

State of Arizona  
Senate  
Fifty-fourth Legislature  
First Regular Session  
2019

# SENATE BILL 1366

AN ACT

AMENDING SECTION 41-1519 AND 42-5071, ARIZONA REVISED STATUTES; RELATING  
TO THE ARIZONA COMMERCE AUTHORITY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 41-1519, Arizona Revised Statutes, is amended to  
3 read:

4 41-1519. Computer data center tax relief; definitions

5 A. ~~From and after August 31, 2013,~~ Tax relief is allowed for the  
6 owner or operator of a computer data center certified pursuant to this  
7 section. The same tax relief is allowed for qualified colocation tenants  
8 of the computer data center. All tax relief applies during the  
9 qualification period.

10 B. To qualify for the tax relief, the owner or operator shall  
11 submit to the authority an application on a form prescribed by the  
12 authority that includes all of the following:

13 1. The owner's or operator's name, address and telephone number.

14 2. The address of the site where the facility is or will be  
15 located, including, if applicable, information sufficient to identify the  
16 specific portion or portions of the facility composing the computer data  
17 center.

18 3. If the computer data center is to qualify under subsection E,  
19 paragraph 1 of this section, both of the following:

20 (a) The anticipated investment associated with the computer data  
21 center for which the tax relief is being sought and whether the computer  
22 data center is anticipated to qualify as a sustainable redevelopment  
23 project.

24 (b) An affirmation, signed by an authorized executive representing  
25 the owner or operator, that the computer data center is expected to  
26 satisfy one of the certification requirements prescribed in subsection E,  
27 paragraph 1 of this section and that the computer data center will not  
28 violate subsection M of this section.

29 4. If the computer data center is to qualify under subsection E,  
30 paragraph 2 of this section, an affirmation, signed by an authorized  
31 executive representing the owner or operator, that the computer data  
32 center has satisfied the certification requirements prescribed in  
33 subsection E, paragraph 2 of this section, whether the computer data  
34 center qualifies as a sustainable redevelopment project and that the  
35 computer data center will not violate subsection M of this section.

36 C. Within sixty days after receiving a complete and correct  
37 application, the authority shall review the application and either issue a  
38 written certification that the computer data center qualifies for the tax  
39 relief or provide written reasons for its denial. Failure to approve or  
40 deny the application within sixty days after the date the owner or  
41 operator submits the application to the authority constitutes approval of  
42 the computer data center, and the authority shall issue written  
43 certification to the owner or operator within fourteen days. The  
44 effective date of the certification is the date on which the application  
45 was submitted to the authority. The authority shall send a copy of the

1 certification, including its effective date, to the department of  
2 revenue. The authority shall not certify any new computer data center  
3 after December 31, 2023.

4 D. An owner or operator may separate a facility into one or more  
5 computer data centers, which may each receive a separate certification if  
6 each computer data center individually meets the requirements prescribed  
7 in subsection E of this section. A portion of a facility or an article of  
8 computer data center equipment shall not be deemed to be a part of more  
9 than one computer data center. The owner or operator may aggregate one or  
10 more of the parcels, buildings, condominiums or modular data centers in a  
11 facility into a single computer data center if, in the aggregate, the  
12 parcels, buildings, condominiums and modular data centers meet the  
13 requirements of subsection E of this section.

14 E. A computer data center must meet one of the following  
15 requirements after taking into account the combined investments made by  
16 the owner, operator or qualified colocation tenants of a computer data  
17 center:

18 1. On or before the fifth anniversary of certification, the  
19 computer data center creates a minimum investment of at least:

20 (a) ~~Twenty-five million dollars~~ \$25,000,000 of new investment,  
21 including costs of land, buildings, improvements, modular data centers and  
22 computer data center equipment, whether owned or leased or paid for  
23 pursuant to a right to use agreement, if the computer data center is  
24 located in a county with a population of eight hundred thousand or less  
25 persons.

26 (b) ~~Fifty million dollars~~ \$50,000,000 of new investment, including  
27 costs of land, buildings, improvements, modular data centers and computer  
28 data center equipment, whether owned or leased or paid for pursuant to a  
29 right to use agreement, if the computer data center is located in a county  
30 with a population of more than eight hundred thousand persons.

31 2. During the seventy-two months immediately before September 1,  
32 2013, the computer data center created an investment of at least ~~two~~  
33 ~~hundred fifty million dollars~~ \$250,000,000, including costs of land,  
34 buildings, improvements, modular data centers and computer data center  
35 equipment, whether owned or leased or paid for pursuant to a right to use  
36 agreement.

37 F. On or before the fifth anniversary of the certification of a new  
38 computer data center, the owner or operator shall notify the authority in  
39 writing that the computer data center for which the certification is  
40 requested has or has not satisfied the requirements prescribed in  
41 subsection E, paragraph 1 of this section. Until a new computer data  
42 center satisfies the requirements prescribed in subsection E, paragraph 1  
43 of this section, the owner or operator shall keep detailed records of all  
44 investment created by the new computer data center, including costs of  
45 land, buildings, improvements, modular data centers and computer data

1 center equipment, and all tax relief directly received by the owner or  
2 operator. This subsection does not apply to an existing computer data  
3 center.

4 G. If the authority determines that:

5 1. A new computer data center that is certified under subsection E,  
6 paragraph 1 of this section has not complied with the requirements and  
7 time periods prescribed by subsection E, paragraph 1 of this section, the  
8 authority shall revoke the computer data center's certification. If the  
9 certification is revoked, the qualification period of any owner, operator  
10 or qualified colocation tenant of the computer data center automatically  
11 terminates, and the department of revenue may recapture all or part of the  
12 tax relief provided directly to the owners and operators. A qualified  
13 colocation tenant is not subject to recapture of any part of tax relief  
14 received pursuant to this section, except that a contributing qualified  
15 colocation tenant may be subject to recapture if ~~they are~~ IT IS located in  
16 a computer data center that is certified from and after August 31, 2016.  
17 An owner or operator may appeal any revocation under this paragraph  
18 pursuant to chapter 6, article 10 of this title.

19 2. There has been a violation of subsection M of this section with  
20 respect to a computer data center:

21 (a) The authority shall revoke the computer data center's  
22 certification and, if revoked, the qualification period of any owner,  
23 operator or qualified colocation tenant of the computer data center  
24 automatically terminates.

25 (b) The department of revenue may not recapture any tax relief  
26 provided directly to the owner, operator or qualified colocation tenant  
27 before the date of revocation.

28 (c) An owner or operator may appeal any revocation under this  
29 paragraph pursuant to chapter 6, article 10 of this title.

30 H. The authority and the department of revenue shall adopt rules  
31 and prescribe forms and procedures as necessary for the purposes of this  
32 section. The authority and the department shall collaborate in adopting  
33 rules as necessary to avoid duplication and inconsistencies while  
34 accomplishing the purposes of this section. The authority has exclusive  
35 authority over issues related to certification, including determinations  
36 as to whether a computer data center has satisfied the requirements of  
37 subsection E of this section, constitutes a qualified sustainable  
38 redevelopment project or has committed a violation of this section. The  
39 department of revenue has exclusive authority over the administration of  
40 tax relief.

41 I. Proprietary business information contained in the application  
42 described in subsection B of this section, the written notice described in  
43 subsection F of this section and the list described in subsection J of  
44 this section are confidential and shall not be disclosed to the public  
45 except that the information shall be transmitted to the department of

1 revenue. The authority or the department may disclose the name of a  
2 computer data center that has been certified pursuant to this section.

3 J. The owner or operator shall provide the authority and the  
4 department of revenue with a list of qualified colocation tenants,  
5 including the commencement and expiration dates of each qualified  
6 colocation tenant's agreement to use or occupy all or part of the computer  
7 data center, and shall notify the authority and the department of any  
8 changes within thirty days. The failure of an owner or operator to  
9 provide the list or notify the authority and department of revenue of  
10 changes within the required time are not grounds for termination of the  
11 computer data center's certification, but may preclude unlisted colocation  
12 tenants from receiving tax relief until the list is provided or updated.

13 K. Except as provided in subsection G of this section, if a  
14 computer data center has been certified, the certification remains in  
15 effect, even in the event of a future transfer, sale or disposition,  
16 directly or indirectly, of the computer data center.

17 L. For the purposes of qualifying and continuing as a sustainable  
18 redevelopment project:

19 1. After receiving certification, an owner may substantially  
20 demolish all or part of an existing building to the extent reasonably  
21 necessary to accommodate future computer data center use, and the  
22 demolition is not cause for loss of certification as a sustainable  
23 redevelopment project. An existing building that has been substantially  
24 demolished before certification is not eligible to qualify as a  
25 sustainable redevelopment project.

26 2. An owner or operator may expand the boundaries of a certified  
27 computer data center by increasing the size of an existing building within  
28 a sustainable redevelopment project or by building additional improvements  
29 in an unlimited manner to the extent the expansion is constructed on the  
30 same parcel of land on which the original sustainable redevelopment  
31 project is located or on a contiguous parcel, regardless of whether the  
32 contiguous parcel was within the original description of the boundaries of  
33 the certified computer data center. Expansion activities do not prevent a  
34 facility from maintaining its classification as a sustainable  
35 redevelopment project.

36 3. All construction activities and investments related to  
37 demolition and expansion activities described in this subsection are  
38 considered to be a part of the sustainable redevelopment project.

39 M. This section does not allow a computer data center to do either  
40 of the following:

- 41 1. Generate electricity for resale purposes.
- 42 2. Generate, provide or sell electricity outside of the computer  
43 data center.

44 N. The owner or operator may be a single individual or entity or  
45 multiple affiliated entities.

1           0. For the purposes of this section:

2           1. "Computer data center" means all or part of a facility that may  
3 be composed of multiple businesses or owners, that is or will be  
4 predominantly used to house working servers and that may have  
5 uninterruptible energy supply or generator backup power, or both, cooling  
6 systems, towers and other temperature control infrastructure.

7           2. "Computer data center equipment" means equipment **OR PROPERTY**  
8 that is used to outfit, operate or benefit a computer data center and  
9 component parts, installations, refreshments, replacements and upgrades to  
10 this equipment **OR PROPERTY**, regardless of whether affixed to or  
11 incorporated into real property, and whether owned, leased, **LICENSED** or  
12 used by the owner or operator pursuant to a contract for the right to use  
13 the equipment **OR PROPERTY**, including:

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

19           (b) All equipment necessary to cool and maintain a controlled  
20 environment for the operation of the computer server and other components  
21 of the computer data center, including mechanical equipment, refrigerant  
22 piping, gaseous fuel piping, adiabatic and free cooling systems, cooling  
23 towers, water softeners, air handling units, indoor direct exchange units,  
24 fans, ducting and filters.

25           (c) All water conservation systems, including facilities or  
26 mechanisms that are designed to collect, conserve and reuse water.

27           (d) All **enabling** software, computer server equipment, chassis,  
28 networking equipment, switches, racks, cabling, trays and conduit.

29           (e) All monitoring equipment and security systems.

30           (f) Modular data centers and preassembled components of any item  
31 described in this paragraph, including components used in the  
32 manufacturing of modular data centers.

33           (g) Other tangible personal property that is essential to the  
34 operations of a computer data center.

35           3. "Contributing qualified colocation tenant" means a qualified  
36 colocation tenant that is an operator or that had its anticipated  
37 investment included in an application for certification for the purposes  
38 of satisfying subsection E, paragraph 1 of this section.

39           4. "Existing building" means any existing vertical building  
40 improvement located at a facility used for commercial purposes at the time  
41 of its acquisition by an owner, but not including single family  
42 residential structures, barns or other agricultural structures.

43           5. "Existing computer data center" means a computer data center  
44 that is certified under subsection E, paragraph 2 of this section.

1           6. "Facility" means one or more parcels of land in this state and  
2 any structures and personal property contained on the land.

3           7. "Investment" means all monies spent to acquire a facility  
4 regardless of prior use and all monies spent to construct or expand a  
5 computer data center, including costs of land, buildings, improvements,  
6 modular data centers and computer data center equipment. For new data  
7 centers, investment includes all costs incurred on or after a date that is  
8 thirty days before the date the application is submitted to the authority.

9           8. "Modular data center" means a portable system of information  
10 technology, climate control, energy supply and energy distribution  
11 machinery, equipment and related tangible personal property contained in  
12 an intermodal freight container or similar structure.

13           9. "New computer data center" means a computer data center that is  
14 certified under subsection E, paragraph 1 of this section.

15           10. "Operator" means any individual or entity that operates a  
16 computer data center as an operator or lessor or pursuant to a contract  
17 with an owner or lessor. Operator includes a licensed property management  
18 company, a property lessor or any other individual or entity responsible  
19 for the control, oversight or maintenance of a facility.

20           11. "Qualification period" means:

21           (a) With respect to the owner or operator of a computer data  
22 center, a period of time beginning on the effective date of the computer  
23 data center's certification and expiring at the end of the tenth full  
24 calendar year following the calendar year containing the effective date,  
25 except, if a computer data center is a sustainable redevelopment project,  
26 qualification period means a period of time beginning on the effective  
27 date of the computer data center's certification and expiring at the end  
28 of the twentieth full calendar year following the calendar year containing  
29 the effective date.

30           (b) With respect to the qualified colocation tenant of the owner or  
31 operator of a computer data center certified under this section, a period  
32 of time beginning on the date that the qualified colocation tenant enters  
33 into an agreement concerning the use or occupancy of the computer data  
34 center and expiring at the earlier of the expiration of the term of the  
35 agreement or the tenth full calendar year following the calendar year in  
36 which the qualified colocation tenant entered into the agreement, except,  
37 if a computer data center is a sustainable redevelopment project,  
38 qualification period means a period of time beginning on the date that the  
39 qualified colocation tenant enters into an agreement concerning the use or  
40 occupancy of the computer data center and expiring at the earlier of the  
41 expiration of the term of the agreement or the twentieth full calendar  
42 year following the calendar year in which the tenant entered into the  
43 agreement. The qualification period for a qualified colocation tenant may  
44 not extend beyond the qualification period for the owner or operator of  
45 the computer data center.

1           12. "Qualified colocation tenant" means an entity that contracts  
2 with the owner, THE operator or another qualified colocation tenant of a  
3 computer data center, that is certified pursuant to this section to use or  
4 occupy all or part of the computer data center for at least five hundred  
5 kilowatts per month for a period of two or more years.

6           13. "SOFTWARE" MEANS ANY SOFTWARE THAT IS PURCHASED, LEASED OR  
7 LICENSED TO SUPPORT, MAINTAIN OR USE IN ANY ASPECT OF A COMPUTER DATA  
8 CENTER OR ITS COMPUTER DATA CENTER EQUIPMENT, INCLUDING SOFTWARE THAT  
9 AFFECTS OPERATIONS, NETWORKING, OPERATING SYSTEMS, DATA STORAGE AND  
10 MANIPULATION, CLOUD COMPUTING, AUTOMATION, VIRTUALIZATION, MANAGEMENT,  
11 SECURITY AND OTHER USES.

12           ~~13.~~ 14. "Sustainable redevelopment project" means a computer data  
13 center that satisfies the requirements in subsection E of this section and  
14 is either:

15           (a) A newly constructed data center, with at least a ~~two hundred~~  
16 ~~million dollar~~ \$200,000,000 investment, that attains certification under  
17 the energy star or green globes standard, the leadership in energy and  
18 environmental design green building rating standard developed by the  
19 United States green building council or an equivalent green building  
20 standard and was not previously certified under these standards.

21           (b) A data center that occupies an existing facility that either:

22           (i) Was at least fifty percent vacant for six of the twelve  
23 consecutive months before the acquisition by purchase or lease of or with  
24 respect to the facility.

25           (ii) Attains certification under the energy star or green globes  
26 standard, the leadership in energy and environmental design green building  
27 rating standard developed by the United States green building council or  
28 an equivalent green building standard and was not previously certified  
29 under these standards.

30           ~~14.~~ 15. "Tax relief" means the deduction of the gross proceeds of  
31 sale or gross income from the sale, USE OR RENTAL of qualified equipment  
32 as prescribed by section 42-5061, 42-5071, 42-5159 or 42-6004 that is  
33 installed in a computer data center.

34           Sec. 2. Section 42-5071, Arizona Revised Statutes, is amended to  
35 read:

36           42-5071. Personal property rental classification; definitions

37           A. The personal property rental classification is comprised of the  
38 business of leasing or renting tangible personal property for a  
39 consideration. The tax does not apply to:

40           1. Leasing or renting films, tapes or slides used by theaters or  
41 movies, which are engaged in business under the amusement classification,  
42 or used by television stations or radio stations.

43           2. Activities engaged in by the Arizona exposition and state fair  
44 board or county fair commissions in connection with events sponsored by  
45 such entities.



1           3. Leasing or renting tangible personal property by a parent  
2 corporation to a subsidiary corporation or by a subsidiary corporation to  
3 another subsidiary of the same parent corporation if taxes were paid under  
4 this chapter on the gross proceeds or gross income accruing from the  
5 initial sale of the tangible personal property. For the purposes of this  
6 paragraph, "subsidiary" means a corporation of which at least eighty  
7 percent of the voting shares are owned by the parent corporation.

8           4. Operating coin-operated washing, drying and dry cleaning  
9 machines or coin-operated car washing machines at establishments for the  
10 use of such machines.

11           5. Leasing or renting tangible personal property for incorporation  
12 into or comprising any part of a qualified environmental technology  
13 facility as described in section 41-1514.02. This paragraph shall apply  
14 for ten full consecutive calendar or fiscal years following the initial  
15 lease or rental by each qualified environmental technology manufacturer,  
16 producer or processor.

17           6. Leasing or renting aircraft, flight simulators or similar  
18 training equipment to students or staff by nonprofit, accredited  
19 educational institutions that offer associate or baccalaureate degrees in  
20 aviation or aerospace related fields.

21           7. Leasing or renting photographs, transparencies or other creative  
22 works used by this state on internet websites, in magazines or in other  
23 publications that encourage tourism.

24           8. Leasing or renting certified ignition interlock devices  
25 installed pursuant to the requirements prescribed by section 28-1461. For  
26 the purposes of this paragraph, "certified ignition interlock device" has  
27 the same meaning prescribed in section 28-1301.

28           9. The leasing or renting of space to make attachments to utility  
29 poles, as follows:

30           (a) By a person that is engaged in business under section 42-5063  
31 or 42-5064 or that is a cable operator.

32           (b) To a person that is engaged in business under section 42-5063  
33 or 42-5064 or that is a cable operator.

34           10. Leasing or renting billboards that are designed, intended or  
35 used to advertise or inform and that are visible from any street, road or  
36 other highway.

37           B. The tax base for the personal property rental classification is  
38 the gross proceeds of sales or gross income derived from the business, but  
39 the gross proceeds of sales or gross income derived from the following  
40 shall be deducted from the tax base:

41           1. Reimbursements by the lessee to the lessor of a motor vehicle  
42 for payments by the lessor of the applicable fees and taxes imposed by  
43 sections 28-2003, 28-2352, 28-2402, 28-2481 and 28-5801, title 28, chapter  
44 15, article 2 and article IX, section 11, Constitution of Arizona, to the

1 extent such amounts are separately identified as such fees and taxes and  
2 are billed to the lessee.

3 2. Leases or rentals of tangible personal property that, if it had  
4 been purchased instead of leased or rented by the lessee, would have been  
5 exempt under:

6 (a) Section 42-5061, subsection A, paragraph 8, 9, 12, 13, 25, 29,  
7 49 or 53.

8 (b) Section 42-5061, subsection B, except that a lease or rental of  
9 new machinery or equipment is not exempt pursuant to section 42-5061,  
10 subsection B, paragraph 13 if the lease is for less than two years.

11 (c) Section 42-5061, subsection I, paragraph 1.

12 (d) Section 42-5061, subsection M.

13 3. Motor vehicle fuel and use fuel that are subject to a tax  
14 imposed under title 28, chapter 16, article 1, sales of use fuel to a  
15 holder of a valid single trip use fuel tax permit issued under section  
16 28-5739 and sales of aviation fuel that are subject to the tax imposed  
17 under section 28-8344.

18 4. Leasing or renting a motor vehicle subject to and on which the  
19 fee has been paid under title 28, chapter 16, article 4.

20 5. Amounts received by a motor vehicle dealer for the first month  
21 of a lease payment if the lease and the lease payment for the first month  
22 of the lease are transferred to a third-party leasing company.

23 6. COMPUTER DATA CENTER EQUIPMENT LEASED OR RENTED TO THE OWNER,  
24 OPERATOR OR QUALIFIED COLOCATION TENANT OF A COMPUTER DATA CENTER THAT IS  
25 CERTIFIED BY THE ARIZONA COMMERCE AUTHORITY PURSUANT TO SECTION 41-1519 OR  
26 AN AUTHORIZED AGENT OF THE OWNER, OPERATOR OR QUALIFIED COLOCATION TENANT  
27 DURING THE QUALIFICATION PERIOD FOR USE IN THE QUALIFIED COMPUTER DATA  
28 CENTER. FOR THE PURPOSES OF THIS PARAGRAPH, "COMPUTER DATA CENTER",  
29 "COMPUTER DATA CENTER EQUIPMENT", "QUALIFICATION PERIOD" AND "QUALIFIED  
30 COLOCATION TENANT" HAVE THE SAME MEANINGS PRESCRIBED IN SECTION 41-1519.

31 C. Sales of tangible personal property to be leased or rented to a  
32 person engaged in a business classified under the personal property rental  
33 classification are deemed to be resale sales.

34 D. In computing the tax base, the gross proceeds of sales or gross  
35 income from the lease or rental of a motor vehicle does not include any  
36 amount attributable to the car rental surcharge under section 5-839,  
37 28-5810 or 48-4234.

38 E. Until December 31, 1988, leasing or renting animals for  
39 recreational purposes is exempt from the tax imposed by this section.  
40 Beginning January 1, 1989, the gross proceeds or gross income from leasing  
41 or renting animals for recreational purposes is subject to taxation under  
42 this section. Tax liabilities, penalties and interest paid for taxable  
43 periods before January 1, 1989 shall not be refunded unless the taxpayer  
44 requesting the refund provides proof satisfactory to the department that  
45 the monies paid as taxes will be returned to the customer.

1 F. For the purposes of this section:

2 1. "Cable operator" has the same meaning prescribed ~~by~~ IN section  
3 9-505.

4 2. "Utility pole" means any wooden, metal or other pole used for  
5 utility purposes and the pole's appurtenances that are attached or  
6 authorized for attachment by the person controlling the pole.

7 Sec. 3. Retroactivity

8 This act applies retroactively to from and after September 12, 2013.