

Legislative Analysis



ENTERPRISE DATA CENTERS

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

House Bill 5305 (proposed substitute H-4)
Sponsor: Rep. Joseph N. Bellino, Jr.

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

House Bill 5306 (proposed substitute H-4)
Sponsor: Rep. Kevin Hertel

Committee: Commerce and Tourism
Complete to 1-24-22

SUMMARY:

House Bills 5305 and 5306 would amend the General Sales Tax Act and the Use Tax Act, respectively, to exempt from sales and use taxes the sale or the storage, use, or consumption of data center equipment under specific conditions related to the equipment's use in an enterprise data center (defined in the bills). The exemption would begin 90 days after the applicable bill is enacted and continue through December 31, 2046. The bills are jointly described below. Their provisions are identical except that the sales tax bill applies to the sale of data center equipment and the use tax bill applies to its storage, use, or consumption.

Description of exemptions

Under each bill, from its effective date through December 31, 2046, the sale of *data center equipment* to either of the following (or the storage, use, or consumption of data center equipment that is sold to either of the following) would be exempt from the tax imposed by the applicable act:

- A *qualified entity* or its affiliates for assembly, use, or consumption in the operations of an *enterprise data center* subject to a *certificate*.
- A person engaged in the business of constructing, altering, repairing, or improving real estate for others, to the extent that the data center equipment is to be affixed to or made a structural part of an enterprise data center subject to a certificate.

For purposes of the above, *data center equipment* would mean only computers, servers, routers, switches, peripheral computer devices, racks, shelving, cabling, wiring, storage batteries, back-up generators, uninterrupted power supply units, environmental control equipment, other redundant power supply equipment, and prewritten computer software used in operating, managing, or maintaining the enterprise data center. Data center equipment also would include any construction materials used or assembled for the construction or modification of an enterprise data center, including building materials, infrastructure, machinery, wiring, cabling, devices, tools, and equipment that would otherwise be considered a fixture or related equipment.

Qualified entity would mean an applicant that is issued a certificate for a particular enterprise data center project and that complies with the requirements described below.

Certificate would mean a document issued by the Michigan Strategic Fund (MSF) to an applicant that certifies or otherwise establishes that the facility identified in that document, which is or is to be developed, owned, and operated by the applicant or an affiliate of the applicant, qualifies as an enterprise data center.

Enterprise data center would mean a facility that MSF determines either meets all of the following requirements or is expected to meet all of the following requirements within the time frame set forth in the certificate (and would not include a facility that MSF determines no longer meets these requirements or is no longer expected to meet them within the applicable time frame):

- The facility consists of one or more buildings and is located in Michigan.
- The facility is primarily designed and intended to house, and does actually house, data center equipment to centralize the storage and processing of the qualified entity's own data or the data of any of its affiliates.
- The facility is developed, owned, and operated by a qualified entity or any of its affiliates for the exclusive use of the qualified entity or its affiliates (which could include use by contractors for or on behalf of the qualified entity or its facilities).
- The qualified entity, and any of its affiliates that will develop, own, and operate the facility, makes an **aggregate capital investment** of at least \$250.0 million in the facility.
- The qualified entity and any of its affiliates create and maintain an aggregate total of at least 30 **qualified new jobs** through December 31, 2046, with wage rates that exceed 120% of the **county average wage**.
- All qualified new jobs are held by individuals who reside in Michigan.
- 50% of the qualified new jobs consist of individuals who have an associate, bachelor's, or advanced degree in science, technology, engineering, or mathematics or who are licensed, registered, or certified under the Skilled Trades Regulation Act.

Aggregate capital investment would mean capital investment made and maintained in the facility to the extent that the investment increases the total capital investment maintained in Michigan by the qualified entity and its affiliates, in the aggregate, when compared to the total capital investment the applicant and its affiliates, in the aggregate, maintained in Michigan before the certificate was issued, as determined and verified by MSF.

Qualified new job would mean a full-time job created by the qualified entity or its affiliates at the facility that is in excess of the number of full-time jobs that the applicant and its affiliates maintained at the project location before the certificate was issued, as determined and verified by MSF.

County average wage would mean 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. The county average wage of a facility located in more than one county would be based on the county with the highest average annual wage.

Certificates

To claim an exemption described above, the qualified entity would have to have a certificate for that facility that is in good standing at the time the data center equipment is sold to the purchaser. All of the following also would apply:

- A person seeking a certificate for an enterprise data center would have to apply to MSF on a form and in a manner prescribed by MSF. The application would have to include a signed affirmation that the applicant expects the facility to meet the enterprise data center criteria and the expected time frame for doing so. MSF would have to review the application and issue a certificate or provide reasons for its denial within 120 days after receiving a complete and correct application. If the facility does not meet the applicable criteria when the certificate is issued, the certificate would have to specify a time frame for it to do so. MSF would have to provide a copy of each certificate issued to the Department of Treasury.
- A qualified entity to which a certificate was issued would have to report to MSF all information required by MSF regarding purchases for which a sales or use tax exemption was claimed and to determine whether the facility continues to qualify as an enterprise data center. This report would be subject to audit and would have to be made on an annual basis after issuance of the certificate. The report could not include any remittance for tax and would not constitute a tax return.
- If MSF determined that a facility no longer met the criteria to qualify as an enterprise data center, it would have to revoke the certificate. At least 60 days and up to 180 days before revocation, MSF would have to provide written notice to the qualified entity and the Department of Treasury of its preliminary revocation determination, providing the entity an opportunity to demonstrate, within a time period prescribed in the notice, that the facility continues to qualify. During that time period, all persons would have to cease claiming an exemption stemming from the certificate. If at the end of the time period MSF determines that the facility does not qualify, MSF would have to revoke the certificate and notify the Department of Treasury within five days after doing so. The former qualified entity would have to pay to the Department of Treasury an amount equal to the entire amount of the tax exemptions stemming from the certificate that have been received by all persons, plus interest (as specified in 1941 PA 122) calculated from January 1 of the year the exemption was received until the amount is paid. However, for a revocation occurring more than 10 years after issuance of the certificate, MSF could determine under published guidelines, after evaluating the circumstances, that a lesser payment amount is appropriate—although this lesser amount could not be less than 50% of the entire amount of the exemptions stemming from the certificate that have been received by all persons.

Annual summary report

On or before January 1 of each year, a person engaged in the business of constructing, altering, repairing, or improving real estate for others that has claimed an exemption for a particular facility would have to submit a summary report to the qualified entity or former qualified entity to which a certificate for that facility was issued that provides at least information sufficient to identify the person who made the purchases and the purchase price of all items purchased each month of that year. For four years after the date of purchase, the person also would have to maintain all invoices, bills of sale, or similar documents for all claimed exempt purchases that indicate the date of purchase, the items purchased, and the purchase price of the property identified in the summary report.

Qualified data centers

The sections the bills would amend now provide for an exemption for data center equipment that is sold to, or used by, a qualified data center (as defined in the act), as long as the qualified data center maintains a specified number of data center industry jobs or data center industry related jobs.¹

The bills would add that, for purposes of those provisions, “data center industry jobs” and “data center industry related jobs” do not include *qualified new jobs* as that term is defined under the bills.

Each bill would take effect 90 days after its enactment.

HB 5305 (sales tax): MCL 205.54ee

HB 5306 (use tax): MCL 205.94cc

FISCAL IMPACT:

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, for a \$250.0 million investment (the minimum requirement under the bills), the corresponding sales/use tax revenue loss would be \$15.0 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 2020 was \$69,254 (Oakland County), the lowest was \$29,308 (Keweenaw County), and the statewide average was \$59,463. In contrast, the statewide average wage in 2018 for workers employed in computer systems design and related services (NAICS 5415) was \$104,143, almost 50% 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.

Legislative Analyst: Rick Yuille

Fiscal Analyst: Jim Stansell

■ 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.

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