Legislative Analysis

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

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

**SALES & USE TAX EXEMPTIONS
FOR QUALIFIED DATA CENTERS**

**Senate Bill 616 (as enrolled)
Sponsor: Sen. Tonya Schuitmaker**

**Senate Bill 617 (as enrolled)
Sponsor: Sen. Peter MacGregor**

**Senate Committee: Michigan Competitiveness
House Committee: Tax Policy
Complete to 12-16-15**

SUMMARY:

Senate Bills 616 and 617 would provide for sales and use tax exemptions for data center equipment, or the storage, use, or consumption of data center equipment, sold to the owner or operator of a qualified data center or a colocated business for use or consumption in the operations of the data center. The sales and use tax exemptions would apply from January 1, 2016, to December 31, 2021, and then would continue to apply through December 31, 2035, if certain job creation criteria were met.

Further, the bills would require the legislature to annually appropriate sufficient funds from the state's General Fund to the State School Aid Fund to fully compensate for any loss of revenue to the SAF from the tax exemptions.

Senate Bill 616 would amend the General Sales Tax Act (Proposed MCL 205.54ee). Senate Bill 617 would amend the Use Tax Act (Proposed MCL 205.94cc).

Jobs Requirements. The sales/use tax exemptions would only continue to apply after January 1, 2022, if the qualified data centers, colocated businesses and the contractors of the data centers had in aggregate established in Michigan at least 400 data center industry jobs and related jobs since January 1, 2016. Further, the exemptions would only continue to apply after January 1, 2026, if established Michigan job totals since January 1, 2016, had reached 1,000 or more.

The job figures would be reported by the Department of Talent and Economic Development (TED) in a report to the Speaker and Minority Leader of the state House of Representatives, the Majority Leader and Minority Leader of the state Senate, and the Governor. Job numbers would be gathered and certified by local economic development corporations and reported to TED.

Qualified Data Centers. A qualified data center is defined in each of the bills as a facility composed of one or more buildings located in Michigan and that is owned or operated by an entity engaged in that facility in operating, managing, or maintaining a group of networked computers or networked facilities for the purpose of centralizing, or allowing one or more colocated businesses to centralize, the storage, processing, management, or dissemination of data of one or more other persons who are not affiliates of the owner or operator of the qualified data center or the data of a colocated business. Also to qualify, such an entity must receive 75% or more of its revenue from colocated businesses that are not affiliates of the owner or operator of the qualified data center.

Affiliates. The term "affiliate" is defined to refer to a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with a specified person. The definition is used within the definition of "qualified data center" so as to limit the application of the tax exemptions to a data center engaged in the centralization, storage, processing, management, and dissemination of data of entities that are not affiliates of the data center.

Data Center Equipment. Senate Bills 616 and 617 would exempt data center equipment from the sales and use taxes, and the bills define such equipment as 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 qualified data center or the business of the qualified data center or a colocated business.

The term also would include any construction materials used or assembled under the qualified data center's proprietary method, including but not limited to building materials, infrastructure, machinery, wiring, cabling, devices, tools, and equipment that would otherwise be considered a fixture or related equipment.

The term would not include any equipment owned by a third party used to supply the qualified data center's primary power.

Colocated Business. In each of the bills, a colocated business is defined as a person that enters into a contract with the owner or operator of a qualified data center to use or deploy data center equipment physically located within the data center for a period of one or more years.

FISCAL IMPACT:

The package as a whole would reduce sales and use tax revenue by an indeterminate amount. There are currently about 40 data centers operating in Michigan that would become eligible for the exemptions. Based on information from the Annual Capital Expenditures Survey (U.S. Census Bureau) corresponding to data centers at the national level, the resulting annual decline in sales and use taxes would be about $13.0 million.

However, this estimate does not include revenue losses associated with the colocated businesses that would also qualify for the preferential tax treatment. The extent to which this would result in additional revenue reduction cannot be determined from available information.

In addition, no attempt has been made to estimate any revenue losses that would occur as data centers open or expand in Michigan because the amount of potential new investment and the corresponding time frame cannot be known in advance. However, as a point of reference, exempting $1.0 billion of capital expenditures from sales/use taxes (assuming 75% of the investment is tangible personal property) would represent foregone revenue of $45.0 million in the year in which the equipment is purchased.

Senate Bills 616 and 617 stipulate that the School Aid Fund (SAF) be held harmless from any sales or use tax revenue losses, so declines in sales and use tax revenue would only reduce Constitutional revenue sharing and General Fund/General Purpose (GF/GP) revenue. However, because the language requires the legislature to appropriate the necessary funds, there is no guarantee that the SAF will actually be held harmless since statute can't mandate an appropriation.

Legislative Analyst: Chris Couch
Legislative/Fiscal Analyst: Georges Tippens
Fiscal Analyst: Jim Stansell