By: Castellano H.B. No. 1273

A BILL TO BE ENTITLED

AN ACT

relating to the siting, construction, permitting, and operation of certain data centers; requiring local option elections; imposing a temporary moratorium; establishing an annual payments to county residents; repealing certain tax exemptions; providing civil penalties.

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

SECTION 1. Subtitle B, Title 5, Health and Safety Code, is amended by adding Chapter 398 to read as follows:

CHAPTER 398. DATA CENTER SITING, COMMUNITY CONSENT, AND PUBLIC BENEFIT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 398.001. DEFINITIONS. In this chapter:

(1) "Artificial intelligence compute occupant" means a person that owns, leases, controls, or uses computing equipment at a covered data center primarily to train, develop, fine-tune, or operate a generative or other machine-learning model for commercial consideration. The term includes a person receiving dedicated computing capacity through a contract with the owner or operator of the center but does not include a retail customer making ordinary, incidental use of an artificial intelligence service.

(2) "Commission" means the Texas Commission on Environmental Quality.

(3) "Covered data center" means one or more buildings,

facilities, or installations under common ownership or control, or designed or operated as an integrated project, that contain or are proposed to contain computing equipment used for processing, storage, distribution of data, or artificial intelligence, and that:

(A) have a designed aggregate maximum electric demand of 20 megawatts or more; or

(B) contain or are proposed to contain 50,000 square feet or more of space primarily devoted to the equipment described by this subdivision.

(4) "Developer" includes an owner, operator, applicant, affiliate, successor, or person acting in concert to construct, expand, occupy, or operate a covered data center.

(5) "Local approval" means voter approval under Subchapter C.

(6) "Project" includes a new covered data center or expansion that increases a center's maximum electric demand by 10 megawatts or more or gross equipment floor area by 25,000 square feet or more.

(7) "Host county" means the county in which a covered data center is located. If a covered data center occupies land in more than one county, each county is a host county and payments under Subchapter E must be allocated among the host counties in proportion to the maximum electric demand of the equipment located in each county.

(8) "Eligible resident" means a natural person whose principal residence is in a host county for at least 183 days of the

calendar year for which a stipend is paid. The term includes a minor child; a payment to a minor shall be made to the child's parent or legal guardian on behalf of the child. Ownership of real property, citizenship status, and income may not be used as conditions of eligibility.

Sec. 398.002. AGGREGATION; EVASION PROHIBITED. (a) For purposes of this chapter, adjacent or nearby facilities within two miles that share a common developer, financing, utility interconnection, water supply, or operational plan are presumed to be one covered data center.

(b) A person may not divide, phase, lease, convey, or separately permit a project for the purpose of avoiding this chapter. The commission shall consider reasonably foreseeable future phases in determining applicability.

Sec. 398.003. APPLICABILITY; OTHER LAW. (a) This chapter applies to projects proposed after the effective date of the Act adding this chapter and to covered projects that have not commenced substantial physical construction on that date.

(b) This chapter does not dispense with any permit, approval, or requirement imposed by federal or state law, a groundwater conservation district, or a political subdivision.

(c) A permit, interconnection agreement, zoning approval, or incentive agreement does not substitute for approval required by this chapter.

SUBCHAPTER B. TEMPORARY MORATORIUM

Sec. 398.051. TWO-YEAR MORATORIUM. (a) Before the second anniversary of the effective date of the Act adding this chapter, a

state agency or political subdivision may not issue a permit, approval, authorization, or certificate for the construction or expansion of a project, and a utility may not energize a new or expanded electric service connection for a project.

(b) A person may not commence or continue substantial physical construction of a project during the period prescribed by Subsection (a), except work necessary to address an imminent threat to life, health, or the environment or to maintain a facility in lawful operation on the effective date of the Act adding this chapter.

(c) An application submitted during the moratorium may be received and reviewed, but no approval may be issued and no vested right to approval arises from its submission or review.

Sec. 398.052. EXISTING OPERATIONS. This subchapter does not prohibit continued operation at the lawfully authorized demand and floor area of a covered data center in commercial operation on the effective date of the Act adding this chapter. An expansion remains subject to Section 398.051.

SUBCHAPTER C. LOCAL OPTION ELECTION

Sec. 398.101. LOCAL ELECTION REQUIRED. (a) The commission may not issue a permit under this chapter unless the development of the project has been approved by a majority of voters voting at a local option election held under this subchapter.

(b) For a project in an unincorporated area, the county shall conduct the election among the registered voters of the county. For a project within a municipality, the municipality shall conduct an election among its registered voters and the

county shall conduct a separate election among its registered voters; both elections must approve the project.

(c) If the project crosses municipal or county boundaries, each affected municipality and county must approve the project by separate election.

Sec. 398.102. PETITION AND ORDER. (a) A developer seeking local approval shall file a request with the governing body of each political subdivision required to hold an election, together with a project description, projected peak demand, annual water use, emergency generation capacity, parcel description, and the disclosure required by Section 398.151.

(b) The governing body shall order an election for the next uniform election date under Section 41.001, Election Code, for which the election can lawfully be ordered and administered. The developer shall reimburse each political subdivision for the reasonable cost of the election.

Sec. 398.103. BALLOT. The ballot shall be prepared to permit voting for or against the proposition: "The approval of a [name of project] data center at [general location], with a proposed maximum electric demand of [number] megawatts and projected annual water use of [number] gallons, subject to state permitting, public disclosure, and annual payments to county residents."

Sec. 398.104. EFFECT OF REJECTION; MATERIAL CHANGE. (a) A project rejected at an election may not be submitted for another election before the second anniversary of that election.

(b) An approval does not authorize a material increase of

more than 10 percent in the demand, water use, or physical footprint disclosed to voters. A material increase requires another election.

Sec. 398.105. PUBLIC NOTICE. At least 60 days before the election, the developer shall provide a plain-language impact statement on a publicly accessible website and by first-class mail to residents of the host county. The statement must identify projected electric and water demand, planned sources of electricity and water, potential noise, emissions, requested incentives, expected infrastructure costs, and the proposed annual county resident stipend and the method for calculating it.

SUBCHAPTER D. STATE DATA CENTER PERMIT

Sec. 398.151. PERMIT REQUIRED. (a) A person may not construct, expand, or commence operation of a project without a data center impact permit issued by the commission in addition to all other approvals required by law.

(b) An application must contain independently verified studies of:

(1) projected hourly peak and annual electric demand, required transmission and distribution facilities, and effects on residential rates and grid reliability;

(2) daily and annual water withdrawals and consumptive use, drought-stage operation, aquifer and surface-water impacts, and effects on drinking-water availability;

(3) air emissions from emergency generation and other sources;

(4) noise at the nearest residence and property

boundary, including low-frequency noise;

(5) cumulative impacts of other existing or proposed facilities in the same watershed or electric service territory; and

(6) site restoration, emergency response, financial assurance, and mitigation of adverse effects on surrounding communities.

Sec. 398.152. INTERAGENCY REVIEW; FINDINGS. (a) Before issuing a permit, the commission shall obtain written findings from the Public Utility Commission of Texas concerning electric reliability, system costs, and compliance with Section 37.0561, Utilities Code, and from the Texas Water Development Board concerning water supply and drought impacts.

(b) The commission may issue a permit only if the applicant establishes by a preponderance of the evidence that:

(1) the project will not materially impair the ability of local residents to obtain affordable, reliable electricity or drinking water;

(2) the developer will bear all reasonably attributable incremental interconnection and utility infrastructure costs, without shifting those costs to residential ratepayers;

(3) the project incorporates water-efficient cooling technology and an enforceable drought curtailment plan;

(4) noise, air emissions, and other nuisance impacts are minimized through best available practicable mitigation;

(5) required financial assurance and reclamation plans are sufficient; and

(6) the applicant has obtained local approval and entered into all agreements required by Subchapter E.

Sec. 398.153. PUBLIC CONTESTED CASE HEARING. (a) The commission shall provide notice of a complete application to residents of the host county and to each affected municipality, county, utility, and groundwater conservation district.

(b) On the request of an affected person, the commission shall refer the application to the State Office of Administrative Hearings for a contested case hearing. A resident, property owner, or political subdivision within the host county is an affected person for purposes of this section.

(c) The applicant has the burden of proof. The commission may not issue a permit before findings from the hearing are considered.

Sec. 398.154. MONITORING; REVIEW. (a) A permit holder shall meter electric consumption and water withdrawals and consumption separately for each project and submit quarterly verified reports to the commission, the Public Utility Commission of Texas, and the Texas Water Development Board.

(b) Reports, permit applications, compliance records, and beneficial ownership of a permit holder are public information, except for specific technical cybersecurity information protected by other law.

(c) The commission shall review a permit at least once every five years and may amend, suspend, or revoke the permit for material noncompliance. A material increase in demand, consumption, or footprint is a new project subject to Subchapter C.

Sec. 398.155. FINANCIAL ASSURANCE. Before construction, the developer shall provide a bond or other financial assurance in an amount determined by the commission sufficient to fund site reclamation, groundwater remediation if applicable, and the correction of reasonably foreseeable off-site harms.

SUBCHAPTER E. ANNUAL STIPEND FOR COUNTY RESIDENTS

Sec. 398.201. COUNTY RESIDENT STIPEND FUND. (a) A developer shall, as a condition of receiving and maintaining a permit under this chapter, establish an independently audited county resident stipend fund for each host county. The fund shall be held in trust solely for payments to eligible residents of that county under this subchapter.

(b) A fund may not be used for general county operations, economic development subsidies, tax abatements, or payments to the developer or an affiliate. The commission shall provide for independent administration, annual public audits, and disclosure of the amount received and the amount distributed.

Sec. 398.202. ANNUAL PAYMENT BY DATA CENTER. (a) For each calendar year during which a covered data center operates, the developer and operator are jointly and severally liable for an annual county resident stipend payment in an amount equal to the greater of:

(1) two percent of gross receipts derived from the provision of data processing, computing capacity, artificial intelligence training, inference, data storage, or related services performed using the covered data center; or

(2) $10,000 multiplied by the number of megawatts of

the covered data center's maximum authorized electric demand.

(b) Gross receipts include amounts received by an affiliate or person under common control for services attributable to computing equipment at the covered data center. For computing capacity used by the developer or an affiliate rather than sold to an unrelated customer, gross receipts shall include the fair market value of that computing capacity as determined under rules adopted by the commission.

(c) The payment is due March 1 for the preceding calendar year. A partial year of operation is prorated by the number of days the center operated. The obligation may not be avoided by a lease, a service agreement, division of a project, or transfer of the center to an affiliate.

(d) The developer shall file an annual sworn statement of gross receipts and authorized demand. The commission may audit the statement and examine records necessary to verify the annual amount owed.

Sec. 398.203. ANNUAL STIPEND TO RESIDENTS. (a) Not later than June 1 of each year, the administrator of the fund shall distribute the money received under Section 398.202, less reasonable audited administrative expenses not exceeding two percent of the annual payment, in equal per-person amounts to all eligible residents of the host county.

(b) The administrator shall provide a reasonably accessible method for residents to establish eligibility, including an alternative to electronic verification, and may rely on records maintained by a state agency, school district, or county subject to

applicable confidentiality protections.

(c) A stipend may not depend on ownership of a homestead or other property, income, employment, or whether the recipient lives within a specified distance of the data center. A resident is eligible only once for the same calendar year with respect to each host county.

(d) Unclaimed payments shall be held for three years and then added to the amount available for distribution in that county for the next payment year. The administrator shall publish the annual payment obligation, total eligible residents, and amount of the stipend per person.

Sec. 398.204. PAYMENT IN ADDITION TO OTHER OBLIGATIONS. A payment under this subchapter is in addition to all taxes, utility charges, mitigation, and other obligations under law. The payment may not be credited against or used to reduce an obligation otherwise imposed on the developer and may not be collected through a separately identified charge on residential electricity or water bills.

Sec. 398.205. ENFORCEMENT. (a) The attorney general, the commission, the county, or an eligible resident may bring an action for an injunction, an accounting, or the collection of amounts due under this subchapter.

(b) A court may award reasonable attorney's fees and costs to a prevailing claimant. Remedies under this section are cumulative of other remedies provided by law.

SUBCHAPTER F. ENFORCEMENT

Sec. 398.251. CIVIL PENALTY; INJUNCTION. (a) A person who

constructs, expands, or operates a project in violation of this chapter is liable to the state for a civil penalty not to exceed $25,000 for each day of violation. Each day constitutes a separate violation.

(b) The attorney general, on request of the commission or an affected political subdivision, may bring an action for an injunction and civil penalties. A court may order cessation of unauthorized construction or operation.

Sec. 398.252. RULES. The commission, in consultation with the Public Utility Commission of Texas and the Texas Water Development Board, shall adopt rules to implement this chapter. Rules may not reduce the requirements or eligibility thresholds prescribed by this chapter.

SECTION 2. Sections 151.317(a), (b), and (d), Tax Code, are amended to read as follows:

(a) Subject to Section [~~Sections~~] 151.1551[~~, 151.359, and 151.3595~~] 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;

(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 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 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

(10) [~~(11)~~] use in timber operations, including pumping for irrigation of timberland.

(b) The sale, production, distribution, lease, or rental

of, and the use, storage, or other consumption in this state of, gas and electricity sold for the uses listed in Subsection (a), are exempted from the taxes imposed by a municipality under Chapter 321 except as provided by Section [Sections 151.359(j) and] 321.105.

(d) To qualify for the exemptions in Subsections (a)(2)-(8) [~~(a)(2)-(9)~~], the gas or electricity must be sold to the person using the gas or electricity in the exempt manner. For purposes of this subsection, the use of gas or electricity in an exempt manner by an independent contractor engaged by the purchaser of the gas or electricity to perform one or more of the exempt activities identified in Subsections (a)(2)-(8) [~~(a)(2)-(9)~~] is considered use by the purchaser of the gas or electricity.

SECTION 3. Section 321.208, Tax Code, is amended to read as follows:

Sec. 321.208. STATE EXEMPTIONS APPLICABLE. The exemptions provided by Subchapter H, Chapter 151, apply to the taxes authorized by this chapter, except as provided by Section [~~Sections 151.359(j) and~~] 151.317(b).

SECTION 4. Section 323.207, Tax Code, is amended to read as follows:

Sec. 323.207. STATE EXEMPTIONS APPLICABLE. The exemptions provided by Subchapter H, Chapter 151, apply to the taxes authorized by this chapter, except as provided by Section [~~Sections 151.359(j) and~~] 151.317(b).

SECTION 5. The following provisions of the Tax Code are repealed:

(1) Section 151.359;

(2) Section 151.3595; and

(3) Section 313.009.

SECTION 6. (a) An exemption under Section 151.359 or 151.3595, Tax Code, to which a person is entitled on the effective date of this Act expires on that date. No person is entitled to a refund or credit based on property purchased on or after that date under either repealed section.

(b) An application for certification as a qualifying data center or qualifying large data center project pending on the effective date of this Act is considered denied and may not be approved by the comptroller.

SECTION 7. (a) The Texas Commission on Environmental Quality, Public Utility Commission of Texas, and Texas Water Development Board shall adopt initial rules under Chapter 398, Health and Safety Code, as added by this Act, not later than March 1, 2028.

(b) The moratorium imposed by Section 398.051, Health and Safety Code, as added by this Act, terminates on the second anniversary of the effective date of this Act, but all other provisions of Chapter 398 remain effective after that date.

(c) The requirements of Subchapter E, Chapter 398, Health and Safety Code, apply only to projects for which a permit is first issued under that chapter after the effective date of this Act.

SECTION 8. If any provision of this Act or its application to a person or circumstance is held invalid, the invalidity does not affect other provisions or applications that can be given effect without the invalid provision, and to this end the provisions of

this Act are severable.

SECTION 9. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2027.