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HOUSE BILL NO. 897
AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on Finance
on _____)
(Patron Prior to Substitute—Delegate Sullivan)

A BILL to amend and reenact § 58.1-609.3 of the Code of Virginia, relating to retail sales and use tax; exemption for data centers.

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-609.3 of the Code of Virginia is amended and reenacted as follows:

§ 58.1-609.3. Commercial and industrial exemptions.

The tax imposed by this chapter or pursuant to the authority granted in §§ 58.1-605 and 58.1-606 shall not apply to the following:

1. Personal property purchased by a contractor which is used solely in another state or in a foreign country, which could be purchased by such contractor for such use free from sales tax in such other state or foreign country, and which is stored temporarily in Virginia pending shipment to such state or country.

2. (i) Industrial materials for future processing, manufacturing, refining, or conversion into articles of tangible personal property for resale where such industrial materials either enter into the production of or become a component part of the finished product; (ii) industrial materials that are coated upon or impregnated into the product at any stage of its being processed, manufactured, refined, or converted for resale; (iii) machinery or tools or repair parts therefor or replacements thereof, fuel, power, energy, or supplies, used directly in processing, manufacturing, refining, mining or converting products for sale or resale; (iv) materials, containers, labels, sacks, cans, boxes, drums or bags for future use for packaging tangible personal property for shipment or sale; or (v) equipment, printing or supplies used directly to produce a publication described in subdivision 3 of § 58.1-609.6 whether it is ultimately sold at retail or for resale or distribution at no cost. Machinery, tools and equipment, or repair parts therefor or replacements thereof, shall be exempt if the preponderance of their use is directly in processing, manufacturing, refining, mining or converting products for sale or resale. The provisions of this subsection do not apply to the drilling or extraction of oil, gas, natural gas and coalbed methane gas. In addition, the exemption provided herein shall not be applicable to any machinery, tools, and equipment, or any other tangible personal property used by a public service corporation in the generation of electric power, except for raw materials that are inputs to production of electricity, including fuel, or for machinery, tools, and equipment used to generate energy derived from

32 sunlight or wind. The exemption for machinery, tools, and equipment used to generate energy derived from
33 sunlight or wind shall expire June 30, 2027.

34 3. Tangible personal property sold or leased to a public service corporation engaged in business as a
35 common carrier of property or passengers by railway, for use or consumption by such common carrier
36 directly in the rendition of its public service.

37 4. Ships or vessels, or repairs and alterations thereof, used or to be used exclusively or principally in
38 interstate or foreign commerce; fuel and supplies for use or consumption aboard ships or vessels plying the
39 high seas, either in intercoastal trade between ports in the Commonwealth and ports in other states of the
40 United States or its territories or possessions, or in foreign commerce between ports in the Commonwealth
41 and ports in foreign countries, when delivered directly to such ships or vessels; or tangible personal property
42 used directly in the building, conversion or repair of the ships or vessels covered by this subdivision. This
43 exemption shall include dredges, their supporting equipment, attendant vessels, and fuel and supplies for use
44 or consumption aboard such vessels, provided the dredges are used exclusively or principally in interstate or
45 foreign commerce.

46 5. Tangible personal property purchased for use or consumption directly and exclusively in basic research
47 or research and development in the experimental or laboratory sense.

48 6. Notwithstanding the provisions of subdivision 20 of § 58.1-609.10, all tangible personal property sold
49 or leased to an airline operating in intrastate, interstate or foreign commerce as a common carrier providing
50 scheduled air service on a continuing basis to one or more Virginia airports at least one day per week, for use
51 or consumption by such airline directly in the rendition of its common carrier service.

52 7. Meals furnished by restaurants or food service operators to employees as a part of wages.

53 8. Tangible personal property including machinery and tools, repair parts or replacements thereof, and
54 supplies and materials used directly in maintaining and preparing textile products for rental or leasing by an
55 industrial processor engaged in the commercial leasing or renting of laundered textile products.

56 9. Certified pollution control equipment and facilities as defined in § 58.1-3660, except for any equipment
57 that has not been certified to the Department of Taxation by a state certifying authority or subdivision
58 certifying authority pursuant to such section.

59 10. Parts, tires, meters and dispatch radios sold or leased to taxicab operators for use or consumption
60 directly in the rendition of their services.

61 11. High speed electrostatic duplicators or any other duplicators which have a printing capacity of 4,000
62 impressions or more per hour purchased or leased by persons engaged primarily in the printing or
63 photocopying of products for sale or resale.

64 12. From July 1, 1994, and ending July 1, 2024, raw materials, fuel, power, energy, supplies, machinery
65 or tools or repair parts therefor or replacements thereof, used directly in the drilling, extraction, or processing
66 of natural gas or oil and the reclamation of the well area. For the purposes of this section, the term "natural
67 gas" shall mean "gas," "natural gas," and "coalbed methane gas" as defined in § 45.2-1600. For the purposes
68 of this section, "drilling," "extraction," and "processing" shall include production, inspection, testing,
69 dewatering, dehydration, or distillation of raw natural gas into a usable condition consistent with commercial
70 practices, and the gathering and transportation of raw natural gas to a facility wherein the gas is converted
71 into such a usable condition. Machinery, tools and equipment, or repair parts therefor or replacements
72 thereof, shall be exempt if the preponderance of their use is directly in the drilling, extraction, refining, or
73 processing of natural gas or oil for sale or resale, or in well area reclamation activities required by state or
74 federal law.

75 13. Beginning July 1, 1997, (i) the sale, lease, use, storage, consumption, or distribution of an orbital or
76 suborbital space facility, space propulsion system, space vehicle, satellite, or space station of any kind
77 possessing space flight capability, including the components thereof, irrespective of whether such facility,
78 system, vehicle, satellite, or station is returned to this Commonwealth for subsequent use, storage or
79 consumption in any manner when used to conduct spaceport activities; (ii) the sale, lease, use, storage,
80 consumption or distribution of tangible personal property placed on or used aboard any orbital or suborbital
81 space facility, space propulsion system, space vehicle, satellite or space station of any kind, irrespective of
82 whether such tangible personal property is returned to this Commonwealth for subsequent use, storage or
83 consumption in any manner when used to conduct spaceport activities; (iii) fuels of such quality not adapted
84 for use in ordinary vehicles, being produced for, sold and exclusively used for space flight when used to
85 conduct spaceport activities; (iv) the sale, lease, use, storage, consumption or distribution of machinery and
86 equipment purchased, sold, leased, rented or used exclusively for spaceport activities and the sale of goods
87 and services provided to operate and maintain launch facilities, launch equipment, payload processing
88 facilities and payload processing equipment used to conduct spaceport activities.

89 For purposes of this subdivision, "spaceport activities" means activities directed or sponsored at a facility
90 owned, leased, or operated by or on behalf of the Virginia Commercial Space Flight Authority.

91 The exemptions provided by this subdivision shall not be denied by reason of a failure, postponement or
92 cancellation of a launch of any orbital or suborbital space facility, space propulsion system, space vehicle,
93 satellite or space station of any kind or the destruction of any launch vehicle or any components thereof.

94 14. Semiconductor cleanrooms or equipment, fuel, power, energy, supplies, or other tangible personal
95 property used primarily in the integrated process of designing, developing, manufacturing, or testing a
96 semiconductor product, a semiconductor manufacturing process or subprocess, or semiconductor equipment
97 without regard to whether the property is actually contained in or used in a cleanroom environment, touches
98 the product, is used before or after production, or is affixed to or incorporated into real estate.

99 15. Semiconductor wafers for use or consumption by a semiconductor manufacturer.

100 16. Railroad rolling stock when sold or leased by the manufacturer thereof.

101 17. Computer equipment purchased or leased on or before June 30, 2011, used in data centers located in a
102 Virginia locality having an unemployment rate above 4.9 percent for the calendar quarter ending November
103 2007, for the processing, storage, retrieval, or communication of data, including but not limited to servers,
104 routers, connections, and other enabling hardware when part of a new investment of at least \$75 million in
105 such exempt property, when such investment results in the creation of at least 100 new jobs paying at least
106 twice the prevailing average wage in that locality, so long as such investment was made in accordance with a
107 memorandum of understanding with the Virginia Economic Development Partnership Authority entered into
108 or amended between January 1, 2008, and December 31, 2008. The exemption shall also apply to any such
109 computer equipment purchased or leased to upgrade, add to, or replace computer equipment purchased or
110 leased in the initial investment. The exemption shall not apply to any computer software sold separately from
111 the computer equipment, nor shall it apply to general building improvements or fixtures.

112 18. a. Beginning July 1, 2010, and ending June 30, 2035, except as provided in subdivision *b or* 19,
113 computer equipment or enabling software purchased or leased for the processing, storage, retrieval, or
114 communication of data, including ~~but not limited to~~ servers, routers, connections, and other enabling
115 hardware, including chillers and backup generators used or to be used in the operation of the equipment
116 exempted in this paragraph, provided that such computer equipment or enabling software is purchased or
117 leased for use in a data center, which includes any data center facilities located in the same locality as the data
118 center that are under common ownership or affiliation of the data center operator, that (i) is located in a
119 Virginia locality; (ii) results in a new capital investment on or after January 1, 2009, of at least \$150 million;
120 and (iii) results in the creation on or after July 1, 2009, of at least 50 new jobs by the data center operator and

121 the tenants of the data center, collectively, associated with the operation or maintenance of the data center
122 provided that such jobs pay at least one and one-half times the prevailing average wage in that locality. The
123 requirement of at least 50 new jobs is reduced to 10 new jobs if the data center is located in a distressed
124 locality at the time of the execution of a memorandum of understanding with the Virginia Economic
125 Development Partnership Authority. Additionally, the requirement of a \$150 million capital investment shall
126 be reduced to \$70 million for data centers that qualify for the reduced jobs requirement.

127 This exemption applies to the data center operator and the tenants of the data center if they collectively
128 meet the requirements listed in this section. Prior to claiming such exemption, any qualifying person claiming
129 the exemption, including a data center operator on behalf of itself and its tenants, must enter into a
130 memorandum of understanding with the Virginia Economic Development Partnership Authority that at a
131 minimum provides the details for determining the amount of capital investment made and the number of new
132 jobs created, the timeline for achieving the capital investment and new job goals, the repayment obligations
133 should those goals not be achieved, and any conditions under which repayment by the qualifying data center
134 or data center tenant claiming the exemption may be required. *Such memorandum of understanding shall*
135 *include or, if already in effect prior to July 1, 2026, shall be amended to include the data center operator's*
136 *method of demonstrating compliance with the requirements of subdivision d.* In addition, the exemption shall
137 apply to any such computer equipment or enabling software purchased or leased to upgrade, supplement, or
138 replace computer equipment or enabling software purchased or leased in the initial investment. The
139 exemption shall not apply to any other computer software otherwise taxable under Chapter 6 of Title 58.1
140 that is sold or leased separately from the computer equipment, nor shall it apply to general building
141 improvements or other fixtures.

142 b. *A data center operator and the tenants of the data center shall only qualify for this exemption if in*
143 *addition to meeting all other requirements of this subdivision 18, the data center operator and any such*
144 *tenants:*

145 (1) *Beginning July 1, 2027, do not use co-located generating facilities that emit carbon dioxide, other*
146 *than backup generators;*

147 (2) *Beginning July 1, 2029, contract for energy, capacity, and renewable energy certificates (RECs) from*
148 *clean energy resources to serve the data center in percentages equal to or greater than the annual*
149 *percentage that applies to the incumbent utility under subsection C of § 56-585.5, except that the data center*
150 *operator's or tenants' minimum annual clean energy procurement obligations shall be accelerated by 10*
151 *years relative to the incumbent electric utility's annual requirement. If the data center is not located within*

152 *the certificated service territory of a Phase I or Phase II Utility, as those terms are defined in subdivision A 1*
153 *of § 56-585.1, the data center's annual clean energy procurement percentage shall be accelerated by 10*
154 *years relative to the percentage applicable to a Phase I Utility under subsection C of § 56-585.5.*

155 *Evidence of compliance with the annual clean energy procurement obligation described in this*
156 *subdivision shall be established by either (i) a certification from the State Corporation Commission that the*
157 *data center operator or its tenants are an accelerated renewable buyer that purchases energy, capacity, and*
158 *RECs in sufficient quantity to satisfy the requirement identified in this subdivision or (ii) contracts or other*
159 *service agreements, redacted as may be necessary to protect commercially sensitive information, that*
160 *establish the data center operator or its tenants as participating in a voluntary tariff program, approved by*
161 *the State Corporation Commission, to facilitate large customer procurement of carbon-free and renewable*
162 *energy generation in a manner that does not impose additional costs on other customers, including ring-*
163 *fenced, utility-owned resources and sleeved third-party power purchase agreements, to satisfy the percentage*
164 *requirement identified above;*

165 *(3) Except as provided in this subdivision 3, utilize only non-carbon dioxide-emitting backup power*
166 *sources, such as energy storage resources. For a data center operator or its tenants that use carbon dioxide-*
167 *emitting backup power sources for some or all of their backup power supply, the exemption shall only be*
168 *available (i) through January 1, 2035, if such operator or tenants took initial service prior to July 1, 2026,*
169 *only use carbon dioxide-emitting backup power sources during declared grid emergencies and required*
170 *testing and maintenance, and have either installed a selective catalytic reduction system on at least one-third*
171 *of such power generators or at least one-third of such generators meet or exceed the U.S. Environmental*
172 *Protection Agency's Tier 4 emissions standards by July 1, 2031, or (ii) if such operator or tenants take initial*
173 *service on or after July 1, 2026, only use carbon dioxide-emitting backup power sources during declared grid*
174 *emergencies and required testing and maintenance, and utilize non-carbon dioxide-emitting power sources*
175 *as their primary backup power source for at least one-third of their contracted demand by January 1, 2030,*
176 *and 100 percent of their contracted demand by January 1, 2035. The Department may provide an extension*
177 *of the deadlines set forth in clauses (i) and (ii) if, in its sole discretion, it finds that the data center operator*
178 *or tenants have taken reasonable efforts to comply with such requirements but require additional time due to*
179 *supply chain constraints beyond the data center operator's or tenants' control; and*

180 *(4) Demonstrate, for any new data center issued a final certificate of occupancy or its equivalent on or*
181 *after January 1, 2030, or for any data center operator seeking an amended memorandum of understanding,*
182 *sufficient investment in environmental management and energy efficiency measures to provide system-wide*

183 *benefits, as defined herein, including in the methods of reporting and certification of compliance and the*
184 *maintenance of the environmental management and energy efficiency measures. A data center operator with*
185 *a memorandum of understanding initially entered into before July 1, 2027, may seek to amend its*
186 *memorandum of understanding to comply with the requirements of this subdivision b and must do so by July*
187 *1, 2028. If such data center operator fails to amend its memorandum of understanding by July 1, 2028, such*
188 *data center facility shall only be eligible for the exemption through December 31, 2034.*

189 c. For purposes of this subdivision 18; ~~"distressed":~~

190 *"Clean energy resources" means electric generating facilities that are located in the Commonwealth or*
191 *are physically located within the PJM Interconnection, LLC region, that do not emit carbon dioxide as a*
192 *byproduct of combusting fuel or manufacturing fuel for combustion to generate electricity, do not include*
193 *electric generating units utilizing carbon capture and sequestration facilities, and were not in operation prior*
194 *to July 1, 2020.*

195 *"Distressed locality" means:*

196 (1) From July 1, 2021, until July 1, 2023, any locality that had (i) an annual unemployment rate for
197 calendar year 2019 that was greater than the final statewide average unemployment rate for that calendar year
198 and (ii) a poverty rate for calendar year 2019 that exceeded the statewide average poverty rate for that year;
199 and

200 (2) From and after July 1, 2023, any locality that has (i) an annual unemployment rate for the most recent
201 calendar year for which such data is available that is greater than the final statewide average unemployment
202 rate for that calendar year and (ii) a poverty rate for the most recent calendar year for which such data is
203 available that exceeds the statewide average poverty rate for that year.

204 *"Sufficient investment in environmental management and energy efficiency measures to provide system-*
205 *wide benefits" means a data center operator has an environmental management system certified under the*
206 *International Organization for Standardization (ISO) 14001 (Environmental Management Systems) or*
207 *another reasonable environmental management system approved by the Virginia Economic Development*
208 *Partnership Authority, in consultation with the Department of Energy, and has met the requirements of one*
209 *or more of the following sustainable design, energy management, or green building standards: Building*
210 *Research Establishment Environmental Assessment Methodology (BREEAM) for new construction or*
211 *BREEAM in-use; Energy Star; ISO 50001; Leadership in Energy and Environmental Design (LEED); Green*
212 *Globes for new construction or Green Globes for existing building; UL 3223; or another comparable*
213 *standard approved by the Virginia Economic Development Partnership Authority.*

214 e- d. For so long as a data center operator is claiming an exemption pursuant to this subdivision 18, such
215 operator shall be required to submit an annual report to the Virginia Economic Development Partnership
216 Authority on behalf of itself and, if applicable, its participating tenants that includes their employment levels,
217 capital investments, average annual wages, qualifying expenses, and tax benefit, and such other information
218 as the Virginia Economic Development Partnership Authority determines is relevant, pursuant to procedures
219 developed by the Virginia Economic Development Partnership Authority. The annual report shall be
220 submitted by the data center operator in a format prescribed by the Virginia Economic Development
221 Partnership Authority. The Virginia Economic Development Partnership Authority shall share all information
222 collected with the Department.

223 The Department, in collaboration with the Virginia Economic Development Partnership Authority, shall
224 publish a biennial report on the exemption that shall include aggregate information on qualifying expenses
225 claimed under this exemption, the total value of the tax benefit, a return on investment analysis that includes
226 direct and indirect jobs created by data center investment, state and local tax revenues generated, and any
227 other information the Department and the Virginia Economic Development Partnership Authority deem
228 appropriate to demonstrate the costs and benefits of the exemption. The report shall not include, and the
229 Department and the Virginia Economic Development Partnership Authority shall not publish or disclose, any
230 such information if it is unaggregated or if such report or publication could be used to identify a business or
231 individual. The Department shall submit the report to the Chairmen of the Senate Committee on Finance and
232 Appropriations and the House Committees on Appropriations and Finance. The Virginia Economic
233 Development Partnership Authority may publish on its website and distribute annual information indicating
234 the job creation and ranges of capital investments made by a data center operator and, if applicable, its
235 participating tenants, in a format to be developed in consultation with data center operators.

236 19. a. Notwithstanding any provision of subdivision 18 to the contrary, the exemption set forth in
237 subdivision 18 may be extended for the purchase or lease of computer equipment or enabling software by or
238 on behalf of data center operators for use in data centers in the Commonwealth that are under common
239 ownership or affiliation with the data center operator as set forth in this subdivision 19. For purposes of this
240 subdivision 19, a data center operator shall be considered to own a data center if it is operated on behalf of
241 the data center operator pursuant to a long-term lease of at least ten years.

242 b. To qualify for an extension pursuant to this subdivision 19, a data center operator shall enter into a
243 memorandum of understanding with the Virginia Economic Development Partnership Authority on or after

244 January 1, 2023, that at a minimum provides the details for determining the amount of capital investment
245 made and the number of new jobs created; the locality or localities in which the capital investment shall be
246 made and new jobs shall be created in order to qualify for the extension; and the timeline for making the
247 capital investment and creating the new jobs in each specified locality. *Such memorandum of understanding*
248 *shall include or, if already in effect prior to July 1, 2026, shall be amended to include the data center*
249 *operator's method of demonstrating compliance with the requirements of subdivision 18 b.* A data center
250 operator shall only be required to enter into one memorandum of understanding pursuant to this subdivision
251 19 in order to qualify for the extension pursuant to both subdivisions c and d.

252 c. If on or after January 1, 2023, but before July 1, 2035, a data center operator that has entered into a
253 memorandum of understanding pursuant to subdivision b (i) makes or causes to be made a capital investment
254 of at least \$35 billion in data centers in localities identified in a memorandum of understanding and (ii)
255 creates at least 1,000 new full-time jobs, as defined in § 59.1-284.42, at such data centers, of which at least
256 100 of such jobs shall pay at least one and one-half times the prevailing average wage in the Commonwealth,
257 the data center operator shall be eligible to continue to utilize the exemption set forth in subdivision 18
258 through June 30, 2040.

259 d. If on or after January 1, 2023, but before July 1, 2040, a data center operator that has entered into a
260 memorandum of understanding pursuant to subdivision b (i) makes a total capital investment of at least \$100
261 billion, inclusive of any investment made pursuant to subdivision c, in data centers in the localities identified
262 in such memorandum of understanding and (ii) creates a total of at least 2,500 new full-time jobs, as defined
263 in § 59.1-284.42, at such data centers, of which at least 100 of such jobs shall pay at least one and one-half
264 times the prevailing average wage in the Commonwealth, inclusive of any new full-time jobs created
265 pursuant to subdivision c, the data center operator shall be eligible to utilize the exemption set forth in
266 subdivision 18 through June 30, 2050.

267 e. The extension provided in this subdivision 19 shall apply to the computer equipment or enabling
268 software purchased or leased for use in the data centers subject to the capital investment and job requirements
269 set forth herein, as well as to any such computer equipment or enabling software purchased or leased to
270 upgrade, supplement, or replace computer equipment or enabling software purchased or leased in the initial
271 investment. The extension shall also apply to any computer equipment or software purchased or leased in
272 data centers under common ownership or affiliation with the data center operator for which the data center
273 operator entered into a memorandum of understanding with the Virginia Economic Development Partnership

274 Authority to qualify for the exemption set forth in subdivision 18.

275 f. The reporting requirements set forth in subdivision 18 *and any requirement set forth in subdivision 18 b*
276 shall continue to apply to a data center operator for the duration of any extension granted pursuant to this
277 subdivision 19.

278 20. If the preponderance of their use is in the manufacture of beer by a brewer licensed pursuant to
279 subdivision 3 or 4 of § 4.1-206.1, (i) machinery, tools, and equipment, or repair parts therefor or replacements
280 thereof, fuel, power, energy, or supplies; (ii) materials for future processing, manufacturing, or conversion
281 into beer where such materials either enter into the production of or become a component part of the beer;
282 and (iii) materials, including containers, labels, sacks, cans, bottles, kegs, boxes, drums, or bags for future
283 use, for packaging the beer for shipment or sale.

284 21. If the preponderance of their use is in advanced recycling, as defined in § 58.1-439.7, (i) machinery,
285 tools, and equipment, or repair parts therefor or replacements thereof, fuel, power, energy, or supplies; (ii)
286 materials for processing, manufacturing, or conversion for resale where such materials either are recycled or
287 recovered; and (iii) materials, including containers, labels, sacks, cans, boxes, drums, or bags used for
288 packaging recycled or recovered material for shipment or resale.

289 **2. That, to the extent not already available, each investor-owned electric utility shall file with the State**
290 **Corporation Commission for approval of a voluntary tariff to facilitate large customer procurement of**
291 **clean energy in a manner that does not impose additional costs on other customers, including ring-**
292 **fenced, utility-owned resources and sleeved third-party power purchase agreements.**

293 **3. That, to the extent not already available, each investor-owned electric utility shall petition the State**
294 **Corporation Commission for approval of a program enabling large energy customers to participate in**
295 **demand response or other voluntary programs in which a large energy customer's on-site solar, wind,**
296 **energy storage, or zero-carbon electricity generating resources, as defined in § 56-585.5 of the Code of**
297 **Virginia, can provide system-wide benefits for which such large energy customer shall receive just and**
298 **reasonable compensation.**