Department of Finance and Administration

Legislative Impact Statement

Bill: HB1476

Bill Subtitle: TO CREATE A SALES AND USE TAX EXEMPTION FOR ELECTRICITY SOLD TO A DATA CENTER; AND TO DECLARE AN EMERGENCY.

Basic Change :

Sponsors: Rep. Pilkington and Sen. Gilmore

HB1476 creates a new section, § 26-52-455, to provide a sales and use tax exemption for electricity sold to a data center.

To be eligible for the exemption, a data center must:

- Be classified within North American Industry Classification System (NAICS) codes 516210, 517111, 518210, 519290, 541512, or 541513 as in effect on January 1, 2023;
- Make a capital investment in the state of at least \$100,000,000;
- Not be a facility used for cryptocurrency operations; and
- Create at least 50 new full-time permanent jobs in the state that have an hourly wage of at least 150% of the lesser of the county or state average hourly wage for the county in which the data center is located.

To be eligible for the exemption, the electricity must:

- Be used only for the data center; and
- Be metered separately from electricity used for any other purpose by the data center.

HB1476 permits the Department of Finance and Administration (DFA) to establish additional requirements for the metering of electricity, including the requirement that the seller obtain a certificate of eligibility from the consumer. HB1476 requires DFA to promulgate rules for the administration of the exemption.

HB1476 contains an emergency clause and will be effective on the date of its approval by the Governor; the expiration of the period of time during which the Governor may veto the bill; or the date the last house overrides the veto.

Revenue Impact :

FY2024

Total Approximate State Sales and Use Tax Loss \$ - 193,000

General Revenue - 4.5%	\$ - 129,473
Property Tax Relief5%	\$ - 14,846
Conservation Fund125%	\$ - 3,596
Educational Adequacy Fund875%	\$ - 25,175
Highway Fund5%	\$ - 14,846
Educational Excellence Trust Fund -	\$000
Educational Adequacy (GR Transfer) -	\$000

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State Central Services -	\$ - 3.741

State Central Services -	\$ - 3,741
Constitutional Officers -	\$ - 1,782

Total Approximate Local City and County \$ - 64,333

Sales and Use Tax Loss

FY2025

Total Approximate State Sales and Use Tax Loss \$ - 195,000

General Revenue - 4.5%	\$ - 110,889
Property Tax Relief5%	\$ - 14,535
Conservation Fund125%	\$ - 3,634
Educational Adequacy Fund875%	\$ - 25,436
Highway Fund5%	\$ - 15,000
Educational Excellence Trust Fund -	\$ - 14,535
Educational Adequacy (GR Transfer) -	\$ - 1,618
State Central Services -	\$ - 3,780
Constitutional Officers -	\$ - 1,800

Total Approximate Local City and County \$ - 65,000 Sales and Use Tax Loss

Taxpayer Impact :

A data center that meets the requirements of HB1476 would no longer be responsible for paying sales and use taxes on its purchases of electricity. A data center would be required to obtain a certificate from DFA and separately meter the qualifying electricity prior to claiming this exemption.

Resources Required :

Five additional audit staff will be required to administer this new exemption process. Staff would review requests and eligibility as well as determine any limitation amounts of the exemption. Anticipated personnel cost totaling \$324,570.00 per year for one Tax Auditor Supervisor and four Tax Auditors. Programming changes for the Arkansas Integrated Revenue System (AIRS) is estimated at \$8,000.00.

Time Required :

Adequate time is provided for implementation.

Procedural Changes :

Updates to the Sales and Use Tax Rules will be promulgated and DFA staff would be trained on this update to existing Arkansas tax law.

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Other Comments :

The bill provides for an immediate effective date of its approval by the Governor. Due to existing Arkansas tax law which requires the DFA to provide notification of this tax change and the requirements of the Streamlined Sales and Use Tax Agreement (SSUTA), the earliest this bill could become effective and comply with DFA's taxpayer notification requirements without being in violation of the law and the SSUTA agreement would be July 1, 2023.

Legal Analysis:

None.

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