

# SENATE AMENDMENTS

2<sup>nd</sup> Printing

By: Anderson

H.B. No. 3104

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the temporary exemption of certain tangible personal  
3 property related to certain connected data center projects from  
4 sales and use taxes.

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

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

8 Sec. 151.3596. PROPERTY USED IN CERTAIN CONNECTED DATA  
9 CENTER PROJECTS; TEMPORARY EXEMPTION. (a) In this section:

10 (1) "Affiliated group" has the meaning assigned by  
11 Section 171.0001.

12 (2) "Connected data center project" means a project  
13 that:

14 (A) is located in this state;

15 (B) is composed of one or more buildings:

16 (i) comprising at least 250,000 square feet  
17 of space;

18 (ii) located or to be located on contiguous  
19 or noncontiguous parcels of land that are commonly owned, owned by  
20 affiliation with the qualifying operator, or leased by a common  
21 qualifying operator; and

22 (iii) connected to each other:

23 (a) by fiber and associated equipment  
24 required for operating a fiber transmission network between data

1 center buildings and upstream Internet peering points for the sole  
2 use of the qualifying occupant; and

3 (b) for the purpose of providing  
4 redundancy and resiliency for the data center services provided in  
5 each building;

6 (C) is specifically constructed or refurbished  
7 and primarily used to house servers and related equipment and  
8 support staff for the processing, storage, and distribution of  
9 data;

10 (D) is used by a single qualifying occupant for  
11 the processing, storage, and distribution of data;

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

15 (F) has an uninterruptible power source, backup  
16 electricity generation system, fire suppression and prevention  
17 system, and physical security that includes restricted access,  
18 video surveillance, and electronic systems.

19 (3) "County average weekly wage" means the average  
20 weekly wage in a county for all jobs during the most recent four  
21 quarterly periods for which data is available, as computed by the  
22 Texas Workforce Commission, at the time a connected data center  
23 project creates a job used to qualify under this section. If the  
24 connected data center project is located in more than one county,  
25 the county average weekly wage for each county in which the project  
26 is located may be calculated by averaging the county average weekly  
27 wages of all counties in which the project is located.

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

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

7           (6) "Qualifying job" means a full-time, permanent job  
8 that pays at least 120 percent of the county average weekly wage in  
9 the county in which the job is based. The term includes a new  
10 employment position staffed by a third-party employer if a written  
11 contract exists between the third-party employer and a qualifying  
12 owner, qualifying operator, or qualifying occupant that provides  
13 that the employment position is permanently assigned to an  
14 associated qualifying connected data center project. The term does  
15 not include a job that is moved from one county in this state to  
16 another county in this state.

17           (7) "Qualifying occupant" means a person who contracts  
18 with a qualifying owner or qualifying operator to place, or cause to  
19 be placed, and to use tangible personal property at the qualifying  
20 connected data center project or, in the case of a qualifying  
21 occupant who is also the qualifying owner and the qualifying  
22 operator, who places or causes to be placed and uses tangible  
23 personal property at the qualifying connected data center project.  
24 The term includes a member of the person's affiliated group.

25           (8) "Qualifying operator" means a person who controls  
26 access to a qualifying connected data center project, regardless of  
27 whether that person owns each item of tangible personal property

1 located at the qualifying connected data center project. The term  
2 includes a member of the person's affiliated group. A qualifying  
3 operator may also be the qualifying owner.

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

8 (b) Except as otherwise provided by this section, tangible  
9 personal property that is necessary and essential to the operation  
10 of a qualifying connected data center project is exempted from the  
11 taxes imposed by this chapter if the tangible personal property is  
12 purchased for installation at, incorporation into, or in the case  
13 of electricity, use in a qualifying connected data center project  
14 by a qualifying owner, qualifying operator, or qualifying occupant,  
15 and the tangible personal property is:

- 16 (1) electricity;
- 17 (2) an electrical system;
- 18 (3) a cooling system;
- 19 (4) a backup electricity generation system;
- 20 (5) hardware or a distributed mainframe computer or  
21 server;
- 22 (6) a data storage device;
- 23 (7) network connectivity equipment;
- 24 (8) a rack, cabinet, and raised floor system;
- 25 (9) a peripheral component or system;
- 26 (10) software;
- 27 (11) a mechanical, electrical, or plumbing system that

1 is necessary to operate any tangible personal property described by  
2 Subdivisions (2)-(10);

3 (12) any other item of equipment or system necessary  
4 to operate any tangible personal property described by Subdivisions  
5 (2)-(11), including a fixture; and

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

8 (c) The exemption provided by this section does not apply  
9 to:

10 (1) office equipment or supplies;

11 (2) maintenance or janitorial supplies or equipment;

12 (3) equipment or supplies used primarily in sales  
13 activities or transportation activities;

14 (4) tangible personal property on which the purchaser  
15 has received or has a pending application for a refund under Section  
16 151.429;

17 (5) tangible personal property not otherwise exempted  
18 under Subsection (b) that is incorporated into real estate or into  
19 an improvement of real estate;

20 (6) tangible personal property that is rented or  
21 leased for a term of one year or less; or

22 (7) notwithstanding Section 151.3111, a taxable  
23 service that is performed on tangible personal property exempted  
24 under this section.

25 (d) Subject to Subsection (j), a connected data center  
26 project may be certified by the comptroller as a qualifying  
27 connected data center project for purposes of this section if, on or

1 after September 1, 2023:

2 (1) a single qualifying occupant:

3 (A) contracts with a qualifying owner or  
4 qualifying operator to lease space in which the qualifying occupant  
5 will locate a connected data center project; or

6 (B) occupies a space that was not previously used  
7 as a data center in which the qualifying occupant will locate a  
8 connected data center project, in the case of a qualifying occupant  
9 who is also the qualifying operator and the qualifying owner; and

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

12 (A) creates at least 40 qualifying jobs in the  
13 county or counties in which the connected data center project is  
14 located;

15 (B) makes or agrees to make a capital investment,  
16 on or after September 1, 2023, of at least \$500 million in that  
17 particular connected data center project, the amount of which may  
18 not include a capital investment to replace personal property  
19 previously placed in service in that connected data center project,  
20 over a five-year period beginning on the earlier of:

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

23 (ii) the date the connected data center  
24 project is certified by the comptroller as a qualifying connected  
25 data center project; and

26 (C) agrees to contract for at least 20 megawatts  
27 of transmission capacity for the operation of the connected data

1 center project.

2 (e) A connected data center project that is eligible under  
3 Subsection (d) to be certified by the comptroller as a qualifying  
4 connected data center project shall apply to the comptroller for  
5 certification as a qualifying connected data center project and for  
6 the issuance of a registration number or numbers by the  
7 comptroller. The application must be made on a form prescribed by  
8 the comptroller and include the information required by the  
9 comptroller. The application must include the name and contact  
10 information for the qualifying occupant, and, if applicable, the  
11 name and contact information for the qualifying owner and the  
12 qualifying operator who will claim the exemption authorized under  
13 this section. The application form must include a section for the  
14 applicant to certify that the capital investment required by  
15 Subsection (d)(2)(B) will be met independently or jointly by the  
16 qualifying occupant, qualifying owner, or qualifying operator  
17 within the time period prescribed by Subsection (d)(2)(B).

18 (f) The exemption provided by this section begins on the  
19 date the connected data center project is certified by the  
20 comptroller as a qualifying connected data center project and  
21 expires on the 20th anniversary of that date, if the qualifying  
22 occupant, qualifying owner, or qualifying operator, independently  
23 or jointly makes a capital investment of \$500 million or more as  
24 provided by Subsection (d)(2)(B).

25 (g) Each person who is eligible to claim an exemption  
26 authorized by this section must hold a registration number issued  
27 by the comptroller. The registration number must be stated on the

1 exemption certificate provided by the purchaser to the seller of  
2 tangible personal property eligible for the exemption.

3 (h) The comptroller shall revoke all registration numbers  
4 issued in connection with a qualifying connected data center  
5 project that the comptroller determines does not meet the  
6 requirements prescribed by Subsection (d). Each person who has the  
7 person's registration number revoked by the comptroller is liable  
8 for taxes, including penalty and interest from the date of  
9 purchase, imposed under this chapter on purchases for which the  
10 person claimed an exemption under this section, regardless of  
11 whether the purchase occurred before the date the registration  
12 number was revoked.

13 (i) The comptroller shall adopt rules consistent with and  
14 necessary to implement this section, including rules relating to:

15 (1) a qualifying connected data center project,  
16 qualifying owner, qualifying operator, and qualifying occupant;

17 (2) issuance and revocation of a registration number  
18 required under this section; and

19 (3) reporting and other procedures necessary to ensure  
20 that a qualifying connected data center project, qualifying owner,  
21 qualifying operator, and qualifying occupant comply with this  
22 section and remain entitled to the exemption authorized by this  
23 section.

24 (j) A connected data center project is not eligible to  
25 receive an exemption under this section if the connected data  
26 center project is subject to an agreement limiting the appraised  
27 value of the connected data center's property under former



1 Subchapter B or C, Chapter 313.

2 SECTION 2. Section 151.317(a), Tax Code, is amended to read  
3 as follows:

4 (a) Subject to Sections 151.1551, 151.359, [~~and~~] 151.3595,  
5 and 151.3596 and Subsection (d) of this section, gas and  
6 electricity are exempted from the taxes imposed by this chapter  
7 when sold for:

8 (1) residential use;

9 (2) use in powering equipment exempt under Section  
10 151.318 or 151.3185 by a person processing tangible personal  
11 property for sale as tangible personal property, other than  
12 preparation or storage of prepared food described by Section  
13 151.314(c-2);

14 (3) use in lighting, cooling, and heating in the  
15 manufacturing area during the actual manufacturing or processing of  
16 tangible personal property for sale as tangible personal property,  
17 other than preparation or storage of prepared food described by  
18 Section 151.314(c-2);

19 (4) use directly in exploring for, producing, or  
20 transporting, a material extracted from the earth;

21 (5) use in agriculture, including dairy or poultry  
22 operations and pumping for farm or ranch irrigation;

23 (6) use directly in electrical processes, such as  
24 electroplating, electrolysis, and cathodic protection;

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

1           (8) use directly in providing, under contracts with or  
2 on behalf of the United States government or foreign governments,  
3 defense or national security-related electronics, classified  
4 intelligence data processing and handling systems, or  
5 defense-related platform modifications or upgrades;

6           (9) use directly by a data center, ~~or~~ large data  
7 center project, or connected data center project that is certified  
8 by the comptroller as a qualifying data center under Section  
9 151.359, ~~or~~ a qualifying large data center project under Section  
10 151.3595, or a qualifying connected data center project under  
11 Section 151.3596 in the processing, storage, and distribution of  
12 data;

13           (10) a direct or indirect use, consumption, or loss of  
14 electricity by an electric utility engaged in the purchase of  
15 electricity for resale; or

16           (11) use in timber operations, including pumping for  
17 irrigation of timberland.

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

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

ADOPTED

MAY 19 2023

*Agate Saw*  
Secretary of the Senate

FLOOR AMENDMENT NO. \_\_\_\_\_

BY: \_\_\_\_\_

*Tom Parker*

1 Amend H.B. No. 3104 (senate committee report) as follows:

2 (1) In SECTION 1 of the bill, in added Section 151.3596(a),  
3 Tax Code (page 2, between lines 49 and 50), add the following  
4 appropriately numbered subdivision to the subsection and renumber  
5 the subdivisions of the subsection accordingly:

6 ( ) "Virtual currency" has the meaning assigned by  
7 Section 12.001, Business & Commerce Code.

8 (2) In SECTION 1 of the bill, strike added Section  
9 151.3596(a)(2)(B), Tax Code (page 1, lines 40 through 54), and  
10 substitute the following:

11 (B) is composed of one or more buildings:

12 (i) comprising at least 250,000 square feet  
13 of space;

14 (ii) located or to be located on contiguous  
15 or noncontiguous parcels of land;

16 (iii) that are commonly owned, owned by  
17 affiliation with the qualifying operator, or leased by a common  
18 qualifying operator; and

19 (iv) connected to each other:

20 (a) by fiber and associated equipment  
21 required for operating a fiber transmission network between data  
22 center buildings and upstream Internet peering points for the sole  
23 use of the qualifying occupant; and

24 (b) for the purpose of providing  
25 redundancy and resiliency for the data center services provided in  
26 each building;

27 (3) In SECTION 1 of the bill, strike added Section  
28 151.3596(j), Tax Code (page 4, lines 36 through 40), and substitute  
29 the following:

1       (j) A connected data center project is not eligible to  
2 receive an exemption under this section if the connected data  
3 center project is:

4           (1) subject to an agreement limiting the appraised  
5 value of the connected data center's property under former  
6 Subchapter B or C, Chapter 313, or a substantially similar program  
7 that authorizes a temporary limit on the value of the connected data  
8 center's property for school district maintenance and operations ad  
9 valorem tax purposes; or

10           (2) used for the mining and staking of virtual  
11 currency.

12       (4) Add the following appropriately numbered SECTIONS to  
13 the bill and renumber the SECTIONS of the bill accordingly:

14       SECTION \_\_\_\_\_. Section 151.359(a), Tax Code, is amended by  
15 adding Subdivision (9) to read as follows:

16           (9) "Virtual currency" has the meaning assigned by  
17 Section 12.001, Business & Commerce Code.

18       SECTION \_\_\_\_\_. Section 151.359(k), Tax Code, is amended to  
19 read as follows:

20       (k) A data center is not eligible to receive an exemption  
21 under this section if the data center is:

22           (1) subject to an agreement limiting the appraised  
23 value of the data center's property under former Subchapter B or C,  
24 Chapter 313, or a substantially similar program that authorizes a  
25 temporary limit on the value of the data center's property for  
26 school district maintenance and operations ad valorem tax purposes;  
27 or

28           (2) used for the mining and staking of virtual  
29 currency.

30       SECTION \_\_\_\_\_. Section 151.3595(a), Tax Code, is amended by  
31 adding Subdivision (9) to read as follows:

1           (9) "Virtual currency" has the meaning assigned by  
2 Section 12.001, Business & Commerce Code.

3           SECTION \_\_\_\_\_. Section 151.3595(j), Tax Code, is amended to  
4 read as follows:

5           (j) A data center is not eligible to receive an exemption  
6 under this section if the data center is:

7           (1) subject to an agreement limiting the appraised  
8 value of the data center's property under former Subchapter B or C,  
9 Chapter 313, or a substantially similar program that authorizes a  
10 temporary limit on the value of the data center's property for  
11 school district maintenance and operations ad valorem tax purposes;  
12 or

13           (2) used for the mining and staking of virtual  
14 currency.

15           SECTION \_\_\_\_\_. Sections 151.359(k) and 151.3595(j), Tax Code,  
16 as amended by this Act, apply only to a data center or large data  
17 center project that applies to the comptroller for certification as  
18 a qualifying data center or qualifying large data center project on  
19 or after the effective date of this Act.

20           SECTION \_\_\_\_\_. The comptroller of public accounts may adopt  
21 rules necessary to implement and administer this Act.

**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 <i>General Revenue Related Funds</i>
2024	\$0
2025	\$0
2026	\$0
2027	\$0
2028	\$0

**All Funds, Five-Year Impact:**

<i>Fiscal Year</i>	Probable Revenue (Loss) from <i>Cities</i>	Probable Revenue (Loss) from <i>Transit Authorities</i>	Probable Revenue (Loss) from <i>Counties &amp; Special Districts</i>
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



**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 88TH LEGISLATIVE REGULAR SESSION**

**May 12, 2023**

**TO:** Honorable Joan Huffman, Chair, Senate Committee on Finance

**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 Engrossed**

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

**General Revenue-Related Funds, Five- Year Impact:**

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

**All Funds, Five-Year Impact:**

<i>Fiscal Year</i>	<i>Probable Revenue (Loss) from Cities</i>	<i>Probable Revenue (Loss) from Transit Authorities</i>	<i>Probable Revenue (Loss) from Counties &amp; Special Districts</i>
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**

This 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.

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, KK, SD

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 88TH LEGISLATIVE REGULAR SESSION

April 29, 2023

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

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.), Committee Report 1st House, Substituted

Estimated Two-year Net Impact to General Revenue Related Funds for HB3104, Committee Report 1st House, Substituted : 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 <i>General Revenue Related Funds</i>
2024	\$0
2025	\$0
2026	\$0
2027	\$0
2028	\$0

All Funds, Five-Year Impact:

<i>Fiscal Year</i>	Probable Revenue (Loss) from <i>Cities</i>	Probable Revenue (Loss) from <i>Transit Authorities</i>	Probable Revenue (Loss) from <i>Counties &amp; Special Districts</i>
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

This 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.

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, KK, SD

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 88TH LEGISLATIVE REGULAR SESSION

April 16, 2023

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

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 Introduced**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB3104, As Introduced : 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 <i>General Revenue Related Funds</i>
2024	\$0
2025	\$0
2026	\$0
2027	\$0
2028	\$0

**All Funds, Five-Year Impact:**

<i>Fiscal Year</i>	Probable Revenue (Loss) from <i>Cities</i>	Probable Revenue (Loss) from <i>Transit Authorities</i>	Probable Revenue (Loss) from <i>Counties &amp; Special Districts</i>
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.

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 proposed Sec. 151 would expire, there would be a reduction in state sales tax revenues relative to a certification under current 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 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, KK, SD

**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**TAX/FEE EQUITY NOTE**

**88TH LEGISLATIVE REGULAR SESSION**

**April 29, 2023**

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

**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.), **Committee Report 1st House, Substituted**

No statistically significant impact on the overall distribution of a state tax or fee burden among individuals and businesses is anticipated from the provisions of this bill.

**Source**

**Agencies:**

**LBB Staff:** JMc, KK

**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**TAX/FEE EQUITY NOTE**

**88TH LEGISLATIVE REGULAR SESSION**

**April 16, 2023**

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

**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 Introduced**

No statistically significant impact on the overall distribution of a state tax or fee burden among individuals and businesses is anticipated from the provisions of this bill.

**Source**

**Agencies:**

**LBB Staff:** JMc, KK