

A BILL TO BE ENTITLED

AN ACT

relating to countywide voter approval of certain proposed data centers; establishing a state-law condition on the construction of certain data centers; authorizing a petition for an election; providing for a temporary construction prohibition following the filing of a petition or the ordering of an election; authorizing a commissioners court to order an election; providing procedures for the election; providing civil remedies and penalties for construction of a data center without required voter approval; providing that certain municipal and county permits and ordinances do not authorize construction in violation of this Act; providing that Chapter 245, Local Government Code, does not create a right to construct a covered data center without voter approval; and providing an effective date.

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

SECTION 1. SHORT TITLE. This Act may be cited as the Texas Data Center Voter Approval Act.

SECTION 2. LEGISLATIVE FINDINGS AND PURPOSE.

(a) The legislature finds that:

- (1) certain data centers may involve substantial electrical demand, water consumption, land use, infrastructure requirements, and other impacts that may affect residents throughout the county in which the facility is located;
- (2) the impacts of a covered data center may extend beyond the boundaries of the municipality or other political subdivision in which the facility is located;
- (3) some municipalities may allow certain data centers or similar facilities as a permitted or "by-right" use under municipal zoning, development, or land-use regulations;
- (4) the Legislature intends to establish a countywide voter-approval requirement as a condition imposed by state law on the construction of a covered data center;
- (5) the voter-approval requirement established by this Act is not an exercise of county zoning authority and does not transfer municipal zoning authority to a county;
- (6) the Legislature intends this Act to apply to a covered data center located in the unincorporated area of a county and to a covered data center located within the corporate limits of a municipality;
- (7) the Legislature intends that all qualified voters of the county, including qualified voters residing within municipalities, be entitled to participate in an election under this Act; and

(8) the Legislature intends the requirements of this Act to apply notwithstanding a municipal ordinance, zoning classification, development regulation, permit, approval, agreement, or other authorization that would otherwise permit construction of the covered data center without voter approval.

(b) The purpose of this Act is to require countywide voter approval before construction of a covered data center may commence or continue, regardless of whether the proposed location is inside or outside the corporate limits of a municipality.

SECTION 3. Subtitle B, Title 10, Local Government Code, is amended by adding Chapter 245A to read as follows:

CHAPTER 245A. COUNTYWIDE VOTER APPROVAL OF CERTAIN DATA CENTERS

Sec. 245A.001. PURPOSE. The purpose of this chapter is to establish a countywide voter-approval requirement as a condition imposed by state law on the construction of a covered proposed data center.

Sec. 245A.002. DEFINITIONS. In this chapter:

(1) "Commissioners court" means the commissioners court of the county in which a covered proposed data center is proposed to be located.

(2) "Covered data center" means a facility that:

(A) consists of one or more buildings or structures specifically constructed or refurbished primarily to house servers and related equipment for the processing, storage, or distribution of data; and

(B) has, or is proposed to have, an aggregate electrical demand of at least 10 megawatts.

(3) "Covered proposed data center" means a covered data center that is proposed to be constructed, expanded, or materially modified.

(4) "Qualified voter" means a person who is registered to vote in the county and is otherwise eligible to vote in an election held in the county.

(5) "Countywide election" means an election at which every qualified voter of the county is entitled to vote, regardless of whether the voter's residence is located:

(A) inside or outside the corporate limits of a municipality;

(B) inside or outside the extraterritorial jurisdiction of a municipality; or

(C) in any other portion of the county.

(6) "Construction" includes site preparation, grading, excavation, foundation work, structural construction, installation of permanent electrical infrastructure, installation of permanent mechanical or cooling infrastructure, and installation of permanent data-processing infrastructure.

Sec. 245A.003. APPLICABILITY.

(a) This chapter applies to a covered proposed data center proposed to be located wholly or partly within the geographic boundaries of a county.

(b) This chapter applies regardless of whether the covered proposed data center is proposed to be located:

(1) in the unincorporated area of the county;

(2) wholly within the corporate limits of a municipality; or

(3) partly within the corporate limits of a municipality and partly in the unincorporated area of the county.

(c) A person is not exempt from this chapter because:

(1) the proposed location is zoned for the proposed use;

(2) the proposed use is permitted by right under a municipal ordinance;

(3) the proposed use is permitted without a zoning change, special exception, variance, conditional-use permit, or similar discretionary municipal approval;

(4) the municipality has issued a building permit or other development permit;

(5) the municipality has approved a site plan, development plan, plat, or similar instrument;

(6) the proposed data center is subject to a development agreement or other agreement with a municipality; or

(7) the municipality otherwise determines that the proposed data center is authorized under municipal law.

(d) A voter's residence within a municipality does not affect the voter's eligibility to vote in an election held under this chapter.

Sec. 245A.004. VOTER APPROVAL REQUIRED FOR CONSTRUCTION.

(a) Except as provided by Subsection (b), a person may not commence or continue construction of a covered proposed data center unless the covered proposed data center has been approved by the qualified voters of the county in a countywide election held under this chapter.

(b) A covered proposed data center is subject to an election under this chapter only if:

(1) a petition meeting the requirements of Section 245A.006 is filed; or

(2) the commissioners court orders an election under Section 245A.005.

(c) The requirement of Subsection (a) is a substantive condition imposed by state law on the construction of the covered proposed data center.

(d) A municipal ordinance, zoning classification, development regulation, permit, approval, agreement, or other authorization may not be construed to authorize construction of a covered proposed data center in violation of Subsection (a).

(e) A county or municipality may not issue or recognize a permit, authorization, or other approval as authorizing construction in violation of Subsection (a).

(f) Approval under this chapter does not constitute:

(1) zoning approval;

(2) a building permit;

(3) subdivision approval;

(4) utility approval;

(5) environmental approval; or

(6) any other permit or authorization otherwise required by law.

Sec. 245A.005. ELECTION ORDERED BY COMMISSIONERS COURT.

(a) The commissioners court may, by majority vote, order a countywide election on whether to approve a covered proposed data center.

(b) The election order must identify the covered proposed data center with reasonable specificity, including:

(1) the name of the proposed data center, if known;

(2) the proposed owner or operator, if known;

- (3) the proposed location;
 - (4) the anticipated electrical demand, if known; and
 - (5) a brief description of the proposed facility.
- (c) An election ordered under this section shall be a countywide election.
- (d) The commissioners court shall provide notice that all qualified voters of the county are entitled to vote in the election, including qualified voters residing within the corporate limits of a municipality.

Sec. 245A.006. PETITION FOR COUNTYWIDE ELECTION.

(a) The commissioners court shall order a countywide election on whether to approve a covered proposed data center if presented with a petition signed by qualified voters of the county in a number equal to the lesser of:

- (1) 500 registered voters of the county; or
- (2) one percent of the registered voters of the county.

(b) The number of registered voters shall be determined from the most recent official voter registration list available on the date the petition is submitted for verification.

(c) A petition under this section must identify the covered proposed data center with reasonable specificity and must substantially state:

"This petition requests a countywide election in _____ County to determine whether the covered proposed data center identified in this petition may be constructed in _____ County."

(d) Each signature on a petition must be accompanied by:

- (1) the signer's printed name;
- (2) the signer's residence address;
- (3) the signer's voter registration number or date of birth; and
- (4) the date the petition was signed.

(e) A person who is registered to vote in the county may sign a petition under this section regardless of whether the person's residence is inside or outside the corporate limits of a municipality.

(f) The petition shall be filed with the county election administrator or, if the county does not have a county election administrator, the county clerk.

(g) Chapter 277, Election Code, applies to verification of a petition under this section to the extent not inconsistent with this chapter.

Sec. 245A.007. TEMPORARY CONSTRUCTION PROHIBITION.

(a) Beginning on the date a petition under Section 245A.006 is filed or an election is ordered under Section 245A.005, a person may not commence or continue construction of the covered proposed data center identified in the petition or election order.

(b) The prohibition under Subsection (a) applies regardless of whether:

(1) the covered proposed data center is located in the unincorporated area of the county;

(2) the covered proposed data center is located within a municipality;

(3) the covered proposed data center is permitted by right under municipal law;

(4) a municipal permit has been issued;

(5) construction has commenced; or

(6) the owner or applicant asserts a right under Chapter 245.

(c) This section does not prohibit:

(1) work necessary to secure an existing construction site;

(2) work necessary to protect public health or safety;

(3) emergency repairs necessary to prevent injury or substantial property damage; or

(4) other work expressly authorized by the applicable governmental entity solely for purposes of complying with this section.

(d) The prohibition remains in effect until:

(1) the petition is finally determined to be insufficient and no election is ordered;

(2) the petition is withdrawn and no election is ordered;

(3) the commissioners court enters an order determining the petition is insufficient and no election is ordered;

- (4) the covered proposed data center is approved at an election held under this chapter; or
- (5) the covered proposed data center is disapproved at an election held under this chapter.

Sec. 245A.008. EFFECT ON MUNICIPAL AUTHORITY.

- (a) This chapter does not transfer municipal zoning authority to a county.
- (b) A municipality retains authority otherwise granted to the municipality by state law or its charter, except that municipal authority may not be exercised to authorize construction of a covered proposed data center in violation of Section 245A.004.
- (c) A municipal zoning classification permitting a covered proposed data center by right does not exempt the covered proposed data center from this chapter.
- (d) A municipal permit or other authorization issued for a covered proposed data center remains effective according to its terms, but does not authorize construction prohibited by this chapter.
- (e) Nothing in this chapter authorizes a county to revoke, amend, or invalidate a municipal permit or zoning classification.
- (f) Nothing in this chapter authorizes a county to exercise municipal zoning authority.

Sec. 245A.009. VERIFICATION OF PETITION; ORDERING ELECTION.

- (a) Not later than the fifth business day after receiving a petition under Section 245A.006, the county election administrator or county clerk, as applicable, shall submit the petition for verification of voter registration status.
- (b) Not later than the 20th day after receiving the petition for verification, the officer responsible for verification shall certify to the commissioners court whether the petition contains the required number of valid signatures.
- (c) If the petition is certified as sufficient, the commissioners court shall order the election not later than the fifth business day after receiving the certification.
- (d) If the petition is certified as insufficient, the officer responsible for verification shall provide written notice stating the reason the petition is insufficient.

Sec. 245A.010. DATE OF ELECTION.

- (a) An election ordered under this chapter shall be held on the first uniform election date authorized by Section 41.001, Election Code, that occurs not earlier than the 60th day after the date the election is ordered.

(b) The commissioners court shall select the first uniform election date described by Subsection (a) in the election order.

(c) If more than one uniform election date could satisfy the requirements of Subsection (a), the commissioners court shall select the earliest such date.

(d) The election date selected under this section must provide sufficient time for the county election officer to comply with applicable requirements governing notice, ballot preparation, early voting, polling places, election officers, and canvassing.

Sec. 245A.011. ELECTION ORDER.

An election order under this chapter must:

- (1) state the covered proposed data center to which the election applies;
- (2) state that the election is countywide;
- (3) state the date of the election;
- (4) state the hours during which the polls will be open;
- (5) identify polling places in accordance with applicable law; and
- (6) contain the ballot proposition prescribed by Section 245A.012.

Sec. 245A.012. BALLOT PROPOSITION.

The ballot for an election under this chapter shall be printed to permit voting for or against the proposition:

"Approving construction of the proposed data center identified in the election order in _____ County."

Sec. 245A.013. APPROVAL OF PROPOSED DATA CENTER.

- (a) A covered proposed data center is approved under this chapter if a majority of the votes cast on the proposition favor approval.
- (b) If the proposition does not receive approval, a person may not commence or continue construction of the covered proposed data center.
- (c) Approval applies only to the covered proposed data center identified in the election order.
- (d) Approval does not transfer to an unrelated data center or materially different project.

Sec. 245A.014. EFFECT OF APPROVAL.

(a) Approval at an election authorizes construction of the covered proposed data center for purposes of this chapter only.

(b) Approval under this chapter does not:

(1) waive municipal zoning requirements;

(2) waive municipal building requirements;

(3) waive county requirements;

(4) waive state requirements;

(5) waive federal requirements; or

(6) constitute a permit or other governmental authorization.

(c) A municipality may continue to administer and enforce its laws applicable to the covered proposed data center after voter approval under this chapter.

Sec. 245A.015. UNAUTHORIZED CONSTRUCTION; CIVIL REMEDIES.

(a) A person may not knowingly commence or continue construction of a covered proposed data center in violation of Section 245A.004 or 245A.007.

(b) The county attorney, or another attorney representing the county, may bring an action in a district court of the county to:

(1) enjoin commencement or continuation of construction;

(2) obtain a temporary restraining order or temporary injunction as authorized by law;

(3) recover a civil penalty under Subsection (c);

(4) recover reasonable attorney's fees and court costs; and

(5) obtain other equitable relief necessary to enforce this chapter.

(c) A person who knowingly commences or continues construction in violation of this section is liable to the county for a civil penalty of not more than \$500,000 for each day the violation continues.

(d) Each day of unauthorized construction constitutes a separate violation.

(e) A civil penalty recovered under this section shall be deposited in the general fund of the county.

Sec. 245A.016. ELECTION ADMINISTRATION.

An election under this chapter shall be administered by the county election officer in accordance with the Election Code and this chapter.

Sec. 245A.017. CANVASS AND EFFECT OF RESULT.

(a) The commissioners court shall canvass the returns of an election held under this chapter in accordance with applicable law.

(b) If the covered proposed data center is approved, the commissioners court shall enter an order in its minutes stating that the covered proposed data center received voter approval under this chapter.

(c) If the covered proposed data center is not approved, the commissioners court shall enter an order in its minutes stating that construction of the covered proposed data center is prohibited under this chapter.

Sec. 245A.018. JUDICIAL REVIEW.

A person adversely affected by a petition verification determination, election order, construction prohibition, or election held under this chapter may seek judicial review or contest the election as otherwise authorized by law.

Sec. 245A.019. RELATION TO OTHER LAW.

(a) To the extent of a conflict between this chapter and a municipal ordinance, zoning classification, development regulation, permit, approval, agreement, or other municipal authorization concerning whether a covered proposed data center may be constructed, this chapter controls.

(b) To the extent of a conflict between this chapter and another provision of this code concerning whether a covered proposed data center may be constructed, this chapter controls.

(c) This chapter does not authorize a county or municipality to exercise authority preempted by federal law.

(d) This chapter does not authorize a county or municipality to revoke or invalidate a state or federal permit.

SECTION 4. Section 245.002, Local Government Code, is amended by adding Subsection (f) to read as follows:

(f) Notwithstanding Subsection (a), a right accrued under this chapter does not authorize the commencement or continuation of construction of a covered proposed data center in violation of Chapter 245A.

SECTION 5. Section 245.004, Local Government Code, is amended by adding Subsection (12) to read as follows:

(12) a requirement imposed under Chapter 245A.

SECTION 6. Section 211.001, Local Government Code, is amended by adding Subsection (c) to read as follows:

(c) Notwithstanding any other law, the authority granted to a municipality under this chapter does not exempt a covered proposed data center from a voter-approval requirement imposed under Chapter 245A.

SECTION 7. Section 3.005, Election Code, is amended by adding Subsection (e) to read as follows:

(e) An election held under Chapter 245A, Local Government Code, is a countywide election and shall be administered by the county election officer in accordance with Chapter 245A, Local Government Code, and this code.

SECTION 8. Chapter 277, Election Code, applies to a petition submitted under Chapter 245A, Local Government Code, except to the extent Chapter 245A expressly provides otherwise.

SECTION 9. The changes in law made by this Act apply only to a petition filed or an election ordered on or after the effective date of this Act.

SECTION 10. This Act takes effect September 1, 2027.