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**HOUSE BILL 2673**

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**State of Washington 65th Legislature 2018 Regular Session**

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

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

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

NEW SECTION. **Sec.**  The legislature finds that data centers are a cornerstone for strong internet infrastructure that is critical to the continuing prosperity of Washington's vibrant digital economy. Under current law, data center incentives are restricted to rural counties and have improved the economies of rural counties. The legislature recognizes that rural county data center investments are necessary but insufficient for the state's total economy and competitiveness. Washington is the only state that restricts incentives geographically. As a result, data centers serving urban counties requiring higher performance and that offer colocation services for multiple tenants that foster technology ecosystems are lost to other states, particularly neighboring Oregon. The legislature further finds that despite the need, the lack of data center usage growth in Washington urban counties is primarily due to the sales tax, which can add as much as ten percent to the total cost of ownership and often runs into the millions of dollars for even mid-level users. Therefore, the legislature authorizes sales tax abatement for tenants in as many as eight data centers in Washington's urban counties.

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

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

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

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

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

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

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

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

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

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

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

(c)(i) In order to qualify for the exemption, a qualifying business must be located in a nonrural county, demonstrate that it possesses sufficient capacity to meet the minimum tenant take down requirement no less than ten times and in the twelve months prior to applying, and must be in the business of servicing this scale and type of data center tenant.

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

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

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

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

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

(B) "Expansions beyond the initial perimeter" means if a qualifying business purchases, after their initial application for an exemption under this section, a lot adjacent to the initial perimeter or a lot in a different location from the data center in their initial application, the qualifying business must amend their initial application for an exemption under this section or submit a new application, as required by the department, to include the expansion beyond the initial perimeter in order to notify the department of additional capacity that may qualify for an exemption under this section.

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

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

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

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

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

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

(b) For the purposes of this subsection, kilowatts are measured by the amount of power for which the qualifying business or qualifying tenant contracted during the applicable tax year for which an exemption is claimed under this section. A qualifying business or qualifying tenant must maintain a contracted minimum of one hundred fifty kilowatts during the tax year for which the qualifying business or qualifying tenant is claiming an exemption under this section. The information required under this subsection must be reported to the department within thirty days after the last day of the exemption applicant's tax year.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(11) This section expires January 1, 2029.

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

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

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

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

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

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