

DEPARTMENT OF TAXATION

2021 Fiscal Impact Statement

1. **Patron** Frank M. Ruff, Jr.

2. **Bill Number** SB 1425

3. **Committee** Senate Finance and Appropriations

House of Origin:

 X **Introduced**

 Substitute

 Engrossed

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

Second House:

 In Committee

 Substitute

 Enrolled

5. **Summary/Purpose:**

This bill would clarify that the exemption from Retail Sales and Use Tax for data centers 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. Additionally, if a data center operator qualifies for an exemption and seeks to qualify for an exemption in a locality other than the one in which it is located, such data center operator would not be required to meet the job creation requirement for purposes of qualifying in the other locality. However, the data center would still be required to be located in a Virginia locality and result in a new capital investment on or after January 1, 2009, of at least \$150 million.

The bill would require all data centers claiming the exemption to report certain information to the Virginia Economic Development Partnership Authority ("VEDP") annually. Such information would include employment level, capital investment, salaries, qualifying expenses, and tax benefit. This data would be aggregated and published annually by the Department of Taxation ("the Department") in consultation with VEDP.

Under current law, a data center claiming an exemption from sales and use tax must enter into a memorandum of understanding (MOU) with VEDP for each individual data center facility. All such facilities must:

- Be located in a Virginia locality;
- Result in a new capital investment on or after January 1, 2009, of at least \$150 million; and
- Result 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 VEDP or is located in an enterprise zone.

If enacted during the regular session of the 2021 General Assembly, 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 data centers would qualify for this sales tax exemption if the job creation requirement was removed for existing data centers to open new facilities in different Virginia jurisdictions.

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

The Retail Sales and Use Tax is imposed upon the charge for the sale or use of tangible personal property, unless an exemption applies. Virginia law defines “tangible personal property” as personal property that may be seen, weighed, measured, felt, or touched, or is in any other manner perceptible to the senses.

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 VEDP 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 clarify that the exemption from Retail Sales and Use Tax for data centers 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. Additionally, if a data center operator qualifies for an exemption and seeks to qualify for an exemption in a locality other than the one in which it is located, such data center operator would not be required to meet the job creation requirement for purposes of qualifying in the other locality. However, the data center must be located in a Virginia locality and result in a new capital investment on or after January 1, 2009, of at least \$150 million.

The bill would require all data centers claiming the exemption to report certain information to VEDP annually. Such information would include employment level, capital investment, salaries, qualifying expenses, and tax benefit. This data would be aggregated and published annually by the Department of Taxation in consultation with VEDP.

If enacted during the regular session of the 2021 General Assembly, this bill would become effective July 1, 2021.

Similar Legislation

House Bill 2273 and **Senate Bill 1423** would eliminate the job creation requirement for a data center located in a distressed locality for purposes of qualifying for the sales and use tax exemption for data centers; redefine the criteria for identifying a distressed locality; 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; and impose a reporting requirement on data centers to allow the Department to publish an annual report with aggregate information regarding the exemption.

cc : Secretary of Finance

Date: 1/17/2021 SK
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