

By: Hilderbran

H.B. No. 1223

A BILL TO BE ENTITLED

AN ACT

relating to tax incentives with respect to certain data centers.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

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

1 will exist for at least five years after the date the job is
2 created.

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

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

8 (6) "Qualifying operator" means a person who controls
9 access to a qualifying data center, regardless of whether that
10 person owns each item of tangible personal property located at the
11 data center.

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

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

20 (1) electricity;

21 (2) an electrical system;

22 (3) a cooling system;

23 (4) an emergency generator;

24 (5) hardware or a distributed mainframe computer or
25 server;

26 (6) a data storage device;

27 (7) network connectivity equipment;

1 (8) a rack, cabinet, and raised floor system;

2 (9) a peripheral component or system;

3 (10) software;

4 (11) a mechanical, electrical, or plumbing system that
5 is necessary to operate any tangible personal property described by
6 Subdivisions (2)-(10);

7 (12) any other item of equipment or system necessary
8 to operate any tangible personal property described by Subdivisions
9 (2)-(11), including a fixture; and

10 (13) a component part of any tangible personal
11 property described by Subdivisions (2)-(10).

12 (c) This section does not apply to:

13 (1) office equipment or supplies;

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

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

20 (d) A data center is eligible to be a qualifying data center
21 for purposes of this section if the data center, an operator of the
22 data center, or a tenant of the data center, independently or as a
23 group:

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

26 (2) makes or agrees to make a capital investment, on or
27 after September 1, 2013, of at least \$150 million in this state

1 related to improvements to real and tangible personal property
2 installed at the data center over a four-year period after initial
3 construction or refurbishing of the data center facility.

4 (e) A data center may apply to the comptroller for
5 qualification as a qualifying data center. The application must be
6 made on a form prescribed by the comptroller and include the
7 information required by the comptroller. The application form must
8 include a section for the data center to certify that the data
9 center, an operator of the data center, or a tenant of the data
10 center, independently or as a group, will make the investment
11 required by Subsection (d)(2).

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

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

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

26 (g) The amount of the refund authorized by this section for
27 each annual period with respect to the taxes imposed on the purchase

1 during that period of an item of tangible personal property to which
2 this section applies is equal to the greater of:

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

7 (2) the amount by which the taxes paid under this
8 chapter exceed \$80.

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

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

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

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

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

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

1 year.

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

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

7 (1) manufacturing;

8 (2) research and development;

9 (3) a clean coal project, as defined by Section 5.001,
10 Water Code;

11 (4) an advanced clean energy project, as defined by
12 Section 382.003, Health and Safety Code;

13 (5) renewable energy electric generation;

14 (6) electric power generation using integrated
15 gasification combined cycle technology;

16 (7) nuclear electric power generation; [~~or~~]

17 (8) a computer center primarily used in connection
18 with one or more activities described by Subdivisions (1) through
19 (7) conducted by the entity; or

20 (9) a data center that is eligible to receive a tax
21 refund under Section 151.4292.

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

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