

Legislative Analysis



EXEMPT ENTERPRISE DATA CENTERS FROM SALES AND USE TAXES

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 5127 (proposed substitute H-4)
Sponsor: Rep. Bronna Kahle

Analysis available at
<http://www.legislature.mi.gov>

House Bill 5128 (proposed substitute H-4)
House Bill 5187 (proposed substitute H-2)
Sponsor: Rep. Rebekah Warren

House Bill 5188 (proposed substitute H-2)
Sponsor: Rep. Mark E. Huizenga

Committee: Commerce and Tourism
Complete to 1-15-20

SUMMARY:

The bills would amend the General Sales Tax Act and the Use Tax Act in order to extend to enterprise data centers the exemption from the taxes levied under those acts that is currently provided to qualified data centers and to provide for reimbursement to the School Aid Fund of revenue that was lost to it as a result of the data center tax exemptions.

House Bills 5127 and 5128 would amend the Use Tax Act and the General Sales Tax Act, respectively, to exempt an *enterprise data center* from sales and use taxes by including them in the exemption currently applied to data center equipment that is sold to, or used by, a qualified data center.¹ The bills would also extend the qualified data center exemption for twenty more years, to expire in 2055 rather than 2035.

Under the bills, *enterprise data center* would mean a facility composed of one or more buildings located in Michigan that meets all of the following requirements:

- The facility is composed of one or more buildings located in the same county, township, city, or village.
- The facility is owned and operated by an entity operating a group of networked computers to centralize data storage and processing of the entity's own data.
- The *initial capital investment* in the facility is at least \$250.0 million. (*Initial capital investment* would mean the investment in a facility in this state that is in excess of any or all investment that the entity maintained in this state before the facility's creation or expansion.)
- The entity creates and maintains at least 30 *qualified new jobs* at wage rates that exceed 120% of the average annual wage for the county where the facility is located, based on the most recent data made available by the Michigan Bureau of Labor Market Information and Strategic Initiatives. (*Qualified new jobs* would mean full-time jobs created by the facility in this state that are in excess of the number of full-time jobs that the facility maintained in this state before the facility's creation or expansion.)

¹ This exemption was added by 2015 PAs 251 and 252. See: <http://legislature.mi.gov/doc.aspx?2015-SB-0616>

The bills would amend the definition of “qualified data center” to include an enterprise data center beginning on the effective date of the applicable bill, thus entitling an enterprise data center to the same exemption for data center equipment sold to or used by a qualified data center.

In addition, the bills would extend the sunset (expiration date) of the exemption for qualified data centers from December 31, 2035, to December 31, 2055.

In order for the exemption under each act to continue to apply, local economic development centers must certify and report information in 2022 and 2026 on the number of jobs created by qualified data centers since January 1, 2016, to determine whether the qualified data centers are meeting certain employment requirements. The bills would also require the information gathered and reported to include information regarding the wages paid for these jobs.

[Note: The bills also change references to the Department of Talent and Economic Development (TED) in current law to refer to the Michigan Strategic Fund instead. The responsibilities of TED under these sections of law were transferred to the Michigan Strategic Fund by Executive Order No. 2019-13.]

Each bill would take effect 90 days after its enactment.

MCL 205.94cc (HB 5127: Use Tax Act)

MCL 205.54ee (HB 5128: General Sales Tax Act)

House Bills 5187 and 5188 would amend the General Sales Tax Act and the Use Tax Act, respectively, to reimburse the School Aid Fund (SAF) for any lost revenue resulting from the exemption given under those acts to qualified data centers (which, under HBs 5127 and 5128, would include enterprise data centers).

Under each bill, an amount determined by the Department of Treasury that is equal to all revenue lost to the SAF as a result of the exemption for qualified data centers provided under the respective act would have to be deposited into the SAF.

Each bill would provide that a person that claimed an exemption for a qualified data center under the respective act would have to report annually on a form at the time and in a manner prescribed by the Department of Treasury the sales or purchase price of the data center equipment and any other information necessary to determine the amount of revenue lost to the SAF as a result of the exemption.

MCL 205.75 (HB 5187: General Sales Tax Act)

MCL 205.111 (HB 5188: Use Tax Act)

Tie-bars

HB 5127 is tie-barred to HB 5188, and HB 5128 is tie-barred to HB 5187. A bill cannot take effect unless the bill to which it is tie-barred is also enacted.

FISCAL IMPACT:

House Bills 5127 and 5128

To the extent that an entity qualifies as an enterprise data center, sales and use tax revenue would decline relative to current law. However, without knowing the amount of capital investment that would qualify under the bills, the extent of the revenue loss cannot be determined. As a frame of reference, 6% of \$250 million is \$15 million.

About 73% of sales tax revenue is earmarked to the School Aid Fund, and an additional 10% is dedicated to constitutional revenue sharing. The remainder accrues to the general fund. Similarly, one-third of use tax revenue is earmarked to the School Aid Fund, while the remainder accrues to the general fund. It is anticipated that most of the revenue loss would be sales taxes as opposed to use taxes.

The stipulation that wages must exceed the average county wage by at least 120% is unlikely to have a significant economic impact. The highest average county wage in 2018 was just under \$63,000 (Oakland County), the lowest was just under \$26,000 (Keweenaw County), and the overall average was \$53,800. In contrast, the statewide average wage in 2018 for computer systems analysts was \$83,900, almost 30% higher than 120% of the average statewide annual wage. While some specific employees might benefit from this provision, it would not be expected to have wide-ranging effects.

House Bills 5187 and 5188

Because the intent is to hold the school aid fund harmless for the loss of sales and use tax revenue stemming from the exemptions available to qualified data centers (which include enterprise data centers), the bills would have no overall impact on state tax revenue. Although the annual amount will vary and cannot be known in advance, it should be noted that the sales/use tax exemption is not limited to the initial investment by data centers, but also ongoing investment as equipment is replaced on a regular basis.

As an example, if the exemption applies collectively to \$1.0 billion of qualified investment, the forgone sales/use tax would be \$60.0 million. Because approximately 73% of sales tax revenue and 33% of use tax revenue is constitutionally dedicated to the school aid fund, the general fund reduction would range between \$20.0 million and \$43.8 million, depending on the distribution between sales and use taxes.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.