~~
2 ~~to the total amount of qualified equity investments requested~~
3 ~~in all applications received on the same day.~~

4 (e) Once the Department has certified qualified equity
5 investments that, on a cumulative basis, are eligible for
6 \$20,000,000 in tax credits, the Department may not certify any
7 more qualified equity investments. ~~If a pending request cannot~~
8 ~~be fully certified, the Department shall certify the portion~~
9 ~~that may be certified unless the qualified community~~
10 ~~development entity elects to withdraw its request rather than~~
11 ~~receive partial credit.~~

12 (f) (Blank). ~~Within 30 days after receiving notice of~~
13 ~~certification, the qualified community development entity~~
14 ~~shall (i) issue the qualified equity investment and receive~~
15 ~~cash in the amount of the certified amount and (ii) with~~
16 ~~respect to qualified equity investments made on or after~~
17 ~~January 1, 2017, if applicable, designate the required amount~~
18 ~~of qualified equity investment authority as a federal~~
19 ~~qualified equity investment. The qualified community~~
20 ~~development entity must provide the Department with evidence~~
21 ~~of the receipt of the cash investment within 10 business days~~
22 ~~after receipt and, with respect to qualified equity~~
23 ~~investments made on or after January 1, 2017, if applicable,~~
24 ~~provide evidence that the required amount of qualified equity~~
25 ~~investment authority was designated as a federal qualified~~
26 ~~equity investment. If the qualified community development~~

1 ~~entity does not receive the cash investment and issue the~~
2 ~~qualified equity investment within 30 days following receipt~~
3 ~~of the certification notice, the certification shall lapse and~~
4 ~~the entity may not issue the qualified equity investment~~
5 ~~without reapplying to the Department for certification. A~~
6 ~~certification that lapses reverts back to the Department and~~
7 ~~may be reissued only in accordance with the application~~
8 ~~process outline in this Section 25.~~

9 (g) Allocation rounds enabled by this Act shall be applied
10 for according to the following schedule:

11 (1) (blank); ~~on January 2, 2019, \$125,000,000 of~~
12 ~~qualified equity investments; and~~

13 (2) not less than 45 days after but not more than 90
14 days after the Community Development Financial
15 Institutions Fund of the United States Department of the
16 Treasury announces allocation awards under a Notice of
17 Funding Availability that is published in the Federal
18 Register on ~~after~~ September 6, 2019, \$125,000,000 of
19 qualified equity investments; ~~and.~~

20 (3) for any round occurring after January 1, 2022, at
21 times published on the Department's website.

22 (Source: P.A. 100-408, eff. 8-25-17; 101-604, eff. 12-13-19.)

23 (20 ILCS 663/45)

24 Sec. 45. Examination and Rulemaking.

25 (a) The Department may conduct examinations to verify that

1 the tax credits under this Act have been received and applied
2 according to the requirements of this Act and to verify that no
3 event has occurred that would result in a recapture of tax
4 credits under Section 40.

5 (b) The ~~Neither the~~ Department and ~~nor~~ the Department of
6 Revenue shall have the authority to adopt ~~promulgate~~ rules
7 under the Act, including, but not limited to, the areas of
8 eligibility criteria, application review, award procedures,
9 and prohibited activities and interests. Rules relating to
10 eligibility may include criteria that prioritize investments
11 in targeted industries or that are likely to increase local
12 employment. ~~but the Department and the Department of Revenue~~
13 ~~shall have the authority to issue advisory letters to~~
14 ~~individual qualified community development entities and their~~
15 ~~investors that are limited to the specific facts outlined in~~
16 ~~an advisory letter request from a qualified community~~
17 ~~development entity. Such rulings cannot be relied upon by any~~
18 ~~person or entity other than the qualified community~~
19 ~~development entity that requested the letter and the taxpayers~~
20 ~~that are entitled to any tax credits generated from~~
21 ~~investments in such entity. For purposes of this subsection,~~
22 ~~"rules" is given the meaning contained in Section 1-70 of the~~
23 ~~Illinois Administrative Procedure Act.~~

24 (c) (Blank). ~~In rendering advisory letters and making~~
25 ~~other determinations under this Act, to the extent applicable,~~
26 ~~the Department and the Department of Revenue shall look for~~

1 ~~guidance to Section 45D of the Internal Revenue Code of 1986,~~
2 ~~as amended, and the rules and regulations issued thereunder.~~

3 (Source: P.A. 95-1024, eff. 12-31-08.)

4 (20 ILCS 663/50)

5 Sec. 50. Sunset. For fiscal years following fiscal year
6 2026 ~~2021~~, qualified equity investments shall not be made
7 under this Act unless reauthorization is made pursuant to this
8 Section. For all fiscal years following fiscal year 2026 ~~2021~~,
9 unless the General Assembly adopts a joint resolution granting
10 authority to the Department to approve qualified equity
11 investments for the Illinois new markets development program
12 and clearly describing the amount of tax credits available for
13 the next fiscal year, or otherwise complies with the
14 provisions of this Section, no qualified equity investments
15 may be permitted to be made under this Act. The amount of
16 available tax credits contained in such a resolution shall not
17 exceed the limitation provided under Section 20. Nothing in
18 this Section precludes a taxpayer who makes a qualified equity
19 investment prior to the expiration of authority to make
20 qualified equity investments from claiming tax credits
21 relating to that qualified equity investment for each
22 applicable credit allowance date.

23 (Source: P.A. 100-408, eff. 8-25-17.)

24 Section 99. Effective date. This Act takes effect upon
25 becoming law.