

**DEPARTMENT OF TAXATION
2024 Fiscal Impact Statement**

1. **Patron** Richard C. "Rip" Sullivan, Jr.

2. **Bill Number** HB 116

3. **Committee** House Finance

House of Origin:

 X **Introduced**

 Substitute

 Engrossed

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

Second House:

 In Committee

 Substitute

 Enrolled

5. Summary/Purpose:

This bill would require data centers to meet certain energy efficiency standards in order to be eligible for the Retail Sales and Use Tax ("RSUT") exemption for qualifying data center purchases. A data center would be eligible for the exemption only if the operator demonstrates that:

- Its facilities either:
 - Have a power usage effectiveness score of no greater than 1.2, or
 - For data centers co-located in buildings with other commercial uses, achieve an energy efficiency level of no less than the most efficient 15 percent of similar buildings constructed in the previous five years, and
- It will procure carbon-free renewable energy and associated renewable energy certificates from facilities equal to 90 percent of its electricity requirements or that its electricity will be otherwise derived from non-carbon-emitting, renewable sources.

Under current law, qualification for the exemption is not contingent on the data center meeting energy efficiency standards.

If enacted during the regular session of the 2024 General Assembly, this bill would become effective July 1, 2024.

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>
2024-25	\$230,000	2 FTE	GF
2025-26	\$230,000	2 FTE	GF
2026-27	\$230,000	2 FTE	GF

2027-28	\$230,000	2 FTE	GF
2028-29	\$230,000	2 FTE	GF
2029-30	\$230,000	2 FTE	GF

8. Fiscal implications:

Administrative Costs:

The Department of Taxation considers implementation of this bill as routine and does not require additional funding. VEDP estimates that it would need two additional full time employees at a cost of \$230,000 (including benefits) annually to monitor data centers' compliance with the requirements established by this bill.

Revenue Impact

As it is unknown whether any data centers currently meet the energy usage requirements mandated by this bill or would be able to meet them going forward, the impact of this bill on the cost to the Commonwealth of the data center exemption is unknown. To the extent that data centers are unable to meet this bill's energy usage requirements, this bill could result in a substantial unknown positive revenue impact.

Based upon data provided to the Virginia Economic Development Partnership (VEDP) by data centers, the estimated cost of this program to the Commonwealth is as follows:

Fiscal Year	Aggregate Reported Exempt Equipment and Software Investment	Aggregate Estimated Cost to the Commonwealth Based Upon Reported Data
2022	\$9.4 billion	\$674 million
2023	\$15.6 billion	\$904 million

The aggregate estimated cost to the Commonwealth reflects the total negative revenue impact to the Commonwealth, including the General Fund, non-General Fund, and local revenue impact. Please note that these estimated costs are based upon data that was self-reported by data center operators and cannot be independently validated. In addition, certain companies did not report the requested information and, as a result, the actual impact could be higher.

Therefore, to the extent that data centers are unable to comply with the energy usage requirements of this bill, the aggregate cost of the data center exemption to the Commonwealth would be reduced, resulting in a positive revenue impact. The extent of such positive revenue impact, if any, is unknown.

9. Specific agency or political subdivisions affected:

Virginia Economic Development Partnership Authority
Department of Taxation

10. Technical amendment necessary: No.

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 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.

Proposal

This bill would require data centers to meet certain energy efficiency standards in order to be eligible for the data center exemption. A data center would be eligible for the exemption only if the operator demonstrates that:

- Its facilities either:
 - Have a power usage effectiveness score of no greater than 1.2, or
 - For data centers co-located in buildings with other commercial uses, achieve an energy efficiency level of no less than the most efficient 15 percent of similar buildings constructed in the previous five years, and
- It will procure carbon-free renewable energy and associated renewable energy certificates from facilities equal to 90 percent of its electricity requirements or that its electricity will be otherwise derived from non-carbon-emitting, renewable sources.

The bill would require VEDP to establish guidelines for calculating the power usage effectiveness (PUE) score and determining analogous buildings for comparison. In no case would a qualifying data center be allowed to use diesel fuel for on-site power generation.

The data center's memorandum of understanding with VEDP would be required to include or, if already in effect prior to July 1, 2024, would need to be amended to include the data center operator's method of demonstrating compliance with these energy procurement and use requirements.

Power usage effectiveness (PUE) is a ratio that describes how efficiently a computer data center uses energy; specifically, how much energy is used by the computing equipment (in contrast to cooling and other overhead that supports the equipment).

If enacted during the regular session of the 2024 General Assembly, this bill would become effective July 1, 2024.

Similar Legislation

Senate Bill 192 is identical to this bill except that the guidelines that would need to be established by VEDP for calculating energy efficiency and determining analogous buildings for comparison would be required to be based on accepted industry and federal government standards. Also, the data center's memorandum of understanding with VEDP would be required to include the data center operator's method of demonstrating compliance with the energy procurement requirements.

cc: Secretary of Finance

Date: 1/21/2024 JEM
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