

BILL ANALYSIS

Senate Research Center

C.S.H.B. 1223
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Finance
5/17/2013
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Many states currently provide significant economic incentives to attract large data center projects. It is reported that these capital-intensive projects represent a growing market segment in the technology industry and generate economic activity in the cities and states where they are located. Interested parties assert that Texas is losing the opportunity to attract these major data center projects, including many prominent and highly desired technology leaders and corporations, due to the absence of state sales tax incentives. Incentives offered by the most competitive states are meaningful to the data center owners, but the states also benefit directly in a multitude of ways, including job creation and an increase in local property tax revenue. Texas is well positioned to attract data centers because of its strong infrastructure, major population centers, educated workforce, and favorable construction costs and permitting process. The goal of C.S.H.B. 1223 is to reestablish Texas as the leader in the technology industry.

C.S.H.B. 1223 amends current law relating to the temporary exemption of certain tangible personal property related to data centers from the sales and use tax.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the comptroller of public accounts of the State of Texas in SECTION 1 (Section 151.359, Tax Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter H, Chapter 151, Tax Code, by adding Section 151.359, as follows:

Sec. 151.359. PROPERTY USED IN CERTAIN DATA CENTERS; TEMPORARY EXEMPTION. (a) Defines "county average weekly wage," "data center," "permanent job," "qualifying data center," "qualifying job," "qualifying operator," "qualifying owner," and "qualifying occupant" in this section.

(b) Provides that, except as otherwise provided this section, tangible personal property that is necessary and essential to the operation of a qualified data center 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 Subdivision (1), use in a qualifying data center by a qualifying owner, qualifying operator, or qualifying occupant, and the tangible personal property is:

- (1) electricity;
- (2) an electrical system;
- (3) a cooling system;
- (4) an emergency generator;
- (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) Provides that 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 (Tax Refunds for Enterprise Projects);
- (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
- (7) notwithstanding Section 151.3111 (Services on Certain Exempted Personal Property), a taxable service that is performed on tangible personal property exempted under this section.

(d) Authorizes a data center, subject to Subsection (k), to be certified by the comptroller of public accounts of the State of Texas (comptroller) as a qualifying data center for purposes of this section if, on or after September 1, 2013:

- (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 data center; or
 - (B) occupies a space that was not previously used as a data center in which the qualifying occupant will locate a data center, 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 20 qualifying jobs in the county in which the data center is located, not including jobs moved from one county in this state to another county in this state; and

(B) makes or agrees to make a capital investment, on or after September 1, 2013, of at least \$200 million in that particular data center over a five-year period beginning on the date the data center is certified by the comptroller as a qualifying data center.

(e) Requires a data center that is eligible under Subsection (d) to be certified by the comptroller as a qualified data center to apply to the comptroller for certification as a qualifying data center and for issuance of a registration number or numbers by the comptroller. Requires that the application be made on a form prescribed by the comptroller and include the information required by the comptroller. Requires that the application 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. Requires that the application form 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) Provides that the exemption provided by this section begins on the date the data center is certified by the comptroller as a qualifying data center and expires:

(1) on the 10th anniversary of that date, if the qualifying occupant, qualifying owner, or qualifying operator independently or jointly makes a capital investment of at least \$200 million but less than \$250 million as provided by Subsection (d)(2)(B); or

(2) on the 15th anniversary of that date, if the qualifying occupant, qualifying owner, or qualifying operator independently or jointly makes a capital investment of \$250 million or more as provided by Subsection (d)(2)(B).

(g) Requires each person who is eligible to claim an exemption authorized by this section to hold a registration number issued by the comptroller. Requires that the registration number be stated on the exemption certificate provided by the purchaser to the seller of tangible personal property eligible for the exemption.

(h) Requires the comptroller to revoke all registration numbers issued in connection with a qualifying data center that the comptroller determines does not meet the requirements prescribed by Subsection (d). Provides that 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) Requires the comptroller to adopt rules consistent with and necessary to implement this section, including rules relating to:

(1) a qualifying data center, 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 data center, qualifying owner, qualifying operator, and qualifying occupant comply with this section and remain entitled to the exemption authorized by this section.

(j) Provides that the exemption in this section does not apply to the taxes imposed under Chapter 321 (Municipal Sales and Use Tax), 322 (Sales and Use Taxes for Special Purpose Taxing Authorities), or 323 (County Sales and Use Tax Act).

(k) Provides that a data center is not eligible to receive an exemption under this section if the data center is subject to an agreement limiting the appraised value of the data center's property under Subchapter B (Limitation on Appraised Value of Certain Property Used to Create Jobs) or C (Limitation on Appraised Value of Property in Certain Rural School Districts), Chapter 313 (Texas Economic Development Act).

SECTION 2. Amends Sections 151.317(a), (b), and (d), Tax Code, as follows:

(a) Exempts gas and electricity, subject to Sections 151.359 and 151.1551 (Registration Number Required for Timber and Certain Agricultural Items) and Subsection (d) of this section, from the taxes imposed by this chapter when sold for:

(1)-(8) Makes no change to these subdivisions;

(9) use directly by a data center that is certified by the comptroller as a qualifying data center under Section 151.359 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.

Makes nonsubstantive changes.

(b) Exempts 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), from the taxes imposed by a municipality under Chapter 321 except as provided by Sections 151.359(j) and 321.105 (Residential Use of Gas and Electricity).

(d) Requires that the gas or electricity, to qualify for the exemptions in Subsections (a)(2)-(9), rather than Subsections (a)(2)-(8), be sold to the person using the gas or electricity in the exempt manner. Provides that, 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)-(9) is considered use by the purchaser of the gas or electricity. Makes a conforming change.

SECTION 3. Amends Section 151.1551(a), Tax Code, as follows:

(a) Provides that this section applies to an exemption provided by:

(1)-(3) Makes no change to these subdivisions;

(4) Sections 151.317(a)(5) and (11), rather than Sections 151.317(a)(5) and (10), for electricity used in agriculture or timber operations; and

(5) Makes no change to this subdivision.

SECTION 4. Amends Subchapter A, Chapter 313, Tax Code, by adding Section 313.010, as follows:

Sec. 313.010. CERTAIN ENTITIES INELIGIBLE. Provides that an entity that has been issued a registration number under Section 151.359 is not eligible to receive a limitation on appraised value under this chapter.

SECTION 5. Amends Section 321.208, Tax Code, as follows:

Sec. 321.208. STATE EXEMPTIONS APPLICABLE. Provides that the exemptions provided by Subchapter H (Exemptions), Chapter 151 (Limited Sales, Excise, and Use Tax), apply to the taxes authorized by this chapter, except as provided by Sections 151.359(j) and 151.317(b). Makes a nonsubstantive change.

SECTION 6. Amends Section 323.207, Tax Code, as follows:

Sec. 323.207. STATE EXEMPTIONS APPLICABLE. Provides that the exemptions provided by Subchapter H, Chapter 151, apply to the taxes authorized by this chapter, except as provided by Sections 151.359(j) and 151.317(b). Makes a nonsubstantive change.

SECTION 7. Provides that the change in law made by this Act does not affect tax liability accruing before the effective date of this Act. Provides that tax liability accruing before the effective date of this Act 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 8. Effective date: September 1, 2013.