

SENATE BILL REPORT

SB 6642

As of February 4, 2020

Title: An act relating to providing a tax preference for rural and nonrural data centers.

Brief Description: Providing a tax preference for rural and nonrural data centers.

Sponsors: Senators Zeiger, O'Ban, Becker and Darneille.

Brief History:

Committee Activity: Financial Institutions, Economic Development & Trade: 2/04/20.

Brief Summary of Bill

- Authorizes a sales and use tax exemption for the purchase of eligible server equipment, and related labor and services, for eligible data centers in nonrural counties.
- Extends the current sales and use tax exemption for rural county data centers.

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, ECONOMIC DEVELOPMENT & TRADE

Staff: Clint McCarthy (786-7319)

Background: Retail Sales and Use Tax. Retail sales taxes are imposed on retail sales of most articles of tangible personal property, digital products, and some services. A retail sale is a sale to the final consumer or end user of the property, digital product, or service. If retail sales taxes were not collected when the user acquired the property, digital products, or services, then use tax applies to the value of property, digital product, or service when used in this state. The state, all counties, and all cities levy retail sales and use taxes. The state sales and use tax rate is 6.5 percent; local sales and use tax rates vary from 0.5 percent to 3.9 percent, depending on the location.

Data Centers Tax Preference. The owner of an eligible data center with a combined square footage of at least 100,000 square feet, and the tenants of an eligible data center located in a rural county, may be eligible for a sales and use tax exemption. A rural county is defined as a county with a population density of less than 100 persons per square mile or counties smaller

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than 225,000 square miles as of April 1, 2018. There are currently 30 counties meeting the rural county definition.

To qualify, the data center must have a building permit to construct, renovate, or expand the data center issued between:

- April 1, 2010 and June 30, 2011;
- April 1, 2012 and June 30, 2015; or
- July 1, 2015 and June 30, 2025.

Only 12 data centers that begin construction on or after July 1, 2015, but before July 1, 2025, can be approved for the exemption. Of the 12, only eight centers can be approved that begin construction on or after July 1, 2015, but before July 1, 2019.

The sales and use tax exemption is available for purchases of eligible server equipment and labor and services to install server equipment in an eligible data center. A sales and use tax exemption is allowed for purchases of eligible power infrastructure and the labor and services to construct, install, repair, alter, or improve eligible power infrastructure.

A "computer data center" means a facility with 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:

- uninterruptible power supplies, generator backup power, or both;
- sophisticated fire suppression and prevention systems; and
- enhanced physical security.

The exemption is available on a first-in-time basis based on the date the application for the sales and use tax exemption is received by the Department of Revenue. Exemption certificates expire two years after the date of issuance, unless construction of the data center has begun.

An eligible taxpayer must file an annual tax performance report by May 31st of the year following the year the applicant becomes eligible to claim the sales and use tax exemption.

There are hiring requirements for recipients of the sales and use tax exemption. Within six years of the issue date on the sales and use tax exemption certificate, the qualifying data center must establish that net employment has increased by a minimum of 35 family-wage employment positions or three family-wage employment positions for each 20,000 square feet of space or less that is newly dedicated to housing working servers at the eligible computer data center.

Tax Preference Performance Statement. State law provides for a range of tax preferences that confer reduced tax liability upon a designated class of taxpayer. Tax preferences include tax exclusions, deductions, exemptions, preferential tax rates, deferrals, and credits. Washington has over 650 tax preferences, including a variety of sales and use tax exemptions. Legislation establishing or expanding a tax preference must include a Tax Preference Performance Statement (TPPS) identifying the public policy objective of the preference, as well as specific metrics the Joint Legislative Audit and Review Committee (JLARC) can use

to evaluate the effectiveness of the preference. All new tax preferences automatically expire after ten years, unless an alternative expiration date is provided.

Summary of Bill: Nonrural County Data Centers. A sales and use tax exemption is authorized 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. The sales and use tax exemption also applies to the labor and services charges related to the installation of eligible server equipment.

A sales and use tax exemption is authorized for sales to qualifying businesses and tenants of eligible power infrastructure and labor, and services rendered related to construction, installation, repair, alteration, or improvement to eligible power infrastructure.

A qualifying business must be in a nonrural county, demonstrate it possesses sufficient capacity to meet the minimum tenant take down requirement no less than ten times and in the 12 months prior to applying, and must be in the business of servicing this scale and type of data center tenant.

The exemption is limited to qualifying businesses or tenants in more than eight computer data centers.

This exemption is subject to the automatic ten-year exemption.

Tax Preference Performance Statement. It is the specific public policy objective of the tax exemption to improve industry competitiveness and retain or create jobs in computer data centers. The Legislature intends to extend the expiration date of the tax preference if the JLARC review finds the amount of electrical capacity deployed attributable to these projects increased by at least 10 percent over the capacity deployed in the nonrural data centers in Washington since 2016, or if the county tax base increased as the result of the construction, leasing, or other investment of eligible computer data centers.

Appropriation: None.

Fiscal Note: Not requested.

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

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

Staff Summary of Public Testimony: PRO: Currently, data center infrastructure is currently exempt from the sales & use tax only in eastern Washington. This bill is about competing with the state of Oregon. There is a high concentration of data centers in Hillsboro, OR. This would have an enormous impact on the state's economy. Many people are moving to Oregon to work in urban data centers in Oregon. We are the only state that limits this to rural states. Oregon has been very progressive about attracting these data centers and has become the center of the west for the backbone of the internet. We have electricians in Washington driving to Oregon to work at these data centers because this is where the jobs are. The server tax is at the heart of the issue as to why there is no investment

in this space in Washington while data centers thrive in Oregon. Companies need the certainty of a permanent or long term exemption from the sales and use tax to make it worth the time and energy to build data centers in Washington. This would bring more opportunity to Washington State, and Pierce County specifically. More jobs in Pierce County means less commuting to Seattle for technical jobs.

Persons Testifying: PRO: Senator Hans Zeiger, Prime Sponsor; Tom Pierson, Tacoma Pierce County Chamber; Simon Lee, Centeris; Tara Doyle-Enneking, Puyallup Sumner Chamber of Commerce; Maddie Merton, Tacoma Pierce County Economic Development Board.

Persons Signed In To Testify But Not Testifying: No one.