

SENATE BILL REPORT

SB 5262

As Reported by Senate Committee On:
Business, Financial Services & Trade, February 2, 2021
Ways & Means, March 27, 2021

Title: An act relating to broadening the eligibility requirements and extending the expiration date for the data center tax incentive.

Brief Description: Broadening the eligibility requirements and extending the expiration date for the data center tax incentive.

Sponsors: Senators Lias, Warnick and Saldaña.

Brief History:

Committee Activity: Business, Financial Services & Trade: 1/28/21, 2/02/21 [DP-WM, DNP].

Ways & Means: 3/11/21, 3/27/21 [DPS, DNP, w/oRec].

Brief Summary of First Substitute Bill

- Expands eligibility and extends the expiration date for the current sales and use tax exemption on qualifying businesses and tenants of eligible data centers.

SENATE COMMITTEE ON BUSINESS, FINANCIAL SERVICES & TRADE

Majority Report: Do pass and be referred to Committee on Ways & Means.

Signed by Senators Mullet, Chair; Dozier, Ranking Member; Brown, Frockt, Hobbs and Wilson, L.

Minority Report: Do not pass.

Signed by Senator Hasegawa, Vice Chair.

Staff: Kellee Gunn (786-7429)

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.

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Substitute Senate Bill No. 5262 be substituted therefor, and the substitute bill do pass.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair, Capital; Wilson, L., Ranking Member; Brown, Assistant Ranking Member, Operating; Honeyford, Assistant Ranking Member, Capital; Schoesler, Assistant Ranking Member, Capital; Braun, Conway, Dhingra, Gildon, Hunt, Keiser, Liias, Muzzall, Pedersen, Rivers, Van De Wege, Wagoner, Warnick and Wellman.

Minority Report: Do not pass.

Signed by Senators Darneille and Hasegawa.

Minority Report: That it be referred without recommendation.

Signed by Senators Robinson, Vice Chair, Operating & Revenue; Carlyle.

Staff: Alia Kennedy (786-7405)

Background: Current law provides a retail sale and use tax exemption for 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.

To claim the exemption, a qualifying business or a tenant must apply to the Department of Revenue (DOR) for an exemption certificate. Exemption certificates expire two years after the date of issuance unless construction has been commenced.

To qualify, a facility must meet certain criteria regarding employment and facility size, whether it is in a rural county, and when construction commenced. Construction must occur within three time periods, or windows, to maintain the exemption:

- after March 31, 2010, and before July 1, 2011;
- after March 31, 2012, and before July 2015; or
- after June 30, 2015, and before July 1, 2025.

Within the period of July 1, 2015 and July 1, 2019, the exemption was limited to eight data centers. Within the current period, June 30, 2015 to July 1, 2025, the exemption is limited to 12 centers.

Within six years of issuance, an eligible computer data center must show they have established or increased the number of family wage employment positions by a certain amount depending on the size of the data center. Family wage employment positions are defined as new permanent full-time jobs requiring 40 hours of work where the wage is 150 percent of the per capita personal income of the county where the center is located.

The current retail sale and use exemption expires January 1, 2026, or 12 years from the certificate of occupancy. Businesses or tenants claiming the exemption must file an annual tax performance report.

Summary of Bill (First Substitute): This bill extends the current sales and use tax exemptions for qualifying businesses operating data centers and qualifying tenants of those data centers from January 1, 2026, to July 1, 2035. Exemptions fully expire on July 1, 2047.

The exemption certificate is effective on the date the application is received from DOR. No tax refunds may be given for purchases made before the effective date of this bill.

In addition to the extension, eligible data center businesses and tenants may use their exemption certificate to refurbish existing eligible data centers. DOR may issue no more than two 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 DOR. Each qualifying business may apply for only one certificate for a refurbished data center each calendar year.

Refurbishment is defined as 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 DOR 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.

Several definitions are amended, a definition of certificate of occupancy is provided, and the calculation of family wage jobs is clarified and changed. The new definition of family wage employment positions include all new permanent positions requiring 40 hours of weekly work, or equivalent, on a full-time basis and receiving 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 net increase of family wage jobs must be since the issuance of the qualifying business's exemption certificate.

The final window period for construction is extended from July 1, 2015, to the effective date of this bill. Though the current statutory limits still apply to the construction of data centers for previous periods, there is no limit for the extended retail sale and use tax exemption for eligible data centers.

Those holding a certificate of exemption may be able to assign or transfer the certificate if certain requirements are met and they have the written consent of DOR.

Tax Performance Statement. There is a tax performance statement. The Legislature intends

to extend the expiration date of the preference if a review finds the preference is generating:

- capital investment in new computer data centers, refurbished data centers, and existing data centers;
- state and local tax collections from data center investment and operations; and
- construction and trade jobs in the state.

The review must factor in changing economic conditions.

EFFECT OF CHANGES MADE BY WAYS & MEANS COMMITTEE (First Substitute):

- Provides that if a data center does not increased employment by a minimum of 35 family-wage jobs, then it must create at least three family-wage jobs for each 20,000 square feet of space newly dedicated to housing servers.
- Allows an existing data center that was previously ineligible to count the existing employment positions that are dedicated to the data center toward the family wage employment position requirements.
- Allows a facility qualifying as a refurbishment of an existing data center that previously qualified under the data center program to count the existing employment positions dedicated to the data center toward the family wage employment position requirements.
- Clarifies that commencement of construction includes expansion, renovation, or refurbishment for previously ineligible data centers regardless of the date of commencement of construction.
- Provides that in event an assignee or transferee acquires eligible server equipment in a qualifying asset sale, the purchaser is deemed to purchase the eligible server equipment pursuant to the transferred certificate.
- Makes other technical and administrative corrections.
- Limits total refurbishments to no more than two each calendar year.
- Restricts the number of certificates a data centers may apply for to only one certificate for a refurbished data center each year.

Appropriation: None.

Fiscal Note: Available.

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

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

Staff Summary of Public Testimony on Original Bill (Business, Financial Services & Trade): PRO: This legislation came from a partnership between organized labor, that builds these facilities, and the companies that own and operate them. This will ensure the state can stay competitive. Refurbishment will make sure the data centers here, stay here,

and are not motivated to move elsewhere. This bill is not the most competitive in the nation but will provide enough to keep data centers here.

I was raised in Quincy, Washington. When I graduated from high school, I attended Big Bend Community College where I got a degree in data center technology. After graduating, I was offered a job with Sabey Data Center Properties. I was glad to have this employment opportunity in my hometown. Working families across central Washington have benefited from the state's investment in data center construction. This has meant creation of new apprenticeships and family wage jobs. This bill ensures educational opportunities and competitive and economic opportunities in rural regions now and in the future.

The data center program is a proven job producer. This has been an economic lifesaver in central Washington. When the recession came, the data centers stayed open. With Washington's clean affordable power, this industry is well suited to the region. The extension of the expiration dates gives assurance to the people in this sector. This support leads to new roads and other new construction. The cost of electricity is lower here than anywhere else in the country—however, part of the decision making goes into the total cost of building and maintaining the data centers. These costs include labor, real estate, and the overall tax burden. Washington State's taxes are what really tips the scale.

Many of the data centers built in Quincy were not eligible for current tax incentives because they were built prior to 2010. Allowing an exemption to refurbish these older data centers would really help reinvestment in these centers. This is about rural economic development.

Persons Testifying (Business, Financial Services & Trade): PRO: Senator Marko Liias, Prime Sponsor; John McCarthy, Verizon Media; Diego Hernandez, Sabey Data Center Properties; Matthew Hepner, IBEW and CEWW; Nickolas Bumpaous, Washington State Building Trades.

Persons Signed In To Testify But Not Testifying (Business, Financial Services & Trade): No one.

Staff Summary of Public Testimony on Original Bill (Ways & Means): *The committee recommended a different version of the bill than what was heard.* PRO: The tax exemption works for creating opportunities in rural communities, including increases in employment and county median income. The bill encourages the use of clean energy in Washington. Thirty-three other states have similar tax incentives. The increase to employment does not just exist within the data centers, but also the additional need for jobs through ancillary activities that boost the economy. This bill helps people achieve goals for themselves while remaining in their hometown. In addition to raising revenue and promoting community growth, data centers allow areas to diversify their economic portfolios, which is needed more than ever following the pandemic. Oregon is a huge industry competitor and projects are likely to migrate there if the exemption goes away. The revenue generated from data centers helps fund public programs, like law enforcement and schools. This bill helps

Washington become a leader in cloud computing. Any loss in state revenue associated with the bill is made up in other tax areas.

Persons Testifying (Ways & Means): PRO: Senator Marko Liias, Prime Sponsor; Matthew Kozma, NTT Data Services; Diego Hernandez, Sabey Data Centers; Matthew Hepner, IBEW/CEWW; Patrick Boss, Port of Quincy; John McCarthy, Verizon Media.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.