

Legislative Analysis



REIMBURSE SCHOOL AID FUND FOR DATA CENTER REVENUE

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House Bill 5187 (H-3) as reported from committee
Sponsor: Rep. Rebekah Warren

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

House Bill 5188 (H-3) as reported from committee
Sponsor: Rep. Mark E. Huizenga

(Enacted as Public Acts 29 and 30 of 2020)

1st Committee: Commerce and Tourism
2nd Committee: Ways and Means
Complete to 1-22-20

SUMMARY:

House Bills 5187 and 5188 would amend the General Sales Tax Act and the Use Tax Act, respectively, to reimburse the School Aid Fund (SAF) for any lost revenue resulting from the exemption given under those acts to qualified data centers.

The acts currently 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. (See **Background**, below, for a detailed description of the exemptions.)

House Bills 5187 and 5188 would require an amount determined by the Department of Treasury that is equal to all revenue lost to the SAF as a result of the exemption for qualified data centers provided under the respective act to be deposited into the SAF.

Each bill would provide that a person that claimed an exemption for a qualified data center under the respective act would have to report annually on a form at the time and in a manner prescribed by the Department of Treasury the sales or purchase price of the data center equipment and any other information necessary to determine the amount of revenue lost to the SAF as a result of the exemption. The report could not include any remittance for tax and would not constitute a return or otherwise alleviate the person's tax obligations under the act.

MCL 205.75 (HB 5187: General Sales Tax Act)
MCL 205.111 (HB 5188: Use Tax Act)

FISCAL IMPACT:

As written, the bills would require that general fund revenue be transferred to the SAF so as to hold the SAF harmless for forgone sales and use tax revenue resulting from an exemption available to co-located data centers operating in Michigan. Because the value of qualifying property cannot be known in advance, the impact on the general fund cannot be determined.

BACKGROUND:

2015 PAs 251 and 252 (Senate Bills 616 and 617)¹ respectively amended the General Sales Tax Act and Use Tax Act to 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.

A *qualified data center* is defined in each act 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.

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.

Data center equipment is defined 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 includes any construction materials used or assembled under the qualified data center's proprietary method, but does not include any equipment owned by a third party used to supply the qualified data center's primary power.

The exemptions apply from January 1, 2016, to December 31, 2021, and then continue to apply after January 1, 2022, if the qualified data centers, colocated businesses and the contractors of the data centers have in aggregate established in Michigan at least 400 data center industry jobs and related jobs since January 1, 2016. The exemptions only continue to apply after January 1, 2026, if established Michigan job totals since January 1, 2016, have reached 1,000 or more. The exemptions end December 31, 2035.

2015 PAs 251 and 252 each contained an enacting section requiring the legislature to annually appropriate sufficient funds from the general fund to the SAF to fully compensate for any loss of revenue to the SAF from the tax exemptions. However, a statute cannot mandate an appropriation, and the enacting sections are unenforceable. The bills under consideration are understood, at least in part, to be codifying in statute the intent of the 2015 enacting sections.

¹ See <http://legislature.mi.gov/doc.aspx?2015-SB-0616>

BRIEF DISCUSSION:

House Bills 5127 and 5128, referred to the House Committee on Ways and Means, would amend the Use Tax Act and General Sales Tax Act, respectively, to extend to enterprise data centers (defined in the bills) the tax exemption currently provided to qualified data centers under the acts. The exemption proposed by those bills would also be subject to the provisions of HBs 5187 and 5188. As referred, HBs 5127 and 5128 were respectively tie-barred to HBs 5188 and 5187. A bill cannot take effect unless any bill to which it is tie-barred is also enacted.

POSITIONS:

The following entities indicated support for the bills (1-22-20):

- Michigan Association of School Boards
- Barry, Branch, Calhoun, Jackson, Lenawee, and Monroe ISD

The West Michigan Talent Triangle indicated support for HB 5188. (1-22-20)

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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.