

**COMMONWEALTH OF KENTUCKY FISCAL NOTE STATEMENT
LEGISLATIVE RESEARCH COMMISSION
2021 REGULAR SESSION**

MEASURE

2021 BR NUMBER 1158

HOUSE BILL NUMBER 372

TITLE AN ACT relating to the taxation of data centers.

SPONSOR Representative Phillip Pratt

FISCAL SUMMARY

STATE FISCAL IMPACT: YES NO UNCERTAIN

OTHER FISCAL STATEMENT(S) THAT MAY APPLY: ACTUARIAL ANALYSIS
 LOCAL MANDATE CORRECTIONS IMPACT HEALTH BENEFIT MANDATE

APPROPRIATION UNIT(S) IMPACTED: _____

FUND(S) IMPACTED: GENERAL ROAD FEDERAL RESTRICTED _____

FISCAL ESTIMATES	2020-2021	2021-2022	ANNUAL IMPACT AT FULL IMPLEMENTATION
REVENUES		(\$15,000,000)	(Substantial negative)
EXPENDITURES			
NET EFFECT		(\$15,000,000)	(Substantial negative)

() indicates a decrease/negative

PURPOSE OF MEASURE:

The purpose of the bill is to provide a sales and use tax exemption to data centers. The exemption would be available from July 1, 2021, to June 30, 2051. The data centers shall apply to the Department of Revenue (Department) and certify that the following minimum investments will be made:

1. Make capital investments in one or more data centers of at least \$150,000,000 within five years of commencement of construction; and
2. Create and maintain at least twenty new jobs at the data center within 2 calendar years after the commencement of operations.

Once the application is approved by the Department, the tangible personal property used to construct, retrofit, or upgrade a data center would be exempt, as well as the data center equipment and electricity used in the facility. The exemption will flow through to any contractors who buy materials for the data center. This exemption includes building materials, electricity, and equipment used. The data center is required to report annually, on or before October 1, the progress made toward achieving the program targets.

There is no requirement for a data center to report to the Department the amount of the sales and use tax exemption taken. If the data center becomes non-compliant at the end of the five year period of

investment, the proposal requires repayment of any exemptions taken, with accrued interest, from the dates on which purchases were made, to the Department within 60 days.

In this bill, “data center” means a person that has a facility comprised of one or more buildings in Kentucky that is used to house and continuously operate computer servers and associated data center equipment for the transmission and storage of data where the facility has the following characteristics:

1. Uninterruptible power supplies, generator power, or both;
2. Sophisticated fire suppression and prevention systems;
3. Enhanced physical security; and
4. Restricted access.

The definition of data center is quite broad and, unlike economic incentives currently available, the exemption will provide a benefit prior to meeting the minimum investment or jobs thresholds.

FISCAL EXPLANATION:

Assuming that at least one data center facility will be constructed and operational during FY 22 and at least one other will be partially operational, it is estimated that this proposal will have a negative impact on the General Fund of (\$15,000,000) in FY 22. The negative impact to the General Fund at full implementation will be substantial if a number of entities avail themselves of this exemption. Verification of the investment and new jobs criteria, as well as the amount of exemption claimed, will be difficult without an examination by the Department of the applicant and the applicant’s contractor and subcontractors records.

There will be no impact on the General Fund in FY 21 as the exemption is not available until July 1, 2021.

DATA SOURCE(S): LRC Staff, LRC Economists

PREPARER: Katy Jenkins NOTE NUMBER: 42 REVIEW: JAB DATE: 2/12/2021