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Introduced by M. of A. KELLES, GONZALEZ-ROJAS, REYES, LASHER, SHIMSKY, WRIGHT, BURDICK, SHRESTHA, LEVENBERG, STIRPE, CLARK -- read once and referred to the Committee on Corporations, Authorities and Commissions -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Corporations, Authorities and Commissions in accordance with Assembly Rule 3, sec. 2 -- reference changed to the Committee on Energy -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public service 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:

1 Section 1. Short title. This act shall be known and may be cited as
2 the "New York state sustainable data centers act".
3 § 2. Legislative intent and findings. The legislature finds that data
4 centers are significant energy and water consumers and significant
5 contributors to air and water pollution. The expansion and operation of
6 data centers across the state impairs New York state's ability to
7 achieve the renewable energy and emissions reduction benchmarks required
8 by the climate leadership and community protection act due to their
9 significant use of energy and water and significant emissions of green-
10 house gases generated through the power needs of their operation. Given
11 the growing demand for the construction of data centers, there is a
12 critical need to improve the energy efficiency of data centers and
13 reduce their energy consumption, water use, reliance on fossil fuels,
14 and emissions. Likewise, the large quantities of water used by data
15 centers contribute an additional threat to the health of the state's
16 waters, the ecosystems of which they are an integral part, and the resi-
17 dents of the state who rely on them. This act will ensure that economic

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

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1 development involving data centers is consistent with the state's envi-
2 ronmental standards and principles, and that where renewable energy is
3 used to power data centers, that such energy is being used responsibly,
4 with the interests and health of the public in mind.

5 § 3. The public service law is amended by adding a new article 12 to
6 read as follows:

7 ARTICLE 12

8 REGULATION OF DATA CENTER ENERGY CONSUMPTION

9 Section 240. Definitions.

10 241. Data center disclosure reports.

11 242. Public engagement.

12 243. Annual data center disclosure report.

13 § 240. Definitions. For the purposes of this article:

14 1. "Carbon dioxide equivalents" shall have the meaning given to such
15 term in section 75-0101 of the environmental conservation law.

16 2. "Data center" shall mean all buildings, equipment, structures,
17 infrastructure within an existing structure, and other stationary items,
18 such as server racks, that are located on a single site or on contig-
19 uous, adjacent, or otherwise connected sites, and that are owned or
20 operated by the same entity or by any entity who controls, is controlled
21 by, or is under common control by such entity, regardless of whether the
22 data center is a single-occupant site or multi-occupant site, that is
23 capable of using twenty megawatts of electricity or more and is designed
24 or intended to be primarily engaged in data processing, data storage,
25 data transport, web hosting, web streaming support, or other services
26 described under code 518210 of the two thousand twenty-two North Ameri-
27 can Industry Classification System.

28 3. "Data center operator" shall mean the owner or operator of the data
29 center, or other person who has comparable rights of use over a data
30 center, including any person or entity responsible for allocating space
31 for external use of information technology and network telecommuni-
32 cations equipment within a data center.

33 4. "Data center disclosure report" shall mean that report which data
34 center operators must submit to the commission prior to construction of
35 a data center, as required by section two hundred forty-one of this
36 article.

37 5. "Employee" shall have the meaning given to such term in section
38 seven hundred forty of the labor law.

39 6. "Fossil fuel" shall have the meaning given to such term in subdivi-
40 sion seven of section 1-103 of the energy law.

41 7. "Host community" shall mean any municipality within which a data
42 center, or any portion thereof, has been developed or proposed for
43 development, or which suffers any negative impact from a data center.

44 8. "Negative impact" shall mean any increase in emissions of regulated
45 air contaminants as defined in subdivision twenty-two of section 19-0107
46 of the environmental conservation law, discharges into waters of the
47 state as described in subdivision two of section 17-0301 of the environ-
48 mental conservation law, noise pollution, or any other form of pollution
49 that affects a host community.

50 9. "Renewable energy" shall have the same meaning as "renewable energy
51 systems" as defined in section sixty-six-p of this chapter.

52 10. "Regulated data center" shall mean a data center projected to have
53 an energy usage capacity of twenty or more megawatts.

54 11. "Bill credit" means a monthly monetary credit which is funded by a
55 data center operator as further determined by the commission and appears

1 on the utility bill of a low income or moderate income customer located
2 in this state.

3 12. "Hyperscale data center" shall mean a data center that takes up
4 ten thousand square feet or more and uses at least five thousand serv-
5 ers.

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

9 § 241. Data center disclosure reports. For any proposed regulated data
10 center, the proposed data center operator shall submit a data center
11 disclosure report to the department and the commission at least one
12 hundred eighty days prior to commencing any construction activities
13 related to a regulated data center. The report shall contain relevant
14 information regarding the proposed regulated data center, including:

15 1. (a) the host community or communities in which the regulated data
16 center will be located; and

17 (b) the organization of the planned regulated data center as a single
18 operator enterprise or managed data center, colocated facility, hypers-
19 cale data center, micro data center, or a container or modular data
20 center.

21 2. the number of full-time and part-time employees the data center
22 operator intends to employ at the planned regulated data center and the
23 projected percentage of employees residing in the host community or
24 communities.

25 3. (a) the projected average daily energy usage of the planned data
26 center measured in kilowatt-hours;

27 (b) the projected percentage of energy to be used that is from fossil
28 fuel, renewable, and non-renewable non-fossil fuel sources, including
29 but not limited to nuclear and hydrogen, if produced from fossil fuel
30 sources, where the data center is operating at peak;

31 (c) the projected average amount of energy usage per hour of the
32 planned data center during peak load measured in kilowatt-hours and
33 anticipated frequency of peak load per week;

34 (d) the projected annual emissions of carbon dioxide equivalents
35 produced to power the facility which are produced on-site and off-site;

36 (e) the projected annual amount of waste heat produced on-site, meas-
37 ured in British thermal units;

38 (f) the projected percentage of the annual amount of recovered waste
39 heat, that was transformed into energy to power the data center; and

40 (g) the intended use for recovered waste heat to include but not be
41 limited to general building heating, cooling systems, coolant system
42 specifically for the capture of waste heat from processors.

43 4. If a planned regulated data center is required to obtain and hold a
44 permit pursuant to title fifteen of article fifteen of the environmental
45 conservation law, the data center operator shall report:

46 (a) the amount of water projected to be used annually and how that
47 water will be used in the planned regulated data center; and

48 (b) the average amount of water expected to be used daily measured in
49 gallons.

50 5. For any regulated data center making any discharge within the mean-
51 ing of article seventeen of the environmental conservation law, the data
52 center operator shall report:

53 (a) the annual projected discharges by type and amount; and

54 (b) how discharges will be treated, if at all, to remove pollutants
55 and/or to what extent discharge temperature will be adjusted, if at all,
56 before being discharged.

1 6. The commission may promulgate rules requiring additional disclo-
2 tures, as appropriate.

3 § 242. Public engagement. 1. The commission shall publicize the data
4 center disclosure report created pursuant to section two hundred forty-
5 one of this article on its website within ten days of receiving such
6 report.

7 2. The data center operator shall hold at least two public hearings
8 within sixty days after submitting its data center disclosure report to
9 the commission.

10 (a) At least one of the two public hearings must be held within the
11 host community where the data center operator plans to locate its data
12 center.

13 (b) The data center operator shall provide at least thirty days
14 advance notice to residents of host communities of any planned public
15 hearings. Notice of public hearings shall include the time, place, and
16 location of each public hearing, a summary of the proposed data center
17 project, and the specific location of the planned data center. Methods
18 of providing notice to a host community shall include, but shall not be
19 limited to, coverage in any print or digital publication produced by
20 local, community, or ethnic media.

21 (c) During a public hearing conducted pursuant to this section, the
22 data center operator must explicitly disclose and present its findings
23 in clear and concise language comprehensible for members of the public
24 in general. It shall also address the efforts it will make to reduce
25 any negative impacts to the host community and its environment that the
26 planned data center may cause.

27 3. A draft of the data center disclosure report shall be made publicly
28 available no later than thirty days prior to the first hearing.

29 § 243. Annual data center disclosure report. 1. A regulated data
30 center operator shall submit an annual data disclosure report to the
31 commission, which the commission shall post on its website within
32 fifteen days of receipt. Data center operators shall include all changes
33 to the disclosures required pursuant to section two hundred forty-one of
34 this article annually. Additionally, annual reports shall include but
35 not be limited to information regarding the data center operator's
36 efforts toward greater energy efficiency and overall environmental
37 sustainability that year. Such findings shall be presented in clear and
38 concise language readily comprehensible for members of the general
39 public.

40 2. Specifically, data center operators shall report:

41 (a) energy consumption, including:

42 (i) total energy consumption for the past year;

43 (ii) efforts made to reduce total energy consumption within the past
44 year;

45 (iii) a comparison of the past year's energy consumption to the
46 initial projected amounts reported pursuant to subdivision three of
47 section two hundred forty-one of this article, and, following the first
48 year, a comparison to the year before;

49 (iv) the percentage of energy used in the past year from fossil fuel,
50 renewable and non-renewable non-fossil fuel sources;

51 (v) efforts made to reduce energy consumption from fossil fuel sources
52 and increase the percentage of renewable energy use, or support for
53 renewable energy within the past year;

54 (vi) a comparison of the year's fossil fuel consumption to the
55 projected amount;

1 (vii) following the first year, a comparison of energy consumption for
2 the past year to the year before; and

3 (viii) a projection for energy consumption for the next year, disclos-
4 ing the same information as required by subdivision three of section two
5 hundred forty-one of this article;

6 (b) water use, including:

7 (i) total amount of water used for the past year;

8 (ii) efforts made to reduce the amount of water used within the past
9 year;

10 (iii) for data centers that are required to obtain and hold a permit
11 pursuant to title fifteen of article fifteen of the environmental
12 conservation law, a comparison of the year's amount of water use to the
13 projected amount, and, following the first year;

14 (iv) a comparison to the year before, expressed in gallons; and

15 (v) a projection for water usage for the next year, disclosing the
16 same information as required by subdivision four of section two hundred
17 forty-one of this article;

18 (c) water pollution, including:

19 (i) total water pollution generated in the past year, measured in a
20 manner to be determined by the department pursuant to regulations; and

21 (ii) efforts made to protect the environment and public from polluted
22 water in the past year;

23 (d) waste heat, including:

24 (i) total waste heat generated in the past year; and

25 (ii) efforts made to reduce waste heat and utilize waste heat to power
26 the data center;

27 (e) for regulated data centers making any discharge within the meaning
28 of article seventeen of the environmental conservation law:

29 (i) actual water pollution, measured in a manner to be determined by
30 the department pursuant to regulations;

31 (ii) efforts made to protect the environment and public from polluted
32 water in the past year;

33 (iii) a comparison of the year's discharges to the projected amount,
34 and, following the first year, a comparison to the year before, by type
35 and amount; and

36 (iv) a plan for how discharges in the coming year will be treated, if
37 at all, to remove pollutants, as well as the extent to which discharge
38 temperature will be adjusted, if at all, before water is discharged; and

39 (f) employees, including:

40 (i) total number of people employed in the past year; and

41 (ii) the percentage of data center employees that live within the host
42 community.

43 3. In the event of any noncompliance with this section or section two
44 hundred forty-one of this article, the department shall notify the data
45 center operator. The data center operator shall have sixty days to cure
46 such violation. If such violation has not been cured after sixty days,
47 such data center shall be subject to fines of up to ten thousand dollars
48 based on the severity and extent of the violation and shall be assessed
49 another ten thousand dollar fine for every day they are late in comply-
50 ing with such sections. All funds collected under this article shall be
51 deposited into the environmental protection fund established by section
52 ninety-two-s of the state finance law.

53 4. The department and the attorney general are authorized to enforce
54 the provisions of this article.

55 § 4. The public authorities law is amended by adding a new section
56 1854-e to read as follows:

1 § 1854-e. Energy consumption efficiency goals. 1. No later than one
2 year after the effective date of this section, the authority, in
3 conjunction with the federally designed bulk system operator, the public
4 service commission, and the New York state climate action council shall
5 determine reasonable energy consumption efficiency goals for the design
6 and operation of data centers as defined in article twelve of the public
7 service law, including, but not limited to, recycling of waste heat
8 emitted from data centers into an energy source. Such goals shall align
9 with the benchmarks set forth in the climate leadership and community
10 protection act enacted by chapter one hundred six of the laws of two
11 thousand nineteen and shall be reviewed and updated accordingly, annual-
12 ly.

13 2. A data center operator that has commenced operation prior to the
14 effective date of this section shall have two years to comply with the
15 energy consumption efficiency goals developed pursuant to this section.
16 A data center operator that has commenced operation within one year of
17 the effective date of this section shall have one year to comply with
18 such energy consumption efficiency goals.

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

21 ARTICLE 19

22 DATA CENTERS

23 Section 19-101. Fossil fuel power purchase agreements.

24 § 19-101. Fossil fuel power purchase agreements. 1. Power purchase
25 agreements for any energy generated through the consumption of fossil
26 fuels shall not provide economic incentives or discounts to regulated
27 data centers, as set forth in article twelve of the public service law.

28 2. For the purposes of this section, the following terms shall have
29 the following meanings:

30 (a) "Power purchase agreement" shall mean an agreement between a data
31 center operator, a utility, an authority, or an independent power
32 producer wherein the utility agrees to provide the data center electric-
33 ity, or an independent power producer, over a defined period of time.

34 (b) "Utility" shall have the same meaning as "utility company" as
35 defined in section two of the public service law.

36 § 6. This act shall take effect one year after it shall have become a
37 law.