

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION

May 2, 2021

TO: Honorable Morgan Meyer, Chair, House Committee on Ways & Means

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB3236 by Capriglione (Relating to the temporary exemption of certain tangible personal property related to certain colocation data centers from sales and use taxes.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for HB3236, As Introduced : a negative impact of (\$60,900,000) through the biennium ending August 31, 2023.

General Revenue-Related Funds, Five- Year Impact:

<i>Fiscal Year</i>	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2022	(\$23,100,000)
2023	(\$37,800,000)
2024	(\$54,400,000)
2025	(\$68,700,000)
2026	(\$84,600,000)

All Funds, Five-Year Impact:

<i>Fiscal Year</i>	Probable Revenue (Loss) from General Revenue Fund 1
2022	(\$23,100,000)
2023	(\$37,800,000)
2024	(\$54,400,000)
2025	(\$68,700,000)
2026	(\$84,600,000)

Fiscal Analysis

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

The bill defines “Colocation data center” as 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 tenants for the processing, storage, and distribution of data; and meets specified standards related to power supply.

The bill defines “operator” as someone who controls access to a colocation data center regardless of whether

they own each item of tangible personal property in the data center.

The bill defines “tenant” as a person who contracts with an operator for a period of at least five years for at least one megawatt of critical IT load per month, and to place or cause to be placed, and to use tangible personal property at the colocation data center; or if the tenant is also the operator, places or causes to be placed and uses tangible personal property at the data center.

The bill defines “qualifying tenant” as a tenant that is certified by the Comptroller. A tenant may be certified by the Comptroller as a qualifying tenant if the tenant employs at least 500 people full-time in the state; and, on or after January 1, 2021, contracts with an operator or tenant to lease space in a facility in which the tenant would locate a colocation data center, and would make or agree to make a capital investment of at least \$15 million in that particular colocation data center over a three-year period.

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 by a qualifying tenant 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 tenant 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 tenant 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 tenant whose registration number was revoked would be liable for taxes, including penalty and interest from the date of purchase, on purchases for which the tenant claimed exemption.

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

The bill would take effect September 1, 2021.

Methodology

The Comptroller estimate of fiscal impacts assumes both tenants and, because “tenant” is defined to include the operator, operators of colocation data centers may qualify for exemption if meeting employment and capital investment requirements, as well as enterprise data centers for which the operator and tenant are the same entity or affiliates under common ownership.

The estimate is based on industry reported average annual rate of absorption of megawatt capacity in colocation data centers in this state, reduced for operators and demand by tenants that would not meet the employment requirement, combined with data on per megawatt expenditures by tenants (or tenants and operators when

affiliated) on items that would be subject to tax under current law but would be exempt under provisions of the bill.

The estimate assumes, in view of the bill language that provides for a data center to consist of more than one building on more than one parcel of land, that pursuant to the rulemaking authority provided by proposed Section 151.3596(j), it will be provided by rule that the component buildings for a data center must be in local proximity and that multiple data center facilities at different locations may not be combined as one data center for purposes of the exemption qualification.

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 expected to be substantially less than the sales tax foregone with respect to expenditures on power, cooling, and communications equipment, servers and other tenant purchased equipment, and electricity pursuant to data center demand that would continue to occur without the exemption.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 304 Comptroller of Public Accounts

LBB Staff: JMc, KK, SD