

# DEPARTMENT OF TAXATION

## 2022 Fiscal Impact Statement

1. **Patron** Joseph P. McNamara

3. **Committee** House Finance

4. **Title** Property Tax; Fixtures in Data Centers

2. **Bill Number** HB 791

**House of Origin:**

  X   **Introduced**

       **Substitute**

       **Engrossed**

**Second House:**

       **In Committee**

       **Substitute**

       **Enrolled**

### 5. **Summary/Purpose:**

This bill would provide that if a locality taxes certain fixtures located in a data center as real property, the fixtures will be valued based on depreciated reproduction or replacement cost. Fixtures would include generators, radiators, exhaust fans, and fuel storage tanks; electrical substations, power distribution equipment, cogeneration equipment, and batteries; chillers, computer room air conditioners, and cool towers; heating, ventilating, and air conditioning systems; water storage tanks, water pumps, and piping; monitoring systems; and transmission and distribution equipment. Computer equipment and peripherals would not be considered fixtures.

Under current law, localities may tax the listed items as either real or personal property. There are three methods that may be used for assessing real estate: (1) the sales comparison method; (2) the replacement cost less depreciation method; and (3) the capitalization of income method. If these items are taxed as personal property, they are valued by means of a percentage or percentages of original cost.

If enacted during the regular session of the 2022 General Assembly, this bill would become effective July 1, 2022.

6. **Budget amendment necessary:** No

7. **Fiscal Impact Estimates are:** Not available. (See Line 8.)

8. **Fiscal implications:**

#### Administrative Costs

This bill could result in administrative costs to localities. It would have no impact on state administrative costs.

## Revenue Impact

This bill could result in an unknown revenue impact to localities. It would have no impact on state revenue.

### **9. Specific agency or political subdivisions affected:**

Localities in which data centers are located

### **10. Technical amendment necessary: No**

### **11. Other comments:**

#### Background

The *Virginia Constitution* and the *Virginia Code* segregate real and personal property for local taxation.

In *Danville Holding Corp. v. Clement*, 178 Va. 223, 232, 16 S.E.2d 345, 349 (1941), the Virginia Supreme Court (the "Court") set forth three general rules to be used in determining whether an article of tangible personal property is a fixture, and thus considered a part of the real estate for purposes of taxation, or remains personal property subject to taxation as tangible personal property. The three tests are: (1) the annexation of the chattel (property) to the realty, actual or constructive; (2) its adaptation to the use or purpose to which that part of the realty to which it is connected is appropriated; and (3) the intention of the parties, *i.e.*, the intention of the owner of the chattel to make it a permanent addition to the freehold. In its decision, the Court noted that the "intention of the party making the annexation is the paramount and controlling consideration."

Under current law, real property may be valued using three methods: (1) the sales comparison method; (2) the replacement cost less depreciation method; and (3) the capitalization of income method.

Current law establishes several different classes of tangible personal property for valuation purposes. Property within each class must be valued using the same method. In general, tangible personal property employed in a trade or business must be valued by means of a percentage or percentages of original cost

#### Proposal

This bill would provide that if data center fixtures are taxed as part of the real property where they are located, they must be valued based on the cost approach.

The bill defines "cost approach" as assessing value by determining the cost to construct a reproduction or suitable replacement of fixtures and deducting physical, functional, and economic depreciation sustained by such fixtures.

Fixtures would include generators, radiators, exhaust fans, and fuel storage tanks; electrical substations, power distribution equipment, cogeneration equipment, and

batteries; chillers, computer room air conditioners, and cool towers; heating, ventilating, and air conditioning systems; water storage tanks, water pumps, and piping; monitoring systems; and transmission and distribution equipment.

If enacted during the regular session of the 2022 General Assembly, this bill would become effective July 1, 2022.

#### Similar Legislation

**Senate Bill 513** is identical to this bill.

cc : Secretary of Finance

Date: 1/20/2022 SK  
HB791F161