

119TH CONGRESS
2D SESSION

S. _____

To prohibit Federal and State incentives for the development or commercial operations of data centers.

IN THE SENATE OF THE UNITED STATES

Mr. MORENO introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To prohibit Federal and State incentives for the development or commercial operations of data centers.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Recapturing Excessive
5 Corporate Largesse through Accountability and Incentive
6 Measures Act” or the “RECLAIM Act”.

7 **SEC. 2. PROHIBITION ON INCENTIVES FOR COVERED DATA**
8 **CENTERS.**

9 (a) NO FEDERAL INCENTIVES.—A covered data cen-
10 ter (as defined in section 5000E(b) of the Internal Rev-

1 enue Code of 1986, as added by subsection (b)) shall not
2 be eligible for any Federal grant, loan, loan guarantee, co-
3 operative agreement, tax credit or deduction, exclusion, ex-
4 emption, abatement, or other form of Federal financial as-
5 sistance or tax incentive for the development or commer-
6 cial operations of such covered data center.

7 (b) EXCISE TAX ON PROHIBITED STATE AND LOCAL
8 INCENTIVES.—

9 (1) IN GENERAL.—Subtitle D of the Internal
10 Revenue Code of 1986 is amended by adding at the
11 end the following new chapter:

12 **“CHAPTER 50B—PROHIBITED STATE AND**
13 **LOCAL INCENTIVES FOR DATA CENTERS**

“Sec. 5000E. Prohibited state and local incentives for data centers.

14 **“SEC. 5000E. PROHIBITED STATE AND LOCAL INCENTIVES**
15 **FOR DATA CENTERS.**

16 “(a) IN GENERAL.—In the case of any covered data
17 center, there is imposed a tax in an amount equal to 100
18 percent of the amount of any prohibited State or local in-
19 centive received by the data center operator during the
20 taxable year with respect to such data center.

21 “(b) DEFINITIONS.—In this section—

22 “(1) ARTIFICIAL INTELLIGENCE.—The term
23 ‘artificial intelligence’ has the meaning given such

1 term in section 5002 of the National Artificial Intel-
2 ligence Initiative Act of 2020 (15 U.S.C. 9401).

3 “(2) COVERED DATA CENTER.—

4 “(A) IN GENERAL.—Subject to subpara-
5 graph (B), the term ‘covered data center’
6 means any facility or integrated campus of fa-
7 cilities—

8 “(i) that has or is designed to have a
9 contracted peak power demand of not less
10 than 100 megawatts, and

11 “(ii) within which not less than 50
12 percent of the installed compute accelera-
13 tors are AI accelerator chips attributed to
14 artificial intelligence training, fine-tuning,
15 or inference.

16 “(B) REGULATIONS.—

17 “(i) IN GENERAL.—Not later than 1
18 year after the date of enactment of this
19 section, the Secretary (in conjunction with
20 the Secretary of Commerce) shall promul-
21 gate regulations that define the term ‘AI
22 accelerator chip’ for purposes of subpara-
23 graph (A)(ii).

24 “(ii) REQUIRED CONSIDERATIONS.—

25 In promulgating the regulations required

1 under clause (i), the Secretary (in conjunc-
2 tion with the Secretary of Commerce) shall
3 consider whether the definition of the term
4 ‘AI accelerator chip’ should include graph-
5 ics processing units, tensor processing
6 units, application-specific integrated cir-
7 cuits, and other semiconductor devices de-
8 signed primarily for artificial intelligence
9 training or inference.

10 “(iii) ADJUSTMENTS.—The Secretary
11 (in conjunction with the Secretary of Com-
12 merce) may promulgate regulations—

13 “(I) adjusting the thresholds de-
14 scribed in clauses (i) and (ii) of sub-
15 paragraph (A) for high-density facili-
16 ties optimized for artificial intel-
17 ligence, and

18 “(II) excluding de minimis com-
19 puting sites sitting on the edge of
20 those thresholds.

21 “(3) DATA CENTER OPERATOR.—The term
22 ‘data center operator’ means the person that enjoys
23 the economic benefits from, and bears a majority of
24 the economic burdens related to, ownership of the
25 covered data center.

1 “(4) PROHIBITED STATE OR LOCAL INCEN-
2 TIVE.—The term ‘prohibited State or local incentive’
3 means any State or local grant, loan, loan guar-
4 antee, cooperative agreement, tax credit or deduc-
5 tion, exclusion, exemption, abatement, or other form
6 of State or local financial assistance or tax incentive
7 for the development or commercial operations of a
8 covered data center.

9 “(c) REGULATIONS AND GUIDANCE.—Not later than
10 the date that is 12 months after the date of enactment
11 of this section, the Secretary shall issue such regulations
12 or other guidance as may be necessary or appropriate to
13 carry out the purposes of this section, including any regu-
14 lations or guidance for purposes of—

15 “(1) determining the value of any prohibited
16 State or local incentive,

17 “(2) coordinating the tax imposed under sub-
18 section (a) with any other relevant Federal tax li-
19 ability associated with a covered data center, includ-
20 ing rules to prevent double taxation or double count-
21 ing with respect to any prohibited State or local in-
22 centive, and

23 “(3) the timing of recognition of a prohibited
24 State or local incentive as received, including rules

1 addressing incentives received in installments or con-
2 tingent on future performance.”.

3 (2) CLERICAL AMENDMENT.—The table of
4 chapters for subtitle D of the Internal Revenue Code
5 of 1986 is amended by inserting after the item relat-
6 ing to chapter 50A the following new item:

“CHAPTER 50B—PROHIBITED STATE AND LOCAL INCENTIVES FOR DATA
CENTERS”.

7 (c) SENSE OF CONGRESS.—It is the sense of Con-
8 gress that States and political subdivisions thereof should
9 promptly repeal or reform any tax incentive programs that
10 are specific to data centers in order to restore tax neu-
11 trality, protect public revenues, and eliminate distortions
12 in business location decisions that disadvantage domestic
13 manufacturing and other job-creating investments.

14 (d) EFFECTIVE DATES.—The provisions of this sec-
15 tion, and any amendment to the Internal Revenue Code
16 of 1986 made by this section, shall take effect on the day
17 after the date on which final regulations are issued by the
18 Secretary pursuant to section 5000E(c) of the Internal
19 Revenue Code of 1986 (as added by subsection (b)).

20 **SEC. 3. SEVERABILITY.**

21 If any provision of this Act or amendment made by
22 this Act or the application of such provision or amendment
23 to any person or circumstance is held to be unconstitu-
24 tional, the remainder of this Act and the amendments

1 made by this Act, and the application of the provision or
2 amendment to any other person or circumstance, shall not
3 be affected.