

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 88TH LEGISLATIVE REGULAR SESSION

May 21, 2023

TO: Honorable Dade Phelan, Speaker of the House, House of Representatives

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB3104 by Anderson (Relating to the temporary exemption of certain tangible personal property related to certain connected data center projects from sales and use taxes.), **As Passed 2nd House**

Estimated Two-year Net Impact to General Revenue Related Funds for HB3104, As Passed 2nd House : an impact of \$0 through the biennium ending August 31, 2025.

General Revenue-Related Funds, Five- Year Impact:

<i>Fiscal Year</i>	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2024	\$0
2025	\$0
2026	\$0
2027	\$0
2028	\$0

All Funds, Five-Year Impact:

<i>Fiscal Year</i>	Probable Revenue (Loss) from Cities	Probable Revenue (Loss) from Transit Authorities	Probable Revenue (Loss) from Counties & Special Districts
2024	(\$3,950,000)	(\$1,310,000)	(\$900,000)
2025	(\$1,760,000)	(\$580,000)	(\$400,000)
2026	(\$6,460,000)	(\$2,140,000)	(\$1,470,000)
2027	(\$2,940,000)	(\$970,000)	(\$670,000)
2028	(\$8,590,000)	(\$2,850,000)	(\$1,950,000)

Fiscal Analysis

The bill would amend Chapter 151 of the Tax Code, to add Section 151.3596 to provide for exemption from sales and use taxation of certain tangible personal property related to connected data center projects.

The bill defines a “connected data center project” as a project that is located in this state; 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 and connected to each other by fiber and associated equipment required for operating a fiber transmission network for the sole use of the qualifying occupant; for the purpose of providing redundancy and resiliency for the data center services provided in each building is specifically constructed or refurbished and primarily used to house servers and related equipment and support staff for the processing, storage, and distribution of data; is used by a single qualifying occupant for the processing, storage, and distribution of data; and 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.

A connected data center would not include a data center used primarily by a telecommunications provider to place tangible personal property used to deliver telecommunications services.

The bill would define a "qualifying operator," "qualifying owner," and "qualifying occupant," and provide that a data center may be certified by the Comptroller as a "qualifying connected data center project" if, on or after September 1, 2023, a single qualifying occupant contracts to lease space from a qualifying owner or operator or occupies a space not previously used as a data center and the qualifying owner, operator, and occupant jointly or independently: a) create at least 40 full-time, permanent jobs that pay at least 120 percent of the county average weekly wage in the county in which the job is based; b) makes or agrees to make a capital investment, on or after September 1, 2023, of at least \$500 million in that particular large data center project over a five-year period; and c) will contract for at least 20 megawatts of transmission capacity for operations of the large data center project.

The bill would exempt from tax tangible personal property that is necessary and essential to the operation of a connected data center if the property is purchased by a qualifying tenant for installation at, incorporation into, or in the case of electricity for use in, a connected data center if 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 necessary to operate the foregoing property; any other item of equipment or system necessary to operate any of the foregoing, including a fixture; and a component part of any of the foregoing.

Excluded from exemption would be: office equipment or supplies; maintenance or janitorial supplies or equipment; equipment or supplies used primarily in sales activities or in transportation activities; property for which a refund may be received under Section 151.429 (tax refunds for enterprise projects); tangible personal property not otherwise exempted that is incorporated into real estate or an improvement of real estate; tangible personal property that is rented or leased for a term of one year or less; or notwithstanding Section 151.3111 (services on certain exempted personal property), a taxable service that is performed on tangible personal property exempted under Section 151.3596.

The exemption would expire on the twentieth anniversary of the date a connected data center project was certified as qualifying by the Comptroller for capital investments of at least \$500 million.

A registration number would have to be obtained from the Comptroller for each tenant eligible to claim the exemption and must be stated on the exemption certificate provided by the purchaser to the seller of tangible personal property eligible for the exemption. All registration numbers issued in connection with a connected data center would be revocable by the Comptroller upon determination that the requirements for qualification were not met, and each tenant whose registration number was revoked would be liable for taxes, including penalty and interest from the date of purchase, on purchases for which the tenant claimed exemption.

The bill would prohibit a connected data center primarily used for the mining and staking of virtual currency, as defined in the bill, from receiving an exemption under this Section. The bill would also prohibit a connected data center project that has an agreement under former Chapter 313 or a substantially similar successor program from receiving an exemption.

This bill would take effect September 1, 2023.

Methodology

Because a connected data center meeting the single occupancy, capital investment, and jobs criteria to be a qualifying connected data center project under the proposed new Section 151.3596 would surpass the commitment necessary to qualify, depending on configuration, as two or more single building qualified data centers under current Section 151.359, no fiscal implication for the state would be expected before the tenth year after certification as a qualifying connected data center project.

From the tenth, or depending on extent of investment, fifteenth year after certification, through the twentieth

year when an exemption under the bill's proposed Section 151.3596 would expire, there would be a reduction in state sales tax revenues relative to the current Section 151.359.

Local Government Impact

In contrast to a certification under current Section 151.359 (exemption of state tax only), certification under proposed new Section 151.3596 would exempt a qualifying data center from local sales and use taxes, as well.

Consequently, there would be fiscal implications for local sales taxing jurisdictions immediately following certification under the proposed new section, while, as previously noted, fiscal implications to the state would be delayed until either the tenth or fifteenth anniversary of certification, depending on scale of investment. The estimates indicated for the first five years after effective date of the bill assume certification of one new connected data center opening every two years.

Source Agencies: 304 Comptroller of Public Accounts

LBB Staff: JMc, SD, KK