

# DEPARTMENT OF TAXATION

## 2010 Fiscal Impact Statement

1. **Patron** John M. O'Bannon, III

3. **Committee** House Finance

4. **Title** Retail Sales and Use Tax Exemption;  
Computer Equipment for Data Centers

2. **Bill Number** HB 302

**House of Origin:**

  X   **Introduced**

       **Substitute**

       **Engrossed**

**Second House:**

       **In Committee**

       **Substitute**

       **Enrolled**

### 5. **Summary/Purpose:**

This bill would expand the current exemption from the Retail Sales and Use Tax, beginning July 1, 2010 and ending June 30, 2020, for computer equipment and enabling hardware purchased or leased for the processing, storage, retrieval, or communication of data, including but not limited to servers, routers, connections and other enabling hardware to include enabling software, chillers, and backup generators.

In order to be eligible for this exemption, the computer equipment and enabling software and hardware would need to be purchased or leased for use in a data center located in a Virginia locality that results in a new investment of at least \$150 million on or after January 1, 2009 and that creates at least 50 new jobs paying at least one and one-half the prevailing average wage in the locality on or after July 1, 2009. The investment would need to be made in accordance with a memorandum of understanding with the Virginia Economic Development Partnership Authority. Purchased or leased upgrades, additions to, or replacement of such equipment and enabling software would also be exempt.

This bill would also provide that qualifying data centers would receive a refund on or after July 1, 2010 of any Retail Sales and Use Tax paid for purchases or leases of such computer equipment and enabling software made on and after July 1, 2009, and before July 1, 2010.

The effective date of this bill is not specified.

6. **Fiscal Impact Estimates are:** Preliminary. (See Line 8.)

7. **Budget amendment necessary:** No.

8. **Fiscal implications:**

#### Administrative Costs Impact

TAX would not incur any costs in the implementation of this bill.

## Revenue Impact

The **introduced Executive Budget** assumes the fiscal impact of this bill. As a result, this bill would have no revenue impact. Based on information provided by the Virginia Economic Development Partnership, it is estimated that the expansion of the existing Retail Sales and Use Tax exemption would result in a loss of total state and local tax revenue of an estimated \$3.42 million in Fiscal Year 2011 and \$0.41 million in Fiscal Year 2012. General Fund revenues would decrease by an estimated \$2.38 million in Fiscal Year 2011 and \$0.28 million in Fiscal Year 2012. This revenue estimate assumes the technical amendment suggested below and only reflects the initial investment for one specific project. Given the uncertainty regarding the number of qualifying data centers in the future, as well as the amount of upgrades, replacements and expansions of the computer equipment and enabling software, the revenue impact of this bill in Fiscal Year 2013 and later years is unknown.

### **9. Specific agency or political subdivisions affected:**

Department of Taxation  
Virginia Economic Development Partnership

### **10. Technical amendment necessary: Yes.**

If the intent of this bill is to provide a retail sales and use tax exemption for data centers beginning July 1, 2010, the following technical amendment is suggested:

Page 3, Line 122, after Beginning  
Strike: January  
Insert: July

### **11. Other comments:**

#### Generally

Under current law, computer equipment purchased or leased by certain data centers beginning July 1, 2010 and ending June 30, 2020 for the processing, storage, retrieval or communication of data, including but not limited to servers, routers, connections and other enabling hardware are exempt from the Retail Sales and Use Tax. Purchased or leased upgrades, additions to, or replacement of the computer equipment in a qualifying facility would be equally exempt. The exemption does not apply to separately sold computer software or general building improvements or fixtures.

In order to be eligible for this exemption, the data center must be located in a Virginia locality that results in a new investment of at least \$150 million on or after July 1, 2009 and that creates at least 50 new jobs paying at least one and one-half the prevailing average wage in the locality on or after July 1, 2009. The investment would need to be made in accordance with a memorandum of understanding with the Virginia Economic Development Partnership Authority.

However, the exemption provided under current law is not available until July 1, 2010 and has no refund provision for purchases made after July 1, 2009 and prior to July 1, 2010.

The current exemption also does not specify that chillers, backup generators or enabling software are exempt. In addition, the current exemption is limited to data centers that result in a new investment of at least \$150 million on or after July 1, 2009, instead of January 1, 2009.

### Proposal

This bill would expand the current exemption from the Retail Sales and Use Tax, beginning July 1, 2010 and ending June 30, 2020, for computer equipment and enabling hardware purchased or leased for the processing, storage, retrieval, or communication of data, including but not limited to servers, routers, connections and other enabling hardware to include enabling software, chillers, and backup generators.

In order to be eligible for this exemption, the computer equipment and enabling software and hardware would need to be purchased or leased for use in a data center located in a Virginia locality that results in a new investment of at least \$150 million on or after January 1, 2009 and that creates at least 50 new jobs paying at least one and one-half the prevailing average wage in the locality on or after July 1, 2009. The investment would need to be made in accordance with a memorandum of understanding with the Virginia Economic Development Partnership Authority. Purchased or leased upgrades, additions to, or replacement of such equipment and enabling software would also be exempt.

This bill would also provide that qualifying data centers would receive a refund on or after July 1, 2010 of any Retail Sales and Use Tax paid for purchases or leases of such computer equipment and enabling software made on and after July 1, 2009, and before July 1, 2010.

The effective date of this bill is not specified.

### Similar Legislation

**Senate Bill 130** is identical to this bill.

cc : Secretary of Finance

Date: 1/17/2010 AM  
DLAS File Name: HB302F161