Multiple Agency Fiscal Note Summary

Bill Number: 5262 SB	**Title:** Data center tax incentive

Estimated Cash Receipts

Agency Name	2021-23			2023-25			2025-27		
	GF-State	NGF-Outlook	Total	GF-State	NGF-Outlook	Total	GF-State	NGF-Outlook	Total
Department of Revenue	(12,380,000)	(12,380,000)	(12,400,000)	(31,350,000)	(31,350,000)	(31,400,000)	(92,600,000)	(92,600,000)	(92,800,000)
Total $	**(12,380,000)**	**(12,380,000)**	**(12,400,000)**	**(31,350,000)**	**(31,350,000)**	**(31,400,000)**	**(92,600,000)**	**(92,600,000)**	**(92,800,000)**

Estimated Operating Expenditures

Agency Name	2021-23				2023-25				2025-27			
	FTEs	GF-State	NGF-Outlook	Total	FTEs	GF-State	NGF-Outlook	Total	FTEs	GF-State	NGF-Outlook	Total
Joint Legislative Audit and Review Committee	.1	20,300	20,300	20,300	.0	8,200	8,200	8,200	.0	8,200	8,200	8,200
Department of Revenue	.5	138,300	138,300	138,300	.2	37,400	37,400	37,400	.2	37,400	37,400	37,400
Total $	**0.6**	**158,600**	**158,600**	**158,600**	**0.2**	**45,600**	**45,600**	**45,600**	**0.2**	**45,600**	**45,600**	**45,600**

Estimated Capital Budget Expenditures

Agency Name	2021-23			2023-25			2025-27		
	FTEs	Bonds	Total	FTEs	Bonds	Total	FTEs	Bonds	Total
Joint Legislative Audit and Review Committee	.0	0	0	.0	0	0	.0	0	0
Department of Revenue	.0	0	0	.0	0	0	.0	0	0
Total $	**0.0**	**0**	**0**	**0.0**	**0**	**0**	**0.0**	**0**	**0**

Estimated Capital Budget Breakout

NONE

Prepared by: Ramona Nabors, OFM	**Phone:** (360) 902-0547	**Date Published:** Final 1/26/2021

FNPID: 61355

FNS029 Multi Agency rollup

Individual State Agency Fiscal Note

Bill Number: 5262 SB	Title: Data center tax incentive	Agency: 014-Joint Legislative Audit and Review Committee

Part I: Estimates

☐ **No Fiscal Impact**

Estimated Cash Receipts to:

NONE

Estimated Operating Expenditures from:

	FY 2022	FY 2023	2021-23	2023-25	2025-27
FTE Staff Years	0.1	0.0	0.1	0.0	0.0
Account					
General Fund-State 001-1	16,200	4,100	20,300	8,200	8,200
Total $	16,200	4,100	20,300	8,200	8,200

Estimated Capital Budget Impact:

NONE

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

☐ If fiscal impact is greater than $50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.

☒ If fiscal impact is less than $50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).

☐ Capital budget impact, complete Part IV.

☐ Requires new rule making, complete Part V.

Legislative Contact:	Kellee Gunn	Phone: 786-7429	Date: 01/18/2021
Agency Preparation:	Dana Lynn	Phone: 360-786-5177	Date: 01/20/2021
Agency Approval:	Keenan Konopaski	Phone: 360-786-5187	Date: 01/20/2021
OFM Review:	Gaius Horton	Phone: (360) 819-3112	Date: 01/22/2021

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Briefly describe by section number, the significant provisions of the bill, and any related workload or policy assumptions, that have revenue or expenditure impact on the responding agency.

This bill expands eligibility and extends the expiration date for the current sales and use tax exemption provided under RCW 82.08.986 and 82.12.986 for sales of eligible equipment and infrastructure at data centers and charges to install, repair, alter, or improve qualifying equipment and infrastructure for qualifying businesses and tenants of eligible computer data centers.

Section 1: States the Legislature's intent to encourage additional data technology facility investments in order to spur local economic development, and increase local tax revenues and rural construction and trade jobs.

TAX PERFORMANCE STATEMENT DETAILS

Section 2: Provides a new tax preference performance statement that categorizes the preference as intended to:

- Induce certain designated behavior by taxpayers, as indicated under RCW 82.32.808(2)(a).
- Improve industry competitiveness as indicated in RCW 82.32.808(2)(b).
- Create or retain jobs as indicated in RCW 82.32.808(2)(c).
- Reduce structural inefficiencies in the tax structure as indicated in RCW 82.32.808(2)(d).

The Legislature's specific public policy objective is stated to maintain and grow the existing data center sector in Washington, and encourage development of new data center facilities and refurbishment of existing data centers, thereby increasing the competitiveness of Washington's tax structure, which will increase or maintain construction and trade job growth in rural areas, and increase local tax revenue.

The Legislature intends to extend the expiration date of the preference if a review finds the preference is:

- Generating capital investment in new computer data centers, refurbished data centers, and existing data centers.
- Generating state and local tax collections from data center investment and operations, and
- Generating construction and trade jobs in the state.

The review must factor in changing economic conditions.

To obtain data to perform the review, JLARC staff is directed to refer any available data source, including Department of Revenue (DOR) rural county property tax assessments and employment data available from the Employment Security Department.

SALES AND USE TAX EXEMPTIONS

Sections 3 and 4: These sections extend current sales and use tax exemptions under RCW 82.08 986 and 82.12.986 for new exemption certificate issuance from January 1, 2026, to July 1, 2035, and note the exemptions expire fully on July 1, 2047.

These sections also amend the current computer data center sales and use tax exemptions by:

- Specifying the exemption certificate is effective on the date DOR receives the application, and only purchases on or after the issuance date qualify for exemption.
- Clarifying the appropriate calculation for determining the net increase in family wage employment positions.
- Defining "family wage employment positions" for exemption certificates issued before the effective date of

the section (new permanent jobs requiring 40 hours of weekly full time work at the data center and receiving a wage equivalent to or greater than 150% of the per capita personal income of the county where the facility is located) and exemption certificates issued on or after the effective date of the section (new permanent jobs requiring 40 hours of weekly full time work at the eligible data center and receiving a wage equivalent to or greater than 125% of the per capita personal income of the county where the facility is located).

• Prohibiting a certificate holder from assigning or transferring a certificate without prior written consent of DOR and establishing requirements that must be met for DOR to allow such transfers.

• Defining "certificate of occupancy" for both new and renovated data centers.

• Amending the definition of "eligible computer data center" to:

o Remove a prohibition that server space has not been used previously housing working servers.

o Remove references to facilities in existence and expanded or renovated at certain qualifying windows of construction between April 1, 2010, and July 1, 2015.

• Amending the definition of "eligible server equipment" to:

o Include original server equipment installed in an eligible data center on or after July 1, 2015, and before July 1, 2035.

o Include equipment that replaces existing server equipment that meets the following criteria: was ineligible for the exemptions before the effective date of the section as eligible server equipment, has been refurbished, and to which a valid exemption certificate applies.

o Is installed and put into regular use no later than 12 years after the date of the certificate of occupancy or completion of data center refurbishment.

• Defines "refurbished or refurbishment" as substantial improvement to an eligible computer data center for which a certificate of occupancy is not issued. Improvements must update or modernize servers, server space, ventilation, or power infrastructure in an eligible data center.

The expiration date for the existing sales tax exemption is extended to July 1, 2047.

II. B - Cash receipts Impact

Briefly describe and quantify the cash receipts impact of the legislation on the responding agency, identifying the cash receipts provisions by section number and when appropriate the detail of the revenue sources. Briefly describe the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explain how workload assumptions translate into estimates. Distinguish between one time and ongoing functions.

II. C - Expenditures

Briefly describe the agency expenditures necessary to implement this legislation (or savings resulting from this legislation), identifying by section number the provisions of the legislation that result in the expenditures (or savings). Briefly describe the factual basis of the assumptions and the method by which the expenditure impact is derived. Explain how workload assumptions translate into cost estimates. Distinguish between one time and ongoing functions.

JLARC staff would contact and work with the Department of Revenue, the Employment Security Department, and other appropriate agencies immediately after passage of the bill to ensure project contacts are established and any other necessary data for JLARC staff's future evaluation needs are identified and collected.

The expenditure detail noted reflects work conducted to prepare for the future review as well as costs for a tax performance review. Such a review would likely occur in 2031, 10 years after the changes in the bill become effective.

This tax preference review may require additional resources. The audit will be conducted and presented to JLARC consistent with the processes used for other tax preference reviews. Based on all tax preference legislation that is passed, JLARC may subsequently determine that it can absorb the costs for this proposed bill in its base budget, if the workload of other enacted tax preference legislation does not exceed current staffing. JLARC will assess all of the tax preference reviews mandated in the 2021 legislative session.

This audit will require an estimated 2 audit months.

JLARC Audit Months: JLARC calculates its staff resources in "Audit Months" to estimate the time and effort to undertake and complete its studies. An "Audit Month" reflects a JLARC analyst's time for a month, together with related administrative, support, and goods/services costs. JLARC's anticipated 2021-23 costs are calculated at approximately $20,300 per audit month.

Part III: Expenditure Detail

III. A - Operating Budget Expenditures

Account	Account Title	Type	FY 2022	FY 2023	2021-23	2023-25	2025-27
001-1	General Fund	State	16,200	4,100	20,300	8,200	8,200
		Total $	16,200	4,100	20,300	8,200	8,200

III. B - Expenditures by Object Or Purpose

	FY 2022	FY 2023	2021-23	2023-25	2025-27
FTE Staff Years	0.1		0.1		
A-Salaries and Wages	10,200	2,500	12,700	5,000	5,000
B-Employee Benefits	3,200	800	4,000	1,600	1,600
C-Professional Service Contracts					
E-Goods and Other Services	2,600	700	3,300	1,400	1,400
G-Travel	200	100	300	200	200
J-Capital Outlays					
M-Inter Agency/Fund Transfers					
N-Grants, Benefits & Client Services					
P-Debt Service					
S-Interagency Reimbursements					
T-Intra-Agency Reimbursements					
9-					
Total $	16,200	4,100	20,300	8,200	8,200

III. C - Operating FTE Detail: *List FTEs by classification and corresponding annual compensation. Totals need to agree with total FTEs in Part I and Part IIIA*

Job Classification	Salary	FY 2022	FY 2023	2021-23	2023-25	2025-27
Research Analyst	113,827	0.1		0.1		
Support staff	77,705					
Total FTEs		0.1		0.1		0.0

III. D - Expenditures By Program (optional)

NONE

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B - Expenditures by Object Or Purpose

NONE

IV. C - Capital Budget Breakout

Identify acquisition and construction costs not reflected elsewhere on the fiscal note and describe potential financing methods

NONE

IV. D - Capital FTE Detail: *List FTEs by classification and corresponding annual compensation. Totals need to agree with total FTEs in Part IVB*

NONE

Part V: New Rule Making Required

Department of Revenue Fiscal Note

Bill Number: 5262 SB	Title: Data center tax incentive	Agency: 140-Department of Revenue

Part I: Estimates

☐ **No Fiscal Impact**

Estimated Cash Receipts to:

Account	FY 2022	FY 2023	2021-23	2023-25	2025-27
GF-STATE-State 01 - Taxes 01 - Retail Sales Tax	(4,290,000)	(8,090,000)	(12,380,000)	(31,350,000)	(92,600,000)
Performance Audits of Government Account-State 01 - Taxes 01 - Retail Sales Tax	(10,000)	(10,000)	(20,000)	(50,000)	(200,000)
Total $	(4,300,000)	(8,100,000)	(12,400,000)	(31,400,000)	(92,800,000)

Estimated Expenditures from:

	FY 2022	FY 2023	2021-23	2023-25	2025-27
FTE Staff Years	0.7	0.4	0.5	0.2	0.2
Account					
GF-STATE-State 001-1	98,600	39,700	138,300	37,400	37,400
Total $	98,600	39,700	138,300	37,400	37,400

Estimated Capital Budget Impact:

NONE

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

☒ If fiscal impact is greater than $50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.

☐ If fiscal impact is less than $50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).

☒ Capital budget impact, complete Part IV.

☐ Requires new rule making, complete Part V.

Legislative Contact:	Kellee Gunn	Phone: 786-7429	Date: 01/18/2021
Agency Preparation:	Marianne McIntosh	Phone: 360-534-1505	Date: 01/24/2021
Agency Approval:	Don Gutmann	Phone: 360-534-1510	Date: 01/24/2021
OFM Review:	Ramona Nabors	Phone: (360) 902-0547	Date: 01/26/2021

Request # 5262-1-1

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Briefly describe, by section number, the significant provisions of the bill, and any related workload or policy assumptions, that have revenue or expenditure impact on the responding agency.

Note: This fiscal note reflects language in SB 5262, 2021 Legislative Session.

CURRENT LAW:
RCW 82.08.986 and 82.12.986 provide a retail sales and use tax exemption for qualifying businesses operating data centers, and qualifying tenants of these data centers. The exemption includes purchases of eligible server equipment and power infrastructure, and labor and services for installing eligible server equipment, and for constructing, installing, repairing, altering, or improving eligible power infrastructure.

Requirements to qualify:
- Facility must meet employment and facility size criteria;
- Facility is located in a rural county as defined in RCW 82.14.370; and
- Commencement of construction must occur:
  1. After March 31, 2010, and before July 1, 2011 ("Window 1"); or
  2. After March 31, 2012, and before July 1, 2015 ("Window 2"); or
  3. After June 30, 2015, and before July 1, 2025 ("Window 3").

This exemption is limited to eight data centers that begin construction between July 1, 2015, and July 1, 2019, and a total of 12 data centers that begin construction during Window 3.

This exemption expires January 1, 2026, or 12 years from date of the certificate of occupancy, as explained in the Department of Revenue's (Department) Excise Tax Advisory 3213.2019. Business or tenants claiming the exemption must file an annual tax performance report.

PROPOSAL:
This proposal removes the limit on the number of eligible data centers as well as the requirement that qualifying server space cannot be utilized previously for housing working servers. The exemption is extended to persons who have previously received the benefit of the sales and use tax deferral under RCW 82.60. A definition of "certificate of occupancy" is added, along with guidance on assigning or transferring exemption certificates. The definition of "replacement server equipment" is updated to include replacing server equipment for data centers that did not qualify for this exemption previously if the data center is refurbished. The bill defines "refurbished" broadly as any substantial improvement to an eligible computer data center for which a certificate of occupancy is not issued, including improvements that update or modernize servers, server space, ventilation, or power infrastructure.

For data centers that commenced construction during Window 1, the exemption for original server equipment purchased by qualified businesses and qualified tenants is extended from January 1, 2026, to July 1, 2035. The exemption for replacement server equipment purchased by qualified tenants is extended from April 1, 2024, to July 1, 2035.

For data centers that commenced construction during Window 2, the exemption for original server equipment purchased by qualifying businesses and extended from January 1, 2026, to July 1, 2035. The exemption for replacement server equipment purchased by qualifying businesses and qualifying tenants expires either 12 years after the issuance of a certificate of occupancy or 12 years after the completion of a data center refurbishment.

The expiration date for purchases of eligible power infrastructure under RCW 82.08.986 is extended from January 1, 2026, to July 1, 2047, for qualifying power infrastructure. The exemption for qualifying power infrastructure expires January 1, 2026 under RCW 82.12.986.

No new exemption certificates may be issued on or after July 1, 2035.

This exemption expires July 1, 2047.

EFFECTIVE DATE:
The bill takes effect 90 days after final adjournment of the session in which it is enacted.

II. B - Cash receipts Impact

Briefly describe and quantify the cash receipts impact of the legislation on the responding agency, identifying the cash receipts provisions by section number and when appropriate the detail of the revenue sources. Briefly describe the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explain how workload assumptions translate into estimates. Distinguish between one time and ongoing functions.

ASSUMPTIONS
- The earliest an application can be submitted to the Department is July 27, 2021. The date the Department receives the application is the effective date of the approved certificate. Therefore, there are ten months of cash collections in Fiscal Year 2022.
- The current data center program limits new data centers to 12. At this time, the limit has been met.
- The proposal removes the limit on the number of new data centers.
- It takes approximately 18 to 24 months to complete a data center. Twenty-five percent of the dedicated server space will be filled each year and thereafter until full capacity is reached.
- Two new data centers will be completed each year starting in Fiscal Year 2024. Exempt server purchases and power infrastructure installs for the data centers will be part of the build process and therefore the impact will begin in Fiscal Year 2023.
- The average size of a new data center is approximately 215,000 square feet with an estimated 100,000 square feet of dedicated server space.
- The average cost per square foot for equipment including power infrastructure is $1,000.
- Servers are refreshed every three years. This is due to cost savings and upgrading equipment.
- Previous owners whose exemption expired April 1, 2018, will reapply to refresh their server equipment.
- Owners and tenants whose exemption expire April 1, 2024, will have their certificates extended to July 1, 2035, or 12 years from their certificate of occupancy.
- Data centers that did not qualify previously, will qualify for refurbishment.

DATA SOURCES
- Department of Revenue - Annual tax performance reports
- United Sates Chamber of Commerce, Technology Engagement Center, Data Centers Report 2017, https://www.uschamber.com/sites/default/files/ctec_datacenterrpt_lowres.pdf
- The Engineering Projects, https://www.theengineeringprojects.com/2018/12/what-are-data-centers-and-how-much-do-they-cost.html
- Wenatchee World, https://www.wenatcheeworld.com/deepdives/data-centers-a-flood-of-tax-revenue-but-constrained-by/article_47470dc2-7104-11e9-b6ef-7b62ad67197b.html

REVENUE ESTIMATES
This bill decreases state revenues by an estimated $4.3 million in the 10 months of impacted collections in Fiscal Year 2022, and by $5.1 million in Fiscal Year 2023, the first full year of impacted collections. This bill also decreases local revenues by an estimated $1.2 million in the 10 months of impacted collections in Fiscal Year 2022, and by $1.5 million in Fiscal Year 2023, the first full year of impacted collections.

TOTAL REVENUE IMPACT:

State Government (cash basis, $000):

FY 2022 - ($ 4,300)
FY 2023 - ($ 8,100)
FY 2024 - ($ 12,100)
FY 2025 - ($ 19,300)
FY 2026 - ($ 44,400)
FY 2027 - ($ 48,400)

Local Government, if applicable (cash basis, $000):
FY 2022 - ($ 1,200)
FY 2023 - ($ 2,500)
FY 2024 - ($ 3,500)
FY 2025 - ($ 5,600)
FY 2026 - ($ 12,600)
FY 2027 - ($ 13,600)

II. C - Expenditures

Briefly describe the agency expenditures necessary to implement this legislation (or savings resulting from this legislation), identifying by section number the provisions of the legislation that result in the expenditures (or savings). Briefly describe the factual basis of the assumptions and the method by which the expenditure impact is derived. Explain how workload assumptions translate into cost estimates. Distinguish between one time and ongoing functions.

ASSUMPTIONS:
This bill affects 50 taxpayers.

FIRST YEAR COSTS:
The Department will incur total costs of $98,600 in Fiscal Year 2022. These costs include:

Labor Costs – Time and effort equates to 0.68 FTEs.
- Identify publications and information that need to be created or updated.
- Respond to email inquiries and more difficult call backs from the telephone information center.
- Review and prepare refunds and assessments.
- System testing, implementation meetings, and assist in procedure development.

Object Costs - $26,400.
- Contract computer system programming.

SECOND YEAR COSTS:
The Department will incur total costs of $39,700 in Fiscal Year 2023. These costs include:

Labor Costs – Time and effort equates to 0.4 FTEs.
- Respond to email inquiries and more difficult call backs from the telephone information center.
- Review and prepare refunds and assessments.

ONGOING COSTS:
Ongoing costs for the 2023-2025 Biennium equal $37,400 and include similar activities described in the second year costs. Time and effort equates to 0.2 FTEs.

Part III: Expenditure Detail

III. A - Expenditures by Object Or Purpose

	FY 2022	FY 2023	2021-23	2023-25	2025-27
FTE Staff Years	0.7	0.4	0.5	0.2	0.2
A-Salaries and Wages	43,700	25,000	68,700	23,800	23,800
B-Employee Benefits	15,800	9,000	24,800	8,600	8,600
C-Professional Service Contracts	26,400		26,400		
E-Goods and Other Services	8,100	4,600	12,700	4,600	4,600
J-Capital Outlays	4,600	1,100	5,700	400	400
Total $	$98,600	$39,700	$138,300	$37,400	$37,400

III. B - Detail: *List FTEs by classification and corresponding annual compensation. Totals need to agree with total FTEs in Part I and Part IIIA*

Job Classification	Salary	FY 2022	FY 2023	2021-23	2023-25	2025-27
EMS BAND 4	119,061	0.0		0.0		
EMS BAND 5	139,090	0.0		0.0		
EXCISE TAX EX 3	59,688	0.2	0.3	0.3	0.2	0.2
MGMT ANALYST4	70,956	0.2	0.1	0.2		
TAX INFO SPEC 4	64,332	0.2		0.1		
TAX POLICY SP 2	72,756	0.0		0.0		
TAX POLICY SP 3	82,344	0.0		0.0		
TAX POLICY SP 4	88,644	0.0		0.0		
WMS BAND 3	101,257	0.0		0.0		
Total FTEs		0.7	0.4	0.6	0.2	0.2

III. C - Expenditures By Program (optional)

NONE

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B - Expenditures by Object Or Purpose

NONE

IV. C - Capital Budget Breakout

Identify acquisition and construction costs not reflected elsewhere on the fiscal note and dexcribe potential financing methods

NONE

None.

Part V: New Rule Making Required