

**COMMONWEALTH OF KENTUCKY FISCAL NOTE STATEMENT
LEGISLATIVE RESEARCH COMMISSION
2022 REGULAR SESSION**

MEASURE

2022 BR NUMBER 868

HOUSE BILL NUMBER 379

TITLE AN ACT relating to data centers.

SPONSOR Senator 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	2021-2022	2022-2023	2023-2024	ANNUAL IMPACT AT FULL IMPLEMENTATION
REVENUES		(\$27,000,000)	(Substantial- indeterminable)	(Substantial-indeterminable)
EXPENDITURES				
NET EFFECT		(\$27,000,000)	(Substantial- indeterminable)	(Substantial-indeterminable)

() 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 August 1, 2022, to July 31, 2052. The data centers shall apply to the Department of Revenue (Department) and certify that the following minimum investments will be made:

In counties with a population less than 100,000:

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 20 new jobs at the data center within two calendar years after the commencement of operations.

In counties with a population more than 100,000:

1. Make capital investments in one or more data centers of at least \$300,000,000 within five years of commencement of construction; and
2. Create and maintain at least 30 new jobs at the data center within two 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 used in the facility. The exemption will flow through to any contractors who buy materials for the data center. This includes building materials, electricity, and equipment used, including servers and other computer equipment.

The data center is required to report annually, on or before November 1, the progress made toward achieving the program targets; the address of the location of the data center; the county in which the data center is located; a statement of the population of the county and whether the project is in a federal opportunity zone; the total amount of the exemption claimed in the preceding fiscal year, broken down by month; and the cumulative total of the exemption taken. However, there is no penalty if the data center fails to report.

If the data center becomes non-compliant regarding the investment and job creation requirements at the end of the five year period of investment, the Department may require the data center to repay up to the entire amount of any exemptions taken, with accrued interest, from the dates on which purchases were made to the Department within 60 days. The Department is required to issue a written notice to the data center to demonstrate compliance.

The Department is required to report to the Interim Joint Committee on Appropriations and Revenue by December 31, 2022, and every biennium on December 31, the aggregate amount of capital investment and new jobs for the immediately preceding fiscal year and in total for the year; the county's population density of where the data center is located; the number of data centers located in a federal opportunity zone; and the aggregate amount of exemption claimed from all qualifying data centers after 3 or more qualified data centers have claimed the exemption for at least 2 years.

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 be taken prior to meeting the minimum investment or jobs thresholds.

FISCAL EXPLANATION: Assuming that at least one data center facility of each type 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 (\$27,000,000) in FY 23. 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. To the extent that cryptocurrency and other related entities may qualify for the incentives under this bill, the fiscal impact estimated here is understated. There will be no impact on the General Fund in FY 22 as the exemption is not available until August 1, 2022.

DATA SOURCE(S): LRC Economists, LRC Staff

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