
HOUSE BILL 2673

State of Washington

65th Legislature

2018 Regular Session

By Representatives Springer, Stambaugh, Stokesbary, McDonald, and McBride

Read first time 01/12/18. Referred to Committee on Technology & Economic Development.

1 AN ACT Relating to providing a tax preference for nonrural data
2 centers; adding a new section to chapter 82.08 RCW; adding a new
3 section to chapter 82.12 RCW; creating new sections; and providing an
4 expiration date.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** The legislature finds that data centers
7 are a cornerstone for strong internet infrastructure that is critical
8 to the continuing prosperity of Washington's vibrant digital economy.
9 Under current law, data center incentives are restricted to rural
10 counties and have improved the economies of rural counties. The
11 legislature recognizes that rural county data center investments are
12 necessary but insufficient for the state's total economy and
13 competitiveness. Washington is the only state that restricts
14 incentives geographically. As a result, data centers serving urban
15 counties requiring higher performance and that offer colocation
16 services for multiple tenants that foster technology ecosystems are
17 lost to other states, particularly neighboring Oregon. The
18 legislature further finds that despite the need, the lack of data
19 center usage growth in Washington urban counties is primarily due to
20 the sales tax, which can add as much as ten percent to the total cost
21 of ownership and often runs into the millions of dollars for even

1 mid-level users. Therefore, the legislature authorizes sales tax
2 abatement for tenants in as many as eight data centers in
3 Washington's urban counties.

4 NEW SECTION. **Sec. 2.** (1) This section is the tax preference
5 performance statement for the sales and use tax exemptions contained
6 in sections 3 and 4, chapter . . . , Laws of 2018 (sections 3 and 4
7 of this act). This performance statement is only intended to be used
8 for subsequent evaluation of the tax preferences in sections 3 and 4,
9 chapter . . . , Laws of 2018 (sections 3 and 4 of this act). It is not
10 intended to create a private right of action by any party or be used
11 to determine eligibility for preferential tax treatment.

12 (2) The legislature categorizes these sales and use tax
13 exemptions as ones intended to improve industry competitiveness, as
14 indicated in RCW 82.32.808(2)(b) and as one intended to create or
15 retain jobs as indicated in RCW 82.32.808(2)(c).

16 (3) It is the legislature's specific public policy objective to
17 improve industry competitiveness and to increase, create, or retain
18 jobs in computer data centers in Washington state, thereby increasing
19 family wage jobs. It is the legislature's intent to provide a sales
20 and use tax exemption on eligible server equipment and power
21 infrastructure installed in eligible computer data centers, charges
22 made for labor and services rendered in respect to installing
23 eligible server equipment, and for construction, installation,
24 repair, alteration, or improvement of eligible power infrastructures
25 in order to increase investment in data center construction, leasing,
26 and other investment throughout the state of Washington, thereby
27 growing employment in the technology industry in the state while
28 adding real and personal property to state and local property tax
29 rolls, thereby increasing the county tax base.

30 (4) The legislature intends to extend the expiration date of the
31 tax preferences in sections 3 and 4, chapter . . . , Laws of 2018
32 (sections 3 and 4 of this act) and expand the applicability of the
33 tax preferences to the entire state of Washington if a review finds
34 that:

35 (a) As a proxy for overall technology industry growth, the amount
36 of electrical capacity deployed attributable to these projects
37 increased by at least ten percent over the capacity deployed in the
38 nonrural data centers in the state since 2016; or

1 (b) The county tax base increased as a result of the
2 construction, leasing, and other investment of computer data centers
3 eligible for the sales and use tax exemptions in sections 3 and 4 of
4 this act.

5 (5) In order to obtain the data necessary to perform the review
6 in subsection (4) of this section, the joint legislative audit and
7 review committee may refer to data available from the department of
8 revenue regarding county property tax assessments and data provided
9 to the department of revenue pursuant to the annual tax performance
10 report required under RCW 82.32.534.

11 NEW SECTION. **Sec. 3.** A new section is added to chapter 82.08
12 RCW to read as follows:

13 (1) An exemption from the tax imposed by RCW 82.08.020 is
14 provided for sales to qualifying businesses and to qualifying tenants
15 of eligible server equipment to be installed, without intervening
16 use, in an eligible computer data center, and to charges made for
17 labor and services rendered in respect to installing eligible server
18 equipment. The exemption also applies to sales to qualifying
19 businesses and to qualifying tenants of eligible power
20 infrastructure, including labor and services rendered in respect to
21 constructing, installing, repairing, altering, or improving eligible
22 power infrastructure.

23 (2)(a) In order to claim the exemption under this section, a
24 qualifying business or a qualifying tenant must submit an application
25 to the department for an exemption certificate. The application must
26 include the information necessary, as required by the department, to
27 determine that a business or tenant qualifies for the exemption under
28 this section. The department must issue exemption certificates to
29 qualifying businesses and qualifying tenants. The department may
30 assign a unique identification number to each exemption certificate
31 issued under this section.

32 (b) A qualifying business or a qualifying tenant claiming the
33 exemption under this section must present the seller with an
34 exemption certificate in a form and manner prescribed by the
35 department. The seller must retain a copy of the certificate for the
36 seller's files.

37 (c)(i) In order to qualify for the exemption, a qualifying
38 business must be located in a nonrural county, demonstrate that it
39 possesses sufficient capacity to meet the minimum tenant take down

1 requirement no less than ten times and in the twelve months prior to
2 applying, and must be in the business of servicing this scale and
3 type of data center tenant.

4 (ii) For the purposes of demonstrating that the requirements of
5 this subsection (2)(c) are met, a qualifying business must submit
6 records of available power for customers at the time of the
7 application for the exemption under this section. The qualifying
8 business must demonstrate that it has 1.5 megawatt of available power
9 and that in the prior twelve months such qualifying business was in
10 the business of contracts utilizing capacity of at least one hundred
11 fifty kilowatts each. The qualifying business must provide requests
12 for proposals, pricing offered, and marketing materials associated
13 with the requirements of this subsection, as required by the
14 department, as supporting documentation that the requirements of this
15 subsection (2)(c) have been met.

16 (d) In order to qualify for the exemption, a qualifying tenant
17 must contract for a minimum electrical capacity of one hundred fifty
18 kilowatts for server and computer equipment in a qualifying business.
19 Tenants that previously qualified under RCW 82.08.986 or 82.12.986
20 must reapply if they intend to expand into a qualifying business.

21 (e)(i) The exemptions provided in this section are limited to
22 qualifying businesses or tenants in no more than eight computer data
23 centers. Each computer data center must be predefined at the time of
24 application. Expansions beyond the initial perimeter and new computer
25 data centers within the state must apply separately.

26 (ii) For the purposes of this subsection (2)(e):

27 (A) "Predefined" means that at the time of application, the
28 qualifying business must indicate the data center's location and the
29 boundaries where the incentives will apply, which may include new
30 buildings for expansion in a campus. The exemption application of the
31 qualifying business cannot be used in another location, as that
32 location must apply separately; and

33 (B) "Expansions beyond the initial perimeter" means if a
34 qualifying business purchases, after their initial application for an
35 exemption under this section, a lot adjacent to the initial perimeter
36 or a lot in a different location from the data center in their
37 initial application, the qualifying business must amend their initial
38 application for an exemption under this section or submit a new
39 application, as required by the department, to include the expansion
40 beyond the initial perimeter in order to notify the department of

1 additional capacity that may qualify for an exemption under this
2 section.

3 (3) Exemption certificates issued under this section expire three
4 years after the date of issuance, unless the server equipment has
5 been installed. The qualifying business must provide documentation,
6 as required by the department, to substantiate that the server
7 equipment has been installed that includes the contract for relevant
8 services or a power bill.

9 (4) In the case of a change in control of either a qualifying
10 business or tenant, it is the responsibility of the qualifying
11 business or tenant to notify the department of such change within the
12 tax year of the transaction in order to be issued new certificates
13 and maintain eligibility of the exemptions.

14 (5) Qualification for this section may be found in statements
15 related to the amount of power contracted for at the site and what is
16 available to sell, as well as the capacity of the backup power
17 infrastructure.

18 (6) The pro rata portion of previously exempted sales and use
19 taxes are immediately due and payable for a qualifying business or
20 qualifying tenant that does not meet the minimum electrical capacity
21 requirements in subsection (2)(d) of this section for a period of at
22 least three years from the date of installation of the server
23 equipment.

24 (7) Qualifying businesses and tenants must claim an exemption
25 under this section in the current tax year when the taxes would have
26 been due unless an extension is filed with the department.

27 (8)(a) A qualifying business or a qualifying tenant claiming an
28 exemption under this section must complete an annual tax performance
29 report as required in RCW 82.32.534. The tax performance report of a
30 qualifying business or a qualifying tenant must include the amount of
31 electrical capacity, measured by kilowatts deployed within their
32 nonrural data center.

33 (b) For the purposes of this subsection, kilowatts are measured
34 by the amount of power for which the qualifying business or
35 qualifying tenant contracted during the applicable tax year for which
36 an exemption is claimed under this section. A qualifying business or
37 qualifying tenant must maintain a contracted minimum of one hundred
38 fifty kilowatts during the tax year for which the qualifying business
39 or qualifying tenant is claiming an exemption under this section. The
40 information required under this subsection must be reported to the

1 department within thirty days after the last day of the exemption
2 applicant's tax year.

3 (c) Information submitted on the tax performance report is not
4 subject to the confidentiality provisions of RCW 82.32.330 and may be
5 disclosed to the public upon request, except as provided otherwise in
6 RCW 82.32.330.

7 (9)(a) The exemption provided in this section does not apply to:

8 (i) Any person who has received the benefit of the deferral
9 program under chapter 82.60 RCW on the construction, renovation, or
10 expansion of a structure or structures used as a computer data
11 center; and

12 (ii) Any person affiliated with a person within the scope of
13 (a)(i) of this subsection (9).

14 (b) If a person claims an exemption under this section and
15 subsequently receives the benefit of the deferral program under
16 chapter 82.60 RCW on either the construction, renovation, or
17 expansion of a structure or structures used as a computer data center
18 or machinery or equipment used in a computer data center, the person
19 must repay the amount of taxes exempted under this section. Interest
20 as provided in chapter 82.32 RCW applies to amounts due under this
21 section until paid in full.

22 (10) The definitions in this subsection apply throughout this
23 section unless the context clearly requires otherwise.

24 (a) "Affiliated" means that one person has a direct or indirect
25 ownership interest of at least twenty percent in another person.

26 (b) "Building" means a fully enclosed structure with a weather
27 resistant exterior wall envelope or concrete or masonry walls
28 designed in accordance with the requirements for structures under
29 chapter 19.27 RCW.

30 (c)(i) "Computer data center" means a facility comprised of one
31 or more buildings, which may be comprised of multiple businesses,
32 constructed or refurbished specifically, and used primarily, to house
33 working servers, where the facility has the following
34 characteristics: (A) Uninterruptible power supplies, generator backup
35 power, or both; (B) sophisticated fire suppression and prevention
36 systems; and (C) enhanced physical security, such as: Restricted
37 access to the facility to selected personnel; permanent security
38 guards; video camera surveillance; an electronic system requiring
39 passcodes, keycards, or biometric scans, such as hand scans and
40 retinal or fingerprint recognition; or similar security features.

1 (ii) For a computer data center comprised of multiple buildings,
2 each separate building constructed or refurbished specifically, and
3 used primarily, to house working servers is considered a computer
4 data center if it has all of the characteristics listed in (c)(i)(A)
5 through (C) of this subsection (10).

6 (iii) A facility comprised of one building or more than one
7 building must have a combined square footage of at least one hundred
8 thousand square feet.

9 (d) "Eligible computer data center" means a computer data center
10 having at least twenty thousand square feet dedicated to housing
11 working servers.

12 (e) "Eligible power infrastructure" means all fixtures and
13 equipment owned by a qualifying business or qualifying tenant and
14 necessary for the transformation, distribution, or management of
15 electricity that is required to operate eligible server equipment
16 within an eligible computer data center. The term includes
17 generators; wiring; cogeneration equipment; and associated fixtures
18 and equipment, such as electrical switches, batteries, and
19 distribution, testing, and monitoring equipment. The term does not
20 include substations.

21 (f)(i) "Eligible server equipment" means for a qualifying
22 business whose computer data center qualifies as an eligible computer
23 data center, the original server equipment installed in an eligible
24 computer data center on or after the effective date of this section,
25 and replacement server equipment.

26 (ii) For purposes of this subsection (10)(f), "replacement server
27 equipment" means server equipment that:

28 (A) Replaces existing server equipment, if the sale or use of the
29 server equipment to be replaced qualified for an exemption under this
30 section or RCW 82.12.986; and

31 (B) Is installed and put into regular use ten years after the
32 effective date of this section.

33 (iii) For a qualifying tenant who leases space within an eligible
34 computer data center, "eligible server equipment" means the original
35 server equipment installed within the space it leases from an
36 eligible computer data center on or after ten years after the
37 effective date of this section, and replacement server equipment. For
38 purposes of this subsection (10)(f)(iii), "replacement server
39 equipment" means server equipment that:

1 (A) Replaces existing server equipment, if the sale or use of the
2 server equipment to be replaced qualified for an exemption under this
3 section or RCW 82.12.986; and

4 (B) Is installed and put into regular use ten years after the
5 effective date of this section.

6 (g) "Nonrural county" means a county that does not meet the
7 definition of "rural county" under RCW 82.14.370.

8 (h) "Qualifying business" means a business entity that exists for
9 the primary purpose of engaging in commercial activity for profit and
10 that is the owner of an eligible computer data center. The term does
11 not include the state or federal government or any of their
12 departments, agencies, and institutions; tribal governments;
13 political subdivisions of this state; or any municipal, quasi-
14 municipal, public, or other corporation created by the state or
15 federal government, tribal government, municipality, or political
16 subdivision of the state.

17 (i) "Qualifying tenant" means a business entity that exists for
18 the primary purpose of engaging in commercial activity for profit and
19 that leases space from a qualifying business within an eligible
20 computer data center. The term does not include the state or federal
21 government or any of their departments, agencies, and institutions;
22 tribal governments; political subdivisions of this state; or any
23 municipal, quasi-municipal, public, or other corporation created by
24 the state or federal government, tribal government, municipality, or
25 political subdivision of the state.

26 (j) "Server equipment" means the computer hardware located in an
27 eligible computer data center and used exclusively to provide
28 electronic data storage and data management services for internal use
29 by the owner or lessee of the computer data center, for clients of
30 the owner. For the purposes of this subsection, "electronic data
31 storage and data management services" include, but are not limited
32 to: Providing data storage and backup services, providing computer
33 processing power, hosting enterprise software applications, and
34 hosting web sites. The term also includes providing services such as
35 email, web browsing and searching, media applications, and other
36 online services, regardless of whether a charge is made for such
37 services. "Server equipment" also includes computer software
38 necessary to operate the computer hardware. "Server equipment" does
39 not include personal computers, the racks upon which the server

1 equipment is installed, and computer peripherals such as keyboards,
2 monitors, printers, and mice.

3 (11) This section expires January 1, 2029.

4 NEW SECTION. **Sec. 4.** A new section is added to chapter 82.12
5 RCW to read as follows:

6 (1) An exemption from the tax imposed by RCW 82.12.020 is
7 provided for the use by qualifying businesses or qualifying tenants
8 of eligible server equipment to be installed, without intervening
9 use, in an eligible computer data center, and to the use of labor and
10 services rendered in respect to installing such server equipment. The
11 exemption also applies to the use by a qualifying business or
12 qualifying tenant of eligible power infrastructure, including labor
13 and services rendered in respect to installing, repairing, altering,
14 or improving such infrastructure.

15 (2) A qualifying business or a qualifying tenant is not eligible
16 for the exemption under this section unless the department issued an
17 exemption certificate to the qualifying business or a qualifying
18 tenant for the exemption as provided in section 3 of this act.

19 (3) The exemption provided in this section does not apply to any
20 person for whom the exemption under section 3(9) of this act does not
21 apply.

22 (4) The definitions and requirements in section 3 of this act
23 apply to this section.

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