
SENATE BILL 5414

State of Washington

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2021 Regular Session

By Senators Gildon and Conway

1 AN ACT Relating to providing a tax preference for data centers in
2 counties with a certain population; adding new sections to chapter
3 82.08 RCW; adding a new section to chapter 82.12 RCW; creating new
4 sections; and providing expiration dates.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** The legislature finds that data centers
7 are a cornerstone for strong internet infrastructure that is critical
8 to the continuing prosperity of Washington's vibrant digital economy.
9 Under current law, data center incentives are restricted to rural
10 counties and have improved the economies of rural counties. The
11 legislature recognizes that rural county data center investments are
12 necessary but insufficient for the state's total economy and
13 competitiveness. Washington is the only state that restricts
14 incentives geographically. As a result, data centers serving urban
15 counties requiring higher performance and that offer colocation
16 services for multiple tenants that foster technology ecosystems are
17 lost to other states, particularly neighboring Oregon. The
18 legislature further finds that despite the need, the lack of data
19 center usage growth in Washington urban counties is primarily due to
20 the sales tax, which can add as much as 10 percent to the total cost

1 of ownership and often runs into the millions of dollars for even
2 mid-level users.

3 NEW SECTION. **Sec. 2.** (1) This section is the tax preference
4 performance statement for the tax preferences in sections 3, 4, and
5 5, chapter . . . , Laws of 2021 (sections 3, 4, and 5 of this act).
6 This performance statement is only intended to be used for subsequent
7 evaluation of the tax preferences. It is not intended to create a
8 private right of action by any party or be used to determine
9 eligibility for preferential tax treatment.

10 (2) The legislature categorizes these tax preferences as ones
11 intended to improve industry competitiveness, as indicated in RCW
12 82.32.808(2)(b) and as one intended to create or retain jobs as
13 indicated in RCW 82.32.808(2)(c).

14 (3) It is the legislature's specific public policy objective to
15 improve industry competitiveness and to increase, create, or retain
16 jobs in computer data centers in counties with a population between
17 900,000 and 1,000,000, as determined by the April 1, 2020, office of
18 financial management population estimates, thereby increasing family
19 wage jobs. It is the legislature's intent to provide a sales and use
20 tax exemption on eligible server equipment and power infrastructure
21 installed in eligible computer data centers, charges made for labor
22 and services rendered in respect to installing eligible server
23 equipment, and for construction, installation, repair, alteration, or
24 improvement of eligible power infrastructures in order to increase
25 investment in data center construction, leasing, and other investment
26 throughout counties with a population between 900,000 and 1,000,000,
27 as determined by the April 1, 2020, office of financial management
28 population estimates, thereby growing employment in the technology
29 industry while adding real and personal property to state and local
30 property tax rolls, thereby increasing the county tax base.

31 (4) The legislature intends to extend the expiration date of the
32 tax preferences in this act and expand the applicability of the tax
33 preferences to the entire state of Washington if a review finds that
34 the county tax base increased as a result of the construction,
35 leasing, and other investment of computer data centers eligible for
36 the tax preferences.

37 (5) In order to obtain the data necessary to perform the review
38 in subsection (4) of this section, the joint legislative audit and
39 review committee may refer to data available from the department of

1 revenue regarding county property tax assessments and data provided
2 to the department of revenue pursuant to the annual tax performance
3 report required under RCW 82.32.534.

4 NEW SECTION. **Sec. 3.** A new section is added to chapter 82.08
5 RCW to read as follows:

6 (1)(a) An exemption from the tax imposed by RCW 82.08.020 is
7 provided for sales to qualifying businesses and to qualifying tenants
8 of eligible server equipment to be installed, without intervening
9 use, in an eligible computer data center to which a valid exemption
10 certificate applies, and to charges made for labor and services
11 rendered in respect to installing eligible server equipment.

12 (b) The exemption also applies to sales to qualifying businesses
13 and to qualifying tenants of eligible power infrastructure, including
14 labor, material, equipment, and services rendered in respect to
15 constructing, installing, repairing, altering, or improving eligible
16 power infrastructure at an eligible computer data center for which an
17 exemption certificate has been issued.

18 (c) No new exemption certificates may be issued on or after July
19 1, 2027.

20 (d) The exemptions provided in this section expire July 1, 2037.

21 (2)(a)(i) In order to obtain an exemption, a qualifying business
22 must be located in a county with a population between 900,000 and
23 1,000,000, as determined by the April 1, 2020, office of financial
24 management population estimates and must submit an application to the
25 department for an exemption certificate. The application must include
26 the information necessary, as required by the department, to
27 determine that a business or tenant qualifies for the exemption under
28 this section. The department must issue exemption certificates to
29 qualifying businesses and qualifying tenants. The department may
30 assign a unique identification number to each exemption certificate
31 issued under this section.

32 (ii) For the purposes of demonstrating that the requirements of
33 this subsection (2)(a) are met, a qualifying business must submit
34 records of available power for customers at the time of the
35 application for the exemption under this section. The qualifying
36 business must demonstrate that it has a minimum of 1.5 megawatts of
37 available power. The qualifying business must provide requests for
38 proposals, pricing offered, and marketing materials associated with
39 the requirements of this subsection, as required by the department,

1 as supporting documentation that the requirements of this subsection
2 (2)(a) have been met.

3 (b) In order to obtain an exemption, a qualifying tenant must
4 contract for a minimum electrical capacity of 150 kilowatts for
5 server and computer equipment in a qualifying business. Tenants that
6 previously qualified under RCW 82.08.986 or 82.12.986 must reapply if
7 they intend to expand into a qualifying business. A qualifying
8 business or a qualifying tenant claiming the exemption under this
9 section must present the seller with an exemption certificate in a
10 form and manner prescribed by the department. The seller must retain
11 a copy of the certificate for the seller's files.

12 (c) The exemptions provided in this section are limited to
13 qualifying businesses or tenants, and the department is authorized to
14 approve only two such applications to obtain the exemptions for
15 qualifying businesses in the first year and one exemption in each
16 year three through six. The exemption is available on a first-in-time
17 basis based on the date the application required under this section
18 is received by the department.

19 (d) The exemption certificate is effective on the date the
20 application is received by the department, which is deemed to be the
21 date of issuance. Only purchases on or after the date of issuance
22 qualify for the exemption under this section. No tax refunds are
23 authorized for purchases made before the effective date of the
24 exemption certificate.

25 (e) Exemption certificates expire two years after the date of
26 issuance, unless construction has been commenced.

27 (3)(a) Within six years of the date that the department issued an
28 exemption certificate under this section to a qualifying business or
29 a qualifying tenant with respect to an eligible computer data center,
30 the qualifying business or qualifying tenant must establish that net
31 employment at the eligible computer data center has increased by a
32 minimum of three family wage employment positions for each
33 incremental increase of 20,000 square feet of space that is newly
34 dedicated to housing working servers at the eligible computer data
35 center. For qualifying tenants, the number of family wage employment
36 positions that must be increased under this subsection (3)(a) is
37 based only on the space occupied by the qualifying tenant in the
38 eligible computer data center.

39 (b) In calculating the number of family wage employment
40 positions:

1 (i) The owner of an eligible computer data center, in addition to
2 its own net increase in family wage employment positions, may
3 include:

4 (A) The net increase, since the date of issuance of the
5 qualifying business's exemption certificate, in family wage
6 employment positions employed by qualifying tenants; and

7 (B) The net increase in family wage employment positions
8 described in (c)(ii)(B) of this subsection (3).

9 (ii)(A) Qualifying tenants, in addition to their own net increase
10 in family wage employment positions, may include:

11 (I) A portion of the net increase in family wage employment
12 positions employed by the owner; and

13 (II) A portion of the net increase in family wage employment
14 positions described in (c)(ii)(B) of this subsection (3).

15 (B) The portion of the net increase in family wage employment
16 positions to be counted under this subsection (3)(b)(ii) by each
17 qualifying tenant is equal to the net increase in family wage
18 employment positions at the eligible computer data center as
19 described in (b)(ii)(A)(I) and (II) of this subsection (3),
20 multiplied by the percentage of total space within the eligible
21 computer data center occupied by the qualifying tenant. Any
22 combination of qualifying business and qualifying tenant family wage
23 employment positions may meet this requirement.

24 (c)(i) For purposes of this subsection:

25 (A) For exemption certificates issued on or after the effective
26 date of this section, family wage employment positions are new
27 permanent employment positions requiring 40 hours of weekly work, or
28 their equivalent, on a full-time basis at the eligible computer data
29 center and receiving a wage equivalent to or greater than 125 percent
30 of the per capita personal income of the county in which the
31 qualified project is located.

32 (B) An employment position may not be counted as a family wage
33 employment position unless the employment position is entitled to
34 health insurance coverage provided by the employer of the employment
35 position.

36 (C) "New permanent employment position" means an employment
37 position that did not exist or that had not previously been filled as
38 of the date that the department issued an exemption certificate to
39 the qualifying business or qualifying tenant of an eligible computer
40 data center, as the case may be.

1 (ii) (A) Family wage employment positions include positions filled
2 by employees of the qualifying business and by employees of
3 qualifying tenants.

4 (B) Family wage employment positions also include individuals
5 performing work at an eligible computer data center as an independent
6 contractor hired by the owner of the eligible computer data center or
7 as an employee of an independent contractor hired by the owner of the
8 eligible computer data center, if the work is necessary for the
9 operation of the computer data center, such as security and building
10 maintenance, and provided that all of the requirements in (c) (i) of
11 this subsection (3) are met.

12 (d) For a qualifying business or qualifying tenant that does not
13 meet the requirements of this subsection (3), all previously exempted
14 sales and use taxes are immediately due and payable and any exemption
15 certificate issued to that qualifying business or qualifying tenant
16 under this section is canceled.

17 (4) Qualifying businesses and tenants must claim an exemption
18 under this section in the current tax year when the taxes would have
19 been due unless an extension is filed with the department.

20 (5) (a) A qualifying business or a qualifying tenant claiming an
21 exemption under this section must complete an annual tax performance
22 report as required in RCW 82.32.534. The certificate holder may not
23 at any time assign or transfer a certificate without the prior
24 written consent of the department. The department must allow
25 certificate transfers if the certificate holder meets the following
26 requirements:

27 (i) The certificate assignee or transferee is qualified to do
28 business in the state;

29 (ii) The assignee or transferee acknowledges the transfer of the
30 certificate in writing;

31 (iii) The assignee or transferee agrees to keep and perform all
32 the terms of the certificates; and

33 (iv) An assignment or transfer of the certificate is to an entity
34 that:

35 (A) Controls, is controlled by, or under common control with, the
36 certificate holder;

37 (B) Acquires all or substantially all of the stock or assets of
38 the certificate holder; or

39 (C) Is the resulting entity of a merger or consolidation with the
40 certificate holder.

1 (b) Information submitted on the tax performance report is not
2 subject to the confidentiality provisions of RCW 82.32.330 and may be
3 disclosed to the public upon request, except as provided otherwise in
4 RCW 82.32.330.

5 (6) The definitions in this subsection apply throughout this
6 section unless the context clearly requires otherwise.

7 (a) "Affiliated" means that one person has a direct or indirect
8 ownership interest of at least 20 percent in another person.

9 (b) "Building" means a fully enclosed structure with a weather
10 resistant exterior wall envelope or concrete or masonry walls
11 designed in accordance with the requirements for structures under
12 chapter 19.27 RCW.

13 (c) "Certificate of occupancy" means:

14 (i) For a newly constructed eligible computer data center, the
15 certificate of occupancy issued by a local governing authority for
16 the structure or structures which comprise the eligible computer data
17 center; or

18 (ii) For renovations of an eligible computer data center, the
19 certificate of occupancy issued by a local governing authority for
20 the renovated structure or structures that comprise the eligible
21 computer data center.

22 (d) (i) "Computer data center" means a facility comprised of one
23 or more buildings, which may be comprised of multiple businesses,
24 constructed or refurbished specifically, and used primarily, to house
25 working servers, where the facility has the following
26 characteristics: (A) Uninterruptible power supplies, generator backup
27 power, or both; (B) sophisticated fire suppression and prevention
28 systems; and (C) enhanced physical security, such as: Restricted
29 access to the facility to selected personnel; continuous on-site
30 security guards; video camera surveillance; an electronic system
31 requiring passcodes, keycards, or biometric scans, such as hand scans
32 and retinal or fingerprint recognition; or similar security features.

33 (ii) For a computer data center comprised of multiple buildings,
34 each separate building constructed or refurbished specifically, and
35 used primarily, to house working servers is considered a computer
36 data center if it has all of the characteristics listed in (d) (i) (A)
37 through (C) of this subsection (6).

38 (iii) A facility comprised of one building or more than one
39 building must have a combined square footage of at least 100,000
40 square feet.

1 (e) "Electronic data storage and data management services"
2 includes, but is not limited to: Providing data storage and backup
3 services, providing computer processing power, hosting enterprise
4 software applications, and hosting websites. The term also includes
5 providing services such as email, web browsing and searching, media
6 applications, and other online services, regardless of whether a
7 charge is made for such services.

8 (f) "Eligible computer data center" means a computer data center
9 having at least 20,000 square feet dedicated for housing working
10 servers. Movable or fixed stand-alone, prefabricated, or modular
11 units, including intermodal shipping containers, do not qualify as
12 "eligible computer data centers."

13 (g) "Eligible power infrastructure" means all fixtures and
14 equipment owned by a qualifying business or qualifying tenant and
15 necessary for the transformation, distribution, or management of
16 electricity that is required to operate eligible server equipment
17 within an eligible computer data center. The term includes
18 generators; wiring; cogeneration equipment; and associated fixtures
19 and equipment, such as electrical switches, batteries, and
20 distribution, testing, and monitoring equipment. The term does not
21 include substations.

22 (h)(i) "Eligible server equipment" means for a qualifying
23 business whose computer data center qualifies as an eligible computer
24 data center, the original server equipment installed in an eligible
25 computer data center on or after the effective date of this section,
26 and replacement server equipment.

27 (ii) For purposes of this subsection (6)(h), "replacement server
28 equipment" means server equipment that:

29 (A) Replaces existing server equipment, if the sale or use of the
30 server equipment to be replaced qualified for an exemption under this
31 section or RCW 82.12.986; and

32 (B) Is installed and put into regular use 10 years after the
33 effective date of this section.

34 (iii) For a qualifying tenant who leases space within an eligible
35 computer data center, "eligible server equipment" means the original
36 server equipment installed within the space it leases from an
37 eligible computer data center with an exemption certificate on or
38 after 10 years after the effective date of this section, and
39 replacement server equipment. For purposes of this subsection

1 (6) (h) (iii), "replacement server equipment" means server equipment
2 that:

3 (A) (I) Replaces existing server equipment, if the sale or use of
4 the server equipment to be replaced qualified for an exemption under
5 this section or RCW 82.12.986 and is installed and put into regular
6 use before July 1, 2027; or

7 (II) Replaces existing server equipment in a computer data center
8 that meets the following requirements: Was ineligible before the
9 effective date of this section for the exemptions provided under this
10 section and RCW 82.12.986; has been refurbished; and to which a valid
11 exemption certificate applies; and

12 (B) Is installed and put into regular use no later than 12 years
13 after the date of the certificate of occupancy or completion of
14 refurbishment of the computer data center.

15 (i) "Qualifying business" means a business entity that exists for
16 the primary purpose of engaging in commercial activity for profit and
17 that is the owner of an eligible computer data center. The term does
18 not include the state or federal government or any of their
19 departments, agencies, and institutions; tribal governments;
20 political subdivisions of this state; or any municipal, quasi-
21 municipal, public, or other corporation created by the state or
22 federal government, tribal government, municipality, or political
23 subdivision of the state.

24 (j) "Qualifying tenant" means a business entity that exists for
25 the primary purpose of engaging in commercial activity for profit and
26 that leases space from a qualifying business within an eligible
27 computer data center. The term does not include the state or federal
28 government or any of their departments, agencies, and institutions;
29 tribal governments; political subdivisions of this state; or any
30 municipal, quasi-municipal, public, or other corporation created by
31 the state or federal government, tribal government, municipality, or
32 political subdivision of the state.

33 (k) (i) "Refurbished" or "refurbishment" means a substantial
34 improvement to an eligible computer data center for which a
35 certificate of occupancy is not issued. Such an improvement must
36 update or modernize servers, server space, ventilation, or power
37 infrastructure in an eligible computer data center.

38 (ii) For a qualifying computer data center to be considered
39 refurbished, the qualifying business must certify, in a form and
40 manner prescribed by the department, that the refurbishment of an

1 eligible computer data center is complete. The refurbishment is
2 considered complete on the date that the improved portion of the
3 computer data center is operationally complete and able to be used
4 for its intended purpose.

5 (1) "Server equipment" means the computer hardware located in an
6 eligible computer data center and used exclusively to provide
7 electronic data storage and data management services for internal use
8 by the owner or lessee of the computer data center, for clients of
9 the owner. For the purposes of this subsection, "electronic data
10 storage and data management services" include, but are not limited
11 to: Providing data storage and backup services, providing computer
12 processing power, hosting enterprise software applications, and
13 hosting websites. The term also includes providing services such as
14 email, web browsing and searching, media applications, and other
15 online services, regardless of whether a charge is made for such
16 services. "Server equipment" also includes computer software
17 necessary to operate the computer hardware. "Server equipment" does
18 not include personal computers, the racks upon which the server
19 equipment is installed, and computer peripherals such as keyboards,
20 monitors, printers, and mice, unless used within the eligible
21 computer data center.

22 (7) This section expires January 1, 2031.

23 NEW SECTION. **Sec. 4.** A new section is added to chapter 82.12
24 RCW to read as follows:

25 (1) An exemption from the tax imposed by RCW 82.12.020 is
26 provided for the use by qualifying businesses or qualifying tenants
27 of eligible server equipment to be installed, without intervening
28 use, in an eligible computer data center, and to the use of labor and
29 services rendered in respect to installing such server equipment. The
30 exemption also applies to the use by a qualifying business or
31 qualifying tenant of eligible power infrastructure, including labor
32 and services rendered in respect to installing, repairing, altering,
33 or improving such infrastructure.

34 (2) The exemption provided in this section does not apply to any
35 person for whom the exemption under section 3 of this act does not
36 apply.

37 (3) The definitions and requirements in section 3 of this act
38 apply to this section.

39 (4) This section expires January 1, 2027.

1 NEW SECTION. **Sec. 5.** A new section is added to chapter 82.08
2 RCW to read as follows:

3 From the effective date of this section, in order to obtain the
4 exemption provided in section 3 of this act, a qualifying business or
5 qualifying tenant must certify to the department that the computer
6 data center receiving an exemption under section 3 of this act is
7 developed in a way that includes community workforce agreements or
8 project labor agreements and the payment of area standard prevailing
9 wages and apprenticeship utilization requirements, provided the
10 following apply:

11 (1) The owner and the prime contractor and all of its
12 subcontractors regardless of tier have the absolute right to select
13 any qualified and responsible bidder for the award of contracts on a
14 specified project without reference to the existence or nonexistence
15 of any agreements between such bidder and any party to such project
16 labor agreement, and only when such bidder is willing, ready, and
17 able to become a party to, signs a letter of assent, and complies
18 with such agreement or agreements, should it be designated the
19 successful bidder; and

20 (2) It is understood that this is a self-contained, stand-alone
21 agreement, and that by virtue of having become bound to such
22 agreement or agreements, neither the project contractor nor the
23 subcontractors are obligated to sign any other local, area, or
24 national agreement.

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