

HOUSE BILL REPORT

ESHB 1846

As Passed House:

March 4, 2022

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: House Committee on Finance (originally sponsored by Representatives Berg and Ramel).

Brief History:

Committee Activity:

Finance: 1/31/22, 2/17/22 [DPS].

Floor Activity:

Passed House: 3/4/22, 68-30.

Brief Summary of Engrossed Substitute Bill

- Expands and extends the existing sales and use tax exemption for data centers in rural counties.
- Establishes a sales and use tax exemption for the purchase of eligible server equipment, and related labor and services, for eligible data centers in counties with a population over 800,000.
- Requires a qualifying business operating a new data center to attain a specified sustainable design or green building standard certification within three years after being placed in service.
- Requires data centers receiving an exemption to be developed under a community workforce agreement or project labor agreement, for new construction work performed on computer data center site.

HOUSE COMMITTEE ON FINANCE

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.

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Frame, Chair; Berg, Vice Chair; Walen, Vice Chair; Chopp, Harris-Talley, Morgan, Orwall, Ramel, Springer, Thai and Wylie.

Minority Report: Do not pass. Signed by 6 members: Representatives Orcutt, Ranking Minority Member; Dufault, Assistant Ranking Minority Member; Chase, Stokesbary, Vick and Young.

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.

Rural Data Center Tax Preference.

A retail sales and use tax exemption is provided qualifying businesses operating data centers, and qualifying tenants of those data centers, located in rural counties. 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. In addition, 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.

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, 2021. Currently, there are 30 counties that meet 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.

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 31 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. If the family wage job requirement is not met, all previously exempted sales and use taxes are immediately due and payable.

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.

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 that identifies the public policy objective of the preference, as well as specific metrics that the Joint Legislative Audit and Review Committee 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 Engrossed Substitute Bill:

Rural Data Center Tax Preference.

The sales and use tax exemption for qualifying businesses operating data centers located in rural counties, and qualifying tenants of those data centers, is extended. No new exemption certificates may be issued by the Department of Revenue (DOR) on or after July 1, 2036, and the exemptions fully expire July 1, 2048. The exemption certificate is effective on the date the application is received from the DOR. No tax refunds may be given for purchases made before the effective date of this bill.

An eligible computer data center must be located in a county that meets the definition of a rural county at the time of application.

Refurbishment Certificate.

Qualified businesses and qualified tenants may use their exemption certificate to refurbish

existing eligible data centers. The DOR may issue no more than six certificates for data centers that qualify through refurbishment each calendar year. Certificates are available for refurbished data centers on a first-in-time basis. Each qualifying business may apply for only one certificate for a refurbished data center each calendar year.

Refurbishment means a substantial improvement to an eligible computer data center for which a certificate of occupancy is not issued. These improvements must update or modernize servers, server space, ventilation, or power infrastructure in an eligible data center. To be considered refurbished, the qualifying business must certify to the DOR that the refurbishment is complete. It is considered complete when the improved portion of the computer data center is operationally complete and can be used as intended.

Family-wage Employment Requirement.

For new exemptions issued, the income requirement to be considered a family-wage employment positions a wage equivalent to or greater than 125 percent of the per capita personal income of the county in which the qualified project is located as published by the Employment Security Department. The per capita personal income to be used to determine qualification for any year is the amount that was established for the immediate prior year.

The number of family-wage employment positions the qualifying tenant must have created may be based on the proportion of the space they occupy in the data center. In addition to existing consequences of noncompliance, an issued exemption certificate is also canceled if the employment requirement is not met.

A qualifying business and qualifying tenant must maintain the minimum number of required family-wage employment positions while the exemption certificate is valid, beginning from the time the family-wage job requirement is initially established. If the DOR is notified that a qualifying business or qualifying tenant fails to meet the family-wage job requirements, the DOR may require a qualifying business or qualifying tenant to submit records necessary to determine whether the requirements have been met. The Department of Labor and Industries must, at the request of the DOR, assist in determining whether the requirements have been met.

Building Standards Certification Requirement.

Within three years of being placed in service, a qualifying business operating a newly constructed data center must certify to the DOR it has attained certification under one or more sustainable design or green building standards, including the Building Research Establishment's Environmental Assessment Method (BREEAM), Energy star, Envision, International Organization for Standardization (ISO) 50001 energy management systems, Leadership in Energy and Environmental Design (LEED) standards, Green Globes, Underwriters Laboratories (UL) 3223, or other reasonable standards approved by the DOR.

The DOR may require qualifying businesses and qualifying tenants to submit records necessary to verify the sustainable design or green building standard certification

requirement has been met. If the requirement is not met, all previously exempted sales and use taxes are immediately due and payable, the exemption certificate is canceled, and an additional 10 percent penalty is assessed unless an exception or extension is provided

Exceptions and Extensions of Certain Requirements.

The DOR, with the assistance from the Department of Labor and Industries, may provide exceptions or extensions to the family-wage employment requirement and the building standard certification requirement due to an extraordinary event or circumstance beyond the control of the qualifying business or qualifying tenant including, but not limited to, a declaration of an economic recession, pandemic, or natural disaster affecting data center operations. Any tax repayment must be calculated in proportion to the amount of time the applicable requirement was not met.

Community Workforce Agreements or Project Labor Agreements Requirement.

For new exemptions issued, a qualifying business or qualifying tenant receiving the exemption must certify to the DOR that, for new construction work to be performed on the site of the computer data center, the computer data center receiving an exemption will be constructed by the prime contractor and its subcontractors in a way that includes community workforce agreements or project labor agreements and the payment of area standard prevailing wages and apprenticeship utilization requirements.

Additional Provisions.

A qualifying business or tenant claiming the exemption is encouraged to take direct steps to adopt practices to mitigate negative environmental impacts resulting from expanded use of data centers, including the adoption of certain industrial symbiosis practices.

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

As a part of the annual tax performance report requirement, a qualifying business or a qualifying tenant must identify construction firm names and employment levels used for constructing, renovating, refurbishing, or remodeling the data centers.

Data Center Tax Preference in Certain Non-Rural Counties.

An exemption to the sales and use tax is established for qualifying businesses and tenants of eligible data centers. The exemption applies to the purchase of eligible server equipment and services for installing such equipment. In addition, the exemption applies to the purchase of eligible power infrastructure, including labor, material, equipment, and services for constructing, installing, repairing, altering, or improving eligible power infrastructure.

To qualify, a business must be in a county with a population over 800,000 people as determined in the April 1, 2021, population estimate provided by the Office of Financial Management. King, Pierce, and Snohomish counties meet the population criterion.

An application must be made to the 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 tenant must contract for a minimum electrical capacity of 150 kilowatts for server and computer equipment in a qualifying business.

The exemption certificate may be used to build, repair, or refurbish a data center. The number of exemption certificates is limited to six per year for the first calendar year and six per year for years three through six of the exemption.

The certificate is available on a first-in-time basis. Construction must commence within two years of certificate issuance. The exemption certificate is effective the date the application is received by the DOR. No new exemption certificates may be issued by the DOR on or after July 1, 2028, and the exemptions fully expire July 1, 2038.

Family-wage Employment Requirement.

Within six years, a qualifying business must establish a net employment increase of at least three jobs per 20,000 square feet of space, and qualifying tenants must establish a net employment increase based on the space occupied in the eligible computer data center. 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 as published by the Employment Security Department. The per capita personal income to be used to determine qualification for any year is the amount that was established for the immediate prior year.

A qualifying business and qualifying tenant must maintain the minimum number of required family-wage employment positions while the exemption certificate is valid, beginning from the time the family-wage job requirement is initially established. If the DOR is notified that a qualifying business or qualifying tenant fails to meet the family-wage job requirements, the DOR may require a qualifying business or qualifying tenant to submit records necessary to determine whether the requirements have been met. The Department of Labor and Industries must, at the request of the DOR, assist in determining whether the requirements have been met.

If the family-wage job requirements are not met, all previously exempted sales and use taxes are immediately due and payable and the exemption certificate is canceled unless an exception or extension is provided.

Building Standards Certification Requirement.

Within three years after being placed in service, a qualifying business operating a newly constructed data center must certify to the DOR that it has attained certification under one or more sustainable design or green building standards, including BREEAM, Energy star, Envision, ISO 50001 energy management systems, LEED standards, Green Globes, UL 3223, or other reasonable standards approved by the DOR.

The DOR may require qualifying businesses and qualifying tenants to submit records necessary to verify the sustainable design or green building standard certification requirement has been met. If the requirement is not met, all previously exempted sales and use taxes are immediately due and payable, the exemption certificate is canceled, and an additional 10 percent penalty is assessed unless an exception or extension is provided.

Exceptions and Extensions of Certain Requirements.

The DOR, with the assistance from the Department of Labor and Industries, may provide exceptions or extensions to the family-wage employment requirement and the building standard certification requirement due to an extraordinary event or circumstance beyond the control of the qualifying business or qualifying tenant including, but not limited to, a declaration of an economic recession, pandemic, or natural disaster affecting data center operations. Any repayment of taxes must be calculated in proportion to the amount of time the applicable requirement was not met.

Community Workforce Agreements or Project Labor Agreements Requirement.

A qualifying business or qualifying tenant receiving the exemption must certify to the DOR that, for new construction work to be performed on the site of the computer data center, the computer data center receiving an exemption will be constructed by the prime contractor and its subcontractors in a way that includes community workforce agreements or project labor agreements and the payment of area standard prevailing wages and apprenticeship utilization requirements.

Additional Provisions.

A qualifying business or tenant claiming the exemption is encouraged to take direct steps to adopt practices to mitigate negative environmental impacts resulting from expanded use of data centers, including the adoption of certain industrial symbiosis practices.

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. The report must identify construction firm names and employment levels used for constructing, renovating, refurbishing, or remodeling the data centers.

Electric Grid Resilience and Reliability Study.

The Department of Commerce is required to contract with the Pacific Northwest National Laboratory to evaluate Washington's current and future electric grid resilience and reliability. The study must identify key grid resilience and reliability challenges that could emerge under multiple future scenarios given adoption of new energy technologies, changes in residential and industrial energy demand, and changes in energy production and availability from both in and out-of-state sources. The study must review and incorporate existing models, data, and study findings to ensure a duplication of efforts does not occur

and to highlight modeling gaps related to regional grid resilience planning.

In addition, the impact to the future electric grid resulting from the growth of the information technology sector must be studied, including the impact of increased data center energy demand from the rural and non-rural data center tax exemptions.

An advisory group must be convened to inform scenario development and review results. The advisory group may include representatives from the Washington State University Pacific Northwest National Laboratory Advanced Grid Institute and the Utilities and Transportation Commission. In addition, the advisory group may include relevant legislative committees, energy producers, utilities, labor, environmental organizations, tribes, and communities at high risk of rolling blackouts and power supply inadequacy.

Recommendations must be developed for enhancing electric grid reliability and resiliency that include considerations of affordability, equity, and federal funding opportunities.

The Department of Commerce is required to report to the appropriate committees of the Legislature the findings and recommendations of the electric grid resilience and reliability evaluation by December 1, 2022.

The study is null and void unless funded in the budget.

Tax Performance Statement and Review.

A tax preference performance statement is included, stating the Legislature's intent to extend the expiration of the tax preference if the review finds the tax preference is: generating capital investment in new computer data centers, refurbished data centers, and existing data centers (e.g., replacement server equipment); generating state and local tax collections from data center investment and operations; and generating construction and trade jobs in the state. The review must factor in changing economic conditions. The Joint Legislative Audit and Review Committee will perform the tax preference review.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on March 5, 2022.

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

Staff Summary of Public Testimony:

(In support) This bill will ensure that the data center industry has a future in Washington, while both supporting state climate goals and prioritizing the interests of workers. This bill creates a targeted incentive for data center construction and refurbishment, while meeting labor standards and private investments in workforce development. The data centers

receiving the exemption also have to mitigate environmental impacts by using industrial symbiosis or other climate-focused measures. The existing data center exemption works, with the Joint Legislative Audit and Review Committee finding the exemption meets its statutory objective and recommended continuing the exemption.

The bill includes strong accountability mechanisms to ensure workers are safe, skilled appropriately compensated. Project labor agreements provide consistency for areas such as standard wages, benefits, and working conditions. The public works process includes important labor standards. However, the state often establishes policies that defer revenue, rather than spending it. With this, the labor standards no longer apply. This bill addresses this issue by ensuring that the jobs created under the bill are of high quality and include apprenticeship opportunities for those new to the construction workforce. The state should take every step to ensure that every dollar exempted from revenue collection should be driven towards the best possible investment for the community.

The building of infrastructure is an important strategic element of growing a strong economy. Data centers are integral networks that have made Washington a technology hub. Data centers bring immense economic benefits to rural Washington. Data centers have created approximately 5,300 new construction and skilled trade jobs annually since 2017. Data centers also contribute significant tax revenues to the state. The existing data center investments have been beneficial in Central Washington through helping to diversify the local economy.

Without this bill, Washington will not see new data centers located in the state and will risk losing existing data centers. Data center industry expansion is already happening, and Washington is losing data center investments to Oregon and other states. Workers are currently traveling out-of-state to work on data centers that should be built in Washington, which creates a missed opportunity for the state and a burden on the families of workers traveling out-of-state.

The state already has a strong rural data center market, but the lack of urban investment hurts the growth of the overall sector. Washington is the only state that separated rural from urban data center tax preferences. Unequal access to digital infrastructure furthers the digital divide. More online infrastructure capacity is needed to help address the divide, including for those disadvantaged by limited access in urban areas. Pierce County has the economic development profile that could host urban co-location data center facilities.

Brownfield sites provide value to the community through jobs, increased land value, and adding to the tax base. A key component of Brownfield redevelopment is finding sustainable anchor operators, and data centers are a great fit. Fiber-optic Internet providers will not build new, strong networks in areas that do not have data centers because data centers boost the service provider signal and get Internet to local communities. Without fiber-optic providers, businesses access to high-speed Internet and sufficient bandwidth will be limited.

(Opposed) Private owners should be able to choose whatever contractor they want to work with. The public labor agreement or community workforce agreements in the bill would mandate that data centers only use union contractors. Half of the taxpayers in the construction industry would not be able to participate, creating a distinct and unfair advantage for union contractors. Small and mid-sized contractors, as well as most women- and minority-owned firms, are non-union and would be precluded or disincentivized from participating.

There is a great need to construct data centers across Washington, but the public labor agreement or community workforce agreements provisions should be removed from the bill.

(Other) A bill needs to be passed providing tax incentives to data centers this year. Washington is losing projects to Oregon, and there are projects ready to go in Quincy that the state will lose without the passage of a tax incentive. The public labor agreement requirement will be challenging to meet in a small community like Quincy. Current projects use about 90 percent union labor, but it will be difficult to get to 100 percent union labor as required in the bill.

Persons Testifying: (In support) Representative April Berg, prime sponsor; Kristin Gaines, Alcoa Corporation; Mandira Virmani, Computing For All; Larry Brown, Washington State Labor Council; Mark Riker, Washington State Building and Construction Trades Council; Nickolas Bumpaous, Central Washington Building and Construction Trades Council; Molly Jones, Washington Technology Industry Association; Diego Hernandez, Sabey Data Centers; John Traynor, International Brotherhood of Electrical Workers 191; Matthew Hepner, City of East Wenatchee; Heather Kurtenbach, Ironworkers Local 86; Bryant Mullin; Tom Pierson, Tacoma-Pierce County Chamber; Jim Hedrick, City of Puyallup; Dave Vranizan, The Benaroya Company; and Bruce Kendall, Tacoma-Pierce County Economic Development Board.

(Opposed) Jerry Vanderwood, Associated General Contractors of Washington; Sophia Steele, Associated Builders and Contractors of Washington; and Tommy Gantz, Association of Washington Business.

(Other) Patrick Boss, Port of Quincy.

Persons Signed In To Testify But Not Testifying: Vanessa Ergo; Chanique Spires, International Brotherhood of Electrical Workers; Bailee Risley; Francisco Funicello; and Sue Kane, North Central Educational Services District.