HOUSE RESEARCH ORGANIZATION bill analysis | 5/6/2013 | HB 1223 Hilderbran, Murphy (CSHB 1223 by Hilderbran)

SUBJECT: Sales and use tax exemptions of data centers' tangible property

COMMITTEE: Ways and Means — committee substitute recommended

WITNESSES: 8 ayes — Hilderbran, Otto, Bohac, Button, Eiland, N. Gonzalez, Ritter, Strama

0 nays

1 absent — Martinez Fischer

VOTE: For — Brad Enloe and John Patterson, Capstar Real Estate Advisors; Bruce Smith, Cassidy Turley; Charles Martin "Marty" Wender, Westover Hills; *(Registered, but did not testify:* Jeff Coyle, City of San Antonio; Richard Evans, Zachry Industrial; Deborah Giles, SHI Government Solutions; Jim Grace, CenterPoint Energy; Michael Johnson, Hillwood Properties; Sylvia Kang, Cyrusone; James LeBas, AECT; Robert Nathan, CPS Energy; James Nelson, Jr., Zachry Development Ventures; Wendy Reilly, TechAmerica; Chris Rosas, Rackspace; Drew Scheberle, Greater Austin Chamber of Commerce; Carlton Schwab, Texas Economic Development Council; Chris Shields, Greater San Antonio Chamber of Commerce; Ray Sullivan, Amazon.com; Victoria Waddy, Zachry Development Venture; Julie Williams, Chevron USA; Andrew Wise, Microsoft; Geoff Wurzel, TechNet)

Against — *(Registered, but did not testify:* Dick Lavine, Center for Public Policy Priorities; Ted Melina Raab, Texas AFT)

On — Brad Reynolds, Texas Comptroller of Public Accounts

DIGEST: CSHB 1223 would provide a tax exemption for sales and use taxes on tangible property necessary to operate a data center.

To qualify for the exemption, a data center would have to:

- be located in Texas;
- be specifically built or refurbished to house servers and data processing and storage equipment;

- be a single occupant in a space at least 100,000 square feet;
- not be used primarily for telecommunications services;
- have an uninterruptable power source, backup generator, sophisticated fire suppression and prevention system, and advanced security and video surveillance technology.

The data center would have to create at least 20 permanent jobs, not including jobs transferred from within the state, with a salary of 120 percent or higher than the average salary in the county in which the data center was built.

The owner would have to make or agree to make a capital investment of at least $150 million in the data center over a five-year period. The exemption would expire 10 years after the date of the first exemption for an operator that invested more than $150 million and less than $200 million, and 15 years if the operator invested more than $200 million.

The comptroller would create an application that would include a section to certify that the required capital investment was made in the prescribed time period. The comptroller could revoke the exemption of a data center owner that the comptroller determined failed to meet the requirements for the exemption. If the exemption were revoked, the owner would be liable for taxes that were exempted plus penalties and interest.

The exemptions for data centers would not extend to the taxes imposed by a municipality, sales and use taxes for special purpose taxing authorities, or the county.

The tangible personal property that is essential to running a data center that would receive the exemption from taxes would include: electricity, an electrical system, a cooling system, an emergency generator, hardware or distributed mainframe or computer server, data storage devices, network equipment, software, and other mechanical, electrical, and plumbing systems. The exemption would include office equipment, maintenance and janitorial supplies, supplies used in sales or transportation activities, or property and improvements not essential for operating a data center.

The bill would also create an exemption for gas and electricity sold for use directly by a qualified data center.

The bill would take effect September 1, 2013.

**SUPPORTERS SAY:**

CSHB 1223 would create tax incentives to spur investment, create jobs, and help develop Texas' data center and technology sectors.

CSHB 1223 would create specific criteria to ensure that tax exemptions only went to data centers that would provide high-quality, permanent jobs in Texas. New data centers require major capital investment, which is good for the economy and often leads companies to stay in a location for a long time, leading to many years of benefit.

Other states have created tax incentives designed to attract data centers and have on specific occasions taken business from Texas. Texas should act to ensure that it grows this sector and does not miss the opportunity to take advantage of this growing field. Texas already has geographic advantages, a good electricity grid, other tech companies, and an educated work force, but the proper tax incentive tailored to data centers is absolutely critical to ensure that Texas becomes a major player in this sector.

The fiscal impact associated with the bill would not take into account the ripple effect that investment of $150 million or more would have on the economy. The data center facility would pay property taxes and ad valorem taxes and stimulate the economy by attracting other businesses that use the data center's services.

**OPPONENTS SAY:**

Any perceived benefit from CSHB 1223 from the attempt to attract business would not outweigh the tax revenue relinquished to support the provision of important state services.

**NOTES:**

The Legislative Budget Board estimates that the bill would have a negative impact on general revenue of $18.2 million through the biennium ending August 31, 2015, $13.8 million in 2016, $19.7 million in 2017, and $21.1 million in 2018.