By: Perry, et al. S.B. No. 338

A BILL TO BE ENTITLED

AN ACT

relating to data centers.

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

SECTION 1. Section 403.602, Government Code, is amended by adding Subdivision (7-a) to read as follows:

(7-a) "Data center" has the meaning assigned by Section 312.2042, Tax Code.

SECTION 2. Section 403.605(a), Government Code, is amended to read as follows:

(a) The taxable value for school district maintenance and operations ad valorem tax purposes of eligible property subject to an agreement for each tax year of the incentive period prescribed by the agreement is equal to:

(1) 50 percent of the market value of the property for that tax year; [~~or~~]

(2) if the property is used as part of an eligible project that is a data center, not more than 50 percent of the market value of the property for that tax year; or

(3) if the property is located in a qualified opportunity zone, 25 percent of the market value of the property for that tax year.

SECTION 3. Section 403.612(d), Government Code, is amended to read as follows:

(d) This subsection applies to a term described by

Subsection (b)(10). The agreement must provide that:

(1) the governor or the school district is authorized to terminate the agreement if the applicant fails to comply with:

(A) an applicable jobs or wage requirement of the agreement; or

(B) any term of an agreement that pertains to an eligible project that is a data center;

(2) the governor or the district may not terminate the agreement until the party provides written notice to the applicant of the proposed termination;

(3) the governor or the district must provide the applicant a 180-day period to cure and dispute the alleged failure, including through judicial action; and

(4) in the event the agreement is terminated, the state shall recover from the applicant a penalty in an amount equal to all lost ad valorem tax revenue from the project and interest on that amount calculated as provided by Section 111.060, Tax Code.

SECTION 4. Subchapter T, Chapter 403, Government Code, is amended by adding Section 403.6121 to read as follows:

Sec. 403.6121. ADDITIONAL REQUIREMENTS FOR AGREEMENTS INVOLVING DATA CENTERS. (a) In this section:

(1) "Closed-cycle recirculating system," "dry cooling system," "saline water cooling system," and "water-efficient cooling system" have the meanings assigned by Section 39.920, Utilities Code.

(2) "Commission" means the Public Utility Commission of Texas.

(b) This section applies only to an agreement entered into under Section 403.612 pertaining to an eligible project that is a data center.

(c) In addition to the requirements of Section 403.612, an agreement entered into under that section between the governor, a school district, and an applicant pertaining to an eligible project that is a data center must require the applicant to:

(1) use only a closed-cycle recirculating system, dry cooling system, saline water cooling system, water-efficient cooling system, or a combination of such systems to cool the data center, including any generation resource located at the data center;

(2) at the time the applicant executes the agreement, submit to the commission documentation in a form prescribed by the commission that:

(A) estimates the anticipated annual water supply needs for cooling purposes at the data center; and

(B) identifies the anticipated source or sources of water the applicant will procure to meet the anticipated annual water supply needs of the data center;

(3) starting on the first anniversary of the construction completion date of the data center and on each subsequent anniversary of that date until the data center is no longer in operation, submit to the commission documentation in a form prescribed by the commission that states for the preceding year:

(A) the amount of water used for cooling

purposes; and

(B) the source or sources of water used for cooling purposes;

(4) own the data center for the term of the agreement;

(5) pay the cost to remediate environmental harm to the real property that is the subject of the agreement that results from the construction, operation, presence, abandonment, or demolition of the data center;

(6) except as provided by Subsection (d), convey to the school district a nonpossessory interest in the real property that is the subject of the agreement that imposes a permanent limitation on the applicant and the applicant's assignees or successors in interest from constructing or operating a data center that uses a cooling system other than a system or combination of systems described by Subdivision (1), and file for recording in the real property records of the county in which the real property is located the instrument of conveyance of the interest; and

(7) comply with any standards adopted by the commission under Section 39.920, Utilities Code, limiting light and noise pollution caused by operation of the data center or regulating the minimum distance of any component building of the data center to the boundary of the data center.

(d) An agreement is not required to provide for the conveyance of a nonpossessory interest in real property as provided by Subsection (c)(6) if the applicant has conveyed an interest in the property to a taxing unit under an agreement entered into under Chapter 312, Tax Code.

SECTION 5. Chapter 380, Local Government Code, is amended by adding Section 380.005 to read as follows:

Sec. 380.005. ADDITIONAL REQUIREMENTS FOR PROGRAMS INVOLVING DATA CENTERS. (a) In this section, "data center" has the meaning assigned by Section 312.2042, Tax Code.

(b) A municipality may not make a loan or grant of public money under a program authorized by this chapter involving the construction or operation of a data center unless the governing body of the municipality or a development corporation created by the municipality enters into an agreement with the loan or grant recipient that meets the applicable requirements of Section 312.2042, Tax Code.

SECTION 6. Section 381.004(g), Local Government Code, is amended to read as follows:

(g) The commissioners court may develop and administer a program authorized by Subsection (b) for entering into a tax abatement agreement with an owner or lessee of a property interest subject to ad valorem taxation. The execution, duration, and other terms of the agreement are governed, to the extent practicable, by the provisions of Sections 312.204, 312.2042, 312.205, and 312.211, Tax Code, as if the commissioners court were a governing body of a municipality.

SECTION 7. Section 312.204, Tax Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) In this subsection, "data center" has the meaning assigned by Section 312.2042. Notwithstanding any other provision of this section, the governing body of a municipality may not enter

into an agreement under this section with the owner or lessee of property that is a data center to exempt from taxation more than 50 percent of the portion of the value of the property that is otherwise subject to abatement under this section during any year covered by the agreement.

SECTION 8. Subchapter B, Chapter 312, Tax Code, is amended by adding Section 312.2042 to read as follows:

Sec. 312.2042. ADDITIONAL REQUIREMENTS FOR AGREEMENTS INVOLVING DATA CENTERS. (a) In this section:

(1) "Closed-cycle recirculating system," "dry cooling system," "saline water cooling system," and "water-efficient cooling system" have the meanings assigned by Section 39.920, Utilities Code.

(2) "Commission" means the Public Utility Commission of Texas.

(3) "Data center" means a site containing one or more facilities that:

(A) individually or collectively are at least 100,000 square feet in area; and

(B) are constructed or adapted to house servers and related equipment and support staff for the processing, storage, and distribution of data.

(b) This section applies only to an agreement entered into under Section 312.204 pertaining to real and tangible personal property located at a data center.

(c) In addition to the requirements of Section 312.204, an agreement entered into under that section between a municipality

and the owner or lessee of real property at which a data center is located must:

(1) require the owner or lessee, as applicable, to:

(A) use only a closed-cycle recirculating system, dry cooling system, saline water cooling system, water-efficient cooling system, or a combination of such systems to cool the data center;

(B) at the time the agreement is executed, submit to the commission documentation in a form prescribed by the commission that:

(i) estimates the anticipated annual water supply needs for cooling purposes at the data center; and

(ii) identifies the anticipated source or sources of water the owner or lessee, as applicable, will procure to meet the anticipated annual water supply needs of the data center;

(C) starting with the first anniversary of the date the data center begins operations and on each subsequent anniversary of that date until the data center is no longer in operation, submit to the commission documentation in a form prescribed by the commission that states for the preceding year:

(i) the amount of water used for cooling purposes; and

(ii) the source or sources of water used for cooling purposes;

(D) either:

(i) own the data center for the term of the agreement if the owner enters the agreement; or

(ii) lease the data center for the term of the agreement if the lessee enters the agreement;

(E) pay the cost to remediate environmental harm to the real property that is subject to the agreement that results from the construction, operation, presence, abandonment, or demolition of the data center;

(F) except as provided by Subsection (d), convey to the municipality a nonpossessory interest in the real property that is the subject of the agreement that imposes a permanent limitation on the owner and the owner's assignees or successors in interest from constructing or operating a data center that uses a cooling system other than a system or combination of systems described by Paragraph (A), and file for recording in the real property records of the county in which the real property is located the instrument of conveyance of the interest; and

(G) comply with any standards adopted by the commission under Section 39.920, Utilities Code, limiting light and noise pollution caused by operation of the data center or regulating the minimum distance of any component building of the data center to the boundary of the data center;

(2) authorize the municipality to terminate the agreement if the owner or lessee, as applicable, fails to comply with a term of the agreement; and

(3) require the municipality to recover from the owner or lessee, as applicable, a penalty in an amount equal to all lost ad valorem tax revenue from the data center and interest on that amount calculated as provided by Section 111.060 if the agreement

is terminated.

(d) An agreement is not required to provide for the conveyance of a nonpossessory interest in real property as provided by Subsection (c)(1)(F) if the owner has conveyed an interest in the property to:

(1) another taxing unit under a separate agreement entered into under this chapter;

(2) a municipality or county under an agreement entered into under Chapter 380 or 381, Local Government Code; or

(3) a school district under an agreement entered into under Subchapter T, Chapter 403, Government Code.

SECTION 9. Section 312.206(a), Tax Code, is amended to read as follows:

(a) If property taxes on property located in the taxing jurisdiction of a municipality are abated under an agreement made under Section 312.204 or 312.211, the governing body of each other taxing unit eligible to enter into tax abatement agreements under Section 312.002 in which the property is located may execute a written tax abatement agreement with the owner of the property. The agreement is not required to contain terms identical to those contained in the agreement with the municipality, other than a term required by Section 312.2042 if the agreement pertains to property to which that section applies. The execution, duration, and other terms of an agreement made under this section are governed by the provisions of Sections 312.204, 312.2042, 312.205, and 312.211 applicable to a municipality. If the governing body of the taxing unit by official action at any time before the execution of the

municipal agreement expresses an intent to be bound by the terms of the municipal agreement if the municipality enters into an agreement under Section 312.204 or 312.211 with the owner relating to the property, the terms of the municipal agreement regarding the share of the property to be exempt in each year of the municipal agreement apply to the taxation of the property by the taxing unit.

SECTION 10. Section 312.402(a-2), Tax Code, is amended to read as follows:

(a-2) The execution, duration, and other terms of an agreement entered into under this section are governed by the provisions of Sections 312.204, 312.2042, 312.205, and 312.211 applicable to a municipality. Section 312.2041 applies to an agreement entered into under this section in the same manner as that section applies to an agreement entered into under Section 312.204 or 312.211.

SECTION 11. Subchapter H, Chapter 39, Utilities Code, is amended by adding Section 39.362 to read as follows:

Sec. 39.362. DATA CENTER LARGE LOAD REGISTRATION. (a) This section applies only to a large load customer who is subject to the standards adopted under Section 37.0561 and intends to interconnect or has interconnected to the ERCOT transmission grid a site that includes one or more facilities that:

(1) individually or collectively encompass at least 100,000 square feet of space; and

(2) are specifically constructed or refurbished to house servers and related equipment and support staff for the processing, storage, and distribution of data.

(b) The commission by rule shall:

(1) require a large load customer to register as a large load the facility or facilities receiving electric service at the data center; and

(2) establish a method to ensure compliance with this section.

SECTION 12. Subchapter Z, Chapter 39, Utilities Code, is amended by adding Section 39.920 to read as follows:

Sec. 39.920. DATA CENTER CUSTOMERS. (a) In this section:

(1) "Closed-cycle recirculating system" means a cooling system that uses a minimized volume of water to support contact or no-contact cooling uses in one or more facilities by passing water through a condenser, a sub-surface zone, an adiabatic chamber, or another component of the system and reusing that water for cooling multiple times without adding new water to the system, except as necessary to replenish losses caused by blowdown, drift, or leakage.

(2) "Data center customer" means a customer registered under Section 39.362.

(3) "Dry cooling system" means a cooling system that uses no water to support contact or no-contact cooling uses in one or more facilities.

(4) "Saline water cooling system" means a cooling system that is determined by the commission to use only desalinated seawater, desalinated brackish water, or water derived from fluid oil and gas waste, as defined by Section 122.001, Natural Resources Code, for cooling purposes.

(5) "Water-efficient cooling system" means a cooling system that is determined by the commission to use less total water for cooling purposes per unit of power consumed by the system than a closed-cycle recirculating system would use in the same or substantially similar circumstances.

(b) The commission by rule shall require a data center customer to, before interconnecting the customer's site to the ERCOT transmission grid:

(1) use only a closed-cycle recirculating system, dry cooling system, saline water cooling system, water-efficient cooling system, or a combination of such systems to cool the facility or facilities on the customer's site, including any generation resource co-located on the site; and

(2) submit documentation in a form prescribed by the commission that:

(A) estimates the customer's anticipated annual water supply needs for cooling purposes on the customer's site; and

(B) states the anticipated source or sources of water the customer will procure to meet the customer's anticipated annual water supply needs.

(c) The commission by rule shall require a data center customer to, after interconnecting the customer's site to the ERCOT transmission grid, annually submit to the commission documentation in a form prescribed by the commission that states for the preceding calendar year:

(1) the customer's water usage for cooling purposes; and

(2) the source or sources of water used by the customer to meet the customer's water needs.

(d) At least once each year, the commission shall provide to the Texas Water Development Board the documentation provided to the commission under Subsections (b) and (c) during the preceding year.

(e) The commission shall consult with the Texas Water Development Board in developing the forms required by Subsections (b) and (c).

(f) The commission by rule shall:

(1) prohibit an electric cooperative, municipally owned utility, or transmission and distribution utility from interconnecting a data center customer's site to the ERCOT transmission grid, unless:

(A) the site uses only a closed-cycle recirculating system, dry cooling system, saline water cooling system, water-efficient cooling system, or combination of those systems at the time of interconnection; and

(B) the customer has submitted to the commission the documentation required by Subsection (b); and

(2) require an electric cooperative, municipally owned utility, or transmission and distribution utility to disconnect a customer's campus from the ERCOT transmission grid if the customer:

(A) uses a cooling system other than a closed-cycle recirculating system, dry cooling system, saline water cooling system, water-efficient cooling system, or combination of those systems to cool a facility located on the

customer's campus, including any generation resource co-located on the campus, while interconnected to the grid; or

(B) fails to timely submit to the commission the documentation required by Subsection (c).

(g) The commission by rule may require a data center customer to:

(1) limit the noise and light pollution caused by the operation of any facility on the data center customer's site, including any noise and light pollution caused by a generation resource co-located on the customer's site; and

(2) locate a facility on the customer's site, including any generation resource co-located on the customer's site, a minimum distance from the boundary of the tract of land that comprises the site.

(h) The commission by rule may:

(1) prohibit an electric cooperative, municipally owned utility, or transmission and distribution utility from interconnecting a data center customer's site to the ERCOT transmission grid because the customer's site is not in compliance with the standards adopted by the commission under Subsection (g); and

(2) require an electric cooperative, municipally owned utility, or transmission and distribution utility to disconnect a data center customer's site from the ERCOT transmission grid because the site is not in compliance with the standards adopted by the commission under Subsection (g).

SECTION 13. Subchapter L, Chapter 5, Water Code, is amended

by adding Section 5.517 to read as follows:

Sec. 5.517. EMERGENCY ORDER CONCERNING CONSTRUCTION ACTIVITY OF DATA CENTER. The commission shall issue an emergency order in the manner provided by Subchapter L, Chapter 5, requiring the cessation of construction of a data center authorized under a general permit issued under Section 26.040 that authorizes discharges of stormwater runoff and non-stormwater discharges from construction if the commission determines, after receiving a complaint or learning through other means, that the data center does not or will not comply with the standards and rules described by Section 26.054(c).

SECTION 14. Subchapter B, Chapter 26, Water Code, is amended by adding Section 26.054 to read as follows:

Sec. 26.054. PERMIT CONDITIONS FOR DATA CENTERS. (a) In this section, "data center" means a site that has one or more facilities that encompass at least 100,000 square feet of space and are specifically constructed or refurbished to house servers and related equipment and support staff for the processing, storage, and distribution of data.

(b) This section applies only to a general permit issued under Section 26.040 that authorizes discharges of stormwater runoff and non-stormwater discharges from construction activities.

(c) An applicant for authorization to discharge waste from a data center under a general permit shall attest in the notice of intent submitted to the commission that the applicant is compliant or will comply with applicable standards and rules adopted by the Public Utility Commission of Texas under Sections 37.0561 and

39.920, Utilities Code.

(d) Notwithstanding any other provision of this chapter, the commission, after hearing, shall deny or suspend a discharger's authority to discharge from a data center under a general permit if the commission determines that the data center does not or will not comply with applicable standards and rules described by Subsection (c).

SECTION 15. Sections 403.605(a) and 403.612(d), Government Code, as amended by this Act, and Section 403.6121, Government Code, as added by this Act, apply only to an agreement limiting the taxable value of property entered into under Subchapter T, Chapter 403, Government Code, on or after the effective date of this Act.

SECTION 16. Section 380.005, Local Government Code, as added by this Act, applies only to a loan or grant of public money made on or after the effective date of this Act.

SECTION 17. Section 381.004(g), Local Government Code, as amended by this Act, applies only to an agreement entered into on or after the effective date of this Act.

SECTION 18. Sections 312.204(a-1) and 312.2042, Tax Code, as added by this Act, and Sections 312.206(a) and 312.402(a-2), Tax Code, as amended by this Act, apply only to a tax abatement agreement entered into on or after the effective date of this Act.

SECTION 19. The Public Utility Commission of Texas may apply rules adopted under Section 39.920, Utilities Code, as added by this Act, only to the site of a data center customer interconnected to the ERCOT transmission grid on or after the effective date of this Act.

SECTION 20. Section 26.054, Water Code, as added by this Act, applies only to an application for authorization to use a general permit that is filed with the Texas Commission on Environmental Quality on or after the effective date of this Act. An application for authorization to use a general permit that is filed before the effective date of this Act is governed by the law in effect on the date of filing, and that law is continued in effect for that purpose.

SECTION 21. This Act takes effect September 1, 2027.