

Legislative Analysis



ENTERPRISE DATA CENTERS

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

House Bill 4906 (S-10) as passed by the Senate
Sponsor: Rep. Joey Andrews

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

Senate Bill 237 (S-11) as passed by the Senate
Sponsor: Sen. Kevin Hertel

House Committee (HB 4906): Tax Policy
House Committee (SB 237): [Placed on second reading]
Senate Committee: Finance, Insurance, and Consumer Protection
Complete to 5-20-24

SUMMARY:

House Bill 4906 and Senate Bill 237 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, 2050. For properties on brownfields or former electric power plants, the exemption would expire December 31, 2065.

The bills are described together 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 the bill's effective date through December 31, 2050, 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 an enterprise data center subject to a certificate that is located on a property included in a brownfield plan under the Brownfield Redevelopment Financing Act (BRFA),¹ or on property that was once an industrial site used primarily as a power plant to generate electricity for sale, the exemptions would apply through December 31, 2065.

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,

¹ <http://legislature.mi.gov/doc.aspx?mcl-Act-381-of-1996>

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 the 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 meets, or is expected to meet within the time frame set forth in the certificate, all of the following requirements:

- The facility is located in this state.
- The facility is composed of one or more buildings.
- The facility is designed and intended for housing, and does house, data center equipment to centralize the storage and processing of data.
- The **aggregate capital investment** in the facility made by the qualified entity, and any of its affiliates that will develop, own, and operate the facility, is not less than \$250.0 million.
- The qualified entity and any of its affiliates, in the aggregate, create and maintain a minimum of 30 **qualified new jobs** in Michigan with an annual wage that is equal to 150% or more of the **prosperity region median wage** through the **applicable date**.
- Unless approved by a resolution of the governing body each affected **local unit of government**, the facility does not receive and, through the applicable date, will not receive any state or local **property tax benefit**, including property tax benefits available under the General Property Tax Act,² the Michigan Renaissance Zone Act,³ and 1974 PA 198.⁴
- Not later than three years after being placed in service, the facility will attain certification under, and the qualified entity of the facility will certify to MSF that the facility has obtained certification under, one or more of the following green building standards:
 - BREEAM for New Construction or BREEAM for In-Use.
 - ENERGY STAR.
 - Envision.
 - ISO 50001 – energy management.

² <https://www.legislature.mi.gov/Laws/MCL?objectName=mcl-Act-206-of-1893>

³ <https://www.legislature.mi.gov/Laws/MCL?objectName=mcl-Act-376-of-1996>

⁴ <https://www.legislature.mi.gov/Laws/MCL?objectName=mcl-Act-198-of-1974>

- LEED for Building Design and Construction or LEED for Operations and Maintenance.
- Green Globes for New Construction or Green Globes for Existing Buildings.
- UL 3223.
- Before the start of operations, the facility will use municipal water or, if the facility cannot use municipal water before the start of operations, the facility will develop a plan to convert to using municipal water within five years after the start of operations.

Enterprise data center would not include a facility that MSF determines no longer meets, or is no longer expected to meet within the time frame set forth in the certificate, the requirements described above.

Aggregate capital investment would mean the capital investment made and maintained in the facility to the extent that investment results in an increase in the total capital investment that the qualified entity and its affiliates, in the aggregate, maintain in Michigan when compared to the total capital investment that the applicant and its affiliates, in the aggregate, maintained in Michigan before issuance of the certificate, as determined and verified by MSF.

Qualified employee would mean an employee at the facility created by the qualified entity or its affiliates earning a wage of at least 120% of the county average wage.

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 in Michigan before issuance of the certificate, as determined and verified by MSF.

Prosperity region median wage would mean the median annual wage for the prosperity region⁵ where the facility is located based on the most recent data made available by the Michigan Bureau of Labor Market Information and Strategic Initiatives.

Applicable date would mean the following:

- For a facility that is located on the property included in a brownfield plan under the BRFA, or on property that was once an industrial site used primarily as a power plant to generate electricity for sale, December 31, 2065.
- For any other facility, December 31, 2050.

Local unit of government would mean a city, village, township, or county.

Property tax benefit would mean any benefits that reduce the property tax burden on the facility for purposes of encouraging economic development, such as property tax exemptions, millage rate or valuation reductions, and property tax capture, other than

⁵ https://www.michigan.gov/-/media/Project/Websites/mdhhs/Folder3/Folder39/Folder2/Folder139/Folder1/Folder239/Prosperity_Map1_430346_7.pdf?rev=4b907ee644814b6397163752b0c3807e

property tax capture under a brownfield plan that has been approved by the governing board under the BRFA and that is in effect at the time of the application under the bills.

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, which could not exceed six years. MSF or its designees 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. The certificate would have to specify a time frame for the facility to satisfy each of the criteria in the definition of *enterprise data center* (see above). The time frame would have to be the lesser of six years or the time frame specified on the application. 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 information regarding purchases for which a sales or use tax exemption was claimed and employment, tax withholding, capital investment, and other information required by MSF 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. MSF would have to provide a copy of each report to the Department of Treasury but otherwise could not disclose any information from the reports that is not aggregated or could be used to identify a specific person or data center.
- Within three years after a facility is placed in service, the qualified entity of the facility would have to certify to MSF (in a form and manner prescribed by MSF) that the facility has attained under one or more of the green building standards described above.
- If MSF determines that a facility no longer meets 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.

Except as otherwise provided in the bill, MSF could not disclose any information from the reports that is not aggregated or could be used to identify a specific person or data center.

Fees

The bills would authorize MSF to charge and collect reasonable administrative fees to effectuate their purposes.

Environmental encouragement

The bills would state that the legislature encourages a person claiming an exemption under the bills to take direct steps to adopt practices to mitigate negative environmental impacts resulting from expanded use of data centers, including through all of the following:

- To the extent possible, procuring or contracting for power from renewable sources.
- Adopting practices to improve the energy efficiency of existing data centers, including through upgrading and consolidating technology, managing data center airflow, and adjusting and improving heating, ventilation, and air conditioning systems.
- Taking actions to conserve, reuse, and replace water, including at least all of the following:
 - Using water efficient fixtures and practices.
 - Treating, infiltrating, and harvesting rainwater.
 - Recycling water before discharging.
 - Partnering with local water utilities to use discharged water for irrigation and other water conservation purposes.
 - Using reclaimed water where possible for data center operations.
 - Supporting water restoration in local watersheds.

Sunset

MSF would be prohibited from issuing any new certificates after December 31, 2029. The sunset would not affect existing certificates in effect before this date.

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.⁶

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 4906 (sales tax): MCL 205.54ee
SB 237 (use tax): MCL 205.94cc

BRIEF DISCUSSION:

Supporters argued that the bills present an opportunity for Michigan to take advantage of the growing importance of data centers in the modern economy and draw large investments into the state. They argued that, without the exemptions provided by the bills, Michigan would not be competitive for any such projects.

Opponents of the legislation raised concerns about the potential impact on revenue sharing for local governments. Supporters countered if that the data centers would not come to Michigan without the bills, the sales exempted by the bills also would not exist without them.

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 or the number of potential taxpayers 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. If the investment would not have occurred but for the provisions of the bill, that would be a mitigating factor on the revenue loss. That said, whether the exemptions were a necessary condition of the investment in any given case is indeterminable.

The extension of the existing exemption related to qualified data centers would also reduce sales and use tax revenue. The existing exemption is currently estimated to reduce state and local revenue by approximately \$2.5 million per year. As was stated above, the magnitude of any fiscal impact in any given year would depend on the amount of exempt purchases, the number of taxpayers, and the extent to which the investment would have occurred but for the provisions of the bill.

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.

⁶ This exemption was added by 2015 PAs 251 and 252. See: <http://legislature.mi.gov/doc.aspx?2015-SB-0616>

The stipulation that wages must exceed the median prosperity region wage by at least 150% is unlikely to have a significant economic impact. The highest median prosperity region wage 2022 (most recent available) was \$48,380 (Detroit Metro); the lowest was \$37,731 (Northeast). In contrast, median wages in the sectors affected by the bills exceed the wage requirement provisions under the bills. While some specific employees might benefit from this provision, it would not be expected to have wide-ranging effects. In addition, the bill would require the qualified entity and any of its affiliates, in the aggregate, to create and maintain a minimum of 30 qualified new jobs in this state to continue to qualify for the exemption.

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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.