STATE OF NEW YORK

9960

IN SENATE

December 13, 2024

Introduced by Sen. GONZALEZ -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the environmental conservation law, the public authorities law and the energy law, in relation to regulation of energy consumption by data centers

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. This act shall be known and may be cited as the "New York state sustainable data centers act".

§ 2. Legislative intent and findings. The legislature finds that data centers are significant energy and water consumers and contribute to air and water pollution. The expansion and operation of data centers across the state impairs New York state's ability to achieve the benchmarks set out in the state's climate goals due to their significant use of energy and water and significant emissions of greenhouse gases generated through the power needs of their operation. Given the growing demand for the construction of data centers, there is a critical need to improve the energy efficiency of data centers and reduce their energy consumption, water consumption, reliance on fossil fuels, and pollutant expulsion. Additionally, where renewable energy is used to power data centers, this act will ensure that such energy is being used responsibly, with the interests and health of the public in mind, especially concerning power purchase agreements between utility companies and data center operators as they may not directly reduce emissions tied to the data center.

§ 3. The environmental conservation law is amended by adding a new article 31 to read as follows:

ARTICLE 31

REGULATION OF DATA CENTER ENERGY CONSUMPTION

Section 31-0101. Definitions.
31-0103. Data center disclosure reports.
31-0105. Public engagement.
31-0107. Annual data center disclosure report updates.

§ 31-0101. Definitions.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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For the purposes of this article:

1. "Customer" shall mean a homeowner or tenant receiving electricity or natural gas as a retail customer.

2. "Data center" shall mean: (a) a structure, group of structures, or infrastructure within an existing structure for the central housing, interconnection and operation of information technology and network telecommunications equipment for the provision of data storage, data processing, or data transport services; and (b) all related facilities and infrastructure for power distribution, environmental control, cooling and security required to deliver the desired service with respect to the specific data center, which is only connected to data center operation and would not have an impact on an electric grid.

3. "Data center operator" shall mean whoever is either the owner of the data center or has comparable rights of use over a data center, including any person or entity responsible for allocating space for external use of information technology and network telecommunications equipment within a data center.

4. "Data center disclosure report" shall mean that report which data center operators must submit to the department prior to construction of a data center, as required by section 31-0103 of this article.

5. "Disadvantaged communities" shall mean: (a) areas burdened by cumulative environmental pollution and other hazards that can lead to negative public health effects; (b) areas with concentrations of people that are of low income, high unemployment, high rent burden, low levels of home ownership, low levels of educational attainment, or members of groups that have historically experienced discrimination on the basis of race or ethnicity; and (c) areas vulnerable to the impacts of climate change such as flooding, storm surges, and urban heat island effects.

6. "Employee" shall mean an individual who performs services for and under the control and direction of an employer for wages or other remuneration, or natural persons employed as independent contractors to carry out work in furtherance of an employer's business enterprise who are not themselves employers.

7. "Greenhouse gas" shall mean carbon dioxide, carbon monoxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride, and any other substance emitted into the air that may be reasonably anticipated to cause or contribute to anthropogenic climate change.

8. "Host community" shall mean any municipality within which a data center, or any portion thereof, has been developed or proposed for development.

9. "Hyperscale data center" shall mean a data center that takes up ten thousand square feet or more and uses at least five thousand servers.

10. "Micro data center" shall mean a data center that is enclosed within one standard server rack and does not support critical loads of more than one hundred fifty kilowatts.

11. "Negative impact" shall mean any increase in greenhouse gas emissions, concentration of particulates being introduced into natural and drinking water, noise pollution or any other form of pollution that would decrease the quality of life in a host community.

12. "Power purchase agreement" shall mean the agreements between data center operators and a utility provider where data center operators buy an amount of either renewable or non-renewable energy output from that power plant.

13. "Renewable energy" shall have the same meaning as "renewable energy systems" as defined in section sixty-six-p of the public service law.

14. "Utility provider" shall have the same meaning as "utility company" as defined in section two of the public service law.

§ 31-0103. Data center disclosure reports.

Where a planned data center is projected to have the capacity to consume five or more megawatts at any given moment, a data center operator shall submit a data center disclosure report to the public service commission prior to commencing any construction activities related to a data center. The report shall be made publicly available via the public service commission's website and contain data including:

1. Basic information

(a) The host community or communities in which the data center shall be located; and

(b) The organization of the planned data center as a single operator enterprise or managed data center, colocation facility, hyperscale data center, micro data center, or a container or modular data center.

2. Labor

The number of full-time and part-time employees the data center operator intends to employ at the planned data center and relevant demographic information including but not limited to:

(a) The education levels of the employees intended to be employed at the planned data center, with percentages included for highest education achieved including high school diploma, associate's degree, bachelor's degree, and higher level of education; and

(b) The percentage of employees residing in the host community or communities.

3. Projected energy usages

(a) The projected mean energy usage of the planned data center per day measured in kilowatt-hours;

(b) The projected mean amount of energy usage per hour of the planned data center during peak load measured in kilowatt-hours and anticipated frequency of peak load per week;

(c) The projected annual amount of carbon emissions produced to power the facility, including off-site emissions, measured in metric tons;

(d) The projected annual amount of greenhouse gas emissions produced on-site measured in metric tons;

(e) The projected annual amount of waste heat produced on-site measured in British thermal units;

(f) The projected overall percentages of energy used for the specific data center, calculated prior to considering carbon offsets, that are generated from fossil fuel, renewable energy, and neither renewable energy nor fossil fuel for that year, and related information including but not limited to:

(i) The projected type of energy being used that is neither fossil fuel nor renewable energy, where applicable;

(ii) The forms of renewable energy expected to be utilized; and

(iii) The projected percentage of energy usage that is fossil fuel, renewable energy, and neither renewable energy nor fossil fuel where the data center is operating at peak; and

(g) The projected annual amount of waste heat measured in British thermal units being transformed into energy to power the data center.

4. Projected water usage

Only where a planned data center is required to obtain and hold a water withdrawal permit, the data center operator shall report:

(a) Amount of water projected to be used annually measured in gallons and how that water shall be used in the planned data center; and

(b) Mean amount of water expected to be used daily measured in gallons.

5. Projected water pollution

(a) Annual projected amount of water being deposited into the environment measured in gallons; and

(b) How water being reintroduced into the environment will be treated, if at all, to remove pollutants and/or to what extent water temperature will be adjusted, if at all, before being reintroduced into the environment.

6. Additional disclosures

The public service commission and the department may promulgate rules requiring additional points of disclosure, as appropriate.

§ 31-0105. Public engagement.

The data center operator shall hold at least two public hearings within sixty days prior to submitting its data center disclosure report to the public service commission. At least one of the two public hearings must be held within the host community where the data center operator plans to create its data center. The data center operator shall provide advance notice to residents of such host community of such public hearings. Such notice shall include the time, place, and location of such public hearings, a summary of the proposed data center project, and the specific location of the planned data center. Methods of providing notice to a host community shall include, but shall not be limited to, coverage on a local news station and written notice in a local newspaper. During a public hearing conducted pursuant to this section, the data center operator must explicitly disclose the anticipated impacts that its data center will have on host community employment opportunities, air quality, water usage, electricity usage, and water quality, including the number of new jobs it will create for the surrounding area, and the changes in air quality it expects to cause through its operation, expressed in parts per million and the percentage of water it expects to use of the host community's water supply. It shall also address the efforts it will make to reduce any negative impacts to the host community and its environment that the planned data center may cause.

§ 31-0107. Annual data center disclosure report updates.

1. Data center operators shall submit updated data disclosure reports to the department annually, which the department shall post on its website. Data center operators shall include all changes to the disclosures required pursuant to section 31-0103 of this article from year-to-year. Additionally, annual reports shall include information regarding the data center operator's efforts toward greater energy efficiency and overall sustainability that year. Such findings shall be drafted in clear and concise language readily comprehensible for members of the general public. The department shall publicly post the report on the department's website within one week of receipt.

2. Specifically, data center operators shall report:

(a) Efforts made to reduce energy consumption within the past year;

(b) A comparison of the year's energy consumption to the initial projected amounts outlined in subdivision three of section 31-0103 of this article, and, following the first year, a comparison to the year before, expressed in British thermal units;

(c) A projection for energy usage for the next year, disclosing the same information as required by subdivision three of section 31-0103 of this article;

(d) Efforts made to reduce fossil fuel consumption and increase the percentage of energy use from renewable energy within the past year, with a comparison of the year's fossil fuel consumption to the projected amount, and, following the first year, a comparison to the year before, expressed in terawatt-hours;

(e) Efforts made to reduce water consumption within the past year;

(f) For data centers that are required to have a water withdrawal permit, a comparison of the year's water usage to the projected amount, and, following the first year, a comparison to the year before, expressed in gallons;

(g) For data centers that are required to have a water withdrawal permit, a projection for water usage for the next year, disclosing the same information as required by subdivision four of section 31-0103 of this article;

(h) Efforts made to protect the environment and public from polluted water in the past year accompanied by measurements of actual water pollution expressed in milligrams per liter and air pollution expressed in parts per million;

(i) Efforts made to reduce waste heat and utilize waste heat to power the data center accompanied by measurements of actual heat waste expulsion and reuse, measured in British thermal units; and

(j) Percentage of data center employees that live within the host community.

3. If a data center operator is no longer in compliance with this section and sections 31-0103 and 31-0105 of this article, the public service commission shall notify the data center operator. The data center operator shall have sixty days to cure such violation. If such violation has not been cured after sixty days, such data center shall cease operation.

§ 4. The public authorities law is amended by adding a new section 1858-a to read as follows:

§ 1858-a. Energy consumption effectiveness goals. No later than one year after the effective date of this section, the authority, in conjunction with the New York system independent operator and the public service commission, shall determine reasonable energy consumption efficiency goals for the design and operation of data centers, including, without limitation, recycling of waste heat emitted from data centers into an energy source. Such goals shall align with the benchmarks laid out in the New York state climate leadership and community protection act and shall be reviewed and updated accordingly, annually.

§ 5. The energy law is amended by adding a new article 19 to read as follows:

ARTICLE 19

POWER PURCHASE AGREEMENTS

Section 19-101. Fossil fuel power purchase agreements.

19-103. Community discount plan.

§ 19-101. Fossil fuel power purchase agreements. 1. Power purchase agreements for any energy generated through the consumption of fossil fuels shall not provide economic incentives or discounts to data center operators, as defined in article thirty-one of the environmental conservation law.

2. In furtherance of the goals set out in the New York state climate leadership and community protection act: (a) by two thousand thirty, at least one-third of all energy used by data centers must be provided through power purchase agreements exclusively for renewable energy; and (b) by two thousand thirty-five, at least two-thirds of all energy used

by data centers shall be provided through power purchase agreements exclusively for renewable energy; and (c) by two thousand fifty, all energy used by data centers shall be provided through power purchase agreements exclusively for renewable energy.

§ 19-103. Community discount plan. The public service commission shall create a community discount plan to account for increased energy costs for customers within host communities. Such plan shall make data center operators responsible for subsidizing energy costs within the host community. The discount established by the public service commission shall not exceed twenty percent for the first five years of billing cycles.

§ 6. This act shall take effect on the ninetieth day after it shall have become a law.