

## **BILL ANALYSIS**

C.S.H.B. 3104  
By: Anderson  
Ways & Means  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

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.

C.S.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.

### **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 1 of this bill.

### **ANALYSIS**

C.S.H.B. 3104 amends the Tax Code to exempt tangible property that is necessary and essential to the operation of a qualifying connected data center project from the sales and use tax if the 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:

- electricity;
- an electrical system;
- a cooling system;
- a backup electricity generation system;
- 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 that is necessary to operate any of the other listed tangible personal property;
- any other item of equipment or system necessary to operate any of the other listed tangible personal property; or
- a component part of any of the other listed tangible personal property.

The exemption expressly does not apply to any of the following:

- office equipment or supplies;
- maintenance or janitorial supplies or equipment;
- equipment or supplies used primarily in sales activities or transportation activities;
- tangible personal property on which the purchaser has received or has a pending application for a refund;
- tangible personal property not otherwise exempted under the bill's provisions that is incorporated into real estate or into an improvement of real estate;
- tangible personal property that is rented or leased for a term of one year or less; or
- a taxable service that is performed on exempted tangible personal property.

C.S.H.B. 3104 authorizes a connected data center to be certified by the comptroller of public accounts as a qualifying connected data center project if, on or after September 1, 2023:

- a single qualifying occupant:
  - contracts with a qualifying owner or qualifying operator to lease space in which the qualifying occupant will locate a connected data center project; or
  - 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
- the qualifying owner, qualifying operator, or qualifying occupant, jointly or independently:
  - creates at least 40 qualifying jobs in the county or counties in which the connected data center project is located;
  - 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 may not include a capital investment to replace personal property previously placed in service in that connected data center project, over a specified five-year period; and
  - agrees to contract for at least 20 megawatts of transmission capacity for the operation of the connected data center project.

C.S.H.B. 3104 requires an eligible connected data center project to 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. The bill requires the application to, as follows:

- be made on a form prescribed by the comptroller and include the information required by the comptroller;
- 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; and
- include a section for the applicant to certify that the capital investment be met independently or jointly by the qualifying occupant, qualifying owner, or qualifying operator within the applicable time period.

C.S.H.B. 3104 establishes that the exemption begins on the date the connected data center project is certified by the comptroller and, if the qualifying occupant, qualifying owner, or qualifying operator, independently or jointly makes a capital investment of \$500 million or more

as required by the bill, expires on the 20th anniversary of that date. The bill requires each person who is eligible to claim an exemption to hold a registration number issued by the comptroller and requires the number to be stated on the exemption certificate provided by the purchaser to the seller of tangible personal property eligible for the exemption. The bill 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 for certification. The bill makes each person whose registration number is revoked by the comptroller liable for sales and use taxes on purchases for which the person claimed an exemption, including penalty and interest from the date of purchase, regardless of whether the purchase occurred before the date the registration number was revoked.

C.S.H.B. 3104 requires the comptroller to adopt rules consistent with and necessary to implement the exemption, including rules relating to:

- a qualifying connected data center project, qualifying owner, qualifying operator, and qualifying occupant;
- issuance and revocation of a registration number; and
- reporting and other procedures necessary to ensure that a qualifying connected data center project, qualifying owner, qualifying operator, and qualifying occupant comply with the bill and remain entitled to the exemption.

The bill makes a connected data center project ineligible to receive an exemption under the bill's provisions if the connected data center project is subject to an agreement limiting the appraised value of the connected data center's property under certain former provisions of the Texas Economic Development Act.

C.S.H.B. 3104 defines "connected data center project" as a project located in Texas that has an uninterruptible power source, backup electricity generation system, fire suppression and prevention system, and physical security that includes restricted access, video surveillance, and electronic systems and that is:

- composed of one or more buildings:
  - comprising at least 250,000 square feet of space;
  - located or to be located on contiguous or noncontiguous parcels of land that are commonly owned, owned by affiliation with the qualifying operator, or leased by a common qualifying operator; and
  - connected to each other by fiber and associated equipment required for operating a fiber transmission network between data center buildings and upstream Internet peering points for the sole use of the qualifying occupant and for the purpose of providing redundancy and resiliency for the data center services provided in each building;
- specifically constructed or refurbished and primarily used to house servers and related equipment and support staff for the processing, storage, and distribution of data;
- used by a single qualifying occupant for the processing, storage, and distribution of data; and
- not used primarily by a telecommunications provider to place tangible personal property used to deliver telecommunications services.

The bill defines "qualifying connected data center project" as a connected data center project that meets the prescribed qualifications for certification by the comptroller.

C.S.H.B. 3104 defines "qualifying job" as 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. The term includes a new employment position staffed by a third-party employer if a written contract exists between the third-party employer and a qualifying owner, qualifying operator, or qualifying occupant that provides that the employment position is permanently assigned to an associated qualifying connected data center project. The term "qualifying job" does not include a job that is moved from one county in Texas to another. The bill defines "permanent job" as an employment position that will exist for at least five years after the date the job is created and defines "county average weekly wage" as 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 connected data center project creates a job used to qualify for the exemption. If the connected data center project is located in more than one county, the county average weekly wage for each county in which the project is located may be calculated by averaging the county average weekly wages of all counties in which the project is located.

C.S.H.B. 3104 defines "qualifying occupant" as a person who contracts with a qualifying owner or qualifying operator to place, or cause to be placed, and to use tangible personal property at the qualifying connected data center project or, in the case of a qualifying occupant who is also the qualifying owner and the qualifying operator, who places or causes to be placed and uses tangible personal property at the qualifying connected data center project. The term includes a member of the person's affiliated group, which the bill defines by reference as a group of one or more entities in which a controlling interest is owned by a common owner or owners, either corporate or noncorporate, or by one or more of the member entities.

C.S.H.B. 3104 defines "qualifying operator" as a person who controls access to a qualifying connected data center project, regardless of whether that person owns each item of tangible personal property located at the qualifying connected data center project. The bill establishes that the term includes a member of the person's affiliated group and further establishes that a qualifying operator may also be the qualifying owner.

C.S.H.B. 3104 defines "qualifying owner" as a person who owns one or more buildings in which a qualifying connected data center project is located. The bill establishes that the term includes a member of the person's affiliated group and further establishes that a qualifying owner may also be the qualifying operator.

C.S.H.B. 3104 expressly does not affect tax liability accruing before the bill's effective date.

#### **EFFECTIVE DATE**

September 1, 2023.

#### **COMPARISON OF INTRODUCED AND SUBSTITUTE**

While C.S.H.B. 3104 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute revises the definition of "qualifying operator" as set out in the introduced to specify that the term includes a member of the person's affiliated group.