

## **BILL ANALYSIS**

Senate Research Center  
88R18766 CJD-F

H.B. 3104  
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Finance  
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Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

The 84th Texas Legislature enacted legislation providing for an exemption from sales and use taxation for certain tangible personal property used in certain large data center projects. To qualify for an exemption under this legislation, the data center project would have to be composed of buildings comprising at least 250,000 square feet of space, be located on a single parcel of land or contiguous parcels of land, and involve a capital investment of at least \$500 million. Since then, newer data center projects have been created. These data centers provide greater cybersecurity, resilience, and disaster recovery capabilities by building in separate, fiber-connected buildings on separate and noncontiguous parcels of land. With this setup, if one building of the data center is impacted by a natural or manmade disaster or power outage, the data is transferred to another building in the connected data center project to ensure reliability.

H.B. 3104 seeks to encourage more cybersecure, resilient, and reliable data centers to set up operation in Texas by establishing a more modernized incentive structure by creating a new sales and use tax exemption for tangible personal property related to certain connected data center projects.

H.B. 3104 amends current law relating to the temporary exemption of certain tangible personal property related to certain connected data center projects from sales and use taxes.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Comptroller of Public Account of the State of Texas in SECTION 1 (Section 151.3596, Tax Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subchapter H, Chapter 151, Tax Code, by adding Section 151.3596, as follows:

Sec. 151.3596. PROPERTY USED IN CERTAIN CONNECTED DATA CENTER PROJECTS; TEMPORARY EXEMPTION. (a) Defines "affiliated group," "connected data center project," "county average weekly wage," "permanent job," "qualifying connected data center project," "qualifying job," "qualifying occupant," "qualifying operator," and "qualifying owner."

(b) Provides that tangible personal property that is necessary and essential to the operation of a qualifying connected data center project is exempted from the taxes imposed by Chapter 151 (Limited Sales, Excise, and Use Tax), except as otherwise provided by this section, if the tangible personal property is purchased for installation at, incorporation into, or in the case of electricity, use in a qualifying connected data center project 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) a backup electricity generation system;
- (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; and
- (13) a component part of any tangible personal property described by Subdivisions (2)-(10).

(c) Provides that 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 (Tax Refunds for Enterprise Products);
- (5) tangible personal property not otherwise exempted under Subsection (b) that is incorporated into real estate or into an improvement of real estate;
- (6) tangible personal property that is rented or leased for a term of one year or less; or
- (7) notwithstanding Section 151.3111 (Services on Certain Exempted Personal Property), a taxable service that is performed on tangible personal property exempted under this section.

(d) Authorizes a connected data center project subject to Subsection (j) to be certified by the Comptroller of Public Account of the State of Texas (comptroller) as a qualifying connected data center project for purposes of this section if, on or after September 1, 2023:

- (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 connected data center project; or

(B) occupies a space that was not previously used as a data center in which the qualifying occupant will locate a connected data center project, 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:

(A) creates at least 40 qualifying jobs in the county or counties in which the connected data center project is located;

(B) makes or agrees to make a capital investment, on or after September 1, 2023, of at least \$500 million in that particular connected data center project, the amount of which is prohibited from including a capital investment to replace personal property previously placed in service in that connected data center project, over a five-year period beginning on the earlier of:

(i) the date the connected data center project submits the application described by Subsection (e); or

(ii) the date the connected data center project is certified by the comptroller as a qualifying connected data center project; and

(C) agrees to contract for at least 20 megawatts of transmission capacity for the operation of the connected data center project.

(e) Requires that a connected data center project that is eligible under Subsection (d) to be certified by the comptroller as a qualifying connected data center project apply to the comptroller for certification as a qualifying connected data center project and for the issuance of a registration number or numbers by the comptroller. Requires that the application be made on a form prescribed by the comptroller and include the information required by the comptroller. Requires that the application 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. Requires that the application form include a section for the applicant to certify that the capital investment required by Subsection (d)(2)(B) will be met independently or jointly by the qualifying occupant, qualifying owner, or qualifying operator within the time period prescribed by Subsection (d)(2)(B).

(f) Provides that the exemption provided by this section begins on the date the connected data center project is certified by the comptroller as a qualifying connected data center project and expires on the 20th anniversary of that date, if the qualifying occupant, qualifying owner, or qualifying operator, independently or jointly makes a capital investment of \$500 million or more as provided by Subsection (d)(2)(B).

(g) Requires each person who is eligible to claim an exemption authorized by this section to hold a registration number issued by the comptroller. Requires that the registration number be stated on the exemption certificate provided by the purchaser to the seller of tangible personal property eligible for the exemption.

(h) Requires the comptroller to revoke all registration numbers issued in connection with a qualifying connected data center project that the comptroller determines does not meet the requirements prescribed by Subsection (d). Provides that 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) Requires the comptroller to adopt rules consistent with and necessary to implement this section, including rules relating to:

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

(j) Provides that a connected data center project is not eligible to receive an exemption under this section if the connected data center project is subject to an agreement limiting the appraised value of the connected data center's property under former Subchapter B (Limitation on Appraised Value of Certain Property Used to Create Jobs) or C (Limitation on Appraised Value of Property in Strategic Investment Area or Certain Rural School Districts), Chapter 313.

SECTION 2. Amends Section 151.317(a), Tax Code, as follows:

(a) Provides that subject to certain sections, including Section 151.3596, and Subsection (d) (relating to the qualifications for certain exemptions from certain taxes paid on the use of gas or electricity) of this section, gas and electricity are exempted from the taxes imposed by this chapter when sold for:

(1)-(8) makes no changes to these subdivisions;

(9) use directly by a data center, large data center project, or connected data center project that is certified by the comptroller as a qualifying data center under Section 151.359 (Property Used in Certain Data Centers; Temporary Exemption), a qualifying large data center project under Section 151.3595 (Property Used in Certain Large Data Center Projects; Temporary Exemption), or a qualifying connected data center project under Section 151.3596 in the processing, storage, and distribution of data; or

(10)-(11) makes no changes to these subdivisions.

SECTION 3. Provides that the change in law made by this Act does not affect tax liability accruing before the effective date of this Act. Provides that 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 4. Effective date: September 1, 2023.