

1-1 By: Anderson (Senate Sponsor - Parker) H.B. No. 3104  
 1-2 (In the Senate - Received from the House May 8, 2023;  
 1-3 May 9, 2023, read first time and referred to Committee on Finance;  
 1-4 May 15, 2023, reported favorably by the following vote: Yeas 17,  
 1-5 Nays 0; May 15, 2023, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	X			
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			
1-17	X			
1-18	X			
1-19	X			
1-20	X			
1-21	X			
1-22	X			
1-23	X			
1-24	X			

1-25 A BILL TO BE ENTITLED  
 1-26 AN ACT

1-27 relating to the temporary exemption of certain tangible personal  
 1-28 property related to certain connected data center projects from  
 1-29 sales and use taxes.

1-30 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-31 SECTION 1. Subchapter H, Chapter 151, Tax Code, is amended  
 1-32 by adding Section 151.3596 to read as follows:

1-33 Sec. 151.3596. PROPERTY USED IN CERTAIN CONNECTED DATA  
 1-34 CENTER PROJECTS; TEMPORARY EXEMPTION. (a) In this section:

1-35 (1) "Affiliated group" has the meaning assigned by  
 1-36 Section 171.0001.

1-37 (2) "Connected data center project" means a project  
 1-38 that:

1-39 (A) is located in this state;

1-40 (B) is composed of one or more buildings:

1-41 (i) comprising at least 250,000 square feet  
 1-42 of space;

1-43 (ii) located or to be located on contiguous  
 1-44 or noncontiguous parcels of land that are commonly owned, owned by  
 1-45 affiliation with the qualifying operator, or leased by a common  
 1-46 qualifying operator; and

1-47 (iii) connected to each other:

1-48 (a) by fiber and associated equipment  
 1-49 required for operating a fiber transmission network between data  
 1-50 center buildings and upstream Internet peering points for the sole  
 1-51 use of the qualifying occupant; and

1-52 (b) for the purpose of providing  
 1-53 redundancy and resiliency for the data center services provided in  
 1-54 each building;

1-55 (C) is specifically constructed or refurbished  
 1-56 and primarily used to house servers and related equipment and  
 1-57 support staff for the processing, storage, and distribution of  
 1-58 data;

1-59 (D) is used by a single qualifying occupant for  
 1-60 the processing, storage, and distribution of data;

1-61 (E) is not used primarily by a telecommunications

2-1 provider to place tangible personal property used to deliver  
 2-2 telecommunications services; and

2-3 (F) has an uninterruptible power source, backup  
 2-4 electricity generation system, fire suppression and prevention  
 2-5 system, and physical security that includes restricted access,  
 2-6 video surveillance, and electronic systems.

2-7 (3) "County average weekly wage" means the average  
 2-8 weekly wage in a county for all jobs during the most recent four  
 2-9 quarterly periods for which data is available, as computed by the  
 2-10 Texas Workforce Commission, at the time a connected data center  
 2-11 project creates a job used to qualify under this section. If the  
 2-12 connected data center project is located in more than one county,  
 2-13 the county average weekly wage for each county in which the project  
 2-14 is located may be calculated by averaging the county average weekly  
 2-15 wages of all counties in which the project is located.

2-16 (4) "Permanent job" means an employment position that  
 2-17 will exist for at least five years after the date the job is  
 2-18 created.

2-19 (5) "Qualifying connected data center project" means a  
 2-20 connected data center project that meets the qualifications  
 2-21 prescribed by Subsection (d).

2-22 (6) "Qualifying job" means a full-time, permanent job  
 2-23 that pays at least 120 percent of the county average weekly wage in  
 2-24 the county in which the job is based. The term includes a new  
 2-25 employment position staffed by a third-party employer if a written  
 2-26 contract exists between the third-party employer and a qualifying  
 2-27 owner, qualifying operator, or qualifying occupant that provides  
 2-28 that the employment position is permanently assigned to an  
 2-29 associated qualifying connected data center project. The term does  
 2-30 not include a job that is moved from one county in this state to  
 2-31 another county in this state.

2-32 (7) "Qualifying occupant" means a person who contracts  
 2-33 with a qualifying owner or qualifying operator to place, or cause to  
 2-34 be placed, and to use tangible personal property at the qualifying  
 2-35 connected data center project or, in the case of a qualifying  
 2-36 occupant who is also the qualifying owner and the qualifying  
 2-37 operator, who places or causes to be placed and uses tangible  
 2-38 personal property at the qualifying connected data center project.  
 2-39 The term includes a member of the person's affiliated group.

2-40 (8) "Qualifying operator" means a person who controls  
 2-41 access to a qualifying connected data center project, regardless of  
 2-42 whether that person owns each item of tangible personal property  
 2-43 located at the qualifying connected data center project. The term  
 2-44 includes a member of the person's affiliated group. A qualifying  
 2-45 operator may also be the qualifying owner.

2-46 (9) "Qualifying owner" means a person who owns one or  
 2-47 more buildings in which a qualifying connected data center project  
 2-48 is located. The term includes a member of the person's affiliated  
 2-49 group. A qualifying owner may also be the qualifying operator.

2-50 (b) Except as otherwise provided by this section, tangible  
 2-51 personal property that is necessary and essential to the operation  
 2-52 of a qualifying connected data center project is exempted from the  
 2-53 taxes imposed by this chapter if the tangible personal property is  
 2-54 purchased for installation at, incorporation into, or in the case  
 2-55 of electricity, use in a qualifying connected data center project  
 2-56 by a qualifying owner, qualifying operator, or qualifying occupant,  
 2-57 and the tangible personal property is:

2-58 (1) electricity;  
 2-59 (2) an electrical system;  
 2-60 (3) a cooling system;  
 2-61 (4) a backup electricity generation system;  
 2-62 (5) hardware or a distributed mainframe computer or  
 2-63 server;

2-64 (6) a data storage device;  
 2-65 (7) network connectivity equipment;  
 2-66 (8) a rack, cabinet, and raised floor system;  
 2-67 (9) a peripheral component or system;  
 2-68 (10) software;  
 2-69 (11) a mechanical, electrical, or plumbing system that

3-1 is necessary to operate any tangible personal property described by  
3-2 Subdivisions (2)-(10);  
3-3 (12) any other item of equipment or system necessary  
3-4 to operate any tangible personal property described by Subdivisions  
3-5 (2)-(11), including a fixture; and  
3-6 (13) a component part of any tangible personal  
3-7 property described by Subdivisions (2)-(10).  
3-8 (c) The exemption provided by this section does not apply  
3-9 to:  
3-10 (1) office equipment or supplies;  
3-11 (2) maintenance or janitorial supplies or equipment;  
3-12 (3) equipment or supplies used primarily in sales  
3-13 activities or transportation activities;  
3-14 (4) tangible personal property on which the purchaser  
3-15 has received or has a pending application for a refund under Section  
3-16 151.429;  
3-17 (5) tangible personal property not otherwise exempted  
3-18 under Subsection (b) that is incorporated into real estate or into  
3-19 an improvement of real estate;  
3-20 (6) tangible personal property that is rented or  
3-21 leased for a term of one year or less; or  
3-22 (7) notwithstanding Section 151.3111, a taxable  
3-23 service that is performed on tangible personal property exempted  
3-24 under this section.  
3-25 (d) Subject to Subsection (j), a connected data center  
3-26 project may be certified by the comptroller as a qualifying  
3-27 connected data center project for purposes of this section if, on or  
3-28 after September 1, 2023:  
3-29 (1) a single qualifying occupant:  
3-30 (A) contracts with a qualifying owner or  
3-31 qualifying operator to lease space in which the qualifying occupant  
3-32 will locate a connected data center project; or  
3-33 (B) occupies a space that was not previously used  
3-34 as a data center in which the qualifying occupant will locate a  
3-35 connected data center project, in the case of a qualifying occupant  
3-36 who is also the qualifying operator and the qualifying owner; and  
3-37 (2) the qualifying owner, qualifying operator, or  
3-38 qualifying occupant, jointly or independently:  
3-39 (A) creates at least 40 qualifying jobs in the  
3-40 county or counties in which the connected data center project is  
3-41 located;  
3-42 (B) makes or agrees to make a capital investment,  
3-43 on or after September 1, 2023, of at least \$500 million in that  
3-44 particular connected data center project, the amount of which may  
3-45 not include a capital investment to replace personal property  
3-46 previously placed in service in that connected data center project,  
3-47 over a five-year period beginning on the earlier of:  
3-48 (i) the date the connected data center  
3-49 project submits the application described by Subsection (e); or  
3-50 (ii) the date the connected data center  
3-51 project is certified by the comptroller as a qualifying connected  
3-52 data center project; and  
3-53 (C) agrees to contract for at least 20 megawatts  
3-54 of transmission capacity for the operation of the connected data  
3-55 center project.  
3-56 (e) A connected data center project that is eligible under  
3-57 Subsection (d) to be certified by the comptroller as a qualifying  
3-58 connected data center project shall apply to the comptroller for  
3-59 certification as a qualifying connected data center project and for  
3-60 the issuance of a registration number or numbers by the  
3-61 comptroller. The application must be made on a form prescribed by  
3-62 the comptroller and include the information required by the  
3-63 comptroller. The application must include the name and contact  
3-64 information for the qualifying occupant, and, if applicable, the  
3-65 name and contact information for the qualifying owner and the  
3-66 qualifying operator who will claim the exemption authorized under  
3-67 this section. The application form must include a section for the  
3-68 applicant to certify that the capital investment required by  
3-69 Subsection (d)(2)(B) will be met independently or jointly by the

4-1 qualifying occupant, qualifying owner, or qualifying operator  
 4-2 within the time period prescribed by Subsection (d)(2)(B).

4-3 (f) The exemption provided by this section begins on the  
 4-4 date the connected data center project is certified by the  
 4-5 comptroller as a qualifying connected data center project and  
 4-6 expires on the 20th anniversary of that date, if the qualifying  
 4-7 occupant, qualifying owner, or qualifying operator, independently  
 4-8 or jointly makes a capital investment of \$500 million or more as  
 4-9 provided by Subsection (d)(2)(B).

4-10 (g) Each person who is eligible to claim an exemption  
 4-11 authorized by this section must hold a registration number issued  
 4-12 by the comptroller. The registration number must be stated on the  
 4-13 exemption certificate provided by the purchaser to the seller of  
 4-14 tangible personal property eligible for the exemption.

4-15 (h) The comptroller shall revoke all registration numbers  
 4-16 issued in connection with a qualifying connected data center  
 4-17 project that the comptroller determines does not meet the  
 4-18 requirements prescribed by Subsection (d). Each person who has the  
 4-19 person's registration number revoked by the comptroller is liable  
 4-20 for taxes, including penalty and interest from the date of  
 4-21 purchase, imposed under this chapter on purchases for which the  
 4-22 person claimed an exemption under this section, regardless of  
 4-23 whether the purchase occurred before the date the registration  
 4-24 number was revoked.

4-25 (i) The comptroller shall adopt rules consistent with and  
 4-26 necessary to implement this section, including rules relating to:

4-27 (1) a qualifying connected data center project,  
 4-28 qualifying owner, qualifying operator, and qualifying occupant;

4-29 (2) issuance and revocation of a registration number  
 4-30 required under this section; and

4-31 (3) reporting and other procedures necessary to ensure  
 4-32 that a qualifying connected data center project, qualifying owner,  
 4-33 qualifying operator, and qualifying occupant comply with this  
 4-34 section and remain entitled to the exemption authorized by this  
 4-35 section.

4-36 (j) A connected data center project is not eligible to  
 4-37 receive an exemption under this section if the connected data  
 4-38 center project is subject to an agreement limiting the appraised  
 4-39 value of the connected data center's property under former  
 4-40 Subchapter B or C, Chapter 313.

4-41 SECTION 2. Section 151.317(a), Tax Code, is amended to read  
 4-42 as follows:

4-43 (a) Subject to Sections 151.1551, 151.359, ~~and~~ 151.3595,  
 4-44 and 151.3596 and Subsection (d) of this section, gas and  
 4-45 electricity are exempted from the taxes imposed by this chapter  
 4-46 when sold for:

4-47 (1) residential use;

4-48 (2) use in powering equipment exempt under Section  
 4-49 151.318 or 151.3185 by a person processing tangible personal  
 4-50 property for sale as tangible personal property, other than  
 4-51 preparation or storage of prepared food described by Section  
 4-52 151.314(c-2);

4-53 (3) use in lighting, cooling, and heating in the  
 4-54 manufacturing area during the actual manufacturing or processing of  
 4-55 tangible personal property for sale as tangible personal property,  
 4-56 other than preparation or storage of prepared food described by  
 4-57 Section 151.314(c-2);

4-58 (4) use directly in exploring for, producing, or  
 4-59 transporting, a material extracted from the earth;

4-60 (5) use in agriculture, including dairy or poultry  
 4-61 operations and pumping for farm or ranch irrigation;

4-62 (6) use directly in electrical processes, such as  
 4-63 electroplating, electrolysis, and cathodic protection;

4-64 (7) use directly in the off-wing processing, overhaul,  
 4-65 or repair of a jet turbine engine or its parts for a certificated or  
 4-66 licensed carrier of persons or property;

4-67 (8) use directly in providing, under contracts with or  
 4-68 on behalf of the United States government or foreign governments,  
 4-69 defense or national security-related electronics, classified

5-1 intelligence data processing and handling systems, or  
5-2 defense-related platform modifications or upgrades;

5-3 (9) use directly by a data center, ~~or~~ large data  
5-4 center project, or connected data center project that is certified  
5-5 by the comptroller as a qualifying data center under Section  
5-6 151.359, ~~or~~ a qualifying large data center project under Section  
5-7 151.3595, or a qualifying connected data center project under  
5-8 Section 151.3596 in the processing, storage, and distribution of  
5-9 data;

5-10 (10) a direct or indirect use, consumption, or loss of  
5-11 electricity by an electric utility engaged in the purchase of  
5-12 electricity for resale; or

5-13 (11) use in timber operations, including pumping for  
5-14 irrigation of timberland.

5-15 SECTION 3. The change in law made by this Act does not  
5-16 affect tax liability accruing before the effective date of this  
5-17 Act. That liability continues in effect as if this Act had not been  
5-18 enacted, and the former law is continued in effect for the  
5-19 collection of taxes due and for civil and criminal enforcement of  
5-20 the liability for those taxes.

5-21 SECTION 4. This Act takes effect September 1, 2023.

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