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BILL ANALYSIS

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Senate Bills 237 and 238 (as introduced 3-23-23)
Sponsor: Senator Kevin Hertel (S.B. 237)
Senator Roger Victory (S.B. 238)
Committee: Finance, Insurance, and Consumer Protection

Date Completed: 3-5-24

INTRODUCTION

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.

Each bill would take effect 90 days after its enactment.

PREVIOUS LEGISLATION

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

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

BRIEF 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 2050-51 but would depend on when any affected purchases would take place, the number of affected taxpayers, the specific characteristics of the 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.

MCL 205.94cc (S.B. 237)
205.54ee (S.B. 238)

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CONTENT

Senate Bill 237 and Senate Bill 238 would amend the General Sales Tax Act and the Use Tax Act, respectively, to do the following:

- **Extend from December 31, 2035, to December 31, 2050, sales and use tax exemptions for the sale of data center equipment to the owner or operator of a qualified data center or collocated business for assembly, use, or consumption in data center operations, or to a person engaged in real estate construction or improvement to the extent that the equipment is for the qualified data center.**
- **Provide the exemption described above to an enterprise data center, which would generally be a data center that met specific requirements related to capital investment and the creation of new jobs.**
- **Allow an enterprise data center located on a brownfield redevelopment or former electric power plant to claim the exemption until December 31, 2065.**
- **Require as a condition for eligibility that enterprise data centers obtain a certificate from the MSF that met certain conditions.**
- **Allow the MSF to revoke a certificate for a facility that no longer met certain criteria.**
- **Specify that an enterprise data center that had its status revoked would be responsible for paying the Department of Treasury an amount equal to the claimed exemption plus interest.**
- **Require a person engaged in the business of constructing, altering, repairing, or improving real estate for others that had claimed an exemption for a particular facility to submit an annual summary report to the applicable entity that contained certain financial information.**

Qualified Data Center Exemption

The General Sales Tax Act exempts from sales tax a sale of data center equipment to the owner or operator of a qualified data center or a collocated business for assembly, use, or consumption in the operations of the qualified data center or a sale of data center equipment to a person engaged in the business of constructing, altering, repairing, or improving real estate for others to the extent the data center equipment is to be affixed to or made a structural part of a qualified data center, through *December 31, 2035*. Under the same circumstances, the Use Tax Act exempts from use tax the storage, use, or consumption of data center equipment sold to the owner or operator of a qualified data center or a collocated business or to a person engaged in the business of constructing, altering, repairing, or improving real estate for others. The bills would extend the sunset on these exemptions to *December 31, 2050*.

Each exemption continues to apply if the numbers gathered by the local economic development corporations are certified and reported to the Michigan Strategic Fund (MSF) and subsequently forwarded to the Department of Treasury and demonstrate that the qualified data centers, collectively have, in aggregate, established in the State at least 400 data center industry jobs or data center industry related jobs, or a combination of both since 2016. The bills would specify that "data center industry jobs" and "data center industry related jobs" would not include "qualified new jobs".

"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 issuance of the certificate as determined and verified by the MSF. "Qualified entity" would mean an applicant to whom a certificate is

issued for a particular enterprise data center and who is in compliance with certain requirements described below.

Qualified Data Center Brownfield or Former Power Plant Exemption

"Enterprise data center" would mean a facility that the MSF determines meets, or is expected to meet within the time frame set forth in the certificate, all the following requirements:

- The facility was located in the State.
- The facility was composed of at least one building.
- The facility was primarily designed and intended for housing, and did house, data center equipment to centralize the storage and processing of the qualified entity's or any of its affiliates' own data, and was developed, owned, and operated by a qualified entity or any of its affiliates for the qualified entity's or any of its affiliates' exclusive use¹.
- The aggregate capital investment in the facility made by the qualified entity, and any of its affiliates that would develop, own, and operate the facility, was at least \$250.0 million.
- The qualified entity and any of its affiliates, in the aggregate, created and maintained a total of 30 or more qualified new jobs through December 31, 2050 or, for a facility that was located on the property included in a brownfield plan under the Brownfield Redevelopment Financing Act or on property that was once an industrial site used primarily as a power plant to generate electricity for sale, through December 31, 2065, with wage rates that exceeded 120% of the county average wage.
- All qualified new jobs were held by individuals who resided in the State.
- Fifty percent of the qualified new jobs were composed of individuals with an associate's, bachelor's, or advanced degree in the field of science, technology, engineering, or mathematics, or individuals licensed, registered, or certified under the Skilled Trades Regulation Act.

The bills would specify that an "enterprise data center" would not include a facility that the MSF determined no longer met, or was no longer expected to meet within the time frame set forth in the certificate, the requirements described above.

"Aggregate capital investment" would mean 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 the State when compared to the total capital investment that the applicant and its affiliates, in the aggregate, maintained in the State before issuance of the certificate, as determined and verified by the 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. If the facility were located in more than one county, the county average wage would have to be based solely on the average annual wage for the county with the highest average annual wage, from among the applicable counties, based on the most recent data made available by the Michigan Bureau of Labor Market Information and Strategic Initiatives.

Beginning on the bills' effective dates and through December 31, 2050, or, with respect to an enterprise data center subject to a certificate that was located on the property including in a brownfield plan under the Brownfield Redevelopment Financing Act, or on a property that was once an industrial site used primarily as a power plant to generate electricity for sale, through

¹ "Exclusive use" would include use by contractors of the qualified entity or its affiliates for or on behalf of the qualified entity or its affiliates.

December 31, 2065, the sale (under the sales tax), storage, use, or consumption of data center equipment sold (under the use tax) to either of the following would be exempt from the sales and use tax:

- 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 the data center equipment was affixed or was made a structural part of an enterprise data center subject to a certificate.

"Certificate" would mean the document issued by the MSF to an applicant that certifies or otherwise establishes that the facility developed, owned, and operated by the applicant or an affiliate of the applicant, or to be developed, owned, and operated by the applicant or an affiliate of the applicant, and identified in that document qualifies as an enterprise data center.

To qualify for and claim an exemption described above, the qualified entity would have to have received a certificate for that facility which would have to be in good standing at the time the data center equipment was sold to the purchaser.

With respect to the exemption, a person seeking a certificate for an enterprise data center would have to apply to the MSF on a form and in the manner prescribed by the MSF. The application would have to include an affirmation signed by the applicant stating that it would expect the facility to satisfy the criteria for an enterprise data center and the anticipated time frame for doing so. Within 120 days after receiving a complete and correct application, the MSF would have to review the application and either issue a certificate to the applicant or provide written reasons for its denial. The certificate would have to specify a time frame for a facility to satisfy each of the criteria for an enterprise data center. Additionally, the MSF would have to provide the Department of Treasury with a copy of each certificate.

The qualified entity of a facility for which a certificate had been issued would have to report to the MSF all information required by the MSF regarding purchases for which an exemption was claimed and such other information as could be required by the MSF to determine whether the facility continued to qualify as an enterprise data center. The report would be subject to audit and would have to be made on an annual basis following issuance of the certificate. The report could not include any remittance for tax and would not constitute a return or otherwise alleviate any obligations.

The MSF would have to revoke a certificate if it determined a facility no longer met the definition of an enterprise data center. If the MSF determined revocation was appropriate, it would have to provide written notice to the qualified entity and the Department of Treasury between 60 and 180 days before revocation, notifying the qualified entity of its preliminary determination to revoke the certificate and providing the qualified entity an opportunity to demonstrate, within the time period specified in the notice, that the facility continued to meet the definition of an enterprise data center. Following the expiration of the period specified in the notice, if the MSF determined that the facility did not meet the definition of an enterprise data center, the MSF would have to revoke the certificate.

If revocation occurred *within 10 years* after issuance of the certificate, 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 Section 23(2) of the revenue Act calculated from January 1, of

the year the exemption was received until the amount was paid to the Department of Treasury².

If revocation occurred *more than 10 years* after issuance of the certificate, 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 under by all persons, plus interest as specified in Section 23(2) of the revenue Act, calculated from January 1, of the year the exemption was received until the amount was paid to the Department of Treasury, unless the MSF determined, pursuant to published guidelines, that a lesser amount, but at least 50% of the entire amount of the tax exemptions stemming from the certificate that had been received by all persons was appropriate after evaluating the circumstances. During the time specified in the notice, all persons would have to cease claiming a tax exemption stemming from the certificate. If a certificate were revoked, the MSF would have to notify the Department of Treasury within five days after the revocation.

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

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 2050-51 but would depend on when any affected purchases would take place, the number of affected taxpayers, the specific characteristics of the 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 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 relate to two primary provisions: 1) extending the existing sales and use tax exemptions for qualified data centers from 2035 until 2050 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

² Section 23(2) of the revenue Act requires that a taxpayer that paid less than the required amount of taxes or makes an excessive claim is liable for the deficiency and interest and specifies the calculation formula for such amount.

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 must 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.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.