

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION**

**May 22, 2013**

**TO:** Honorable Joe Straus, Speaker of the House, House of Representatives

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB1223** by Hilderbran (Relating to the temporary exemption of certain tangible personal property related to data centers from the sales and use tax. ), **As Passed 2nd House**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB1223, As Passed 2nd House: a negative impact of (\$14,600,000) through the biennium ending August 31, 2015.

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

<b>Fiscal Year</b>	<b>Probable Net Positive/(Negative) Impact to General Revenue Related Funds</b>
2014	(\$5,400,000)
2015	(\$9,200,000)
2016	(\$11,000,000)
2017	(\$15,800,000)
2018	(\$16,900,000)

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

<b>Fiscal Year</b>	<b>Probable Revenue (Loss) from General Revenue Fund 1</b>
2014	(\$5,400,000)
2015	(\$9,200,000)
2016	(\$11,000,000)
2017	(\$15,800,000)
2018	(\$16,900,000)

**Fiscal Analysis**

The bill would amend Chapters 151 and 313, Tax Code, to provide a sales tax exemption for certain property used in certain data centers.

"Data center" would mean at least 100,000 square feet of space in a single building or portion of a single building, which space: is located in this state; is specifically constructed or refurbished and actually used primarily 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; is not used primarily by a telecommunications provider to place tangible personal property that is used to deliver telecommunications services; and that meets other standards related to power supply, fire suppression, and enhanced physical security.

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 data center" if, on or after September 1, 2013, 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 create at least 20 full-time, permanent jobs that pay at least 120 percent of the county average weekly wage in the county in which the data center is located; and 2) 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 as a qualifying data center.

The bill would exempt from tax tangible personal property that is necessary and essential to the operation of a qualifying data center if the property is purchased for installation at, incorporation into, or in the case of electricity for use in, a qualifying data center if the tangible personal property is: electricity; an electrical system; a cooling system; an emergency generator; 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, a taxable service that is performed on tangible personal property exempted under Section 151.359.

The exemption would expire on the tenth anniversary of the date a qualifying data center was certified if the capital investment used to qualify the center was at least \$200 million but less than \$250 million, and would expire on the fifteenth anniversary of that data center if the capital investment was \$250 million or more.

The exemption would not apply to the local sales and use taxes imposed under Chapters 321, 322, or 323, Tax Code.

A data center subject to an agreement limiting appraised value under Subchapter B or C, Chapter 313, would not be eligible for exemption under Section 151.359, and an entity with a registration number under Section 151.359 would not be eligible to receive a limitation on appraisal under Chapter 313.

A registration number would have to be obtained from the Comptroller for each person 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 qualifying data center would be revocable by the Comptroller upon determination that the requirements for qualification were not met, and each person whose registration number was revoked would be liable for taxes, including penalty and interest from the date of purchase, on purchases for which the person claimed exemption.

The Comptroller would be granted rulemaking authority to implement the new Section 151.359.

This bill would take effect September 1, 2013.

### **Methodology**

Data on the composition of data center infrastructure and electricity costs obtained from industry sources was used to model expected annual expenditures by data centers that would be subject to tax under current law but that would be exempt under the provisions of the bill. It is expected that on average a new single-occupancy data center that would meet the 100,000 square foot minimum and the five year \$200 million capital investment commitment would occur at a rate of .8 each year, or once every 15 months, under current law without the provision of the tax incentive proposed in the bill.

Compared with previous versions of the bill, this committee report limits each qualifying data center to one occupant as did the House committee report, and increases the capital investment minimum to \$200 million within a 5 year period versus \$150 million in the House engrossment.

Because the definition of data center provides for use of at least 100,000 square feet in a single building or portion of a single building, this fiscal analysis assumes that while a qualifying data center has only a single occupant, more than one qualifying data center may be located in a single building provided the building is large enough to contain multiple 100,000 square foot occupants. In the event of more than one qualifying data center in a single building it is assumed that the job creation and capital investment commitment requirements prescribed by Section 151.359(d)(2) must be met by each qualifying data center separately and that any capital investment by a qualifying owner or qualifying operator in support of the operation of more than one qualifying data center must be equitably allocated between or among the data centers for purposes of meeting their respective capital investment requirements under Section 151.359(d)(2)(B).

### **Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 304 Comptroller of Public Accounts

**LBB Staff:** UP, KK, SD