

BILL ANALYSIS

C.S.H.B. 2506
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Ways & Means
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Recent legislation created a temporary sales and use tax exemption for equipment purchased for use with certain large data centers, provided those data centers meet certain qualifications, including a commitment to a capital investment of a certain amount and the creation of a certain number of permanent jobs.

Interested parties have observed that medical data centers are able to operate at a full and efficient capacity with less facility square footage than other types of data centers. In order to remain competitive in attracting medical data centers to Texas, the parties suggest that different facility square footage standards should be in place for medical data centers. C.S.H.B. 2506 seeks to provide for a tax exemption for medical data centers with standards tailored to such centers.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the comptroller of public accounts in SECTION 2 of this bill.

ANALYSIS

C.S.H.B. 2506 amends the Tax Code to exempt certain tangible personal property that is necessary and essential to the operation of a qualified medical data center from the sales and use tax if the tangible personal property is purchased for installation at, incorporation into, or use in a qualifying medical data center by a health care corporation or a subsidiary of the corporation. The bill defines "health care corporation" as a corporation whose primary business is the ownership and operation of hospitals and related health care facilities and defines "subsidiary" as an organization for which another organization, either directly or indirectly through or with one or more of its other subsidiaries owns at least 50 percent of the outstanding ownership or membership interests of the organization or possesses at least 50 percent of the voting power of the owners or members of the organization.

C.S.H.B. 2506 defines "medical data center" as at least 75,000 square feet of space in a single building or portion of a single building, or cumulatively in multiple buildings or portions of multiple buildings that are occupied by a single health care corporation, one or more of its subsidiaries, or both, which space is located in Texas; is actually used primarily by the health care corporation or a subsidiary of the corporation to house servers and related equipment and support staff for the processing, storage, and distribution of medical 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, 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 "primarily" as at least 50 percent.

C.S.H.B. 2506 identifies the tangible personal property that is eligible for the exemption and that is specifically excluded from the exemption. The bill authorizes a medical data center to be certified by the comptroller of public accounts as a qualifying medical data center for the purposes of the tax exemption if, on or after September 1, 2015, a health care corporation or a subsidiary of the corporation builds, leases, or operates a medical data center, makes or agrees to make a capital investment, on or after September 1, 2015, of at least \$200 million in that medical data center over a five-year period beginning on the date the medical data center is certified, and creates at least 20 full-time, permanent jobs paying at least 120 percent of the county average weekly wage in the county in which the job is based and the medical data center is located, not including a job moved from one Texas county to another Texas county. The bill defines "permanent job" as an employment position that will exist for at least five years after the date the job is created.

C.S.H.B. 2506 requires an eligible medical data center to apply to the comptroller for certification as a qualifying medical data center and for issuance of a registration number or numbers by the comptroller. The bill sets out requirements applicable to the application. The bill establishes that the tax exemption begins on the date the medical data center is certified and expires on the date that the medical data center ceases operating as a medical data center. The bill requires each person who is eligible to claim the tax 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.

C.S.H.B. 2506 requires the comptroller to revoke all registration numbers issued in connection with a qualifying medical data center that the comptroller determines does not meet the prescribed requirements. The bill makes each person who has the person's registration number revoked by the comptroller liable for sales and use tax, including penalty and interest from the date of purchase, imposed on purchases for which the person claimed an exemption, regardless of whether the purchase occurred before the date the registration number was revoked. The bill requires the comptroller to adopt rules consistent with and necessary to implement the bill's provisions. The exemption expressly does not apply to taxes imposed under the Municipal Sales and Use Tax Act, the County Sales and Use Tax Act, or statutory provisions related to sales and use taxes for special purpose taxing authorities. The bill makes a medical data center ineligible to receive the exemption if the medical data center is subject to an agreement limiting the appraised value of the medical data center's property under certain specified provisions of the Texas Economic Development Act.

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2506 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Sections 151.317(a) and (b), Tax Code, are amended to read as follows:

(a) Subject to Sections 151.359, 151.360, and 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 or medical data center that is certified by the comptroller as a qualifying data center or qualifying medical data center under Section 151.359 or 151.360 in the processing, storage, and distribution of data;
- (10) a direct or indirect use, consumption, or loss of electricity by an electric utility engaged in the purchase of electricity for resale; or

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Sections 151.317(a) and (b), Tax Code, are amended to read as follows:

(a) Subject to Sections 151.359, 151.360, and 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 or medical data center that is certified by the comptroller as a qualifying data center or qualifying medical data center under Section 151.359 or 151.360 in the processing, storage, and distribution of data;
- (10) a direct or indirect use, consumption, or loss of electricity by an electric utility engaged in the purchase of electricity for resale; or

(11) 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), 151.360(k), and 321.105.

SECTION 2. Subchapter H, Chapter 151, Tax Code, is amended by adding Section 151.360 to read as follows:

Sec. 151.360. PROPERTY USED IN CERTAIN MEDICAL DATA CENTERS; EXEMPTION. (a) In this section:

(1) "Medical data center" means at least 75,000 square feet of space in a single building or portion of a single building, or cumulatively in multiple buildings or portions of multiple buildings that are owned by a single qualifying owner, operated by a single qualifying operator, and occupied by a single qualifying occupant, 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 and services used to directly and indirectly support health care, including electronic patient records, medical data, and business records;

(C) is used by a single qualifying occupant for the purposes described by Paragraph (B);

(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,

(11) 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), 151.360(j), and 321.105.

SECTION 2. Subchapter H, Chapter 151, Tax Code, is amended by adding Section 151.360 to read as follows:

Sec. 151.360. PROPERTY USED IN CERTAIN MEDICAL DATA CENTERS; 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) "Health care corporation" means a corporation whose primary business is the ownership and operation of hospitals and related health care facilities.

(3) "Medical data center" means at least 75,000 square feet of space in a single building or portion of a single building, or cumulatively in multiple buildings or portions of multiple buildings that are occupied by a single health care corporation, one or more of its subsidiaries, or both, which space:

(A) is located in this state;

(B) is actually used primarily by the health care corporation or a subsidiary of the corporation to house servers and related equipment and support staff for the processing, storage, and distribution of medical data, including electronic patient records, financial information, and business records;

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

(D) has an uninterruptible power source,

generator backup power, a sophisticated fire suppression and prevention system, and enhanced physical security that includes restricted access, video surveillance, and electronic systems.

(2) "Qualifying medical data center" means a medical data center that meets the qualifications prescribed by Subsection (e).

(3) "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 medical 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 medical data center.

(4) "Qualifying operator" means a person who controls access to a qualifying medical data center, regardless of whether that person owns each item of tangible personal property located at the qualifying medical data center. A qualifying operator may also be the qualifying owner.

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

(b) For purposes of this section:

(1) multiple buildings occupied by a qualifying occupant or a subsidiary or affiliate of the occupant who meets the requirements prescribed by Subsection (a)(3) are considered to be occupied by a single qualifying occupant;

(2) multiple buildings operated by a qualifying operator or a subsidiary or affiliate of the operator who meets the requirements prescribed by Subsection (a)(4) are considered to be operated by a single qualifying operator; and

(3) multiple buildings owned by a

generator backup power, a sophisticated fire suppression and prevention system, and enhanced physical security that includes restricted access, video surveillance, and electronic systems.

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

(5) "Primarily" means at least 50 percent.

(6) "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.

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

(8) "Subsidiary" has the meaning assigned by Section 1.002, Business Organizations Code.

qualifying owner or a subsidiary or affiliate of the owner who meets the requirements prescribed by Subsection (a)(5) are considered to be owned by a single qualifying owner.

(c) Except as otherwise provided by this section, tangible personal property that is necessary and essential to the operation of a qualified medical 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 medical 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; or
- (13) a component part of any tangible personal property described by Subdivisions (2)-(10).

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

- (1) office equipment or supplies;
- (2) maintenance or janitorial supplies or 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 (c) that is incorporated into real estate or into an improvement of real estate; or
- (6) tangible personal property that is rented

(b) Except as otherwise provided by this section, tangible personal property that is necessary and essential to the operation of a qualified medical 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 medical data center by a health care corporation or a subsidiary of the corporation, 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; or
- (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 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; or
- (6) tangible personal property that is rented

or leased for a term of one year or less.

(e) Subject to Subsection (1), a medical data center may be certified by the comptroller as a qualifying medical data center for purposes of this section if, on or after September 1, 2015:

(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 medical data center; or

(B) occupies a space that was not previously used as a medical data center in which the qualifying occupant will locate a medical 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 makes or agrees to make a capital investment, on or after September 1, 2015, of at least \$200 million in that medical data center over a five-year period beginning on the date the medical data center is certified by the comptroller as a qualifying medical data center.

(f) A medical data center that is eligible under Subsection (e) to be certified by the comptroller as a qualified medical data center shall apply to the comptroller for certification as a qualifying medical 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 (e)(2) will be met independently or jointly by the qualifying owner, qualifying operator, or qualifying occupant within the time period prescribed by Subsection (e)(2).

(g) The exemption provided by this section

or leased for a term of one year or less.

(d) Subject to Subsection (k), a medical data center may be certified by the comptroller as a qualifying medical data center for purposes of this section if, on or after September 1, 2015, a health care corporation or a subsidiary of the corporation:

(1) builds, leases, or operates a medical data center;

(2) makes or agrees to make a capital investment, on or after September 1, 2015, of at least \$200 million in that medical data center over a five-year period beginning on the date the medical data center is certified by the comptroller as a qualifying medical data center; and

(3) creates at least 20 qualifying jobs in the county in which the medical data center is located, not including a job moved from one county in this state to another county in this state.

(e) A medical data center that is eligible under Subsection (d) shall apply to the comptroller for certification as a qualifying medical 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 health care corporation or the subsidiary of the corporation that 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) will be met by the health care corporation or the subsidiary of the corporation within the time period prescribed by Subsection (d)(2).

(f) The exemption provided by this section

begins on the date the medical data center is certified by the comptroller as a qualifying medical data center and expires on the date that the medical data center ceases operating as a medical data center.

(h) 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.

(i) The comptroller shall revoke all registration numbers issued in connection with a qualifying medical data center that the comptroller determines does not meet the requirements prescribed by Subsection (e). 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.

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

(1) a qualifying medical 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 medical data center, qualifying owner, qualifying operator, and qualifying occupant comply with this section and remain entitled to the exemption authorized by this section.

(k) The exemption in this section does not apply to the taxes imposed under Chapter 321, 322, or 323.

(l) A medical data center is not eligible to receive an exemption under this section if the medical data center is subject to an agreement limiting the appraised value of the medical data center's property under Subchapter B or C, Chapter 313.

SECTION 3. Section 313.010, Tax Code, as added by Chapter 1274 (H.B. 1223), Acts of the 83rd Legislature, Regular Session, 2013,

begins on the date the medical data center is certified by the comptroller as a qualifying medical data center and expires on the date that the medical data center ceases operating as a medical data center.

(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 medical 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 medical data center;

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

(3) reporting and other procedures necessary to ensure that a qualifying medical data center complies with this section and remains entitled to the exemption authorized by this section.

(j) The exemption in this section does not apply to the taxes imposed under Chapter 321, 322, or 323.

(k) A medical data center is not eligible to receive an exemption under this section if the medical data center is subject to an agreement limiting the appraised value of the medical data center's property under Subchapter B or C, Chapter 313.

SECTION 3. Same as introduced version.

is amended.

SECTION 4. 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), 151.360(k), and 151.317(b).

SECTION 5. 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), 151.360(k), and 151.317(b).

SECTION 6. 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 7. This Act takes effect September 1, 2015.

SECTION 4. 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), 151.360(j), and 151.317(b).

SECTION 5. 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), 151.360(j), and 151.317(b).

SECTION 6. Same as introduced version.

SECTION 7. Same as introduced version.