

DEPARTMENT OF TAXATION

2021 Fiscal Impact Statement

1. **Patron** James W. Morefield

3. **Committee** Passed House and Senate

4. **Title** Sales and Use Tax Exemption for Data Centers

2. **Bill Number** HB 2273

House of Origin:

 Introduced

 Substitute

 Engrossed

Second House:

 In Committee

 Substitute

 X **Enrolled**

5. **Summary/Purpose:**

This bill would reduce the new job creation requirement for any data center located in a distressed locality from 25 jobs to 10 jobs in order to qualify for the sales and use tax exemption for data centers. The bill would also reduce the requirement of a \$150 million capital investment to \$70 million for data centers that qualify for the reduced jobs requirement. The bill would modify the definition of “distressed locality” to include:

- From July 1, 2021, until July 1, 2023, any locality that had (i) an annual unemployment rate for calendar year 2019 that was greater than the final statewide average unemployment rate for that calendar year and (ii) a poverty rate for calendar year 2019 that exceeded the statewide average poverty rate for that year; and
- From and after July 1, 2023, any locality that has (i) an annual unemployment rate for the most recent calendar year for which such data is available that is greater than the final statewide average unemployment rate for that calendar year and (ii) a poverty rate for the most recent calendar year for which such data is available that exceeds the statewide average poverty rate for that year.

The locality must meet both of the criteria at the time of the execution of the memorandum of understanding signed with the Virginia Economic Development Partnership Authority (“VEDP”).

The bill also would clarify that the exemption includes any data center facilities located in the same locality as the data center that are under common ownership or affiliation of the data center operator.

This bill would require all data centers claiming the exemption to report certain information to VEDP annually. Such information would include employment levels, capital investments, average annual wages, qualifying expenses, and tax benefit, and such other information as VEDP determines is relevant. Data center operators would be required to submit the annual report to VEDP regardless of when such operators located a new data center in the Commonwealth. The Department of Taxation (“the Department”), in

collaboration with VEDP, would be required to publish a biennial report on the exemption that would include aggregate information on qualifying expenses claimed under this exemption, the total value of the tax benefit, a return on investment analysis that includes direct and indirect jobs created by data center investment, state and local tax revenues generated, and any other information the Department and VEDP deem appropriate to demonstrate the costs and benefits of the exemption. The report would not include, and the Department and VEDP would not publish or disclose, any such information if it is unaggregated or if such report or publication could be used to identify a business or individual. The Department would be required to publish the report and submit it to the Chairmen of the Senate Committee on Finance and Appropriations and the House Committees on Appropriations and Finance.

If enacted during the 2021 General Assembly, Special Session I this bill would become effective July 1, 2021

6. Budget amendment necessary: No

7. Fiscal Impact Estimates are: Not available (See Line 8.)

8. Fiscal implications:

Administrative Costs

The Department considers implementation of this bill as routine and does not require additional funding.

Revenue Impact

This bill would have an unknown impact on state and local revenues. It is uncertain how many new data centers would locate in distressed localities and qualify for this sales tax exemption if the job creation requirement was reduced from 25 to 10 jobs, and the requirement of a \$150 million capital investment is reduced to \$70 million in distressed localities.

The Department bases its revenue estimates regarding the impact of the existing data center exemption on minimum planned investment levels as stipulated in Memoranda of Understanding with VEDP. Based on such information, it is estimated that the current exemption had a negative Retail Sales and Use Tax revenue impact of \$133.4 million in Fiscal Year 2020. Such impact may be greater to the extent that data centers make exempt purchases in excess of the minimum investment level.

9. Specific agency or political subdivisions affected:

Department of Taxation
Virginia Economic Development Partnership Authority

10. Technical amendment necessary: No

11. Other comments:

Current Law

Under current law, there is a Retail Sales and Use Tax exemption for computer equipment or enabling software purchased or leased for the processing, storage, retrieval, or communication of data, including but not limited to servers, routers, connections, and other enabling hardware, including chillers and backup generators used or to be used in the operation of the equipment for use in a data center that:

- Is located in a Virginia locality;
- Results in a new capital investment on or after January 1, 2009, of at least \$150 million; and
- Results in the creation on or after July 1, 2009, of at least 50 new jobs by the data center operator and the tenants of the data center, collectively, associated with the operation or maintenance of the data center provided that such jobs pay at least one and one-half times the prevailing average wage in that locality.

The requirement of at least 50 new jobs is reduced to 25 new jobs if the data center is located in a locality that has an unemployment rate for the preceding year of at least 150 percent of the average statewide unemployment rate for such year as determined by the Virginia Economic Development Partnership or is located in an enterprise zone. This exemption applies to the data center operator and the tenants of the data center if they collectively meet the requirements listed in this section.

In order to take advantage of this exemption, data center operators and their tenant must enter into a memorandum of understanding ("MOU") with the Virginia Economic Development Partnership and obtain an exemption certificate from the Department of Taxation.

JLARC Report

In 2019, the Joint Legislative Audit and Review Commission ("JLARC") reviewed the data center exemption in a report entitled, "Data Center and Manufacturing Incentives." This report indicated that better tracking of data center investments would improve fiscal and economic impact estimates, as some data centers do not report all of their jobs created and capital investment, showing only that minimum requirements are met. As a result, the tax benefit that data centers receive from the exemption is underestimated. JLARC recommended that data centers be required to report annually to VEDP their actual employment level, capital investment, and tax benefit, and that the Department publish an annual report of the forgone revenue from the data center exemption using such information.

In addition, JLARC recommended that the state study how to maintain a competitive position for attracting data centers, including assessing infrastructure, workforce, and other challenges to attracting data centers outside of Northern Virginia and reducing the job creation threshold in distressed areas.

Proposal

This bill would reduce the new job creation requirement for any data center located in a distressed locality from 25 jobs to 10 jobs in order to qualify for the sales and use tax exemption for data centers. The bill would also reduce the requirement of a \$150 million capital investment to \$70 million for data centers that qualify for the reduced jobs requirement. The bill would modify the definition of “distressed locality” to include:

- From July 1, 2021, until July 1, 2023, any locality that had (i) an annual unemployment rate for calendar year 2019 that was greater than the final statewide average unemployment rate for that calendar year and (ii) a poverty rate for calendar year 2019 that exceeded the statewide average poverty rate for that year; and
- From and after July 1, 2023, any locality that has (i) an annual unemployment rate for the most recent calendar year for which such data is available that is greater than the final statewide average unemployment rate for that calendar year and (ii) a poverty rate for the most recent calendar year for which such data is available that exceeds the statewide average poverty rate for that year.

The locality must meet both of the criteria at the time of the execution of the memorandum of understanding signed with VEDP.

The bill also would clarify that the exemption includes any data center facilities located in the same locality as the data center that are under common ownership or affiliation of the data center operator.

This bill would require all data centers claiming the exemption to report certain information to VEDP annually. Such information would include employment levels, capital investments, average annual wages, qualifying expenses, and tax benefit, and such other information as VEDP determines is relevant. Data center operators would be required to submit the annual report to VEDP regardless of when such operators located a new data center in the Commonwealth. The Department, in collaboration with VEDP, would be required to publish a biennial report on the exemption that would include aggregate information on qualifying expenses claimed under this exemption, the total value of the tax benefit, a return on investment analysis that includes direct and indirect jobs created by data center investment, state and local tax revenues generated, and any other information the Department and VEDP deem appropriate to demonstrate the costs and benefits of the exemption. The report would not include, and the Department and VEDP would not publish or disclose, any such information if it is unaggregated or if such report or publication could be used to identify a business or individual. The Department would be required to publish the report and submit it to the Chairmen of the Senate Committee on Finance and Appropriations and the House Committees on Appropriations and Finance.

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Similar Legislation

Senate Bill 1423 is identical to this bill.

cc : Secretary of Finance

Date: 3/11/2021 SK
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