Senate Fiscal Agency
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BILL ANALYSIS

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Senate Bill 238 (as reported without amendment)
House Bill 4905 (as reported without amendment)
Sponsor: Senator Roger Victory (S.B. 238)
Representative Alabas Farhat (H.B. 4905)
Senate Committee: Finance, Insurance, and Consumer Protection
House Committee: Tax Policy (H.B. 4905)

CONTENT

The bills would extend the sunset on a use and sales tax exemption for qualified entities' sale, storage, use, or consumption of data center equipment through December 31, 2050. Additionally, the bills would establish the same exemption for enterprise data centers, which would generally be data centers that met specific requirements related to capital investment and the creation of new jobs in the State. If an enterprise data center were located on a brownfield redevelopment or former electric power plant, the center could claim the use or sales tax exemption until December 31, 2065. The bills would prescribe the process for an enterprise data center to obtain a certificate from the Michigan Strategic Fund (MSF) certifying that the property met certain conditions and would require the exempt facilities to report certain information to the MSF.

MCL 205.94cc (H.B. 4905)
205.54ee (S.B. 238)

BRIEF RATIONALE

According to testimony, as digital technologies continue to evolve, tech companies will need more enterprise data centers to house large networks of servers. It is thought that the construction of enterprise data centers in the State would have a substantial positive fiscal impact on local and State economies as many jobs would be created by the construction of the data centers as well as the regular refitting and updating the data centers would require to keep up with the progression of technology. Accordingly, it has been suggested that technology-sector companies receive a tax credit for the construction and use of enterprise data centers in the State.

PREVIOUS LEGISLATION

(This section does not provide a comprehensive account of previous legislative efforts on this subject matter.)

Senate Bill 238 and House Bill 4905 are similar companion bills to House Bill 4906 and Senate Bill 237, respectively.

Legislative Analyst: Nathan Leaman

FISCAL IMPACT

The bills would reduce State and local revenue by an unknown amount that would likely be at least $52.5 million through Fiscal Year 2065-66 but would depend on when any affected purchases would take place, the number of affected taxpayers, the specific characteristics of any affected property, and the degree to which the activity would have occurred absent the bills or occurred elsewhere in the State absent the bills. The majority of any revenue reduction would likely lower School Aid Fund (SAF) revenue, although the bills would also reduce

General Fund revenue and, through constitutional revenue sharing provisions, local unit revenue. The exact impact on each revenue source would depend on the relative distribution of exempted purchases under the sales tax compared to the use tax.

The bills' revenue impact relates to two primary provisions: 1) extending the existing sales and use tax exemptions for qualified data centers from 2035 until 2046 and 2) establishing a new sales and use tax exemption for enterprise data centers. Under current law, the existing sales and use tax exemptions for qualified data centers are estimated to reduce State and local unit revenue by approximately $2.5 million per year.

Under current law, the enacting sections for Public Act (PA) 251 and 252 of 2015 (the acts that established the existing sales and use tax exemption for qualified data centers), required the State to appropriate from the General Fund to the SAF the amount needed to compensate the SAF for any revenue losses under the provisions. The language of the enacting section requires such compensation be paid for "any loss of revenue…resulting from the enactment of this amendatory act." Although such provisions are not binding and may not compel appropriations, since the enactment of PAs 251 and 252, money has been appropriated from the General Fund to the SAF in accordance with the enacting section; however, it is unclear if any revenue losses attributable to the bills would be required to be compensated from the General Fund, because such losses would not be the result of PAs 251 and 252.

The second provision would exempt purchases related to an enterprise data center. To qualify as an enterprise data center, a facility would have to provide at least $250.0 million in capital investments. The distribution of any exemption under this section across fiscal years is unknown, but assuming all $250.0 million in investments were subject to sales and use taxes, the associated revenue reduction would total at least $15.0 million. Like with the existing exemption for qualified data centers, the exemption for enterprise data centers would presumably create an ongoing revenue loss of unknown magnitude. The bills do not contain provisions that would attempt to hold the SAF harmless for any revenue losses attributable to enterprise data facilities.

Approximately 73% of sales tax revenue is distributed to the SAF, while 10% of sales tax revenue is distributed to local units according to constitutional revenue sharing provisions. For purchases covered by the bills, the General Fund receives any remaining sales tax revenue. Under the use tax, the SAF receives one-third of any revenue, with the remaining revenue deposited in the General Fund. The distribution of any revenue loss resulting from the bills would depend on the distribution of purchases exempt from the sales tax as compared to the use tax.

Secondary revenue impacts resulting from the wage requirements under the bills would likely be negligible. Average wages in the sectors affected by the bills exceed the requirements under the bills. The MSF would experience a minimal fiscal impact to implement the bills with current appropriations likely sufficient to cover additional costs.

Date Completed: 3-18-24

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