

SENATE BILL REPORT

SB 5262

As of January 29, 2021

Title: An act relating to broadening the eligibility requirements and extending the expiration date for the data center tax incentive.

Brief Description: Broadening the eligibility requirements and extending the expiration date for the data center tax incentive.

Sponsors: Senators Lias, Warnick and Saldaña.

Brief History:

Committee Activity: Business, Financial Services & Trade: 1/28/21.

Brief Summary of Bill

- Expands eligibility and extends the expiration date for the current sales and use tax exemption on qualifying businesses and tenants of eligible data centers.

SENATE COMMITTEE ON BUSINESS, FINANCIAL SERVICES & TRADE

Staff: Kellee Gunn (786-7429)

Background: Current law provides a retail sale and use tax exemption for qualifying businesses operating data centers and qualifying tenants of those data centers. The exemption includes purchases of eligible server equipment and power infrastructure, labor and services for installing eligible server equipment, and for constructing, installing, repairing, altering, or improving eligible power infrastructure.

To claim the exemption, a qualifying business or a tenant must apply to the Department of Revenue (DOR) for an exemption certificate. Exemption certificates expire two years after the date of issuance unless construction has been commenced.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

To qualify, a facility must meet certain criteria regarding employment and facility size, whether it is in a rural county, and when construction commenced. Construction must occur within three time periods, or windows, to maintain the exemption:

- after March 31, 2010, and before July 1, 2011;
- after March 31, 2012, and before July 2015; or
- after June 30, 2015, and before July 1, 2025.

Within the period of July 1, 2015 and July 1, 2019, the exemption was limited to eight data centers. Within the current period, June 30, 2015 to July 1, 2025, the exemption is limited to 12 centers.

Within six years of issuance, an eligible computer data center must show they have established or increased the number of family wage employment positions by a certain amount depending on the size of the data center. Family wage employment positions are defined as new permanent full-time jobs requiring 40 hours of work where the wage is 150 percent of the per capita personal income of the county where the center is located.

The current retail sale and use exemption expires January 1, 2026, or 12 years from the certificate of occupancy. Businesses or tenants claiming the exemption must file an annual tax performance report.

Summary of Bill: This bill extends the current sales and use tax exemptions for qualifying businesses operating data centers and qualifying tenants of those data centers from January 1, 2026, to July 1, 2035. Exemptions fully expire on July 1, 2047.

The exemption certificate is effective on the date the application is received from DOR. No tax refunds may be given for purchases made before the effective date of this bill.

In addition to the extension, eligible data center businesses and tenants may use their exemption certificate to refurbish existing eligible data centers. Refurbishment is defined as a substantial improvement to an eligible computer data center for which a certificate of occupancy is not issued. These improvements must update or modernize servers, server space, ventilation, or power infrastructure in an eligible data center. To be considered refurbished, the qualifying business must certify to DOR the refurbishment is complete. It is considered complete when the improved portion of the computer data center is operationally complete and can be used as intended.

Several definitions are amended, a definition of certificate of occupancy is provided, and the calculation of family wage jobs is clarified and changed. The new definition of family wage employment positions include all new permanent positions requiring 40 hours of weekly work, or equivalent, on a full-time basis and receiving a wage equivalent to or greater than 125 percent of the per capita personal income of the county in which the qualified project is located. The net increase of family wage jobs must be since the issuance of the qualifying business's exemption certificate.

The final window period for construction is extended from July 1, 2015, to the effective date of this bill. Though the current statutory limits still apply to the construction of data centers for previous periods, there is no limit for the extended retail sale and use tax exemption for eligible data centers.

Those holding a certificate of exemption may be able to assign or transfer the certificate if certain requirements are met and they have the written consent of DOR.

Tax Performance Statement. There is a tax performance statement. The Legislature intends to extend the expiration date of the preference if a review finds the preference is generating:

- capital investment in new computer data centers, refurbished data centers, and existing data centers;
- state and local tax collections from data center investment and operations; and
- construction and trade jobs in the state.

The review must factor in changing economic conditions.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.