By:  Paxton S.B. No. 1143

A BILL TO BE ENTITLED

AN ACT

relating to the temporary exemption of certain tangible personal property related to data centers from the sales and use tax.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1.  Subtitle H, Chapter 151.359 Subsections (a) (b) (d) (e) and (f), Tax Code are amended to read as follows:

Sec. 151.359.  PROPERTY USED IN CERTAIN DATA CENTERS; TEMPORARY 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)  "Data center" means at least 100,000 square feet of space in one or more buildings [~~a single building~~] located or to be located on a single parcel of land or on contiguous or noncontiguous parcels of land [~~or portion of a single building, 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;

(C)  [~~is~~] used by one or more [~~a single~~] qualifying occupants [~~occupant~~] for the processing, storage, and distribution of data;

(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, [~~generator~~] backup electricity generation system [~~power~~], [~~a~~] sophisticated fire suppression and prevention system, and enhanced physical security that includes restricted access, video surveillance, and electronic systems; and

(F)  noncontiguous parcels must be located in the same county or an adjacent county and connected by fiber and associated equipment required for operating a fiber transmission network between data center buildings or parcels and for the sole use of the qualifying occupants or their agent(s).

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

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

(5)  "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 data center position [~~job~~] is located [~~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 data center.

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

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

(8)  "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 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 data center.

(b)  Except as otherwise provided by this section, tangible personal property that is necessary and essential to the operation of a qualified 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 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)  a backup electricity generation system [~~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; and

(13)  a component part of any tangible personal property described by Subdivisions (2)-(10).

(d)  Subject to Subsection (k), a data center may be certified by the comptroller as a qualifying data center for purposes of this section if, on or after September 1, 2013:

(1)  one or more [~~a single~~] qualifying occupants [~~occupant~~]:

(A)  contract [~~contracts~~] with a qualifying owner or qualifying operator to lease or license via service agreement space in which at least one [~~the~~] qualifying occupant will locate a data center; [~~or~~]

(B)  occupy [~~occupies~~] a space that was not previously used as a data center in which at least one [~~the~~] qualifying occupant will locate a data center [~~, in the case of a qualifying occupant who is also the qualifying operator and the qualifying owner~~]; or

(C)  refurbish a space in which at least one qualifying occupant will locate a data center; and

(2)  the qualifying owner, qualifying operator, or qualifying occupant or occupants, jointly or independently:

(A)  create [~~creates~~] at least 20 qualifying jobs. All qualifying jobs must be located in the county or counties in which the data center is located. [~~, not including jobs~~] Jobs moved from one county in this state to another county in this state may not be included; and

(B)  make [~~makes~~] or agree [~~agrees~~] to make a capital investment, on or after September 1, 2013, of at least $200 million in that particular data center over a five-year period beginning on the date the data center is certified by the comptroller as a qualifying data center.

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

(f)  The exemption provided by this section begins on the date the data center is certified by the comptroller as a qualifying data center and expires:

(1)  on the 10th anniversary of that date, if the qualifying occupant or occupants, qualifying owner, or qualifying operator independently or jointly makes a capital investment of at least $200 million but less than $250 million as provided by Subsection (d)(2)(B); or

(2)  on the 15th anniversary of that date, if the qualifying occupant or occupants, qualifying owner, or qualifying operator independently or jointly makes a capital investment of $250 million or more as provided by Subsection (d)(2)(B).

SECTION 2.  Subtitle H, Chapter 151.3595 Subsections (a) (b) (d) (e) and (f), Tax Code are amended to read as follows:

Sec. 151.3595.  PROPERTY USED IN CERTAIN LARGE DATA CENTER PROJECTS; TEMPORARY 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 large data center project creates a job used to qualify under this section.

(2)  "Large data center project" means a project that:

(A)  is located in this state;

(B)  is composed of one or more buildings comprising at least 250,000 square feet of space located or to be located on one or more [~~a single parcel of land or on~~] contiguous or noncontiguous parcels of land that are commonly owned or owned by affiliation with the qualifying operator;

(C)  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;

(D)  is used by one or more [~~a single~~] qualifying occupants or operators [~~occupant~~] for the processing, storage, and distribution of data;

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

(F)  has an uninterruptible power source, [~~a~~] backup electricity generation system [~~generator~~], [~~a~~] fire suppression and prevention system, and physical security that includes restricted access, video surveillance, and electronic systems; and

(G)  may include noncontiguous parcels only if the noncontiguous parcels are located in the same or adjacent county and connected by fiber and associated equipment required for operating a fiber transmission network between data center buildings or parcels and for the sole use of the qualifying occupants or their agent(s).

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

(4)  "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 large data center project position [~~job~~] is located [~~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 large data center project.

(5)  "Qualifying large data center project" means a large data center project that meets the qualifications prescribed by Subsection (d).

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

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

(8)  "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 large data center project; 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 large data center project.

(b)  Except as otherwise provided by this section, tangible personal property that is necessary and essential to the operation of a qualifying large data center project 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 electricity, use in a qualifying large 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 [~~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; and

(13)  a component part of any tangible personal property described by Subdivisions (2)-(10).

(d)  Subject to Subsection (j), a large data center project may be certified by the comptroller as a qualifying large data center project for purposes of this section if, on or after June 1, 2015:

(1)  one or more [~~a single~~] qualifying occupants [~~occupant~~]:

(A)  contract [~~contracts~~] with a qualifying owner or qualifying operator to lease, license, or enter into a service agreement for space in which at least one [~~the~~] qualifying occupant will locate a large data center project; [~~or~~]

(B)  occupy [~~occupies~~] a space that was not previously used as a data center in which at least one [~~the~~] qualifying occupant will locate a large data center project, if at least one [~~in the case~~] of the [~~a~~] qualifying occupants [~~occupant who~~] is also the qualifying operator and the qualifying owner; or

(c)  refurbishes a space in which at least one qualifying occupant will locate a large data center project, if at least one of the qualifying occupants is also the qualifying operator and the qualifying owner; and

(2)  the qualifying owner, qualifying operator, or qualifying occupant or occupants, independently or jointly:

(A)  create [~~creates~~] at least 40 qualifying jobs. All jobs must be in the county or counties in which the large data center project is located. [~~, not including jobs~~] Jobs moved from one county in this state to another county in this state may not be included;

(B)  on or after May 1, 2015, make [~~makes~~] or agree [~~agrees~~] to make a capital investment of at least $500 million in that particular large data center project, the amount of which may not include a capital investment to replace personal property previously placed in service in that large data center project, over a five-year period beginning on the earlier of:

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

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

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

(e)  A large data center project that is eligible under Subsection (d) to be certified by the comptroller as a qualifying large data center project shall apply to the comptroller for certification and for the issuance of a registration number or numbers by the comptroller. The application must be made on a form prescribed by the comptroller and must include the information required by the comptroller. The application must include the name and contact information for each [~~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 (d)(2)(B) will be met independently or jointly by the qualifying occupant or occupants, qualifying owner, or qualifying operator within the time period prescribed by that subsection [~~Subsection (d)(2)(B)~~].

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

SECTION 3.  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 4.  This Act takes effect September 1, 2023.