

## **BILL ANALYSIS**

Senate Research Center  
84R19918 CJC-F

H.B. 2712  
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Finance  
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Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Many states provide economic incentives to attract large data center projects. In the last eight years, these capital-intensive projects have come to represent a growing market segment in the technology industry and generate economic activity in the cities and states where they are located. The largest players in the enterprise data center field tend to locate in states where competitors have paved the way, as they have done in Oregon, Iowa, and North Carolina.

Texas statute currently provides tax benefits for other projects, including data centers. Texas is well positioned to attract large data center projects because of its strong infrastructure, major population centers, educated workforce, low construction costs, and a favorable permitting process. The goal of H.B. 2712 is to create a competitive environment for Texas to become a leader in this segment of the industry.

H.B. 2712 provides a temporary sales tax exemption on tangible personal property that is necessary and essential to the operation of a qualifying large data center.

H.B. 2712 amends current law relating to the temporary exemption of certain tangible personal property related to large data center projects 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 151.3595, Tax Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subchapter H, Chapter 151, Tax Code, by adding Section 151.3595, as follows:

Sec. 151.3595. PROPERTY USED IN CERTAIN LARGE DATA CENTER PROJECTS; TEMPORARY EXEMPTION. (a) Defines in this section "county average weekly wage," "large data center project," "permanent job," "qualifying job," "qualifying large data center project," "qualifying operator," "qualifying owner," and "qualifying occupant."

(b) Provides that except as otherwise provided by this section, tangible personal property that is necessary and essential to the operation of a qualifying large data center project 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 electricity, use in a qualifying large data center project by a qualifying owner, qualifying operator, or qualifying occupant, and the tangible personal property set forth herein.

(c) Provides that the exemption provided by this section does not apply to office equipment or supplies, maintenance or janitorial supplies or equipment, equipment or supplies used primarily in sales activities or transportation activities, tangible personal property on which the purchaser has received or has a pending application for a refund under Section 151.429 (Tax Refund for Enterprise

Projects), tangible personal property not otherwise exempted under Subsection (b) that is incorporated into real estate or into 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 (Services on Certain Exempted Personal Property), a taxable service that is performed on tangible personal property exempted under this section.

(d) Authorizes the comptroller to certify a large data center project as a qualifying large data center project for purposes of this section if, on or after June 1, 2015:

(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 large data center project; or

(B) occupies a space that was not previously used as a data center in which the qualifying occupant will locate a large data center project, 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, independently or jointly:

(A) creates at least 40 qualifying jobs in the county in which the large data center project is located, not including jobs moved from one county in this state to another county in this state;

(B) on or after May 1, 2015, makes or agrees to make a capital investment of at least \$500 million in that particular large data center project, the amount of which may not include a capital investment to replace personal property previously placed in service in that large data center project, over a five-year period beginning on the earlier of:

(i) the date the large data center project submits the application described by Subsection (e); or

(ii) the date the large data center project is certified by the comptroller as a qualifying large data center project; and

(C) agrees to contract for at least 20 megawatts of transmission capacity for operation of the large data center project.

(e) Requires a large data center project that is eligible under Subsection (d) to be certified by the comptroller as a qualifying large data center project to apply to the comptroller for certification and for the 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 large data center project is certified by the comptroller as a qualifying large data

center project and expires on the 20th anniversary of that date, if the qualifying occupant, qualifying owner, or qualifying operator, independently or jointly makes the capital investment of at least \$500 million 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 the registration number to 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 large data center project 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 a qualifying large data center project, qualifying owner, qualifying operator, and qualifying occupant; issuance and revocation of a registration number required under this section; and reporting and other procedures necessary to ensure that a qualifying large data center project, qualifying owner, qualifying operator, and qualifying occupant comply with this section and remain entitled to the exemption authorized by this section.

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

(a) Provides that subject to Sections 151.1551 (Registration Number Required for Timber and Certain Agriculture Items), 151.359 (Property Used in Certain Data Centers; Temporary Exemption), and 151.3595, rather than subject to Sections 151.359 and 151.1551, and Subsection (d) of this section, gas and electricity are exempted from the taxes imposed by this chapter when sold for use directly by a data center or large data center project that is certified by the comptroller as a qualifying data center under Section 151.359 or a qualifying large data center project under Section 151.3595 in the processing, storage, and distribution of data.

SECTION 3. 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 that liability 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 4. Effective date: upon passage or September 1, 2015.