

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 88TH LEGISLATIVE REGULAR SESSION

March 27, 2023

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

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB2482 by Capriglione (Relating to the temporary exemption of certain tangible personal property related to data centers from the sales and use tax.), As Introduced

Estimated Two-year Net Impact to General Revenue Related Funds for HB2482, As Introduced : a negative impact of (\$178,900,000) through the biennium ending August 31, 2025.

General Revenue-Related Funds, Five- Year Impact:

<i>Fiscal Year</i>	Probable Net Positive/(Negative) Impact to <i>General Revenue Related Funds</i>
2024	(\$73,100,000)
2025	(\$105,800,000)
2026	(\$179,100,000)
2027	(\$201,300,000)
2028	(\$280,600,000)

All Funds, Five-Year Impact:

<i>Fiscal Year</i>	Probable Revenue (Loss) from <i>General Revenue Fund 1</i>	Probable Revenue (Loss) from <i>Cities</i>	Probable Revenue (Loss) from <i>Transit Authorities</i>	Probable Revenue (Loss) from <i>Counties and Special Districts</i>
2024	(\$73,100,000)	(\$3,590,000)	(\$1,190,000)	(\$820,000)
2025	(\$105,800,000)	(\$1,760,000)	(\$580,000)	(\$400,000)
2026	(\$179,100,000)	(\$6,970,000)	(\$2,320,000)	(\$1,580,000)
2027	(\$201,300,000)	(\$3,250,000)	(\$1,080,000)	(\$740,000)
2028	(\$280,600,000)	(\$9,520,000)	(\$3,160,000)	(\$2,160,000)

Fiscal Analysis

The bill would amend Chapter 151, Tax Code (Limited Sales and Use Tax), regarding the exemptions for qualifying data centers and qualifying large data centers.

The bill would amend Section 151.359, Tax Code, relating to property used in certain data centers, by amending the definition of “data center” to include one or more buildings located or to be located on a single parcel of land or on contiguous or noncontiguous parcels of land. Currently the definition allows only a single building to be counted as a “data center.”

The bill would also stipulate noncontiguous parcels must be in the same county or an adjacent county and be connected by fiber and associated equipment required for the operation of a data center. The fiber transmission

network would be for the sole use of the qualifying occupants, as defined by statute.

The bill would stipulate for a position to be considered a qualifying job, the data center position must pay at least 120 percent of the county average weekly wage in the county in which the data center position is “located.” Current language requires the job to be “based” at the location to be considered a qualifying job.

The bill would allow the Comptroller to certify a data center as a qualifying data center if a qualifying occupant refurbishes a space in which at least one qualifying occupant will locate a data center.

The bill would amend Section 151.3595, Tax Code, relating to property used in certain large data centers, by allowing a large data center to include more than one occupant and to be located on multiple, noncontiguous parcels of land. The bill would stipulate a large data center could consist of noncontiguous parcels only if the parcels are in the same or adjacent county, connected by a fiber transmission network, and the network is for the sole use of the qualifying occupants and their agents.

Under the provisions of the bill, a data center could qualify as a large data center for the purposes of this section if one of the qualifying occupants 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.

The bill would take effect September 1, 2023.

Methodology

According to the Comptroller, the bill would allow colocation (multi-tenant) data centers to receive certification as a qualifying data center or qualifying large data center for the purposes of the tax exemptions granted under Sections 151.359 and 151.3595, Tax Code. Under current law, only enterprise (single-tenant) data centers may qualify. The ability to aggregate the capital expenditures of multiple tenants for purposes of meeting the capital investment thresholds for qualification would substantially increase qualification for exemption under both sections.

The bill would remove the limitation to a single building for a qualifying data center. Many data centers in the state that do not currently qualify for exemption are multi-building campuses with on-site fiber interconnections, and with acreage already reserved for expansion. The ability to aggregate capital expenditures related to multiple buildings for purposes of meeting the capital investment thresholds for qualification would substantially increase qualification for exemption under both sections.

Currently, there are 24 data centers certified as qualifying for exemption under Sec. 151.359, and 11 large data centers certified as qualifying for exemption under Sec. 151.3595. Qualification for exemption under the current single tenant, single building configuration has accelerated in recent years, as the scale and nominal dollar cost of investment per data center has increased. Of the 24 data centers certified under Sec. 151.359, 18 were certified from 2020 – 2022 versus 6 certified from 2013 – 2017; of the 11 large data centers certified under Sec. 151.3595, 8 were certified in 2022 versus 3 from 2015 – 2018. The value of the state sales tax exemptions for the currently qualified data centers is estimated to be \$157.5 million in FY 2023, declining gradually in subsequent years as the ten year period of exemption expires for some of those certified under Sec. 151.395.

Provision of qualification for exemption to include multi-tenant and/or multi-building configurations is expected to more than double the amounts of expenditures exempted under the sections. While development slowed during the pandemic, hampered by supply chain problems, colocation data center development appears poised for resumption of robust growth under current law, spurred by the increasing digitization of economic activity. Commercial real estate data reported by CBRE indicates that in the second half of 2022, 299.4 Megawatts (MW) of capacity was under construction in the Dallas/Ft. Worth market (compared with 392.3 MW existing inventory of capacity), 85.5 MW under construction in the Austin/San Antonio market (compared with 154.7 MW inventory), and 46.0 MW under construction in the Houston market (compared with 131.9 MW inventory). While leasing and utilization may lag the growth in capacity, the rate of capacity addition underway suggests comparatively rapid growth in data center activity under current law.

The estimates from the Comptroller in the above table are based on reported industry average annual rate of absorption of MW capacity in colocation data centers in this state, combined with data on per MW expenditures by operators and tenants on items subject to tax under current law but that would be exempt under provisions of the bill.

While the exemption policy proposed in this bill might foster more data center development in the state, the incremental state sales tax revenues (minimal, because most of the purchases would be exempt) from additional centers that would not locate in the state without exemption would be substantially less than the sales tax foregone with respect to expenditures on power, cooling, communications equipment, servers and other tenant purchased equipment, and electricity pursuant to data center demand and development that would continue to occur without the exemption.

Local Government Impact

There would be a corresponding loss of sales and use tax revenue from local taxing jurisdictions. Estimates of those losses are displayed in the above tables. The analysis assumes one new large data center would come online every other year, which unlike regular data centers, have effects for both state and local governments. The smaller amount shown as an effect every other year is the residual revenue loss to local governments caused by the opening of the large data center the previous year.

Source Agencies: 304 Comptroller of Public Accounts
LBB Staff: JMc, KK, SD