

DEPARTMENT OF TAXATION

2025 Fiscal Impact Statement

1. **Patron** Marty Martinez

3. **Committee** House Finance

4. **Title** Sales and use tax exemption; Data centers

2. **Bill Number** HB 2715

House of Origin:

 X **Introduced**

 Substitute

 Engrossed

Second House:

 In Committee

 Substitute

 Enrolled

5. **Summary/Purpose:**

This bill would require data center operators to meet certain wage rate standards in order to be eligible for the sales and use tax exemption for data center purchases. The bill would also require the Virginia Economic Development Partnership Authority ("VEDP") to audit any qualifying person claiming this exemption to determine whether such person is in compliance with the wage requirements. Upon three violations of the wage requirement within a five-year period, the bill would require the Department of Taxation ("the Department") to revoke any such exemption received by a data center operator or tenant and require repayment.

This bill would expand the existing data reporting requirement imposed on data center operators to include the submission of quarterly reports, effective October 1, 2026. Such quarterly report would include the number of regular part-time and full-time employees employed at each data center by job classification and certified payroll records for all building service workers employed at the data center.

In addition, this bill would require the Department, in collaboration with VEDP, to publish an annual report, rather than a biennial report, beginning with the report due October 1, 2026. Notwithstanding Va. Code § 58.1-3, the Department would be required to include the number of regular part-time and full-time building service and other employees employed at each data center by job classification, indicating their average weekly hours, wage rates and other compensation, including fringe benefits, and direct employer, if not the data center operator. The report shall seek to explain the economic contribution of each data center operator, including the quality of all jobs created at such data center.

Under current law, new jobs created by data centers seeking exemption from sales tax must pay at least one and one-half the prevailing wage in either the locality or the Commonwealth, depending on when the data center was constructed. Data centers claiming this sales tax exemption must report certain information to VEDP annually.

The Department, in collaboration with VEDP, is required to publish a biennial report on the exemption that includes aggregate information on qualifying expenses claimed under this exemption, the total value of the tax benefit, a return on investment analysis that includes

direct and indirect jobs created by data center investment, state and local tax revenues generated, and any other information the Department and VEDP deem appropriate to demonstrate the costs and benefits of the exemption. The Department and VEDP are not currently permitted to publish or disclose any such information if it is unaggregated or if such report or publication could be used to identify a business or individual.

If enacted during the regular session of the 2025 General Assembly, this bill would become effective July 1, 2025.

6. Budget amendment necessary: Yes.

Item 113: Virginia Economic Development Partnership

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

7a. Expenditure Impact:

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Positions</i>	<i>Fund</i>
2025-26	\$250,000	2	GF
2026-27	\$250,000	2	GF
2027-28	\$250,000	2	GF
2028-29	\$250,000	2	GF
2029-30	\$250,000	2	GF
2030-31	\$250,000	2	GF

8. Fiscal implications:

Administrative Costs

VEDP would incur estimated costs as shown on Line 7a.

The Department considers implementation of this bill to be routine and would not require additional funding.

Revenue Impact

This bill would have an unknown positive impact on state and local revenues to the extent that the requirements in the bill result in fewer data centers qualifying for exemption.

9. Specific agency or political subdivisions affected:

Department of Taxation
Virginia Economic Development Partnership Authority

10. Technical amendment necessary: Yes.

Page 3, Line 143 beginning of line
Strike (3)
Insert 3.

Under current law, the Department is generally prohibited from disclosing confidential taxpayer information unless an explicit exception applies. In addition, the Department and

VEDP are explicitly prohibited from publishing any information in the biennial data center report that is unaggregated or that could be used to identify a business or individual. This bill seemingly seeks to permit the Department to disclose detailed information regarding employees employed at each data center, as well as the economic contribution of each data center operator, regardless of the general disclosure prohibitions set forth in *Va. Code* § 58.1-3. Because the disclosure language in this bill seems inconsistent with the general and specific prohibitions against disclosing taxpayer information, it is requested that the bill clarify what specifically the Department and VEDP can and cannot disclose in its data center reports. Such amendments would be made to Lines 220-238 of the bill.

11. Other comments:

Background

Virginia Code § 58.1-609.3 (18) provides an exemption for data center operators and their tenants from the RSUT 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 such exempt equipment, provided that such computer equipment or enabling software is purchased or leased for use in a data center that is located in a Virginia locality, and the data center operator has entered into a memorandum of understanding (“MOU”) with VEDP setting forth minimum capital investment and new job creation requirements associated with the operation or maintenance of the data center. The exemption does not apply to any computer software, otherwise taxable under Chapter 6 of Title 58.1 of the *Virginia Code*, sold separately from the computer equipment, nor does it apply to general building improvements or fixtures.

The exemption is available for data centers that:

- Make a new capital investment on or after January 1, 2009, of at least \$150 million; and,
- Result 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.

The requirement of at least 50 new jobs is reduced to 10 new jobs if the data center is located in a distressed locality at the time of the execution of a memorandum of understanding with VEDP. Additionally, the requirement of a \$150 million capital investment is reduced to \$70 million for data centers that qualify for the reduced jobs requirement.

The exemption is scheduled to sunset June 30, 2035. The exemption, however, is extended to 2040 for a data center operator that on or after January 1, 2023, but before July 1, 2035:

- Makes a capital investment of at least \$35 billion in data centers in the Commonwealth;

- Creates at least 1,000 new full-time jobs; and
- Of the 1,000 new jobs, at least 100 of such jobs shall pay at least one and a half times the prevailing average wage in the Commonwealth.

The data center operator is eligible for further extension to 2050, if such operator on or after January 1, 2023, but before July 1, 2040:

- Makes a total capital investment of at least \$100 billion, inclusive of the initial \$35 billion investment;
- Creates a total of at least 2,500 direct new jobs; and
- Of the 2,500 new jobs, at least 100 of such jobs shall pay at least one and a half times the prevailing average wage in the Commonwealth.

Under current law, all data centers claiming this sales tax exemption must report certain information to VEDP annually. Such information includes employment levels, capital investments, average annual wages, qualifying expenses, and tax benefit, and such other information determined by VEDP as relevant. Data center operators are required to submit the annual report to VEDP regardless of when such operators located a new data center in the Commonwealth.

The Department, in collaboration with VEDP, is required to publish a biennial report on the exemption that includes aggregate information on qualifying expenses claimed under this exemption, the total value of the tax benefit, a return on investment analysis that includes direct and indirect jobs created by data center investment, state and local tax revenues generated, and any other information the Department and VEDP deem appropriate to demonstrate the costs and benefits of the exemption. The report does not include, and the Department and VEDP do not publish or disclose, any such information if it is unaggregated or if such report or publication could be used to identify a business or individual. This biennial report is required to be published and submitted to the Chairmen of the Senate Committee on Finance and Appropriations and the House Committees on Appropriations and Finance.

Proposal

New Wage Requirements

This bill would require data center operators to meet certain wage rate standards in order to be eligible for the sales and use tax exemption for data center purchases. The bill would require a data center operator to ensure that every building service employee employed at the data center is compensated at a rate that is no less than the standard building service employee rate.

The bill would define “standard building service employee rate” as the prevailing wage and benefit rates designated on a quarterly basis by VEDP based on the determinations made by the General Services Administration pursuant to the federal McNamara-O'Hara Service Contract Act of 1965 for the appropriate localities and classifications of building service employees. The bill provides also that in no event shall the prevailing wage and benefit rates applicable to a building service employee be less than the following:

1. One and one-half times the amount of any otherwise applicable minimum wage rate established by the Commissioner of Labor and Industry;
2. An amount of wages or benefit supplements equal to the rate for health and welfare for all occupations, designated by the Virginia Economic Development Partnership Authority based on the determinations made by the federal Department of Labor pursuant to the McNamara-O'Hara Service Contract Act of 1965 for the geographic region in which the data center is located and in effect on the date of the designation by the Virginia Economic Development Partnership Authority; and
3. Paid leave equal to the paid leave requirements designated by the Virginia Economic Development Partnership Authority, based on the determinations made by the General Services Administration pursuant to the McNamara-O'Hara Service Contract Act of 1965.

The bill would also require VEDP to audit any qualifying person claiming this exemption to determine whether such person is in compliance with the wage requirements. The bill would require the Department to revoke any such exemption received by a data center operator or tenant and require repayment upon three violations within a five year period.

Reporting Requirements

This bill would expand the existing data reporting requirement imposed on data center operators to include the submission of quarterly reports, effective October 1, 2026. Such quarterly report would include the number of regular part-time and full-time employees employed at each data center by job classification and certified payroll records for all building service workers employed at the data center.

In addition, this bill would require the Department, in collaboration with VEDP, to publish an annual report, rather than a biennial report, beginning with the report due October 1, 2026. Notwithstanding Va. Code § 58.1-3, the Department would be required to include the number of regular part-time and full-time building service and other employees employed at each data center by job classification, indicating their average weekly hours, wage rates and other compensation, including fringe benefits, and direct employer, if not the data center operator. The report shall seek to explain the economic contribution of each data center operator, including the quality of all jobs created at such data center.

If enacted during the regular session of the 2025 General Assembly, this bill would become effective July 1, 2025.

Similar Legislation

House Bill 2428 would include “digital asset mining business activities” within the definition of “data center” for purposes of what constitutes computer equipment and peripherals used in a data center that is treated as a separate class of tangible personal property for rate purposes. Localities have the option to assign a rate of tax or rate of assessment to this class different from, but not higher than, the rate applicable to the general class of tangible personal property.

House Bill 2578 would require a data center operator, in order to be eligible for the existing data center sales and use tax exemption to (i) beginning July 1, 2030, purchase a certain percentage of the data center's annual electric load from clean energy resources, (ii) beginning July 1, 2030, demonstrate sufficient investment in energy efficiency measures to provide system-wide benefits, and (iii) beginning July 1, 2027, use only backup generators that meet certain emissions standards.

House Bill 2685 would provide that, between July 1, 2025 and July 1, 2030, the retail sales and use tax exemption for computer equipment or enabling software purchased or leased for use in a data center shall not apply for such equipment if it is purchased or leased for use in a data center that is constructed after July 1, 2025, in Planning District 8.

Senate Bill 1196 would require data centers to meet certain energy efficiency standards in order to be eligible for the RSUT exemption for qualifying data center purchases.

Senate Bill 1425 would provide for a sunset of the data center retail sales and use tax exemption on and after July 1, 2025. The bill would require the revenues generated by the expiration of the exemption be distributed for school construction and road and bridge construction.

cc : Secretary of Finance

Date: 01/26/2025 VB
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