Washington State
House of Representatives
Office of Program Research

BILL ANALYSIS

Finance Committee

HB 1473

Brief Description: Providing a tax preference for data centers in counties with a certain population.

Sponsors: Representatives Jacobsen, Kirby, Stokesbary, Sutherland, Robertson, Chambers, Eslick and Barkis.

Brief Summary of Bill

- Establishes a sales and use tax exemption for the purchase of eligible server equipment, and related labor and services, for eligible data centers in certain non-rural counties.
- Requires data centers receiving the sales and use tax exemption to be developed under a community workforce agreement or project labor agreement.

Hearing Date: 1/31/22

Staff: Kyle Raymond (786-7190).

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 4.0 percent, depending on the location.

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

Rural County Data Center Tax Preference.
A retail sale and use tax exemption is provided to qualifying businesses operating data centers and qualifying tenants of those data centers. The exemption includes purchases of eligible server equipment and power infrastructure, labor, and services for installing eligible server equipment, and for constructing, installing, repairing, altering, or improving eligible power infrastructure.

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 than 225,000 square miles as of April 1, 2018. Currently, there 30 counties that meet the rural county definition.

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. Family-wage employment positions are defined as new permanent full-time jobs with employer-provided health care, requiring 40 hours of work and with a wage that is 150 percent of the per capita personal income of the county where the center is located. If the number of family-wage jobs has not increased or been met within those six years, all previously exempted sales and use taxes are immediately due and payable.

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. Currently, Washington has over 650 tax preferences, including a variety of sales and use tax exemptions. Legislation that establishes or expands a tax preference must include a Tax Preference Performance Statement (TPPS) that identifies the public policy objective of the preference, as well as specific metrics that the Joint Legislative Audit and Review Committee (JLARC) can use to evaluate the effectiveness of the preference. All new tax preferences automatically expire after 10 years unless an alternative expiration date is provided.

Summary of Bill:

Data Center Tax Preference in Certain Non-Rural Counties.
A sales and use tax exemption is established for qualifying businesses operating data centers, and qualifying tenants of those data centers, located in certain non-rural counties.

The exemption is provided for the sale of eligible server equipment and services for installing such equipment. The exemption also applies to the sale of eligible power infrastructure, including labor, material, equipment, and services for constructing, installing, repairing, altering, or improving eligible power infrastructure.

To qualify, the data center must be in a county with a population between 900,000 and 1 million people as determined in the April 1, 2020 population estimate provided by the Office of Financial Management. Pierce County meets that population criteria.

An application must be made to the Department of Revenue (DOR) for the exemption certificate. A qualifying business must submit records of available power for customers at the time of application, which demonstrates it has a minimum of 1.5 megawatts of available power. A qualifying tenant must contract for a minimum electrical capacity of 150 kilowatts for server and computer equipment in a qualifying business.

The exemption certificate is effective on the date the application is received by DOR, which is deemed its date of issuance. No new exemption certificates may be issued by DOR on or after July 1, 2027, and the exemptions fully expire July 1, 2037.

The exemption certificate may be used to build, repair, or refurbish a data center. The number of exemption certificates is limited to two the first year and one in each year three through six. The certificate is available on a first-in-time basis. Construction must commence within two years of certificate issuance.

Within six years, a qualifying business must establish a net employment increase of at least three jobs per 20,000 square feet of space. The amount of family-wage jobs the qualifying tenant must have created may be based on the proportion of the space they occupy in the data center. If the number of family-wage jobs has not increased or been met within those six years, all previously exempted sales and use taxes are immediately due and payable.

Family-wage employment positions are new, permanent full-time jobs with employer-provided health care, requiring 40 hours of work and with a wage that is 125 percent of the per capita personal income of the county where the center is located.

A qualifying business must certify that the project is developed under a community workforce agreement or project labor agreement.

An exemption certificate may be assigned or transferred if the assignee or transferee meets specified requirements and has the written consent of the DOR.

A taxpayer claiming the credit must file an annual tax performance report with the DOR.

<u>Tax Performance Statement</u>.
A TPPS is included, stating the Legislature's intent to increase investment in data center construction, leasing, and other investment in qualifying counties to grow employment in the technology industry and increase the county tax base. The JLARC will perform the tax preference review. The Legislature also intends to extend the expiration of the tax preference if

the review finds the tax preference increases the tax base of the county because of the construction, leasing, and other investment of eligible computer data centers.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.