

# HOUSE BILL REPORT

## ESB 5873

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### As Reported by House Committee On: Ways & Means

**Title:** An act relating to the sales and use tax exemption for qualifying businesses of eligible server equipment.

**Brief Description:** Concerning the sales and use tax exemption for qualifying businesses of eligible server equipment.

**Sponsors:** Senators Prentice, Parlette, Hewitt, Murray, Harper, Holmquist Newbry, Chase, Zarelli, Hobbs, King, Fain, Honeyford, Tom, Kilmer and McAuliffe.

#### **Brief History:**

##### **Committee Activity:**

Ways & Means: 5/20/11, 5/23/11 [DPA].

#### **Brief Summary of Engrossed Bill (As Amended by House)**

- Extends the timeline to qualify and claim the data center sales and use tax exemption.
- Removes the requirement that a lessee of data center space must lease at least 20,000 square feet to qualify for the exemption.

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### HOUSE COMMITTEE ON WAYS & MEANS

**Majority Report:** Do pass as amended. Signed by 26 members: Representatives Hunter, Chair; Darneille, Vice Chair; Hasegawa, Vice Chair; Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Dammeier, Assistant Ranking Minority Member; Orcutt, Assistant Ranking Minority Member; Carlyle, Chandler, Cody, Dickerson, Haigh, Haler, Hinkle, Hudgins, Hunt, Kagi, Kenney, Ormsby, Parker, Ross, Schmick, Seaquist, Springer, Sullivan and Wilcox.

**Staff:** Jeffrey Mitchell (786-7139).

#### **Background:**

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

Retail sales and use taxes are imposed by the state, most cities, and all counties. Retail sales taxes are imposed on retail sales of most articles of tangible personal property and digital products and some services. A retail sale is a sale to the final consumer or end user of the property, digital product, or service. If retail sales taxes were not collected when the property, digital products, or services were acquired by the user, then use taxes apply to the value of most tangible personal property and digital products and some services when used in this state. The state sales and use tax rate is 6.5 percent. Local tax rates vary from 0.5 percent to 3.0 percent, depending on the location.

In 2010 Engrossed Second Substitute Bill 6789 provided a sales and use tax exemption for eligible server equipment and power infrastructure for eligible computer data centers. The exemption expires on April 1, 2018. In order to qualify, a data center must:

- be located in a rural county;
- be at least 100,000 square feet; and
- commence construction between April 1, 2010, and July 1, 2011.

Additionally, within six years of construction, a qualifying business must have created 35 family-wage employment positions or three family-wage jobs per 20,000 square feet of space.

A lessee of 20,000 square feet of space within a computer data center is also eligible for the tax exemption.

Commencement of construction means the date that a building permit is issued under the building code for construction of a computer data center. Construction of a data center includes the expansion, renovation, or other improvements made to existing facilities, including leased or rented space.

Eligible server equipment is the original server equipment installed in an eligible data center after April 1, 2010, as well as replacement server equipment replacing the servers originally exempt. To qualify for the exemption, replacement servers must be installed and put into regular use prior to April 1, 2018.

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### **Summary of Amended Bill:**

The time period to qualify for the sales and use tax exemption is extended for eligible data centers from July 1, 2011, to July 1, 2014.

The time period to claim the sales and use tax exemption for eligible replacement server equipment and power infrastructure is extended from April 1, 2018, to April 1, 2021. However, the extension only applies where commencement of construction or expansion occurs on or after July 1, 2011.

The requirement that a lessee lease 20,000 square feet of space is eliminated.

Various definitions are clarified.

## **Amended Bill Compared to Engrossed Bill:**

The amended bill removes language that would allow utilities constructing a substation to claim the sales and use tax exemption for power infrastructure equipment. The amended bill allows the 3-year extension of the exemption only for replacement servers for data centers commencing construction after July 1, 2011. The amended bill clarifies that an eligible business includes tenants leasing and subleasing server space.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Amended Bill:** The bill contains an emergency clause and takes effect on July 1, 2011.

### **Staff Summary of Public Testimony:**

(In support) Construction jobs for data centers are a primary job source in rural counties. These areas have high unemployment. There have been 5 major data construction projects initiated in the last year totaling over \$1 billion in new construction and \$7.3 million in construction tax revenue. The 200,000 construction hours support the state's workers compensation and unemployment programs. A year ago, business, labor, and rural communities came together to support a tax exemption for server and related infrastructure. We hoped to see three or four new projects; however, the Department of Revenue has received eight applications and has approved seven. Six have currently commenced construction. Over a thousand families have been impacted by this legislation. If you don't like what you see in 36 months, let it expire. This exemption helps Washington capitalize on its natural advantages of cheap power and land and a good climate.

(Opposed) This bill deepens the budget hole. When in a hole, one should stop digging. This bill digs a deeper hole. The state already has a lot of difficult fiscal decisions to make and this bill does not make those decisions any easier.

**Persons Testifying:** (In support) Patrick Gallatin, International Brotherhood of Electrical Workers Local Union 191; Terry Tilton, Washington Building and Construction Trades Council; and Dave Sabey, Sabey Corporation.

(Opposed) Nick Federici, Protecting Our Economic Future Coalition.

**Persons Signed In To Testify But Not Testifying:** None.