

MEMORANDUM

To: Secretary Carrie H. Chenery, Secretary of Commerce and Trade

Re: Public Benefit Contribution Requirement for Virginia Data Center Tax Exemptions

Executive Summary

Despite hosting 35% of global hyperscale data center capacity,^[3] Virginia lacks a mechanism to convert that infrastructure advantage into long-term public benefit. The State Corporation Commission has focused on job creation and procurement from pre-existing Virginia industries; benefits JLARC has found to be largely limited to the construction phase.^[4] Meanwhile, the public bears measurable costs: grid expansion, rising utility rates, and environmental impact.^[5]

The lack of public benefit from these data center deals, and the functional and monetary costs borne by the public, is a recognized gap. Efforts have been made to address it. The proposed HB1151 and HB503 address grid reliability and cost allocation respectively, seeking to reduce the strain that data centers place on the public through increased regulation and oversight.^[18] This proposal addresses the benefit side of the equation addressing how to leverage Virginia's role as a data center hub to build up its artificial intelligence infrastructure and promote long-term industrial and economic growth.

This memorandum recommends establishing a public benefit contribution requirement conditioned on the existing sales and use tax exemption. The contribution would direct compute access, model access, or hardware to Virginia's public AI capacity. The estimated annual value is \$194 to \$388 million, representing 10 to 20 percent of the valued \$1.9 billion tax exemption.^[7]

Problem

Projected Data Center Expansions

JLARC found that industry forecasts project continued data center buildout, leading to increased energy demand and electric grid expansion.^[8] Sustaining Virginia's position as the dominant data center hub requires substantial public infrastructure investment. This expansion poses a material risk to consumer utility rates.^[6]

Cost Burden on State/Local Residents

The Harvard Law School Environmental and Energy Law Program documents how utility companies shift the cost of grid development onto consumers. Their report argues that data center subsidies fail traditional benefit-cost tests.^[2] Many of the incentives tied to data center growth are federal in nature, reflecting national security considerations around technology development. The costs of that national priority fall disproportionately on state and local ratepayers, while the benefits and use cases of AI technology remain distant from the daily lives of Virginia residents.^[10]

Limited Long-term Economic Benefit

JLARC found that data centers provide positive economic benefits to Virginia's economy, but that these benefits occur mostly during initial construction.^[11] Although Virginia has more

hyperscale data centers than anywhere in the world, the state's top research institution, the University of Virginia, lags peer institutions in AI research capacity and funding.^[12] The SCC cites increased data center jobs as a primary focus in terms of building new careers,^[13] but AI research and development is not a career sector currently developed in Virginia despite the state's proximity to Washington, D.C. and its concentration of data centers making it well-positioned for strategic investment in AI research infrastructure.

Under provision of Public-Interest AI

Because private AI development is oriented toward commercially viable applications, public-interest use cases (safety, reliability, domain-specific tools for government and civic institutions) are underprovided.^[14] Artificial intelligence that is safe, reliable, and addresses specific needs constitutes a market failure requiring policy intervention to redirect investment toward public-interest applications.^[15] Federal efforts like the National AI Research Resource (NAIRR) reflect growing recognition that this gap requires public intervention.

Virginia's position as the primary host of AI compute infrastructure creates a legitimate basis for state influence over how that capacity is deployed.^[16] Data centers are used to create technologies that many Virginians will use, and the state is well-positioned to shape the economic outcomes of developing this sector.

Policy Proposal

Recent policy proposals like HB 155 sought to increase state oversight of the economic costs, grid reliability, and environmental impact of data center construction. It did not ultimately pass, though it advanced significantly through the legislative process.^[17] Policies like this, and HB 503, are important. Oversight of the economic, environmental, and other impacts of data centers must continue. This proposal works in tandem with cost-side regulation, not in lieu of it.^[18]

This memorandum recommends establishing a public benefit contribution requirement conditioned on the existing sales and use tax exemption, applicable to GS5-eligible construction and operations. It will apply to any entity receiving tax exemption. The public benefit contribution is expected to equal 10 to 20 percent of the annual tax exemption value and may take the form of compute hours, model access, or hardware.^[7]

Virginia Code § 56-580, Item B establishes that utility service must not be contrary to the public interest. The SCC should, consistent with its § 56-580 mandate, condition approval of utility agreements supporting data center operations on demonstrated public benefit, including environmental concerns, strain on utility rates, and the general public benefit derived from data center construction.^[19]

Virginia Code § 58.1-609.3, Item 18 currently conditions tax incentives and exemptions for data center operators on (i) the creation of at least 50 new jobs, (ii) a capital investment of \$150 million, typically through use of Virginia industries and resources, and (iii) adjusted requirements for data centers located in distressed localities.^[20]

A fourth condition should be added requiring a public benefit contribution to be specified for each deal by the Secretary of Commerce and Trade.

Implementation

The Secretary of Commerce and Trade shall administer the contribution requirement through a Public Benefit Contribution Protocol, developed in consultation with the State Council of Higher Education for Virginia (SCHEV),^[21] the Virginia Innovation Partnership Corporation (VIPIC),^[22] and the SCC. The SCC and the Virginia Economic Development Partnership (VEDP) shall provide technical and economic input to the Secretary in determining contribution terms for each qualifying agreement. SCHEV shall report on and develop initiatives to support institutional AI capacity across Virginia's public higher education system. VIPIC shall administer competitive grants to facilitate meaningful distribution of contributed resources to qualifying institutions. The Secretary shall designate a Technical Advisor with demonstrated expertise in compute infrastructure and AI research capacity to assess the form and valuation of proposed contributions. The Office of the Secretary shall publish an annual report on contribution agreements, delivery, and utilization, subject to independent review by JLARC.^[1] This structure requires no new agency or board and builds on existing relationships between Commerce and Trade, VEDP, and Virginia's higher education system.

Tradeoffs

This policy accepts some risk to Virginia's data center growth rate in exchange for a durable public claim on the value that growth generates. There is a genuine risk that new data centers will be built in competing states, as companies will factor the Public Benefit Contribution into the cost of building in Virginia. JLARC's 2024 report found that data center economic benefits accrue primarily during the construction phase, with ongoing revenue concentrated in local property taxes rather than state receipts.^[23] Reducing future investment at the margin could minimize near-term state revenue from that construction activity.^[24]

The data center buildout is accelerating faster than Virginia's regulatory, grid, and infrastructure capacity can sustainably absorb.^[8] The public benefit generated by slower, more accountable growth outweighs the near-term revenue foregone from facilities that might otherwise be built here.

Endnotes

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