Washington State
House of Representatives
Office of Program Research

BILL ANALYSIS

Finance Committee

HB 1846

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

Sponsors: Representatives Berg and Ramel.

Brief Summary of 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 qualifying businesses and qualifying tenants receiving the rural and non-rural sales and use tax exemption to meet an energy consumption requirement, subject to repayment of previously exempted taxes and a 10 percent penalty for noncompliance.
- Requires data centers receiving the rural and non-rural 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

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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.

<u>Rural Data Center Tax Preference</u>.
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, 2018. Currently, there 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.

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

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 (DOR). 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 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 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 (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:

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 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.

Qualified businesses and qualified tenants may use their exemption certificate to refurbish existing eligible data centers. The DOR may issue no more than four certificates for data centers which qualify through refurbishment each calendar year. Certificates are available for refurbished data centers on a first-in-time basis based on the date the application required under this section is received by the DOR. 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 potion of the computer data center is operationally complete and can be used as intended.

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. 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.

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. In addition to existing requirements for noncompliance, an issued exemption certificate is also canceled if the number of family-wage jobs requirement is not met.

For the purpose of limiting emissions to the community in which the data center is located, a qualifying business or qualifying tenant must establish within 12 months that the energy consumed, measured on a per working server basis, by the data center must not increase from the time the exemption certificate was issued. For qualifying businesses or qualifying tenants in operation for less than one year, the energy consumption requirement must occur 12 month after the data center is in operation.

The DOR is required to review power consumption data from qualifying businesses or qualifying tenants in determining whether an increase in energy consumption occurred. The DOR may require qualifying businesses and qualifying tenants to submit records necessary to making a determination. If the energy consumption requirement is not met, all previously exempted sales and use taxes are immediately due and payable, plus a 10 percent penalty is assessed.

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.

For new exemptions issued, a qualifying business or qualifying tenant must certify that the data center is developed in a way that includes: a community workforce agreement or project labor agreement; and the payment of area standard prevailing wages and apprenticeship utilization requirements.

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

<u>Data Center Tax Preference in Certain Non-Rural Counties</u>.
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 is effective on the date the application is received by the DOR, which is deemed its date of issuance. No new exemption certificates may be issued by the DOR on or after July 1, 2028, and the exemptions fully expire July 1, 2038.

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

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.

For the purpose of limiting emissions to the community in which the data center is located, a qualifying business or qualifying tenant must establish within 12 months that the energy consumed, measured on a per working server basis, by the data center must not increase from the time the exemption certificate was issued. For qualifying businesses or qualifying tenants in operation for less than one year, the energy consumption requirement must occur 12 months after the data center began operation.

The DOR is required to review power consumption data from qualifying businesses or qualifying tenants in determining whether an increase in energy consumption occurred. The DOR may require qualifying businesses and qualifying tenants to submit records necessary to making a determination. If the energy consumption requirement is not met, all previously exempted sales and use taxes are immediately due and payable, plus a 10 percent penalty is assessed.

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.

A qualifying business or qualifying tenant must certify that the data center is developed in a way that includes: a community workforce agreement or project labor agreement; and the payment of area standard prevailing wages and apprenticeship utilization requirements.

Tax Performance Statement and Review.
A TPPS 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 JLARC will perform the tax preference review.

Appropriation: None.

Fiscal Note: Available.

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