DEPARTMENT OF TAXATION
2022 Fiscal Impact Statement

1. **Patron** Frank M. Ruff, Jr.

2. **Bill Number** SB 736
   House of Origin:
   X **Introduced**
   ____ **Substitute**
   ____ **Engrossed**

   Second House:
   ____ **In Committee**
   ____ **Substitute**
   ____ **Enrolled**

3. **Committee** Senate Finance and Appropriations

4. **Title** Retail Sales and Use Tax; Data Center Exemption

5. **Summary/Purpose:**

   This bill would reduce the new job creation requirement from 50 to 25 for the Retail Sales and Use Tax exemption for data center operators. It would also clarify that the reduced capital investment requirement of $70 million for data center locations that qualify for the reduced jobs requirement is based on such location being in a "distressed locality."

   Under current law, in order to qualify for the sales and use tax exemption for data centers, a data center must create 50 new jobs and have a capital investment of at least $150 million unless it is located in a "distressed locality." In such localities the job creation requirement is 10 new jobs and the capital investment requirement is $70 million.

   If enacted during the regular session of the 2022 General Assembly, this bill would become effective July 1, 2022.

6. **Budget amendment necessary:** No.

7. **Fiscal Impact Estimates are:** Preliminary (See Line 8.)

8. **Fiscal implications:**

   <u>Administrative Costs</u>

   The Department of Taxation considers implementation of this bill as routine and does not require additional funding.

   <u>Revenue Impact</u>

   This bill would have an unknown negative impact on state and local revenues. It is unknown how many data centers would qualify for this sales tax exemption if the job creation requirement is lowered.

   The Department bases its revenue estimates regarding the impact of the existing data center exemption on minimum planned investment levels as stipulated in Memoranda of

Understanding with VEDP. Based on such information, it is estimated that the current exemption had a negative Retail Sales and Use Tax revenue impact of $150 million in Fiscal Year 2021. Such impact may be greater to the extent that data centers make exempt purchases in excess of the minimum investment level

9. Specific agency or political subdivisions affected:

Department of Taxation

10. Technical amendment necessary: No

11. Other comments:

Current Law

Under current law, there is a Retail Sales and Use Tax exemption for computer equipment or enabling software purchased or leased for the processing, storage, retrieval, or communication of data, including but not limited to servers, routers, connections, and other enabling hardware, including chillers and backup generators used or to be used in the operation of the equipment for use in a data center that:

- Is located in a Virginia locality;
- Results in a new capital investment on or after January 1, 2009, of at least $150 million; and
- Results in the creation on or after July 1, 2009, of at least 50 new jobs by the data center operator and the tenants of the data center, collectively, associated with the operation or maintenance of the data center provided that such jobs pay at least one and one-half times the prevailing average wage in that locality.

In order to take advantage of this exemption, data center operators and their tenant must enter into a memorandum of understanding ("MOU") with the Virginia Economic Development Partnership and obtain an exemption certificate from the Department of Taxation.

Legislation enacted during the 2021 General Assembly reduced the new job creation requirement for any data center located in a distressed locality from 25 jobs to 10 jobs in order to qualify for the sales and use tax exemption for data centers. The legislation also reduced the requirement of a $150 million capital investment to $70 million for data centers that qualify for the reduced jobs requirement. The definition of "distressed locality" was modified to include:

- From July 1, 2021, until July 1, 2023, any locality that had (i) an annual unemployment rate for calendar year 2019 that was greater than the final statewide average unemployment rate for that calendar year and (ii) a poverty rate for calendar year 2019 that exceeded the statewide average poverty rate for that year; and
- From and after July 1, 2023, any locality that has (i) an annual unemployment rate for the most recent calendar year for which such data is available that is greater than the final statewide average unemployment rate for that calendar year and (ii) a poverty

rate for the most recent calendar year for which such data is available that exceeds the statewide average poverty rate for that year.

JLARC Report

In 2019, the Joint Legislative Audit and Review Commission ("JLARC") reviewed the data center exemption in a report entitled, "Data Center and Manufacturing Incentives." This report indicated that better tracking of data center investments would improve fiscal and economic impact estimates, as some data centers do not report all of their jobs created and capital investment, showing only that minimum requirements are met. As a result, the tax benefit that data centers receive from the exemption is underestimated. JLARC recommended that data centers be required to report annually to VEDP their actual employment level, capital investment, and tax benefit, and that the Department publish an annual report of the forgone revenue from the data center exemption using such information.

In addition, JLARC recommended that the state study how to maintain a competitive position for attracting data centers, including assessing infrastructure, workforce, and other challenges to attracting data centers outside of Northern Virginia and reducing the job creation threshold in distressed areas.

Proposal

This bill would reduce the new job creation requirement from 50 to 25 for the Retail Sales and Use Tax exemption for data center operators. It would also clarify that the reduced capital investment requirement of $70 million for data centers locations that qualify for the reduced jobs requirement is based on such location being in a "distressed locality."

If enacted during the regular session of the 2022 General Assembly, this bill would become effective July 1, 2022.

Similar Legislation

House Bill 791 and **Senate Bill 513** would provide that if a locality taxes certain fixtures located in a data center as real property, the fixtures will be valued based on depreciated reproduction or replacement cost. Fixtures would include generators, radiators, exhaust fans, and fuel storage tanks; electrical substations, power distribution equipment, cogeneration equipment, and batteries; chillers, computer room air conditioners, and cool towers; heating, ventilating, and air conditioning systems; water storage tanks, water pumps, and piping; monitoring systems; and transmission and distribution equipment. Computer equipment and peripherals would not be considered fixtures.

cc : Secretary of Finance

Date: 1/26/2022 SK
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