

House Bill 3104
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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

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

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

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

(A) is located in this state;

(B) is composed of one or more buildings:

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

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

that are commonly owned, owned by affiliation with the qualifying operator, or leased by a common qualifying operator; and

(iii) connected to each other:

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

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

(C) 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;

(D) is used by a single qualifying 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

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

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

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

(A) is located in this state;

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

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

(iv) connected to each other:

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

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

[FA2(2)]

(C) 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;

(D) is used by a single qualifying 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

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(F) 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.

(3) "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 connected data center project creates a job used to qualify under this section. If the connected data center project is located in more than one county, the county average weekly wage for each county in which the project is located may be calculated by averaging the county average weekly wages of all counties in which the project is located.

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

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

(6) "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 job is 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 connected data center project. The term does not include a job that is moved from one county in this state to another county in this state.

(7) "Qualifying occupant" means a person who contracts with a qualifying owner or qualifying operator to place, or

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(F) 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.

(3) "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 connected data center project creates a job used to qualify under this section. If the connected data center project is located in more than one county, the county average weekly wage for each county in which the project is located may be calculated by averaging the county average weekly wages of all counties in which the project is located.

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

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

(6) "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 job is 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 connected data center project. The term does not include a job that is moved from one county in this state to another county in this state.

(7) "Qualifying occupant" means a person who contracts with a qualifying owner or qualifying operator to place, or

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cause to be placed, and to use tangible personal property at the qualifying connected data center project or, in the case of a qualifying occupant who is also the qualifying owner and the qualifying operator, who places or causes to be placed and uses tangible personal property at the qualifying connected data center project. The term includes a member of the person's affiliated group.

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

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

(b) Except as otherwise provided by this section, tangible personal property that is necessary and essential to the operation of a qualifying connected 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 connected data center project by a qualifying owner, qualifying operator, or qualifying occupant, and the tangible personal property is:

- (1) electricity;
- (2) an electrical system;

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cause to be placed, and to use tangible personal property at the qualifying connected data center project or, in the case of a qualifying occupant who is also the qualifying owner and the qualifying operator, who places or causes to be placed and uses tangible personal property at the qualifying connected data center project. The term includes a member of the person's affiliated group.

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

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

() "Virtual currency" has the meaning assigned by Section 12.001, Business & Commerce Code. [FA2(1)]

(b) Except as otherwise provided by this section, tangible personal property that is necessary and essential to the operation of a qualifying connected 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 connected data center project by a qualifying owner, qualifying operator, or qualifying occupant, and the tangible personal property is:

- (1) electricity;
- (2) an electrical system;

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- (3) a cooling system;
 - (4) a backup electricity generation system;
 - (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).
- (c) The exemption provided by this section does not apply to:
- (1) office equipment or supplies;
 - (2) maintenance or janitorial supplies or equipment;
 - (3) equipment or supplies used primarily in sales activities or transportation activities;
 - (4) tangible personal property on which the purchaser has received or has a pending application for a refund under Section 151.429;
 - (5) tangible personal property not otherwise exempted under Subsection (b) that is incorporated into real estate or into an improvement of real estate;
 - (6) tangible personal property that is rented or leased for a term of one year or less; or

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- (3) a cooling system;
 - (4) a backup electricity generation system;
 - (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).
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- (1) office equipment or supplies;
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 - (5) tangible personal property not otherwise exempted under Subsection (b) that is incorporated into real estate or into an improvement of real estate;
 - (6) tangible personal property that is rented or leased for a term of one year or less; or

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

(d) Subject to Subsection (j), a connected data center project may be certified by the comptroller as a qualifying connected data center project for purposes of this section if, on or after September 1, 2023:

(1) a single qualifying occupant:

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

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

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

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

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

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

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

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

(d) Subject to Subsection (j), a connected data center project may be certified by the comptroller as a qualifying connected data center project for purposes of this section if, on or after September 1, 2023:

(1) a single qualifying occupant:

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

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

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

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

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

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

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

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

(e) A connected data center project that is eligible under Subsection (d) to be certified by the comptroller as a qualifying connected data center project shall apply to the comptroller for certification as a qualifying connected data center project 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 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, qualifying owner, or qualifying operator within the time period prescribed by Subsection (d)(2)(B).

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

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

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

(e) A connected data center project that is eligible under Subsection (d) to be certified by the comptroller as a qualifying connected data center project shall apply to the comptroller for certification as a qualifying connected data center project 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 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, qualifying owner, or qualifying operator within the time period prescribed by Subsection (d)(2)(B).

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

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

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to the seller of tangible personal property eligible for the exemption.

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

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

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

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

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

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

subject to an agreement limiting the appraised value of the connected data center's property under former Subchapter B or C, Chapter 313.

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to the seller of tangible personal property eligible for the exemption.

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

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

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

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

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

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

(1) subject to an agreement limiting the appraised value of the connected data center's property under former Subchapter B or C, Chapter 313, or a substantially similar program that authorizes a temporary limit on the value of the

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connected data center's property for school district maintenance and operations ad valorem tax purposes; or (2) used for the mining and staking of virtual currency.
[FA2(3)]

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

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

- (1) residential use;
- (2) use in powering equipment exempt under Section 151.318 or 151.3185 by a person processing tangible personal property for sale as tangible personal property, other than preparation or storage of prepared food described by Section 151.314(c-2);
- (3) use in lighting, cooling, and heating in the manufacturing area during the actual manufacturing or processing of tangible personal property for sale as tangible personal property, other than preparation or storage of prepared food described by Section 151.314(c-2);
- (4) use directly in exploring for, producing, or transporting, a material extracted from the earth;
- (5) use in agriculture, including dairy or poultry operations and pumping for farm or ranch irrigation;
- (6) use directly in electrical processes, such as electroplating, electrolysis, and cathodic protection;
- (7) use directly in the off-wing processing, overhaul, or repair of a jet turbine engine or its parts for a certificated or licensed carrier of persons or property;

SECTION 2. Same as House version.

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

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

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

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

No equivalent provision.

No equivalent provision.

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

(9) "Virtual currency" has the meaning assigned by Section 12.001, Business & Commerce Code. [FA2(4)]

SECTION __. Section 151.359(k), Tax Code, is amended to read as follows:

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

(1) subject to an agreement limiting the appraised value of the data center's property under former Subchapter B or C,

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Chapter 313, or a substantially similar program that authorizes a temporary limit on the value of the data center's property for school district maintenance and operations ad valorem tax purposes; or
(2) used for the mining and staking of virtual currency.
[FA2(4)]

No equivalent provision.

SECTION __. Section 151.3595(a), Tax Code, is amended by adding Subdivision (9) to read as follows:
(9) "Virtual currency" has the meaning assigned by Section 12.001, Business & Commerce Code. [FA2(4)]

No equivalent provision.

SECTION __. Section 151.3595(j), Tax Code, is amended to read as follows:
(j) A data center is not eligible to receive an exemption under this section if the data center is:
(1) subject to an agreement limiting the appraised value of the data center's property under former Subchapter B or C, Chapter 313, or a substantially similar program that authorizes a temporary limit on the value of the data center's property for school district maintenance and operations ad valorem tax purposes; or
(2) used for the mining and staking of virtual currency.
[FA2(4)]

No equivalent provision.

SECTION __. Sections 151.359(k) and 151.3595(j), Tax Code, as amended by this Act, apply only to a data center or large data center project that applies to the comptroller for certification as a qualifying data center or qualifying large

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data center project on or after the effective date of this Act.
[FA2(4)]

SECTION __. The comptroller of public accounts may
adopt rules necessary to implement and administer this Act.
[FA2(4)]

SECTION 3. Same as House version.

SECTION 4. Same as House version.

No equivalent provision.

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.