Legislative Analysis

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ENTERPRISE DATA CENTERS

House Bill 5305 as introduced
Sponsor: Rep. Joseph N. Bellino, Jr.

House Bill 5306 as introduced
Sponsor: Rep. Kevin Hertel

Committee: Commerce and Tourism
Complete to 10-15-21

SUMMARY:

House Bills 5305 and 5306 would amend the General Sales Tax Act and the Use Tax Act, respectively, to exempt an ***enterprise data center*** from sales and use taxes by including it in the exemption currently applied to data center equipment that is sold to, or used by, a qualified data center.[1] Each bill would take effect 90 days after enactment.

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 houses data center equipment and is developed, owned, and operated by an entity or any of its affiliates substantially for the use of the entity or any of its affiliates.
- The ***initial capital investment*** in the facility is at least $250.0 million. (***Initial capital investment*** would mean the investment in a facility in Michigan that is in excess of any or all investment that the entity or any of its affiliates maintained in Michigan before the facility's creation or expansion.)
- The entity and any of its affiliates create and maintain 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.)

Each bill would amend the definition of "qualified data center" to include an enterprise data center beginning on the bill's effective date, thus entitling an enterprise data center to the same tax exemption for data center equipment sold to or used by a qualified data center.

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 also would require the information gathered and reported to include information regarding the wages paid for these jobs.

HB 5305: MCL 205.54ee
HB 5306: MCL 205.94cc

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

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 million investment (the minimum requirement under the bills), the corresponding sales/use tax revenue loss would be $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 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