

## **BILL ANALYSIS**

C.S.H.B. 1223  
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Ways & Means  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Many states currently provide significant economic incentives to attract large data center projects. It is reported that these capital-intensive projects represent a growing market segment in the technology industry and generate economic activity in the cities and states where they are located. Interested parties assert that Texas is losing the opportunity to attract these major data center projects, including many prominent and highly desired technology leaders and corporations, due to the absence of state sales tax incentives. Incentives offered by the most competitive states are meaningful to the data center owners, but the states also benefit directly in a multitude of ways, including job creation and an increase in local property tax revenue. Texas is well positioned to attract data centers because of its strong infrastructure, major population centers, educated workforce, and favorable construction costs and permitting process. The goal of C.S.H.B. 1223 is to reestablish Texas as the leader in the technology industry.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the comptroller of public accounts in SECTION 1 of this bill.

### **ANALYSIS**

C.S.H.B. 1223 amends the Tax Code to exempt from sales and use taxes tangible personal property that is necessary and essential to the operation of a qualified data center if the tangible personal property is purchased for installation at, incorporation into, or use in a qualifying data center by a qualifying owner, qualifying operator, or qualifying occupant. The bill sets out what qualifies as tangible personal property for purposes of the exemption and the equipment and tangible personal property to which the exemption does not apply. The bill authorizes a data center to be certified by the comptroller of public accounts as a qualifying data center if, on or after September 1, 2013, a single qualifying occupant contracts with a qualifying owner or qualifying operator to lease space in which the qualifying occupant will locate a data center or occupies a space that was not previously used as a data center in which the qualifying occupant will locate a data center, in the case of a qualifying occupant who is also the qualifying operator and the qualifying owner, and if the qualifying owner, qualifying operator, or qualifying occupant, jointly or independently, creates at least 20 qualifying jobs in the county in which the data center is located, not including jobs moved from one county in Texas to another county in Texas, and makes or agrees to make a capital investment of at least \$150 million in that particular data center over a five-year period beginning on the date the data center is certified by the comptroller as a qualifying data center.

C.S.H.B. 1223 requires a data center that is eligible to be certified by the comptroller as a qualified data center to apply to the comptroller for certification as a qualifying data center and for issuance of a registration number or numbers by the comptroller and sets out requirements for the application form. The bill sets the exemption to begin on the date the data center is certified by the comptroller as a qualifying data center and to expire on the 10th anniversary or 15th anniversary of that date, depending on the amount of the capital investment made by the

qualifying occupant, owner, or operator. The bill requires each person who is eligible to claim an exemption to hold a registration number issued by the comptroller and requires the registration number to be stated on the exemption certificate provided by the purchaser to the seller of tangible personal property eligible for the exemption. The bill requires the comptroller to revoke all registration numbers issued in connection with a qualifying data center that the comptroller determines does not meet the eligibility requirements for certification and establishes the tax liability of each person who has the person's registration number revoked by the comptroller.

C.S.H.B. 1223 requires the comptroller to adopt rules consistent with and necessary to implement the bill's provisions and sets out required categories of rules. The bill makes the exemption inapplicable to sales and use taxes imposed by a municipality, certain transportation-related special purpose taxing authorities, or a county.

C.S.H.B. 1223 exempts gas and electricity from sales and use taxes when sold for use directly by a data center that is certified by the comptroller as a qualifying data center in the processing, storage, and distribution of data.

C.S.H.B. 1223 defines "county average weekly wage" to mean the average weekly wage in a county for all jobs during the most recent four quarterly periods for which data is available, as computed by the Texas Workforce Commission, at the time a data center creates a job used to qualify under the bill's provisions. The bill defines "data center" to mean at least 100,000 square feet of space in a single building or portion of a single building, which space is located in Texas; is specifically constructed or refurbished and actually used primarily to house servers and related equipment and support staff for the processing, storage, and distribution of data; is used by a single qualifying occupant for the processing, storage, and distribution of data; is not used primarily by a telecommunications provider to place tangible personal property that is used to deliver telecommunications services; and has an uninterruptible power source, a generator backup power, a sophisticated fire suppression and prevention system, and enhanced physical security that includes restricted access, video surveillance, and electronic systems. The bill defines "permanent job" to mean an employment position that will exist for at least five years after the date the job is created. The bill defines "qualifying job" to mean a full-time, permanent job that pays at least 120 percent of the county average weekly wage in the county in which the job is based. The bill defines "qualifying operator" to mean a person who controls access to a qualifying data center, regardless of whether that person owns each item of tangible personal property located at the qualifying data center and establishes that a qualifying operator may also be the qualifying owner. The bill defines "qualifying owner" to mean a person who owns the building in which a qualifying data center is located and establishes that a qualifying owner may also be the qualifying operator. The bill defines "qualifying occupant" to mean a person who contracts with a qualifying owner or qualifying operator to place, or cause to be placed, and to use tangible personal property at the qualifying data center or, in the case of a qualifying occupant who is also the qualifying owner and the qualifying operator, places or causes to be placed, and uses tangible personal property at the qualifying data center.

#### **EFFECTIVE DATE**

September 1, 2013.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 1223 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Subchapter I, Chapter 151, Tax Code, is amended by adding Section 151.4292 to read as follows:

Sec. 151.4292. TAX REFUNDS RELATING TO QUALIFYING DATA CENTERS. (a) In this section:

(1) "County average weekly wage" means the average weekly wage in a county for all jobs during the most recent four quarterly periods for which data is available, as computed by the Texas Workforce Commission, at the time a data center creates a job used to qualify under this section.

(2) "Data center" means a facility:

(A) located in this state;

(B) composed of a single building or a portion of a single building specifically constructed or refurbished and actually used primarily to house servers and related equipment and support staff for the processing, storage, and distribution of data; and

(C) that has an uninterruptible power source, a generator backup power, a sophisticated fire suppression and prevention system, and enhanced physical security that includes restricted access, video surveillance, and electronic systems.

(3) "Permanent job" means an employment position that will exist for at least five years after the date the job is created.

(4) "Qualifying data center" means a data center that meets the qualifications prescribed by Subsection (d).

(5) "Qualifying job" means a full-time, permanent job that pays at least 120 percent of the county average weekly wage in the county in which the job is based.

(6) "Qualifying operator" means a person who controls access to a qualifying data center, regardless of whether that person owns each item of tangible personal

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Subchapter H, Chapter 151, Tax Code, is amended by adding Section 151.359 to read as follows:

Sec. 151.359. PROPERTY USED IN CERTAIN DATA CENTERS; TEMPORARY EXEMPTION. (a) In this section:

(1) "County average weekly wage" means the average weekly wage in a county for all jobs during the most recent four quarterly periods for which data is available, as computed by the Texas Workforce Commission, at the time a data center creates a job used to qualify under this section.

(2) "Data center" means at least 100,000 square feet of space in a single building or portion of a single building, which space:

(A) is located in this state;

(B) is specifically constructed or refurbished and actually used primarily to house servers and related equipment and support staff for the processing, storage, and distribution of data;

(C) is used by a single qualifying occupant for the processing, storage, and distribution of data;

(D) is not used primarily by a telecommunications provider to place tangible personal property that is used to deliver telecommunications services; and

(E) has an uninterruptible power source, a generator backup power, a sophisticated fire suppression and prevention system, and enhanced physical security that includes restricted access, video surveillance, and electronic systems.

(3) "Permanent job" means an employment position that will exist for at least five years after the date the job is created.

(4) "Qualifying data center" means a data center that meets the qualifications prescribed by Subsection (d).

(5) "Qualifying job" means a full-time, permanent job that pays at least 120 percent of the county average weekly wage in the county in which the job is based.

(6) "Qualifying operator" means a person who controls access to a qualifying data center, regardless of whether that person owns each item of tangible personal property

property located at the data center.

(7) "Qualifying tenant" means a person who contracts with a qualifying operator to place, or cause to be placed, and to use tangible personal property at a qualifying data center.

(b) Except as provided by Subsection (c), a qualifying data center, a qualifying operator, and a qualifying tenant are entitled to receive a refund in the amount provided by this section of the taxes imposed on the purchase of tangible personal property that is necessary to manage or operate the data center, including:

- (1) electricity;
- (2) an electrical system;
- (3) a cooling system;
- (4) an emergency generator;
- (5) hardware or a distributed mainframe computer or server;
- (6) a data storage device;
- (7) network connectivity equipment;
- (8) a rack, cabinet, and raised floor system;
- (9) a peripheral component or system;
- (10) software;
- (11) a mechanical, electrical, or plumbing system that is necessary to operate any tangible personal property described by Subdivisions (2)-(10);
- (12) any other item of equipment or system necessary to operate any tangible personal property described by Subdivisions (2)-(11), including a fixture; and
- (13) a component part of any tangible personal property described by Subdivisions (2)-(10).

(c) This section does not apply to:

- (1) office equipment or supplies;

located at the qualifying data center. A qualifying operator may also be the qualifying owner.

(7) "Qualifying owner" means a person who owns the building in which a qualifying data center is located. A qualifying owner may also be the qualifying operator.

(8) "Qualifying occupant" means a person who:

(A) contracts with a qualifying owner or qualifying operator to place, or cause to be placed, and to use tangible personal property at the qualifying data center; or

(B) in the case of a qualifying occupant who is also the qualifying owner and the qualifying operator, places or causes to be placed, and uses tangible personal property at the qualifying data center.

(b) Except as otherwise provided this section, tangible personal property that is necessary and essential to the operation of a qualified data center is exempted from the taxes imposed by this chapter if the tangible personal property is purchased for installation at, incorporation into, or in the case of Subdivision (1), use in a qualifying data center by a qualifying owner, qualifying operator, or qualifying occupant, and the tangible personal property is:

- (1) electricity;
- (2) an electrical system;
- (3) a cooling system;
- (4) an emergency generator;
- (5) hardware or a distributed mainframe computer or server;
- (6) a data storage device;
- (7) network connectivity equipment;
- (8) a rack, cabinet, and raised floor system;
- (9) a peripheral component or system;
- (10) software;
- (11) a mechanical, electrical, or plumbing system that is necessary to operate any tangible personal property described by Subdivisions (2)-(10);
- (12) any other item of equipment or system necessary to operate any tangible personal property described by Subdivisions (2)-(11), including a fixture; and
- (13) a component part of any tangible personal property described by Subdivisions (2)-(10).

(c) The exemption provided by this section does not apply to:

- (1) office equipment or supplies;
- (2) maintenance or janitorial supplies or

(2) equipment or supplies used primarily in sales or distribution activities or in transportation activities; or

(3) tangible personal property purchased by an applicant for a refund under this section with respect to which the applicant received or has a pending application for a refund under Section 151.429.

(d) A data center is eligible to be a qualifying data center for purposes of this section if

the data center, an operator of the data center, or a tenant of the data center, independently or as a group:

(1) creates at least 20 qualifying jobs in the county in which the data center is located; and

(2) makes or agrees to make a capital investment, on or after September 1, 2013, of at least \$150 million in this state related to improvements to real and tangible personal property installed at the data center over a four-year period after initial construction or refurbishing of the data center facility.

(e) A data center may apply to the comptroller for qualification as a qualifying data center.

equipment;

(3) equipment or supplies used primarily in sales activities or transportation activities;

(4) tangible personal property on which the purchaser has received or has a pending application for a refund under Section 151.429;

(5) tangible personal property not otherwise exempted under Subsection (b) that is incorporated into real estate or into an improvement of real estate;

(6) tangible personal property that is rented or leased for a term of one year or less; or

(7) notwithstanding Section 151.3111, a taxable service that is performed on tangible personal property exempted under this section.

(d) A data center may be certified by the comptroller as a qualifying data center for purposes of this section if, on or after September 1, 2013:

(1) a single qualifying occupant:

(A) contracts with a qualifying owner or qualifying operator to lease space in which the qualifying occupant will locate a data center; or

(B) occupies a space that was not previously used as a data center in which the qualifying occupant will locate a data center, in the case of a qualifying occupant who is also the qualifying operator and the qualifying owner; and

(2) the qualifying owner, qualifying operator, or qualifying occupant, jointly or independently:

(A) creates at least 20 qualifying jobs in the county in which the data center is located, not including jobs moved from one county in this state to another county in this state; and

(B) makes or agrees to make a capital investment, on or after September 1, 2013, of at least \$150 million in that particular data center over a five-year period beginning on the date the data center is certified by the comptroller as a qualifying data center.

(e) A data center that is eligible under Subsection (d) to be certified by the comptroller as a qualified data center shall apply to the comptroller for certification as a

The application must be made on a form prescribed by the comptroller and include the information required by the comptroller.

The application form must include a section for the data center to certify that the data center, an operator of the data center, or a tenant of the data center, independently or as a group, will make the investment required by Subsection (d)(2).

(f) Beginning on the date a data center becomes a qualifying data center, the data center, a qualifying operator of the data center, and a qualifying tenant of the data center are entitled to receive a refund as provided by this section on an annual basis as provided by Subsection (j) for the purchase of tangible personal property occurring on or after that date and before:

(1) the 10th anniversary of the date the data center becomes a qualifying data center, if the data center, operator, or tenant makes a capital investment of at least \$150 million but less than \$200 million as provided by Subsection (d)(2); or

(2) the 15th anniversary of the date the data center becomes a qualifying data center, if the data center, operator, or tenant makes a capital investment of \$200 million or more as provided by Subsection (d)(2).

(g) The amount of the refund authorized by this section for each annual period with respect to the taxes imposed on the purchase during that period of an item of tangible personal property to which this section applies is equal to the greater of:

(1) an amount equal to the amount by which the taxes paid under this chapter exceed the amount of taxes that would have been imposed under this chapter on the purchase of the item if the rate of the tax imposed under this chapter were one percent; or

(2) the amount by which the taxes paid

qualifying data center and for issuance of a registration number or numbers by the comptroller.

The application must be made on a form prescribed by the comptroller and include the information required by the comptroller.

The application must include the name and contact information for the qualifying occupant, and, if applicable, the name and contact information for the qualifying owner and the qualifying operator who will claim the exemption authorized under this section.

The application form must include a section for the applicant to certify that the capital investment required by Subsection (d)(2)(B) will be met independently or jointly by the qualifying occupant, qualifying owner, or qualifying operator within the time period prescribed by Subsection (d)(2)(B).

(f) The exemption provided by this section begins on the date the data center is certified by the comptroller as a qualifying data center and expires:

(1) on the 10th anniversary of that date, if the qualifying occupant, qualifying owner, or qualifying operator, independently or jointly makes a capital investment of at least \$150 million but less than \$200 million as provided by Subsection (d)(2)(B); or

(2) on the 15th anniversary of that date, if the qualifying occupant, qualifying owner, or qualifying operator, independently or jointly makes a capital investment of \$200 million or more as provided by Subsection (d)(2)(B).

under this chapter exceed \$80.

(h) To receive a refund as provided by this section, a data center must apply to the comptroller.

(i) The comptroller shall adopt rules necessary to implement this section, including rules relating to the:

(1) qualification and disqualification of a data center, operator, or tenant under this section;

(2) determination of the date a data center, operator, or tenant initially qualifies for a refund as provided by this section; and

(3) reporting and other procedures necessary to ensure that a qualifying data center, qualifying operator, and qualifying tenant comply with this section and remain entitled to receive a refund as provided by this section.

(j) The rules adopted by the comptroller under Subsection (i) must allow for a qualifying data center, qualifying operator, or qualifying tenant to apply for and receive annually the refund provided under this section. The rules must prescribe the period each year during which an application may be filed requesting a refund of taxes imposed and paid during the preceding state fiscal year.

(g) Each person who is eligible to claim an exemption authorized by this section must hold a registration number issued by the comptroller. The registration number must be stated on the exemption certificate provided by the purchaser to the seller of tangible personal property eligible for the exemption.

(h) The comptroller shall revoke all registration numbers issued in connection with a qualifying data center that the comptroller determines does not meet the requirements prescribed by Subsection (d). Each person who has the person's registration number revoked by the comptroller is liable for taxes, including penalty and interest from the date of purchase, imposed under this chapter on purchases for which the person claimed an exemption under this section, regardless of whether the purchase occurred before the date the registration number was revoked.

(i) The comptroller shall adopt rules consistent with and necessary to implement this section, including rules relating to:

(1) a qualifying data center, qualifying owner, qualifying operator, and qualifying occupant;

(2) issuance and revocation of a registration number required under this section; and

(3) reporting and other procedures necessary to ensure that a qualifying data center, qualifying owner, qualifying operator, and qualifying occupant comply with this section and remain entitled to the exemption authorized by this section.

(j) The exemption in this section does not apply to the taxes imposed under Chapters

321, 322, or 323.

SECTION 2. Section 313.024(b), Tax Code, is amended to read as follows:

(b) To be eligible for a limitation on appraised value under this subchapter, the entity must use the property in connection with:

- (1) manufacturing;
- (2) research and development;
- (3) a clean coal project, as defined by Section 5.001, Water Code;
- (4) an advanced clean energy project, as defined by Section 382.003, Health and Safety Code;
- (5) renewable energy electric generation;
- (6) electric power generation using integrated gasification combined cycle technology;
- (7) nuclear electric power generation; ~~[or]~~
- (8) a computer center primarily used in connection with one or more activities described by Subdivisions (1) through (7) conducted by the entity; or
- (9) a data center that is eligible to receive a tax refund under Section 151.4292.

No equivalent provision.

No equivalent provision.

SECTION 2. Sections 151.317(a), (b), and (d), Tax Code, are amended to read as follows:

(a) Subject to Sections 151.359 and ~~[Section]~~ 151.1551 and Subsection (d) of this section, gas and electricity are exempted from the taxes imposed by this chapter when sold for:

- (1) residential use;
- (2) use in powering equipment exempt under Section 151.318 or 151.3185 by a person processing tangible personal property for sale as tangible personal property, other than preparation or storage of prepared food described by Section 151.314(c-2);
- (3) use in lighting, cooling, and heating in the manufacturing area during the actual manufacturing or processing of tangible personal property for sale as tangible personal property, other than preparation or storage of prepared food described by Section 151.314(c-2);
- (4) use directly in exploring for, producing, or transporting, a material extracted from the earth;



(5) use in agriculture, including dairy or poultry operations and pumping for farm or ranch irrigation;

(6) use directly in electrical processes, such as electroplating, electrolysis, and cathodic protection;

(7) use directly in the off-wing processing, overhaul, or repair of a jet turbine engine or its parts for a certificated or licensed carrier of persons or property;

(8) use directly in providing, under contracts with or on behalf of the United States government or foreign governments, defense or national security-related electronics, classified intelligence data processing and handling systems, or defense-related platform modifications or upgrades;

(9) use directly by a data center that is certified by the comptroller as a qualifying data center under Section 151.359 in the processing, storage, and distribution of data;

10[(9)] a direct or indirect use, consumption, or loss of electricity by an electric utility engaged in the purchase of electricity for resale; or

11[(10)] use in timber operations, including pumping for irrigation of timberland.

(b) The sale, production, distribution, lease, or rental of, and the use, storage, or other consumption in this state of, gas and electricity sold for the uses listed in Subsection (a), are exempted from the taxes imposed by a municipality under Chapter 321 except as provided by Sections 151.359(j) and [Section] 321.105.

(d) To qualify for the exemptions in Subsections (a)(2)-(9)[(8)], the gas or electricity must be sold to the person using the gas or electricity in the exempt manner. For purposes of this subsection, the use of gas or electricity in an exempt manner by an independent contractor engaged by the purchaser of the gas or electricity to perform one or more of the exempt activities identified in Subsections (a)(2)-(9)[(8)] is considered use by the purchaser of the gas or electricity.

No equivalent provision.

SECTION 3. Section 321.208, Tax Code, is amended to read as follows:

Sec. 321.208. STATE EXEMPTIONS APPLICABLE. The exemptions provided by Subchapter H, Chapter 151, apply to the

taxes authorized by this chapter, except as provided by Sections 151.359(j) and [Section] 151.317(b).

No equivalent provision.

SECTION 4. Section 323.207, Tax Code, is amended to read as follows:

Sec. 323.207. STATE EXEMPTIONS APPLICABLE. The exemptions provided by Subchapter H, Chapter 151, apply to the taxes authorized by this chapter, except as provided by Sections 151.359(j) and [Section] 151.317(b).

SECTION 3. The change in law made by this Act does not affect tax liability accruing before the effective date of this Act. That liability continues in effect as if this Act had not been enacted, and the former law is continued in effect for the collection of taxes due and for civil and criminal enforcement of the liability for those taxes.

SECTION 5. Same as introduced version.

SECTION 4. This Act takes effect September 1, 2013.

SECTION 5. Same as introduced version.