

# DEPARTMENT OF TAXATION

## 2011 Fiscal Impact Statement

1. **Patron** Luke E. Torian

3. **Committee** House Finance

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

2. **Bill Number** HB 2239

**House of Origin:**

  X   **Introduced**

      **Substitute**

      **Engrossed**

**Second House:**

      **In Committee**

      **Substitute**

      **Enrolled**

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

This bill would relax the job creation requirement, from 50 to 25 jobs, in order for a data center to qualify for the Retail Sales and Use Tax data center exemption. In addition, it would relax the wage rate requirement, from one and one-half the prevailing average wage to any wage rate, 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 or is located in an enterprise zone. The bill would also provide that fringe benefits are excluded when determining the wage qualification criteria.

The current exemption from the Retail Sales and Use Tax 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 is available for data centers that, on or after July 1, 2009, create at least 50 new jobs paying at least one and one-half the prevailing average wage in the locality, or 25 new jobs paying at least one and one-half the prevailing average wage in the locality 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 or is located in an enterprise zone, and results in a new investment of at least \$150 million.

The effective date of this bill is not specified.

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

7. **Budget amendment necessary:** Yes.  
ITEM(S): Page 1, Revenue Estimates

### 8. **Fiscal implications:**

#### Administrative Costs Impact

TAX considers implementation of this bill as routine, and does not require additional funding.

## Revenue Impact

To the extent that companies that do not currently qualify for the Retail Sales and Use Tax exemption for computer equipment and enabling hardware purchased or leased for use in a data center would qualify for the expanded exemption, this bill would result in a significant unknown loss of state and local revenues.

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

Department of Taxation  
Virginia Economic Development Partnership Authority

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

If the intent of the legislation is to relax the requirements for data centers located in Virginia localities, the following technical amendment is suggested:

Page 3, Line 132, After benefits,  
Insert: or

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

#### Generally

Under current law, beginning July 1, 2010 and ending June 30, 2020, computer equipment purchased or leased by certain data centers for the processing, storage, retrieval or communication of data, including but not limited to servers, routers, connections and other enabling hardware is exempt from the Retail Sales and Use Tax. Purchased or leased upgrades, additions to, or replacement of the computer equipment in a qualifying facility are 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, on or after July 1, 2009, results in new capital investment of at least \$150 million and creates at least 50 new jobs paying at least one and one-half the prevailing average wage in the locality or at least 25 new jobs paying at least one and one-half the prevailing average wage if the locality that has an unemployment rate for the preceding year of at least 150 percent of the average statewide unemployment rate or is located in an enterprise zone. The investment would need to be made in accordance with a memorandum of understanding with the Virginia Economic Development Partnership Authority.

#### Proposal

This bill would relax the job creation requirement, from 50 to 25 jobs, in order for a data center to qualify for the Retail Sales and Use Tax data center exemption. In addition, it would relax the wage rate requirement, from one and one-half the prevailing average wage to any wage rate, 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 or is located in an enterprise zone. The bill would also provide that fringe benefits are excluded when determining the wage qualification criteria.

The effective date of this bill is not specified.

#### Similar Legislation

**Senate Bill 1045** is identical to this bill.

**House Bill 2122** would relax the job creation requirement in order for a data center to qualify for the Retail Sales and Use Tax exemption by allowing new jobs created by tenants of the data center to count towards the threshold job creation requirement, in addition to new jobs created by the owner of the data center. The bill would also extend the exemption to tenants of the data center if the data center and the tenants collectively meet the requirements to qualify for the data center exemption.

cc : Secretary of Finance

Date: 1/23/2011 AM  
DLAS File Name: HB2239F161