

March 14, 2023

The Honorable Sean Tarwater, Chairperson
House Committee on Commerce, Labor and Economic Development
300 SW 10th Avenue, Room 346-S
Topeka, Kansas 66612

Dear Representative Tarwater:

SUBJECT: Fiscal Note for HB 2450 by House Committee on Taxation

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2450 is respectfully submitted to your committee.

HB 2450 would provide a sales tax exemption for the purpose of constructing, reconstructing, enlarging, or remodeling a qualified data center. The sales tax exemption would apply to the sale and installation of certain data center equipment and eligible data center costs purchased by the qualified firm for the qualified data center, electricity used by the qualified data center, and labor services to install, apply, repair, service, alter, or maintain data center equipment. The sales tax exemption would also be extended to any contractor hired for the constructing, reconstructing, enlarging, or remodeling of a qualified data center. The bill includes reporting requirements for contractors and penalties for the use of the sales tax exemption that is determined to not be part of this project which would be punishable as a misdemeanor. The bill includes definitions, reporting requirements, and claw back provisions.

A qualified data center would commit to an investment of at least \$600.0 million within the first five calendar years after commencement of construction and maintain at least 20 new jobs within two calendar years after the data center begins operation. The sales tax exemption would be valid for 30 years after commencement of construction for a qualified firm making an investment of at least \$600.0 million in a qualified data center, 40 years for an investment of at least \$800.0 million, and indefinitely for an investment of at least \$1.0 billion.

The qualified firm would apply for the sales tax exemption to the Department of Commerce. Certain confidential financial information or trade secrets would not be disclosed to the public and would be an exception to the Open Records Act; however, this information can be requested by Legislative Division of Post Audit. This confidentiality provision would expire on July 1, 2028, unless renewed by the Legislature. As a condition of receiving the sales tax exemption, the qualified firm would be required to agree to cooperate with any audit undertaken by the Secretary of Revenue. The Secretary of Commerce would be required to conduct a review of the qualified firm every five years and certify to the Secretary of Revenue that the qualified firm would continue to receive the sales tax exemption. The Secretary of Commerce and the Secretary

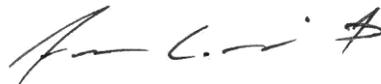
of Revenue would have the power to write rules and regulations to implement the Act. The bill would become effective on July 1, 2023.

The Department of Revenue estimates that HB 2450 has the potential to decrease state and local sales tax revenues by unknown amounts beginning in FY 2024. The state funds directly affected by this bill are the State General Fund and the State Highway Fund. However, the Department does not have sufficient information on how many businesses would qualify for this new sales tax exemption or how long they would qualify for this new sales tax exemption to make a precise estimate of the amount of reduced state and local sales tax revenues. Assuming that a proposed data center is original construction, the labor costs associated with the project would already be exempt under current law. Since the details of any potential projects are unknown, it is assumed that material costs associated with a project would be similar to those under the Enterprise Zone exemption at 60.0 percent. Under this scenario, at a rate of 6.5 percent, a \$600.0 million project could result in sales tax foregone of \$23.4 million, including \$19.4 million from the State General Fund and \$4.0 million from the State Highway Fund. The unknown fiscal effect would be extended in the future for at least 30 years and up to indefinitely under certain levels of investment because the qualified data center would continue to receive the sales tax exemption for purchases of certain data center equipment, eligible data center costs, electricity, and labor services to install, apply, repair, service, alter, or maintain data center equipment. According to the Department of Revenue, reissuing sales tax publications and revising forms would cost \$1,800 from the State General Fund in FY 2024.

The Kansas Department of Transportation (KDOT) indicates that the bill would reduce state revenues to the State Highway Fund as noted above. KDOT indicates that when the state receives lower State Highway Fund dollars it may be required to make corresponding reductions to planned expenditures for projects funded under the comprehensive transportation plan. Any fiscal effect associated with HB 2450 is not reflected in *The FY 2024 Governor's Budget Report*.

The Kansas Association of Counties and the League of Kansas Municipalities indicate that the bill would provide a net reduction to local sales tax collections that are used in part to finance local governments.

Sincerely,



Adam Proffitt
Director of the Budget

cc: Lynn Robinson, Department of Revenue
Brendan Yorkey, Department of Transportation
Wendi Stark, League of Kansas Municipalities
Sherry Rentfro, Department of Commerce
Jay Hall, Kansas Association of Counties