LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION

March 18, 2013

TO: Honorable Harvey Hilderbran, Chair, House Committee On Ways & Means

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: **HB1630** by Murphy (Relating to the temporary exemption of certain tangible personal property related to data centers from the sales and use tax.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for HB1630, As Introduced: a negative impact of ($43,200,000) through the biennium ending August 31, 2015.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2014	($15,100,000)
2015	($28,100,000)
2016	($37,400,000)
2017	($55,300,000)
2018	($63,800,000)

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue (Loss) from *General Revenue Fund* 1	Probable Revenue (Loss) from *Cities*	Probable Revenue (Loss) from *Transit Authorities*	Probable Revenue (Loss) from *Counties and Special Districts*
2014	($15,100,000)	($2,800,000)	($900,000)	($500,000)
2015	($28,100,000)	($5,200,000)	($1,800,000)	($900,000)
2016	($37,400,000)	($6,900,000)	($2,300,000)	($1,200,000)
2017	($55,300,000)	($10,200,000)	($3,500,000)	($1,700,000)
2018	($63,800,000)	($11,800,000)	($4,000,000)	($2,000,000)

Fiscal Analysis

The bill would amend Chapter 151 of the Tax Code, regarding the sales and use tax, to provide for an exemption from sales and use taxes of certain tangible personal property related to data centers.

The bill would add new Section 151.357 to provide that a qualifying data center and qualifying data center tenant would be exempt from sales and use taxes paid on the purchase, lease, or rental of certain tangible personal property beginning on the date the data center or tenant is issued a registration number and ending on the 10th anniversary of that date.

A data center would be defined to be a facility 1) located in this state on or after September 1, 2013; 2) composed of one or more buildings constructed or refurbished and used primarily to house servers and related equipment and staff; 3) used or to be used primarily by a business engaged in data processing, hosting, and related services as described by NAICS code 518210, an Internet activity as described by NAICS code 519130, or computer software publishing and reproduction as described by NAICS code 511210; and 4) that meets other standards related to power supply, fire suppression, and enhanced physical security.

A qualifying data center would be one that on or after September 1, 2013: 1) creates at least 25 permanent jobs that pay at least 150 percent of the county average weekly wage in the county in which the data center is located, and 2) certifies in writing that it will invest at least $150 million in the facility over a five-year period beginning on the date it becomes a qualifying data center. A qualifying data center tenant would be a tenant who contracts with a qualifying data center for at least 500 kilowatts over a term of at least two years.

A qualifying data center and a qualifying data center tenant would be exempt from sales and use tax on tangible personal property that is necessary to manage or operate the data center, including an electrical system, a cooling or environmental control system, a generator, hardware or a distributed mainframe computer or server, a data storage device, network connectivity equipment, and any component part of the foregoing. Excluded from exemption would be office equipment or supplies, or equipment or supplies used in sales or distribution activities or transportation activities.

The bill provides for a qualifying data center or qualifying tenant to apply for qualification and to be issued a registration number by the Comptroller, for statement of the registration number on an exemption certificate issued by the registrant, and for the revocation of registration and the payment of taxes due for failure to meet the qualifying requirements. The Comptroller is provided rulemaking authority necessary to implement the new Section 151.357.

The bill would take effect September 1, 2013.

Methodology

Data on the composition of data center infrastructure and electricity costs obtained from industry sources was used to model expected annual expenditures by data centers that would be subject to tax under current law but that would be eligible for exemption under the provisions of the bill.

For purposes of this fiscal analysis, and under current law, it is assumed that 2 new centers that meet the bill's investment and job creation parameters would begin construction each year.

The bill stipulates, for a data center, that to qualify it must be predominately used by businesses in certain specified industries. However, there is no such stipulation for tenants. Therefore, this analysis assumes a data center facility could be owned by a business in a qualifying industry with a tenant or tenants engaged in business in an industry not listed by the bill in section 151.357 (a)(2)(C).

The term "capital investment" is not defined; it is assumed that expenditures on any items with a useful life in excess of one year, including installation costs, as well as land and construction costs would be claimed as capital investment for purposes of meeting the threshold for qualification.

In as much as qualification for the exemption would be limited to data centers located in the state after September 1, 2013, it is assumed that existing data centers would not qualify for the exemption and no deduction from expected revenue under current law has been made.

As the bill allows an exemption for items used in data centers—either new or refurbished structures—it is possible that some data centers built after the effective date of this bill would qualify repeatedly and thus be exempt indefinitely, regardless of Section 151.357 (b).

The implication to state and local sales taxes will increase as more data centers fall under the bill's provisions. After 10 years the annual fiscal implication of the state sales tax component will exceed $100 million.

Local Government Impact

There would be a corresponding loss of sales and use tax revenue to local taxing jurisdictions.

Source Agencies: 304 Comptroller of Public Accounts

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