

SHB 1846 - H AMD 1340

By Representative Berg

ADOPTED 03/04/2022

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** (1) The legislature finds that data
4 centers are a cornerstone for strong internet infrastructure that is
5 critical to the continuing prosperity of Washington's vibrant digital
6 economy.

7 (2) The legislature further finds that the data center industry
8 is experiencing explosive growth across the nation and the
9 competition among states for data center investments has increased
10 dramatically. A department of commerce study, *2018 State of the Data*
11 *Center Industry, An Analysis of Washington's Competitiveness*, found
12 that data center growth in rural Washington is at the lower end of
13 the growth rate experienced by other major competitive markets.

14 (3) The legislature recognizes that rural county data center
15 investments are necessary but insufficient for the state's total
16 economy and competitiveness. Washington is the only state that
17 restricts incentives geographically. As a result, data centers
18 serving urban counties requiring higher performance and that offer
19 colocation services for multiple tenants that foster technology
20 ecosystems are lost to other states, particularly neighboring Oregon.

21 (4) The legislature further finds that data centers are one of
22 the most energy-intensive building types, consuming 10 to 50 times
23 the energy per floor space of a typical commercial office building.
24 In addition, the legislature finds that it is imperative that the
25 economic expansion of data centers not result in negative
26 environmental impacts to the communities in which the data centers
27 are located. To this end, the legislature encourages data centers to
28 be good environmental stewards for their community through adopting
29 practices to mitigate negative environmental impacts of data centers,
30 such as the use of energy derived from renewable resources,
31 redirecting waste heat for alternative uses, or other industrial
32 symbiosis practices.

1 (5) The legislature therefore intends to encourage additional
2 investments in data technology facilities through expanding and
3 extending the current sales and use tax exemption for rural county
4 data centers and establishing a sales and use tax exemption pilot
5 program for data centers in counties with populations over 800,000,
6 which will in turn incentivize local economic development, increased
7 local tax revenues, and construction and trade jobs across Washington
8 through the development of additional data center facilities.

9 NEW SECTION. **Sec. 2.** (1) This section is the tax preference
10 performance statement for the tax preferences contained in sections
11 3, 4, 5, and 6, chapter . . . , Laws of 2022 (sections 3, 4, 5, and 6
12 of this act). This performance statement is only intended to be used
13 for subsequent evaluation of the tax preferences. It is not intended
14 to create a private right of action by any party or be used to
15 determine eligibility for preferential tax treatment.

16 (2) The legislature categorizes these sales and use tax
17 exemptions on eligible server equipment and eligible power
18 infrastructure equipment at eligible computer data centers as ones
19 intended to: Induce certain designated behavior by taxpayers as
20 indicated in RCW 82.32.808(2)(a); improve industry competitiveness as
21 indicated in RCW 82.32.808(2)(b); create or retain jobs as indicated
22 in RCW 82.32.808(2)(c); and reduce structural inefficiencies in the
23 tax structure as indicated in RCW 82.32.808(2)(d).

24 (3) It is the legislature's specific public policy objective to:

25 (a) Maintain and grow the existing data center sector in
26 Washington state, and encourage development of new data center
27 facilities and refurbishment of existing data centers, thereby
28 increasing the competitiveness of Washington's tax structure, which
29 will increase or maintain construction and trade job growth in rural
30 areas, and increase local tax revenue streams.

31 (b) Improve industry competitiveness and to increase, create, or
32 retain jobs in computer data centers in counties with a population
33 over 800,000, as determined by the April 1, 2021, office of financial
34 management population estimates, thereby increasing family wage jobs.
35 It is the legislature's intent to establish a pilot program that
36 would provide a sales and use tax exemption on eligible server
37 equipment and power infrastructure installed in eligible computer
38 data centers, charges made for labor and services rendered in respect
39 to installing eligible server equipment, and for construction,

1 installation, repair, alteration, or improvement of eligible power
2 infrastructures in order to increase investment in data center
3 construction, leasing, and other investment throughout rural counties
4 and counties with a population over 800,000, as determined by the
5 April 1, 2021, office of financial management population estimates,
6 thereby growing employment in the technology industry while adding
7 real and personal property to state and local property tax rolls,
8 thereby increasing the county tax base.

9 (4) The legislature intends to extend the expiration date of the
10 tax preference. The joint legislative audit and review committee
11 shall conduct a review and determine if the tax preference is (a)
12 generating capital investment in new computer data centers,
13 refurbished data centers, or existing data centers (e.g., replacement
14 server equipment), (b) generating state and local tax collections
15 from data center investment and operations, and (c) generating or
16 maintaining construction and trade jobs in the state. The review must
17 factor in changing economic conditions.

18 (5) In order to obtain the data necessary to perform the review
19 in subsection (4) of this section, the joint legislative audit and
20 review committee may refer to any available data source, including
21 data available from the department of revenue regarding rural county
22 property tax assessments and employment data from the employment
23 security department.

24 **Sec. 3.** RCW 82.08.986 and 2017 c 135 s 26 are each amended to
25 read as follows:

26 (1) (a) An exemption from the tax imposed by RCW 82.08.020 is
27 provided for sales to qualifying businesses and to qualifying tenants
28 of eligible server equipment to be installed, without intervening
29 use, in an eligible computer data center to which a valid exemption
30 certificate applies, and to charges made for labor and services
31 rendered in respect to installing eligible server equipment. (~~Until~~
32 ~~January 1, 2026, the~~)

33 (b) This exemption also applies to sales to qualifying businesses
34 and to qualifying tenants of eligible power infrastructure, including
35 labor and services rendered in respect to constructing, installing,
36 repairing, altering, or improving eligible power infrastructure at an
37 eligible computer data center for which an exemption certificate has
38 been issued.

1 (c) No new exemption certificates may be issued on or after July
2 1, 2036.

3 (d) The exemptions provided in this section expire July 1, 2048.

4 (e) Each calendar year, the department may issue no more than six
5 certificates for data centers which qualify through refurbishment.
6 Certificates are available for refurbished data centers on a first-
7 in-time basis based on the date the application required under this
8 section is received by the department. Each qualifying business may
9 apply for only one certificate for a refurbished data center each
10 calendar year.

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

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

25 (c) With respect to computer data centers for which the
26 commencement of construction occurs after July 1, 2015, but before
27 July 1, 2019, the exemption provided in this section is limited to no
28 more than eight computer data centers, with total eligible data
29 centers provided under this section limited to twelve from July 1,
30 2015, through (~~July 1, 2025~~) the effective date of this section.
31 Tenants of qualified data centers do not constitute additional data
32 centers under the limit. The exemption is available on a first-in-
33 time basis based on the date the application required under this
34 section is received by the department.

35 (d) The exemption certificate is effective on the date the
36 application is received by the department, which is deemed to be the
37 date of issuance. Only purchases on or after the date of issuance
38 qualify for the exemption under this section. No tax refunds are
39 authorized for purchases made before the effective date of the
40 exemption certificate.

1 (e) Exemption certificates expire two years after the date of
2 issuance, unless construction has been commenced.

3 (3) (a) (i) Within six years of the date that the department issued
4 an exemption certificate under this section to a qualifying business
5 or a qualifying tenant with respect to an eligible computer data
6 center, the qualifying business or qualifying tenant must establish
7 that net employment (~~(at the)~~) assigned to an eligible computer data
8 center has increased by a minimum of:

9 (~~(i)~~) (A) Thirty-five family wage employment positions; or, if
10 lower

11 (~~(ii)~~) (B) Three family wage employment positions for each
12 twenty thousand square feet of space or less that is newly dedicated
13 to housing working servers at the eligible computer data center. For
14 qualifying tenants, the number of family wage employment positions
15 that must be increased under this subsection (3) (a) (~~(i)~~) (i) (B) is
16 based only on the space occupied by the qualifying tenant in the
17 eligible computer data center.

18 (ii) After the minimum number of family wage employment positions
19 as required under (a) (i) of this subsection (3) is established, a
20 qualifying business or a qualifying tenant must maintain the minimum
21 family wage employment positions required under (a) (i) of this
22 subsection (3) while the exemption certificate is valid.

23 (b) In calculating the net increase in family wage employment
24 positions:

25 (i) The owner of an eligible computer data center, in addition to
26 its own net increase in family wage employment positions, may
27 include:

28 (A) The net increase, since the date of issuance of the
29 qualifying business's exemption certificate, in family wage
30 employment positions employed by qualifying tenants; and

31 (B) The net increase in family wage employment positions
32 described in (c) (ii) (B) of this subsection (3).

33 (ii) (A) Qualifying tenants, in addition to their own net increase
34 in family wage employment positions, may include:

35 (I) A portion of the net increase in family wage employment
36 positions employed by the owner; and

37 (II) A portion of the net increase in family wage employment
38 positions described in (c) (ii) (B) of this subsection (3).

39 (B) The portion of the net increase in family wage employment
40 positions to be counted under this subsection (3) (b) (ii) by each

1 ~~qualifying tenant ((must be in proportion to the amount of space in~~
2 ~~the eligible computer data center occupied by the qualifying tenant~~
3 ~~compared to the total amount of space in the eligible computer data~~
4 ~~center occupied by all qualifying tenants)) is equal to the net~~
5 ~~increase in family wage employment positions assigned to an eligible~~
6 ~~computer data center as described in (b) (ii) (A) (I) and (II) of this~~
7 ~~subsection (3), multiplied by the percentage of total space within~~
8 ~~the eligible computer data center occupied by the qualifying tenant.~~
9 ~~Any combination of qualifying business and qualifying tenant family~~
10 ~~wage employment positions may meet this requirement.~~

11 (C) (I) In the instance of an existing data center facility that
12 was ineligible, regardless of the date of commencement of
13 construction, that later obtains an exemption certificate under this
14 section, the data center may count the existing employment positions
15 that are dedicated to the data center toward the family wage
16 employment position requirements if the employment positions meet the
17 requirements of a family wage employment position as described in
18 (c) (i) (B) and (C) of this subsection (3).

19 (II) In the instance of the refurbishment of an existing data
20 center that previously qualified under the data center program, the
21 data center may count the existing employment positions dedicated to
22 the data center toward the family wage employment position
23 requirements if the employment positions meet the requirements of a
24 family wage employment position as described in (c) (i) (B) and (C) of
25 this subsection (3).

26 (c) (i) For purposes of this subsection ~~((7))~~:

27 (A) For exemption certificates issued before the effective date
28 of this section, family wage employment positions are new permanent
29 employment positions requiring forty hours of weekly work, or their
30 equivalent, on a full-time basis ~~((at the))~~ assigned to an eligible
31 computer data center and receiving a wage equivalent to or greater
32 than one hundred fifty percent of the per capita personal income of
33 the county in which the qualified project is located as published by
34 the employment security department. The per capita personal income to
35 be used to determine qualification for any year is the amount that
36 was established for the immediate prior year.

37 (B) For exemption certificates issued on or after the effective
38 date of this section, family wage employment positions are new
39 permanent employment positions requiring 40 hours of weekly work, or
40 their equivalent, on a full-time basis assigned to an eligible

1 computer data center and receiving a wage equivalent to or greater
2 than 125 percent of the per capita personal income of the county in
3 which the qualified project is located as published by the employment
4 security department. The per capita personal income to be used to
5 determine qualification for any year is the amount that was
6 established for the immediate prior year.

7 (C) An employment position may not be counted as a family wage
8 employment position unless the employment position is entitled to
9 health insurance coverage provided by the employer of the employment
10 position. ((For purposes of this subsection (3) (c), "new))

11 (D) "New permanent employment position" means an employment
12 position that did not exist or that had not previously been filled as
13 of the date that the department issued an exemption certificate to
14 the ((owner)) qualifying business or qualifying tenant of an eligible
15 computer data center, as the case may be.

16 (ii) (A) Family wage employment positions include positions filled
17 by employees of the ((owner of the eligible computer data center))
18 qualifying business and by employees of qualifying tenants.

19 (B) Family wage employment positions also include individuals
20 performing work at an eligible computer data center as an independent
21 contractor hired by the owner of the eligible computer data center or
22 as an employee of an independent contractor hired by the owner of the
23 eligible computer data center, if the work is necessary for the
24 operation of the computer data center, such as security and building
25 maintenance, and provided that all of the applicable requirements in
26 (c) (i) of this subsection (3) are met.

27 (d) ((All)) (i) For a qualifying business or qualifying tenant
28 that does not meet the requirements of this subsection (3),
29 previously exempted sales and use taxes are immediately due and
30 payable ((for a qualifying business or qualifying tenant that does
31 not meet the requirements of this subsection)) and any exemption
32 certificate issued to that qualifying business or qualifying tenant
33 under this section is canceled, except as described in (d) (iii) of
34 this subsection (3).

35 (ii) The department of labor and industries must, at the request
36 of the department, assist in determining whether the requirements of
37 this subsection (3) have been met.

38 (iii) If the department, with the assistance of the department of
39 labor and industries, finds that a failure to meet the requirements
40 of this subsection (3) is due to circumstances beyond the control of

1 the qualifying business or qualifying tenant including, but not
2 limited to, a declaration of an economic recession, pandemic, or
3 natural disaster affecting data center operations, the department may
4 provide exceptions or extensions to the requirements of this
5 subsection (3).

6 (iv) Any repayment of taxes triggered by the failure of a
7 qualifying business or qualifying tenant to meet the requirements of
8 this subsection (3) must be calculated in proportion to the duration
9 of time for which any applicable requirement was not met.

10 (v) If the department is notified that a qualifying business or
11 qualifying tenant fails to meet the requirements of this subsection
12 (3), the department may require a qualifying business or qualifying
13 tenant to submit records necessary to determine whether the
14 requirements have been met.

15 (4) For exemption certificates issued on or after the effective
16 date of this section:

17 (a) Within three years after being placed in service, the
18 qualifying business operating a newly constructed data center must
19 certify to the department that it has attained certification under
20 one or more of the following sustainable design or green building
21 standards:

22 (i) BREEAM for new construction or BREEAM in-use;

23 (ii) Energy star;

24 (iii) Envision;

25 (iv) ISO 50001-energy management;

26 (v) LEED for building design and construction or LEED for
27 operations and maintenance;

28 (vi) Green globes for new construction or green globes for
29 existing buildings;

30 (vii) UL 3223; or

31 (viii) Other reasonable standards approved by the department.

32 (b) The department may require qualifying businesses and
33 qualifying tenants to submit records necessary to verify the
34 requirements under (a) of this subsection have been met.

35 (c) (i) For a qualifying business or qualifying tenant that does
36 not meet the requirements of (a) of this subsection (4), all
37 previously exempted sales and use taxes may be immediately due and
38 payable, any exemption certificate issued to that qualifying business
39 or qualifying tenant under this section is canceled, and an

1 additional 10 percent penalty is assessed, except as described in
2 (c)(ii) of this subsection (4).

3 (ii) If the department finds that a failure to meet the
4 requirements of this subsection (4) is due to circumstances beyond
5 the control of the qualifying business or qualifying tenant
6 including, but not limited to, a declaration of an economic
7 recession, pandemic, or natural disaster affecting data center
8 operations, the department may, at its discretion, provide exceptions
9 or extensions to the requirements of this subsection (4). The
10 department may, at its discretion, coordinate with agencies with
11 relevant expertise to assist in determining whether the requirements
12 have been met.

13 (5) A qualifying business or a qualifying tenant claiming the
14 exemption under this section is encouraged to take direct steps to
15 adopt practices to mitigate negative environmental impacts resulting
16 from expanded use of data centers, including through:

17 (a) Coordinating with the industrial waste coordination program
18 established under RCW 43.31.625 to identify and provide technical
19 assistance in implementing industrial symbiosis projects;

20 (b) To the extent possible, procuring or contracting for power
21 from renewable sources;

22 (c) Adopting practices to improve the energy efficiency of
23 existing data centers, including through upgrading and consolidating
24 technology, managing data center airflow, and adjusting and improving
25 heating, ventilation, and air conditioning systems; and

26 (d) Taking actions to conserve, reuse, and replace water. This
27 includes using water efficient fixtures and practices; treating,
28 infiltrating, and harvesting rainwater; recycling water before
29 discharging; partnering with local water utilities to use discharged
30 water for irrigation and other water conservation purposes; using
31 reclaimed water where possible for data center operations; and
32 supporting water restoration in local watersheds.

33 (6) A qualifying business or a qualifying tenant claiming an
34 exemption under this section or RCW 82.12.986 must complete an annual
35 tax performance report with the department as required under RCW
36 82.32.534. The report must identify construction firm names and
37 employment levels used for constructing, renovating, refurbishing, or
38 remodeling the data centers.

39 ~~((5)) (7)(a) ((The exemption provided in this section does not~~
40 ~~apply to:~~

1 ~~(i) Any person who has received the benefit of the deferral~~
2 ~~program under chapter 82.60 RCW on: (A) The construction, renovation,~~
3 ~~or expansion of a structure or structures used as a computer data~~
4 ~~center; or (B) machinery or equipment used in a computer data center;~~
5 ~~and~~

6 ~~(ii) Any person affiliated with a person within the scope of~~
7 ~~(a)(i) of this subsection (5).~~

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

16 ~~(6))~~ The certificate holder may not at any time assign or
17 transfer a certificate without the prior written consent of the
18 department. The department must allow certificate transfers if the
19 certificate holder meets the following requirements:

20 (i) The certificate assignee or transferee is qualified to do
21 business in the state;

22 (ii) The assignee or transferee acknowledges the transfer of the
23 certificate in writing;

24 (iii) The assignee or transferee agrees to keep and perform all
25 the terms of the certificates; and

26 (iv) An assignment or transfer of the certificate is to an entity
27 that:

28 (A) Controls, is controlled by, or under common control with, the
29 certificate holder;

30 (B) Acquires all or substantially all of the stock or assets of
31 the certificate holder; or

32 (C) Is the resulting entity of a merger or consolidation with the
33 certificate holder.

34 (b) In the event the assignee or transferee acquires eligible
35 server equipment in a qualifying asset sale under (a)(iv)(B) of this
36 subsection, the purchaser shall be deemed to purchase the eligible
37 server equipment pursuant to the transferred certificate.

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

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

3 (b) "Building" means a fully enclosed structure with a weather
4 resistant exterior wall envelope or concrete or masonry walls
5 designed in accordance with the requirements for structures under
6 chapter 19.27 RCW. This definition of "building" only applies to
7 computer data centers for which commencement of construction occurs
8 on or after July 1, 2015.

9 (c) "Certificate of occupancy" means:

10 (i) For a newly constructed eligible computer data center, the
11 certificate of occupancy issued by a local governing authority for
12 the structure or structures which comprise the eligible computer data
13 center; or

14 (ii) For renovations of an eligible computer data center, the
15 certificate of occupancy issued by a local governing authority for
16 the renovated structure or structures that comprise the eligible
17 computer data center.

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

29 (ii) For a computer data center comprised of multiple buildings,
30 each separate building constructed or refurbished specifically, and
31 used primarily, to house working servers is considered a computer
32 data center if it has all of the characteristics listed in ~~((e))~~
33 ~~(d)(i)~~ (A) through (C) of this subsection ~~((6))~~ (8).

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

37 ~~((d))~~ (e) "Electronic data storage and data management
38 services" include, but are not limited to: Providing data storage and
39 backup services, providing computer processing power, hosting
40 enterprise software applications, and hosting websites. The term also

1 includes providing services such as email, web browsing and
2 searching, media applications, and other online services, regardless
3 of whether a charge is made for such services.

4 ~~((e))~~ (f)(i) "Eligible computer data center" means a computer
5 data center:

6 (A) Located in a rural county as defined in RCW 82.14.370 at the
7 time an application for an exemption under this section is received;

8 (B) Having at least twenty thousand square feet dedicated to
9 housing working servers(~~(, where the server space has not previously~~
10 ~~been dedicated to housing working servers))~~); and

11 (C) For which the commencement of construction occurs:

12 (I) After March 31, 2010, and before July 1, 2011;

13 (II) After March 31, 2012, and before July 1, 2015; or

14 (III) After June 30, 2015, and before July 1, ~~((2025))~~ 2035.

15 (ii) For purposes of this section, "commencement of construction"
16 means the date that a building permit is issued under the building
17 code adopted under RCW 19.27.031 for construction of the computer
18 data center. The construction of a computer data center includes the
19 expansion, renovation, or ~~((other improvements made to))~~
20 refurbishment of existing facilities regardless of whether the
21 existing facility was previously ineligible and regardless of whether
22 commencement of construction of the existing facility occurred
23 outside of the dates listed in (f)(i)(C)(I) through (III) of this
24 subsection, including leased or rented space. "Commencement of
25 construction" does not include soil testing, site clearing and
26 grading, site preparation, or any other related activities that are
27 initiated before the issuance of a building permit for the
28 construction of the foundation of a computer data center. If no
29 building permit is required for renovation or refurbishment, then the
30 date that renovation or refurbishment begins is the "commencement of
31 construction."

32 ~~((iii) With respect to facilities in existence on April 1, 2010,~~
33 ~~that are expanded, renovated, or otherwise improved after March 31,~~
34 ~~2010, or facilities in existence on April 1, 2012, that are expanded,~~
35 ~~renovated, or otherwise improved after March 31, 2012, or facilities~~
36 ~~in existence on July 1, 2015, that are expanded, renovated, or~~
37 ~~otherwise improved after June 30, 2015, an eligible computer data~~
38 ~~center includes only the portion of the computer data center meeting~~
39 ~~the requirements in (e)(i)(B) of this subsection (6).~~

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

10 ~~(g)~~) (h) "Eligible server equipment" means:

11 (i) For a qualifying business whose computer data center
12 qualifies as an eligible computer data center under ~~(e)~~) (f)
13 (i)(C)(I) of this subsection ~~(6)~~) (8), the original server
14 equipment installed in an eligible computer data center on or after
15 April 1, 2010, and before January 1, 2026, and replacement server
16 equipment. For purposes of this subsection ~~(6)(g)~~) (8)(h)(i),
17 "replacement server equipment" means server equipment that:

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

21 (B) Is installed and put into regular use before April 1, 2018.

22 (ii) For a qualifying business whose computer data center
23 qualifies as an eligible computer data center under ~~(e)~~) (f)
24 (i)(C)(II) of this subsection ~~(6)~~) (8), "eligible server
25 equipment" means the original server equipment installed in an
26 eligible computer data center on or after April 1, 2012, and before
27 January 1, 2026, and replacement server equipment. For purposes of
28 this subsection ~~(6)(g)~~) (8)(h)(ii), "replacement server equipment"
29 means server equipment that:

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

33 (B) Is installed and put into regular use before April 1, 2024.

34 (iii) ~~(A)~~) For a qualifying business whose computer data center
35 qualifies as an eligible computer data center under ~~(e)~~) (f)
36 (i)(C)(III) of this subsection ~~(6)~~) (8), "eligible server
37 equipment" means the original server equipment installed in a
38 building within an eligible computer data center on or after July 1,
39 2015, and replacement server equipment. Server equipment installed in
40 movable or fixed stand-alone, prefabricated, or modular units,

1 including intermodal shipping containers, is not "directly installed
2 in a building." For purposes of this subsection (~~((6)(g))~~) (8)(h)
3 (iii)~~((A))~~, "replacement server equipment" means server equipment
4 that (~~replaces~~):

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

8 (II) Replaces existing server equipment in a computer data center
9 that meets the following requirements: Was ineligible before the
10 effective date of this section for the exemptions provided under this
11 section and RCW 82.12.986; has been refurbished; and to which a valid
12 exemption certificate applies; and

13 (B) Is installed and put into regular use no later than twelve
14 years after the date of the certificate of occupancy or completion of
15 refurbishment of the computer data center.

16 (iv) For a qualifying tenant who leases space within an eligible
17 computer data center, "eligible server equipment" means the original
18 server equipment installed within the space it leases from an
19 eligible computer data center with an exemption certificate on or
20 after April 1, 2010, (~~and before January 1, 2026,~~) and replacement
21 server equipment. For purposes of this subsection (~~((6)(g))~~) (8)(h)
22 (iv), "replacement server equipment" means server equipment that:

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

26 (II) Replaces existing server equipment in a computer data center
27 that meets the following requirements: Was ineligible before the
28 effective date of this section for the exemptions provided under this
29 section and RCW 82.12.986; has been refurbished; and to which a valid
30 exemption certificate applies; and

31 (B) Is installed and put into regular use (~~before April 1, 2024;~~
32 and

33 ~~(C) For tenants leasing space in an eligible computer data center~~
34 ~~built after July 1, 2015, is installed and put into regular use no~~
35 ~~later than twelve years after the date of the certificate of~~
36 ~~occupancy)) no later than 12 years after the date of the certificate~~
37 ~~of occupancy or completion of refurbishment of the computer data~~
38 ~~center.~~

39 (~~((h))~~) (i) "Qualifying business" means a business entity that
40 exists for the primary purpose of engaging in commercial activity for

1 profit and that is the owner of an eligible computer data center. The
2 term does not include the state or federal government or any of their
3 departments, agencies, and institutions; tribal governments;
4 political subdivisions of this state; or any municipal, quasi-
5 municipal, public, or other corporation created by the state or
6 federal government, tribal government, municipality, or political
7 subdivision of the state.

8 ~~((i))~~ (j) "Qualifying tenant" means a business entity that
9 exists for the primary purpose of engaging in commercial activity for
10 profit and that leases space from a qualifying business within an
11 eligible computer data center. The term does not include the state or
12 federal government or any of their departments, agencies, and
13 institutions; tribal governments; political subdivisions of this
14 state; or any municipal, quasi-municipal, public, or other
15 corporation created by the state or federal government, tribal
16 government, municipality, or political subdivision of the state. The
17 term also does not include a lessee of space in an eligible computer
18 data center under ~~((e))~~ (f)(i)(C)(I) of this subsection ~~((6))~~
19 (8), if the lessee and lessor are affiliated and:

20 (i) That space will be used by the lessee to house server
21 equipment that replaces server equipment previously installed and
22 operated in that eligible computer data center by the lessor or
23 another person affiliated with the lessee; or

24 (ii) Prior to May 2, 2012, the primary use of the server
25 equipment installed in that eligible computer data center was to
26 provide electronic data storage and data management services for the
27 business purposes of either the lessor, persons affiliated with the
28 lessor, or both.

29 ~~((j))~~ (k)(i) "Refurbished" or "refurbishment" means a
30 substantial improvement to an eligible computer data center to update
31 or modernize servers, server space, ventilation, or power
32 infrastructure in an eligible computer data center.

33 (ii) For a qualifying computer data center to be considered
34 refurbished, the qualifying business must certify, in a form and
35 manner prescribed by the department, that the refurbishment of an
36 eligible computer data center is complete. The refurbishment is
37 considered complete on the date that the improved portion of the
38 computer data center is operationally complete and able to be used
39 for its intended purpose.

1 (1) "Server equipment" means the computer hardware located in an
2 eligible computer data center and used exclusively to provide
3 electronic data storage and data management services, including cloud
4 services, for internal use by the owner or lessee of the computer
5 data center, for clients of the owner or lessee of the computer data
6 center, or both. "Server equipment" also includes computer software
7 necessary to operate the computer hardware. "Server equipment" does
8 not include personal computers, the racks upon which the server
9 equipment is installed, and computer peripherals such as keyboards,
10 monitors, printers, and mice.

11 (9) This section expires July 1, 2048.

12 **Sec. 4.** RCW 82.12.986 and 2015 3rd sp.s. c 6 s 303 are each
13 amended to read as follows:

14 (1) (a) An exemption from the tax imposed by RCW 82.12.020 is
15 provided for the use by qualifying businesses or qualifying tenants
16 of eligible server equipment to be installed, without intervening
17 use, in an eligible computer data center for which an exemption
18 certificate under RCW 82.08.986 has been issued, and to the use of
19 labor and services rendered in respect to installing such server
20 equipment.

21 ~~((The))~~ (b) Until July 1, 2048, this exemption also applies to
22 the use by a qualifying business or qualifying tenant of eligible
23 power infrastructure, including labor and services rendered in
24 respect to installing, repairing, altering, or improving such
25 infrastructure at an eligible computer data center for which an
26 exemption certificate under RCW 82.08.986 has been issued.

27 (c) The exemptions provided in this section expire July 1, 2048.

28 (2) A qualifying business or a qualifying tenant is not eligible
29 for the exemption under this section unless the department issued an
30 exemption certificate to the qualifying business or a qualifying
31 tenant for the exemption provided in RCW 82.08.986.

32 (3) ~~((a) The exemption provided in this section does not apply~~
33 ~~to:~~

34 ~~(i) Any person who has received the benefit of the deferral~~
35 ~~program under chapter 82.60 RCW on: (A) The construction, renovation,~~
36 ~~or expansion of a structure or structures used as a computer data~~
37 ~~center; or (B) machinery or equipment used in a computer data center;~~
38 and

1 ~~(ii) Any person affiliated with a person within the scope of~~
2 ~~(a)(i) of this subsection (3).~~

3 ~~(b) If a person has received the benefit of the exemption under~~
4 ~~this section and subsequently receives the benefit of the deferral~~
5 ~~program under chapter 82.60 RCW on either the construction,~~
6 ~~renovation, or expansion of a structure or structures used as a~~
7 ~~computer data center or machinery or equipment used in a computer~~
8 ~~data center, the person must repay the amount of taxes exempted under~~
9 ~~this section. Interest as provided in chapter 82.32 RCW applies to~~
10 ~~amounts due under this subsection (3)(b) until paid in full. A person~~
11 ~~is not required to repay taxes under this subsection with respect to~~
12 ~~property and services for which the person is required to repay taxes~~
13 ~~under RCW 82.08.986(5).~~

14 ~~(4))~~ The definitions and requirements in RCW 82.08.986 apply to
15 this section.

16 (4) The exemption provided in subsection (1) of this section does
17 not apply to the use of eligible server equipment and eligible power
18 infrastructure, and the labor and services provided in subsection (1)
19 of this section, if first used by qualifying businesses or qualifying
20 tenants on or after July 1, 2048.

21 (5) This section expires July 1, 2053.

22 NEW SECTION. Sec. 5. A new section is added to chapter 82.08
23 RCW to read as follows:

24 (1)(a) An exemption from the tax imposed by RCW 82.08.020 is
25 provided for sales to qualifying businesses and to qualifying tenants
26 of eligible server equipment to be installed, without intervening
27 use, in an eligible computer data center to which a valid exemption
28 certificate applies, and to charges made for labor and services
29 rendered in respect to installing eligible server equipment.

30 (b) The exemption also applies to sales to qualifying businesses
31 and to qualifying tenants of eligible power infrastructure, including
32 labor, material, equipment, and services rendered in respect to
33 constructing, installing, repairing, altering, or improving eligible
34 power infrastructure at an eligible computer data center for which an
35 exemption certificate has been issued.

36 (c) No new exemption certificates may be issued on or after July
37 1, 2028.

38 (d) The exemptions provided in this section expire July 1, 2038.

1 (2) (a) (i) In order to obtain an exemption, a qualifying business
2 must be located in a county with a population over 800,000, as
3 determined by the April 1, 2021, office of financial management
4 population estimates and must submit an application to the department
5 for an exemption certificate. The application must include the
6 information necessary, as required by the department, to determine
7 that a business or tenant qualifies for the exemption under this
8 section. The department must issue exemption certificates to
9 qualifying businesses and qualifying tenants. The department may
10 assign a unique identification number to each exemption certificate
11 issued under this section.

12 (ii) For the purposes of demonstrating that the requirements of
13 this subsection (2) (a) are met, a qualifying business must submit
14 records of available power for customers at the time of the
15 application for the exemption under this section. The qualifying
16 business must demonstrate that it has a minimum of 1.5 megawatts of
17 available power. The qualifying business must provide requests for
18 proposals, pricing offered, and marketing materials associated with
19 the requirements of this subsection, as required by the department,
20 as supporting documentation that the requirements of this subsection
21 (2) (a) have been met.

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

27 (c) (i) The exemptions provided in this section are limited to
28 qualifying businesses or tenants, and the department is authorized to
29 approve:

30 (A) Six applications to obtain the exemptions for qualifying
31 businesses in the first calendar year of the exemption; and

32 (B) Six applications to obtain the exemptions for qualifying
33 businesses in each year, calendar year three through calendar year
34 six, of the exemption.

35 (ii) The exemption is available on a first-in-time basis based on
36 the date the application required under this section is received by
37 the department.

38 (d) The exemption certificate is effective on the date the
39 application is received by the department, which is deemed to be the
40 date of issuance. Only purchases on or after the date of issuance

1 qualify for the exemption under this section. No tax refunds are
2 authorized for purchases made before the effective date of the
3 exemption certificate.

4 (e) Exemption certificates expire two years after the date of
5 issuance, unless construction has been commenced.

6 (f) A qualifying tenant must contract for a minimum electrical
7 capacity of 150 kilowatts for server and computer equipment in a
8 qualifying business. Tenants that previously qualified under RCW
9 82.08.986 or 82.12.986 must reapply if they intend to expand into a
10 qualifying business.

11 (3) (a) (i) Within six years of the date that the department issued
12 an exemption certificate under this section to a qualifying business
13 or a qualifying tenant with respect to an eligible computer data
14 center, the qualifying business or qualifying tenant must establish
15 that net employment assigned to an eligible computer data center has
16 increased by a minimum of three family wage employment positions for
17 each incremental increase of 20,000 square feet of space that is
18 newly dedicated to housing working servers at the eligible computer
19 data center. For qualifying tenants, the number of family wage
20 employment positions that must be increased under this subsection
21 (3) (a) (i) is based only on the space occupied by the qualifying
22 tenant in the eligible computer data center.

23 (ii) After the minimum number of family wage employment positions
24 as required under (a) (i) of this subsection (3) is established, a
25 qualifying business or a qualifying tenant must maintain the minimum
26 family wage employment positions required under (a) (i) of this
27 subsection (3) while the exemption certificate is valid.

28 (b) In calculating the number of family wage employment
29 positions:

30 (i) The owner of an eligible computer data center, in addition to
31 its own net increase in family wage employment positions, may
32 include:

33 (A) The net increase, since the date of issuance of the
34 qualifying business's exemption certificate, in family wage
35 employment positions employed by qualifying tenants; and

36 (B) The net increase in family wage employment positions
37 described in (c) (ii) (B) of this subsection (3).

38 (ii) (A) Qualifying tenants, in addition to their own net increase
39 in family wage employment positions, may include:

1 (I) A portion of the net increase in family wage employment
2 positions employed by the owner; and

3 (II) A portion of the net increase in family wage employment
4 positions described in (c)(ii)(B) of this subsection (3).

5 (B) The portion of the net increase in family wage employment
6 positions to be counted under this subsection (3)(b)(ii) by each
7 qualifying tenant is equal to the net increase in family wage
8 employment positions assigned to an eligible computer data center as
9 described in (b)(ii)(A)(I) and (II) of this subsection (3),
10 multiplied by the percentage of total space within the eligible
11 computer data center occupied by the qualifying tenant. Any
12 combination of qualifying business and qualifying tenant family wage
13 employment positions may meet this requirement.

14 (c)(i) For purposes of this subsection:

15 (A) For exemption certificates issued on or after the effective
16 date of this section, family wage employment positions are new
17 permanent employment positions requiring 40 hours of weekly work, or
18 their equivalent, on a full-time basis assigned to an eligible
19 computer data center and receiving a wage equivalent to or greater
20 than 125 percent of the per capita personal income of the county in
21 which the qualified project is located as published by the employment
22 security department. The per capita personal income to be used to
23 determine qualification for any year is the amount that was
24 established for the immediate prior year.

25 (B) An employment position may not be counted as a family wage
26 employment position unless the employment position is entitled to
27 health insurance coverage provided by the employer of the employment
28 position.

29 (C) "New permanent employment position" means an employment
30 position that did not exist or that had not previously been filled as
31 of the date that the department issued an exemption certificate to
32 the qualifying business or qualifying tenant of an eligible computer
33 data center, as the case may be.

34 (ii)(A) Family wage employment positions include positions filled
35 by employees of the qualifying business and by employees of
36 qualifying tenants.

37 (B) Family wage employment positions also include individuals
38 performing work at an eligible computer data center as an independent
39 contractor hired by the owner of the eligible computer data center or
40 as an employee of an independent contractor hired by the owner of the

1 eligible computer data center, if the work is necessary for the
2 operation of the computer data center, such as security and building
3 maintenance, and provided that all of the requirements in (c)(i) of
4 this subsection (3) are met.

5 (d)(i) For a qualifying business or qualifying tenant that does
6 not meet the requirements of this subsection (3), all previously
7 exempted sales and use taxes immediately due and payable, and any
8 exemption certificate issued to that qualifying business or
9 qualifying tenant under this section is canceled, except as described
10 in (d)(iii) of this subsection (3).

11 (ii) The department of labor and industries must, at the request
12 of the department, assist in determining whether the requirements of
13 this subsection (3) have been met.

14 (iii) If the department, with the assistance of the department of
15 labor and industries, finds that a failure to meet the requirements
16 of this subsection (3) is due to circumstances beyond the control of
17 the qualifying business or qualifying tenant including, but not
18 limited to, a declaration of an economic recession, pandemic, or
19 natural disaster affecting data center operations, the department may
20 provide exceptions or extensions to the requirements of this
21 subsection (3).

22 (iv) Any repayment of taxes triggered by the failure of a
23 qualifying business or qualifying tenant to meet the requirements of
24 this subsection (3) must be calculated in proportion to the duration
25 of time for which any applicable requirement was not met.

26 (v) If the department is notified that a qualifying business or
27 qualifying tenant fails to meet the requirements of this subsection
28 (3), the department may require a qualifying business or qualifying
29 tenant to submit records necessary to determine whether the
30 requirements have been met.

31 (4) For exemption certificates issued on or after the effective
32 date of this section:

33 (a) Within three years after being placed in service, the
34 qualifying business operating a newly constructed data center must
35 certify to the department that it has attained certification under
36 one or more of the following sustainable design or green building
37 standards:

- 38 (i) BREEAM for new construction or BREEAM in-use;
- 39 (ii) Energy star;
- 40 (iii) Envision;

- 1 (iv) ISO 50001-energy management;
- 2 (v) LEED for building design and construction or LEED for
3 operations and maintenance;
- 4 (vi) Green globes for new construction or green globes for
5 existing buildings;
- 6 (vii) UL 3223; or
- 7 (viii) Other reasonable standards approved by the department.

8 (b) The department may require qualifying businesses and
9 qualifying tenants to submit records necessary to verify the
10 requirements under this subsection (4) have been met.

11 (c) (i) For a qualifying business or qualifying tenant that does
12 not meet the requirements of this subsection (4), all previously
13 exempted sales and use taxes are immediately due and payable, any
14 exemption certificate issued to that qualifying business or
15 qualifying tenant under this section is canceled, and an additional
16 10 percent penalty is assessed, except as described in (c) (ii) of
17 this subsection (4).

18 (ii) If the department finds that a failure to meet the
19 requirements of this subsection (4) is due to circumstances beyond
20 the control of the qualifying business or qualifying tenant
21 including, but not limited to, a declaration of an economic
22 recession, pandemic, or natural disaster affecting data center
23 operations, the department may, at its discretion, provide exceptions
24 or extensions to the requirements of this subsection (4). The
25 department may, at its discretion, coordinate with agencies with
26 relevant expertise to assist in determining whether the requirements
27 of this subsection (4) have been met.

28 (5) A qualifying business or a qualifying tenant claiming the
29 exemption under this section is encouraged to take direct steps to
30 adopt practices to mitigate negative environmental impacts resulting
31 from expanded use of data centers, including through:

32 (a) Coordinating with the industrial waste coordination program
33 established under RCW 43.31.625 to identify and provide technical
34 assistance in implementing industrial symbiosis projects;

35 (b) To the extent possible, procuring or contracting for power
36 from renewable sources;

37 (c) Adopting practices to improve the energy efficiency of
38 existing data centers, including through upgrading and consolidating
39 technology, managing data center airflow, and adjusting and improving
40 heating, ventilation, and air conditioning systems; and

1 (d) Taking actions to conserve, reuse, and replace water. This
2 includes using water efficient fixtures and practices; treating,
3 infiltrating, and harvesting rainwater; recycling water before
4 discharging; partnering with local water utilities to use discharged
5 water for irrigation and other water conservation purposes; using
6 reclaimed water where possible for data center operations; and
7 supporting water restoration in local watersheds.

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

11 (7) A qualifying business or a qualifying tenant claiming an
12 exemption under this section must complete an annual tax performance
13 report as required in RCW 82.32.534. The report must identify
14 construction firm names and employment levels used for constructing,
15 renovating, refurbishing, or remodeling the data centers.

16 (8)(a) The certificate holder may not at any time assign or
17 transfer a certificate without the prior written consent of the
18 department. The department must allow certificate transfers if the
19 certificate holder meets the following requirements:

20 (i) The certificate assignee or transferee is qualified to do
21 business in the state;

22 (ii) The assignee or transferee acknowledges the transfer of the
23 certificate in writing;

24 (iii) The assignee or transferee agrees to keep and perform all
25 the terms of the certificates; and

26 (iv) An assignment or transfer of the certificate is to an entity
27 that:

28 (A) Controls, is controlled by, or under common control with, the
29 certificate holder;

30 (B) Acquires all or substantially all of the stock or assets of
31 the certificate holder; or

32 (C) Is the resulting entity of a merger or consolidation with the
33 certificate holder.

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

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

1 (a) "Affiliated" means that one person has a direct or indirect
2 ownership interest of at least 20 percent in another person.

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

7 (c) "Certificate of occupancy" means:

8 (i) For a newly constructed eligible computer data center, the
9 certificate of occupancy issued by a local governing authority for
10 the structure or structures which comprise the eligible computer data
11 center; or

12 (ii) For renovations of an eligible computer data center, the
13 certificate of occupancy issued by a local governing authority for
14 the renovated structure or structures that comprise the eligible
15 computer data center.

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

27 (ii) For a computer data center comprised of multiple buildings,
28 each separate building constructed or refurbished specifically, and
29 used primarily, to house working servers is considered a computer
30 data center if it has all of the characteristics listed in (d) (i) (A)
31 through (C) of this subsection (9).

32 (iii) A facility comprised of one building or more than one
33 building must have a combined square footage of at least 100,000
34 square feet.

35 (e) "Electronic data storage and data management services"
36 includes, but is not limited to: Providing data storage and backup
37 services, providing computer processing power, hosting enterprise
38 software applications, and hosting websites. The term also includes
39 providing services such as email, web browsing and searching, media

1 applications, and other online services, regardless of whether a
2 charge is made for such services.

3 (f) "Eligible computer data center" means a computer data center
4 having at least 20,000 square feet dedicated for housing working
5 servers. Movable or fixed stand-alone, prefabricated, or modular
6 units, including intermodal shipping containers, do not qualify as
7 "eligible computer data centers."

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

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

22 (ii) For purposes of this subsection (9) (h), "replacement server
23 equipment" means server equipment that:

24 (A) Replaces existing server equipment, if the sale or use of the
25 server equipment to be replaced qualified for an exemption under this
26 section or section 6 of this act; and

27 (B) Is installed and put into regular use within 10 years of the
28 effective date of this section.

29 (iii) For a qualifying tenant who leases space within an eligible
30 computer data center, "eligible server equipment" means the original
31 server equipment installed within the space it leases from an
32 eligible computer data center with an exemption certificate on or
33 within 10 years of the effective date of this section, and
34 replacement server equipment. For purposes of this subsection
35 (9) (h) (iii), "replacement server equipment" means server equipment
36 that:

37 (A) (I) Replaces existing server equipment, if the sale or use of
38 the server equipment to be replaced qualified for an exemption under
39 this section or section 6 of this act and is installed and put into
40 regular use before July 1, 2027; or

1 (II) Replaces existing server equipment in a computer data center
2 that meets the following requirements: Was ineligible before the
3 effective date of this section for the exemptions provided under this
4 section and section 6 of this act; has been refurbished; and to which
5 a valid exemption certificate applies; and

6 (B) Is installed and put into regular use no later than 12 years
7 after the date of the certificate of occupancy or completion of
8 refurbishment of the computer data center.

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

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

27 (k) (i) "Refurbished" or "refurbishment" means a substantial
28 improvement to an eligible computer data center for which a
29 certificate of occupancy is not issued. Such an improvement must
30 update or modernize servers, server space, ventilation, or power
31 infrastructure in an eligible computer data center.

32 (ii) For a qualifying computer data center to be considered
33 refurbished, the qualifying business must certify, in a form and
34 manner prescribed by the department, that the refurbishment of an
35 eligible computer data center is complete. The refurbishment is
36 considered complete on the date that the improved portion of the
37 computer data center is operationally complete and able to be used
38 for its intended purpose.

39 (l) "Server equipment" means the computer hardware located in an
40 eligible computer data center and used exclusively to provide

1 electronic data storage and data management services for internal use
2 by the owner or lessee of the computer data center, for clients of
3 the owner. For the purposes of this subsection, "electronic data
4 storage and data management services" include, but are not limited
5 to: Providing data storage and backup services, providing computer
6 processing power, hosting enterprise software applications, and
7 hosting websites. The term also includes providing services such as
8 email, web browsing and searching, media applications, and other
9 online services, regardless of whether a charge is made for such
10 services. "Server equipment" also includes computer software
11 necessary to operate the computer hardware. "Server equipment" does
12 not include personal computers, the racks upon which the server
13 equipment is installed, and computer peripherals such as keyboards,
14 monitors, printers, and mice, unless used within the eligible
15 computer data center.

16 (10) This section expires July 1, 2038.

17 NEW SECTION. **Sec. 6.** A new section is added to chapter 82.12
18 RCW to read as follows:

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

28 (2) The exemption provided in this section does not apply to any
29 person for whom the exemption under section 5 of this act does not
30 apply.

31 (3) A qualifying business or a qualifying tenant claiming an
32 exemption under this section must complete an annual tax performance
33 report as required in RCW 82.32.534. The report must identify
34 construction firm names and employment levels used for constructing,
35 renovating, refurbishing, or remodeling the data centers.

36 (4) The definitions and requirements in section 5 of this act
37 apply to this section.

38 (5) The exemption provided in subsection (1) of this section does
39 not apply to the use of eligible server equipment and eligible power

1 infrastructure, and the labor and services provided in subsection (1)
2 of this section, if first used by qualifying businesses or qualifying
3 tenants on or after July 1, 2038.

4 (6) This section expires July 1, 2043.

5 NEW SECTION. **Sec. 7.** A new section is added to chapter 82.08
6 RCW to read as follows:

7 From the effective date of this section, in order to obtain the
8 exemption provided in RCW 82.08.986 or section 5 of this act, a
9 qualifying business or qualifying tenant must certify to the
10 department that, for new construction work to be performed on the
11 site of the computer data center, the computer data center receiving
12 an exemption under RCW 82.08.986 or section 5 of this act will be
13 constructed by the prime contractor and its subcontractors in a way
14 that includes community workforce agreements or project labor
15 agreements and the payment of area standard prevailing wages and
16 apprenticeship utilization requirements, provided the following
17 apply:

18 (1) The owner and the prime contractor and all of its
19 subcontractors regardless of tier have the absolute right to select
20 any qualified and responsible bidder for the award of contracts on a
21 specified project without reference to the existence or nonexistence
22 of any agreements between such bidder and any party to such project
23 labor agreement, and only when such bidder is willing, ready, and
24 able to become a party to, signs a letter of assent, and complies
25 with such agreement or agreements, should it be designated the
26 successful bidder; and

27 (2) It is understood that this is a self-contained, stand-alone
28 agreement, and that by virtue of having become bound to such
29 agreement or agreements, neither the project contractor nor the
30 subcontractors are obligated to sign any other local, area, or
31 national agreement.

32 NEW SECTION. **Sec. 8.** (1) The department of commerce shall
33 contract with the Pacific Northwest national laboratory to:

34 (a) Evaluate Washington's current and future electric grid
35 resilience and reliability based on current and projected electric
36 energy production, the state's ability to produce energy in state,
37 Washington's reliance on energy production outside of the state, and
38 its energy grid interdependence with other western states;

1 (b) Identify key grid resilience and reliability challenges that
2 could emerge under multiple future scenarios given adoption of new
3 energy technologies, changes in residential and industrial energy
4 demand, and changes in energy production and availability from both
5 in and out-of-state sources;

6 (c) Study the impact to the future electric grid resulting from
7 the growth of the information technology sector, including the impact
8 of increased data center energy demand from the tax exemptions
9 provided in RCW 82.08.986 or section 5 of this act;

10 (d) Review and incorporate existing models, data, and study
11 findings including, but not limited to, the "Washington 2021 state
12 energy strategy and the 2021 northwest power plan," to ensure a
13 duplication of efforts does not occur and to highlight modeling gaps
14 related to regional grid resilience planning;

15 (e) Convene an advisory group to inform scenario development and
16 review results, which may include representatives from the Washington
17 State University Pacific Northwest national laboratory advanced grid
18 institute, utilities and transportation commission, relevant
19 legislative committees, energy producers, utilities, labor,
20 environmental organizations, tribes, and communities at high risk of
21 rolling blackouts and power supply inadequacy; and

22 (f) Develop recommendations for enhancing electric grid
23 reliability and resiliency for Washington that includes
24 considerations of affordability, equity, and federal funding
25 opportunities.

26 (2) The department of commerce shall report by December 1, 2022,
27 in compliance with RCW 43.01.036, the Pacific Northwest national
28 laboratory's findings and recommendations to the appropriate
29 committees of the legislature concerning electric grid resilience and
30 reliability evaluated in subsection (1) of this section.

31 (3) This section expires December 1, 2023.

32 NEW SECTION. **Sec. 9.** If specific funding for the purposes of
33 section 8 of this act, referencing section 8 of this act by bill or
34 chapter number and section number, is not provided by June 30, 2022,
35 in the omnibus appropriations act, section 8 of this act is null and
36 void."

37 Correct the title.

EFFECT: (1) Requires qualifying businesses and qualifying tenants to maintain the minimum number of required family wage employment positions while the exemption certificate is valid, beginning from the time the positions are initially established, under both the rural county data center sales and use tax exemption program (rural program) and the nonrural county data center sales and use tax exemption program (nonrural program).

(2) Specifies that, for the family wage employment requirement under both the rural program and the nonrural program, the required repayment of any previously exempted tax by a qualifying business or a qualifying tenant must be calculated in proportion to the duration of time for which the requirement was not met.

(3) Requires the Department of Labor and Industries to assist the Department of Revenue (DOR) in determining whether the family wage employment requirement is met, and whether to allow exceptions or extensions for extraordinary events or circumstances beyond the control of the qualifying business or qualifying tenant, under both the rural program and nonrural program.

(4) Provides that if DOR is notified that a tax exemption recipient fails to meet the family wage employment requirements under the rural program and nonrural program, DOR may require the exemption recipient to submit records necessary to determine whether the requirements have been met.

(5) Removes a labor strike and technological advancements as specified examples of an extraordinary event or circumstance beyond the control of a qualifying business or qualifying tenant under both the rural program and nonrural program.

(6) Provides that a rural county must meet the specified statutory definition of a rural county at the time of application, rather than meet the specified statutory definition of a rural county as of the effective date of the Act.

(7) Modifies the grid reliability study by: (a) Requiring the Department of Commerce, rather than the Energy Facility Site Evaluation Council, to contract for the study and report to the Legislature; (b) adding existing reports that must be reviewed and incorporated in completing the study; and (c) providing that the study is null and void if funding is not provided in the omnibus appropriations act by June 30, 2022.

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