LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION

April 30, 2019

TO: Honorable Dustin Burrows, Chair, House Committee on Ways & Means

FROM: John McGeady, Assistant Director   Sarah Keyton, Assistant Director
Legislative Budget Board

IN RE: **HB4376** by Bohac (Relating to the temporary exemption of certain tangible personal property related to certain colocation data centers from the sales and use tax.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for HB4376, As Introduced: a negative impact of ($188,900,000) through the biennium ending August 31, 2021.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2020	($80,700,000)
2021	($108,200,000)
2022	($133,200,000)
2023	($163,800,000)
2024	($201,400,000)

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue (Loss) from *General Revenue Fund* 1
2020	($80,700,000)
2021	($108,200,000)
2022	($133,200,000)
2023	($163,800,000)
2024	($201,400,000)

Fiscal Analysis

The bill would amend Chapter 151 of the Tax Code, to add new Section 151.3596 to provide for exemption from sales and use taxation of certain tangible personal property related to colocation data centers.

"Colocation data center" would mean all or part of a new or redeveloped facility in a building or series of buildings and related improvements, on one or more parcels of land that: is located in this state; is specifically constructed or refurbished, repaired, restored, remodeled, or otherwise modified and actually used primarily to house servers and related equipment and support staff for the processing, storage and distribution of data; is used by one or more qualifying tenants for the processing, storage, and distribution of data; and meets other standards related to power supply.

The bill would define a "qualifying colocation data center" as a colocation data center that is certified by the Comptroller and does not generate electricity for resale or for use outside the colocation data center. A colocation data center may be certified by the Comptroller as a "qualifying colocation data center " if, on or after January 1, 2019, a qualifying tenant contracts to lease space from a qualifying operator and the qualifying operator and qualifying tenant jointly or independently: employ at least 500 people full-time in the state; and make or agree to make a capital investment of at least $15 million in that particular colocation data center over a three-year period.

A "qualifying operator" would be someone who controls access to a qualifying colocation data center regardless of whether they own each item of tangible personal property in the qualifying data center.

A "qualifying tenant" would be a person who contracts with a qualifying operator for a period of at least five years for at least 1 megawatt of critical IT load per month, and to place or cause to be placed, and to use tangible personal property at the qualifying data center; or if the qualifying tenant is also the qualifying operator, places or causes to be placed and uses tangible personal property at the qualifying data center.

The bill would exempt from tax tangible personal property that is necessary and essential to the operation of a colocation data center if the property is purchased for installation at, incorporation into, or in the case of electricity for use in, a colocation data center if the tangible personal property is: electricity; an electrical system; a cooling system; an emergency generator; hardware or a distributed mainframe computer or server; a data storage device; network connectivity equipment; a rack, cabinet, and raised floor system; a peripheral component or system; software; a mechanical, electrical, or plumbing system necessary to operate the foregoing property; any other item of equipment or system necessary to operate any of the foregoing, including a fixture; and a component part of any of the foregoing.

Excluded from exemption would be: office equipment or supplies; maintenance or janitorial supplies or equipment; equipment or supplies used primarily in sales activities or in transportation activities; property for which a refund may be received under Section 151.429 (tax refunds for enterprise projects); tangible personal property not otherwise exempted that is incorporated into real estate or an improvement of real estate, tangible personal property that is rented or leased for a term of one year or less; or notwithstanding Section 151.3111 (services on certain exempted personal property), a taxable service that is performed on tangible personal property exempted under Section 151.3596.

The exemption would expire on the tenth anniversary of the date a colocation data center was certified as qualifying by the Comptroller for capital investments of at least $15 million but less than $50 million, or on the fifteenth anniversary for capital investments of at least $50 million.

The exemption would not apply to the local sales and use taxes imposed under Chapters 321, 322, or 323, Tax Code.

A registration number would have to be obtained from the Comptroller for each person eligible to claim the exemption and must be stated on the exemption certificate provided by the purchaser to the seller of tangible personal property eligible for the exemption. All registration numbers issued in connection with a colocation data center would be revocable by the Comptroller upon determination that the requirements for qualification were not met, and each person whose registration number was revoked would be liable for taxes, including penalty and interest from the date of purchase, on purchases for which the person claimed exemption.

The Comptroller would be granted rulemaking authority to implement the new Section 151.3596.

The bill would take effect September 1, 2019.

Methodology

This estimate is based on industry reported 2018 total inventory, vacant and planned inventory, and net absorption of megawatt capacity in the multi-tenant data center markets in the state, combined with data on per megawatt expenditures by data center owners and tenants on items that would be subject to tax under current law but would be exempt under provisions of the bill.

While the exemption policy proposed in this bill might foster more data center development in the state, the incremental state sales tax revenues from the additional centers would be limited for the most part to tax on building materials for the shell; there would be significant reductions in state sales tax revenues from expenditures on power and communications equipment, servers, and electricity pursuant to data center demand that would occur without the exemption.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 304 Comptroller of Public Accounts

LBB Staff: WP, KK, SD