To: The Honorable Joan Huffman, Chair
The Honorable "Chuy" Hinojosa, Vice-Chair
From: Cyrus Reed, Legislative and Conservation Director, Lone Star Chapter of the Sierra Club, cyrus.reed@sierraclub.org, 512-888-9411

Re: Data Center Investment and State Fiscal Effects*: Since the passage of House Bill 1223, 83rd Legislature, in 2013, the state cost of providing a sales tax exemption to qualifying data centers has grown from an estimated $14.6 million for the 2014-15 biennium to a projected $3.3 billion for the 2028-29 biennium. Study the cost and consequences of the sales tax exemption provided to data centers under Tax Code Sections 151.359 and 151.3595. Make recommendations providing safeguards to ensure that Texans benefit from data center investment.*

The Lone Star Chapter of the Sierra Club is the state chapter of the Sierra Club, the largest and oldest conservation organization in the nation. WIth more than 20,000 members and 100,000 supporters we have members and supporters in every Senate District in Texas and have been active on many issues related to data centers. Like many organizations, we have been concerned by the rapid development of cryptocurrency, data centers and AI facilities that are straining our grid, using valuable water resources and have the potential to pollute our air - largely through onsite and backup generation - and cause water pollution. We have been disappointed by data centers' tepid response to even basic requests like reporting their water use data. We are pleased to see Texans from every walk of life making their views known and political leaders on both sides of the aisle calling for guardrails or even a moratorium around this unprecedented development. Like many Texans, we do think a special session could be called in September to deal with many of these issues before Texas is even more overwhelmed by this "hyper-scale" development.

When HB 1223 was approved in 2013, it was meant as an incentive to spur economic development and jobs in the data center and computational world and it has served its purpose. Specifically, Tax Code Section 151.359 applied to exemptions from use and sales tax for a wide variety of components - including electricity sales - for data centers that were housed in buildings that occupied at least 100,000 square feet, and provided at least 20 jobs meeting certain employment standards, while Texas Code Section 151.3595 applied to even larger facilities that occupied at least 250,000 square feet and promised to invest at least $500 million and create at least 40 jobs meeting certain employment standards.

Other incentives - including Chapter 312 county property tax abatements, JETI school tax abatements and Chapter 380 and Chapter 381 economic development incentives - have also been used as sweeteners to attract data centers and large computational loads.

The Incentives Meant to Attract Data Centers Have Worked but Now It is Costing Us Too Much: We should end them.

The Legislature should end incentives for large computational loads by eliminating the sales tax exemption as well as the electricity tax exemption. Both exemptions will cost billions of dollars to state revenue going forward only to help some of the wealthiest corporations in the world.

When the Legislature began the program, it was costing tens of million in lost revenue but today it is well over $1 billion and is expected to rise exponentially. At one time a large data center was 10 or 20 MWs of demand, but today hyperscale facilities are being planned that can be 1000s of MWs in demand.

In 2023, the Texas State Comptroller estimated that a state sales and use tax exemption program for property used by certain data centers would cost the state an estimated $130 million in FY 2025, but today, the Comptroller estimated $1.016 billion in FY 2025, a 682% change. Data center subsidies are now predicted by the Texas Comptroller to cost the state at least $9 billion combined between 2025 and 2030. Even this may be an underestimate and it does not include the state’s tax exemptions for information and data processing services.

This second tax exemption category for information and data processing services cost the state an estimated additional $236 million in 2025 and is projected to cost at least $332 million annually by 2030, according to the Comptroller of Public Accounts’ Tax Exemptions and Incidence Report available at
https://comptroller.texas.gov/transparency/reports/tax-exemptions-and-incidence/

While it might have made sense at one time to provide these incentives, today hyperscale facilities are arriving in unprecedented numbers. These are the wealthiest corporations in the world and there is no reason to exempt them from paying sales and use tax on electricity and other inputs in exchange for a handful of permanent jobs.

The Legislature should also look at local property tax abatement and economic development policy and consider ending or scaling back these agreements for data centers, while giving local government more authority.

Data centers may also receive additional tax abatements from the local government in whose jurisdiction they are located. Data centers can receive reduced or eliminated property taxes on cooling systems, new or expanded buildings and facilities, IT hardware, backup power, and servers.19 Local government tax abatement agreements are one of the few tools that county governments have to influence development impacts within their jurisdictions. In addition to tax abatement under Chapter 312, or school property tax abatements under the JETI Act approved in 2023, some local governments can utilize Chapter 380 and Chapter 381 agreements, which allow for local incentives.

The Legislature should consider eliminating, scaling back or limiting the potential for large computational loads like data centers and AI to be eligible for county property tax breaks (through 312 property tax abatement agreements) or school property tax abatements through the new JETI (Jobs, Energy, Technology and Investment) ACT, which currently can provide significant school property tax abatements for both data centers and onsite gas plants used to power their facility.

This is a difficult and complex conversation because many counties or even smaller cities want to be able to use Chapter 312, Chapter 380, Chapter 381 or JETI Act incentives to attract new development. Such agreements may in fact be the only way that these counties feel like they have the leverage to better control development. The unfortunate truth is that data center growth in the state is occurring within unincorporated counties. Such counties have very limited powers in terms of zoning, regulating impervious cover, providing setback or buffers, controlling air pollution, mitigating flooding, regulating or enforcing building codes or standards or many other local government tools that municipalities do enjoy to better protect their residents. At the moment, development agreements that provide for tax abatements in exchange for community benefits are realistically all that counties have to shape development.

The Sierra Club would recommend that whether or not rhe Legislature chooses to keep the potential for local government abatements and agreements, that counties be given expanded authority on several issues including the ability to better regulate:

- Building code adoption and enforcement;
- Impervious cover;
- Noise and air pollution nuisance;
- Drainage (including drainage fees) and flooding;
- Setbacks from residential property and important water features; and
- Groundwater availability

In addition, if any of these incentives do remain, then data centers should be held to much higher performance standards for noise, air pollution, energy use and water use. We have put forth various proposals with other relevant committees along these lines.

Moreover, residents throughout Texas have been rightly concerned about the use of "non-disclosure agreements" in such abatement agreements or local incentives, which keeps basic information about water and energy use, land use and air pollution out of the hands of the public, even as incentives are being offered. At the very least, the Legislature should limit the use of NDAs, and prohibit that basic information about natural resources be kept private between developers and local governments.

Large computational loads must report their energy and water use, pay their fair share and mitigate their energy and water use.

Finally, the Sierra Club believes that data centers and other large computational loads must meet strong and sustainable water and energy conservation provisions, and report annually to the PUCT on their current and future water and energy use. Such large loads should also pay their fair share and mitigate the impact they have on electricity and water rates and use. The legislature should assure that all water and electric utilities have separate tariffs for large computational loads.

In addition, the legislature should consider the creation of a large computational load mitigation fee on all large computational loads (over 25 MWs) that would be used to help defray expenses, and that are proportional to the industry's impact on local and state resources. These fees could pay into water supply, infrastructure, energy savings, and flood mitigation. An alternative would be for them to make an agreement with the local government for a similar amount. In essence, large computational loads could be provided with an option - reach a strong community benefit agreement with local governments that helps invest in local water and energy savings technology, or pay a significant mitigation fee that would support programs at the PUCT, SECO, TWDB and TDHCA that directly benefit communities.

Conclusions: Eliminate or pare back incentives and require standards, reporting and make data centers invest in our communities

The Sierra Club would favor eliminating the incentives found in Tax Code Sections 151.359 and 151.3595, and also consider ending abatements of local taxes or creation of incentives from local government through Chapter 380 and Chapter 381 agreements. However, the legislature should strengthen county authority over several issues and eliminate or reduce the use of NDAs, especially for natural resources issues. Currently counties have little leverage when large companies come to their areas but providing more authority will lead to better deals.

Large computational loads are coming to Texas with or without the provision with large hand-outs to companies worth trillions. Texas should eliminate or scale back tax breaks, create strong performance standards on energy and water use, eliminate or restrict NDAs, require annual water and energy reporting, strengthen county authority, and require these “neighbors” to either invest directly in communities or pay mitigation fees that will directly benefit water and energy consumers. Instead of a problem, let’s help them be part of the solution.