1-1 By: Geren, Bohac (Senate Sponsor - Hancock) H.B. No. 2712 (In the Senate - Received from the House May 13, 2015; 1-3 May 13, 2015, read first time and referred to Committee on Finance; 1-4 May 21, 2015, reported favorably by the following vote: Yeas 13, 1-5 Nays 0; May 21, 2015, sent to printer.)

1-6	COMMITTEE VOTE
1-7	Yea Nay Absent PNV
1-8	Nelson X
1-9	Hinojosa X
1-10	Bettencourt X
1-11	Eltife X
1-12	Hancock X
1-13	Huffman X
1-14	Kolkhorst X
1-15	Nichols X
1-16	Schwertner X
1-17	Seliger X
1-18	Taylor of Galveston X
1-19	Uresti X
1-20	Watson X
1-21	West X
1-22	Whitmire X
1-23	A BILL TO BE ENTITLED
1-24	AN ACT
1-25	relating to the temporary exemption of certain tangible personal
1-26	property related to large data center projects from the sales and
1-27	use tax.
1-28	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
1-29	SECTION 1. Subchapter H, Chapter 151, Tax Code, is amended
1-30	by adding Section 151.3595 to read as follows:
1-31	Sec. 151.3595. PROPERTY USED IN CERTAIN LARGE DATA CENTER
1-32	PROJECTS; TEMPORARY EXEMPTION. (a) In this section:
1-33	(1) "County average weekly wage" means the average
1-34	weekly wage in a county for all jobs during the most recent four
1-35	quarterly periods for which data is available, as computed by the
1-36	Texas Workforce Commission, at the time a large data center project
1-37	creates a job used to qualify under this section.
1-38	(2) "Large data center project" means a project that:
1-39	(A) is located in this state;
1-40	(B) is composed of one or more buildings
1-41	comprising at least 250,000 square feet of space located or to be
1-42	located on a single parcel of land or on contiguous parcels of land
1-43	that are commonly owned or owned by affiliation with the qualifying
1-44	<u>operator;</u> (C) is presificably constructed or refurbished
1-45	(C) is specifically constructed or refurbished
1-46	and actually used primarily to house servers and related equipment and support staff for the processing, storage, and distribution of
1-47	
1-48	<u>data;</u> (D) is used by a single sublifying essence for
1-49	(D) is used by a single qualifying occupant for
1 - 50 1 - 51	the processing, storage, and distribution of data; (E) is not used primarily by a telecommunications
1-51 1-52	provider to place tangible personal property used to deliver
1-52 1 - 53	telecommunications services; and
1-53 1-54	(F) has an uninterruptible power source, a backup
1 - 54 1 - 55	generator, a fire suppression and prevention system, and physical
1 - 55 1 - 56	security that includes restricted access, video surveillance, and
1-50	electronic systems.
1-57 1-58	(3) "Permanent job" means an employment position that
1-58 1 - 59	will exist for at least five years after the date the job is
1-60	created.
1-61	(4) "Oualifying job" means a full-time, permanent job

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<u> </u>	at least 120 percent of the county average weekly wage in
the count	y in which the job is based. The term includes a new
employment	t position staffed by a third-party employer if a written
contract @	exists between the third-party employer and a qualifying
owner, qua	alifying operator, or qualifying occupant that provides
that the	
associated	d qualifying large data center project.
	(5) "Qualifying large data center project" means a
large data	a center project that meets the qualifications prescribed
by Subsect	cion (d).
	(6) "Qualifying operator" means a person who controls
access to	a qualifying large data center project, regardless of
	hat person owns each item of tangible personal property
located at	the qualifying large data center project. A qualifying
	nay also be the qualifying owner.
-	(7) "Qualifying owner" means a person who owns a
building	in which a qualifying large data center project is
located.	A qualifying owner may also be the qualifying operator.
	(8) "Qualifying occupant" means a person who:
	(Ã) contracts with a qualifying owner or
qualifyin	g operator to place, or cause to be placed, and to use
	personal property at the qualifying large data center
project; c	
	(B) in the case of a qualifying occupant who is
also the	qualifying owner and the qualifying operator, places or
	be placed and uses tangible personal property at the
	g large data center project.
	Except as otherwise provided by this section, tangible
	property that is necessary and essential to the operation
of a quali	fying large data center project is exempted from the taxes
imposed b	y this chapter if the tangible personal property is
purchased	for installation at, incorporation into, or in the case
	icity, use in a qualifying large data center project by a
	g owner, qualifying operator, or qualifying occupant, and
	ole personal property is:
	(1) electricity;
	(2) an electrical system;
	(3) a cooling system;
	(4) an emergency generator;
	(5) hardware or a distributed mainframe computer or
server;	
	(6) a data storage device;
	(7) network connectivity equipment;
	(8) a rack, cabinet, and raised floor system;
	(8) a rack, cabinet, and raised floor system; (9) a peripheral component or system;
	(9) a peripheral component or system;
<u>is necessa</u>	<pre>(9) a peripheral component or system; (10) software;</pre>
	<pre>(9) a peripheral component or system; (10) software; (11) a mechanical, electrical, or plumbing system that</pre>
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service that is performed on tangible personal property exempted 3-1 under this section. 3-2 3-3 (d) A large data center project may be certified by the comptroller as a qualifying large data center project for purposes of this section if, on or after June 1, 2015: 3-4 3-5 3-6 (1)a single qualifying occupant: 3-7 (A) contracts with a qualifying owner or 3-8 qualifying operator to lease space in which the qualifying occupant will locate a large data center project; or 3-9 (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 3-10 3-11 3-12 is also the qualifying operator and the qualifying owner; and 3-13 (2) the qualifying owner, qualifying operator, occupant, independently or jointly: 3-14 or 3**-**15 3**-**16 qualifying occupant, creates at least 40 qualifying jobs (A) in the 3-17 county in which the large data center project is located, not 3-18 including jobs moved from one county in this state to another county in this state; 3-19 3-20 3-21 (B) on or after May 1, 2015, makes or agrees to investment of at least \$500 million in that (B) make a capital 3-22 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 3-23 3-24 3-25 3**-**26 3-27 submits the application described by Subsection (e); or 3-28 (ii) the date the large data center project is certified by the comptroller as a qualifying large data center 3-29 3-30 project; and 3-31 agrees to contract for at least 20 megawatts (C) 3-32 of transmission capacity for operation of the large data center 3-33 project. (e) A large data center project that is eligible under Subsection (d) to be certified by the comptroller as a qualifying large data center project shall apply to the comptroller for 3-34 3-35 3-36 certification and for the issuance of a registration number or 3-37 3-38 numbers by the comptroller. The application must be made on a form prescribed by the comptroller and must include the information required by the comptroller. The application must include the name and contact information for the qualifying occupant, and, if 3-39 3-40 3-41 applicable, the name and contact information for the qualifying 3-42 owner and the qualifying operator who will claim the exemption 3-43 authorized under this section. The application form must include a section for the applicant to certify that the capital investment required by Subsection (d)(2)(B) will be met independently or 3-44 3-45 3-46 jointly by the qualifying occupant, qualifying owner, or qualifying 3-47 3-48 operator within the time period prescribed by Subsection (d)(2)(B). (f) 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 3-49 3-50 3-51 3-52 anniversary of that date, if the qualifying occupant, qualifying 3-53 owner, or qualifying operator, independently or jointly makes the capital investment of at least \$500 million as provided by 3-54 <u>Subsection (d)(2)(B).</u> (g) Each person who is eligible to claim an exemption 3-55 3-56 3-57 authorized by this section must hold a registration number issued by the comptroller. The registration number must be stated on the 3-58 3-59 exemption certificate provided by the purchaser to the seller of tangible personal property eligible for the exemption. (h) The comptroller shall revoke all registration numbers 3-60 3-61 issued in connection with a qualifying large data center project 3-62 3-63 that the comptroller determines does not meet the requirements 3-64 prescribed by Subsection (d). 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 3-65 3-66 3-67 under this chapter on purchases for which the person claimed an exemption under this section, regardless of whether the purchase 3-68 occurred before the date the registration number was revoked. 3-69

H.B. No. 2712 (i) The comptroller shall adopt rules consistent with and necessary to implement this section, including rules relating to: (1) a qualifying large data center project, qualifying 4-1 4-2 4-3 4-4 owner, qualifying operator, and qualifying occupant; 4**-**5 4**-**6 issuance and revocation of a registration number (2) required under this section; and 4-7 (3) reporting and other procedures necessary to ensure 4-8 qualifying large data center project, qualifying owner, that а 4-9 qualifying operator, and qualifying occupant comply with this 4-10 4-11 section and remain entitled to the exemption authorized by this section. 4-12 SECTION 2. Section 151.317(a), Tax Code, is amended to read 4-13 as follows: (a) Subject to Sections <u>151.1551</u>, 151.359, and <u>151.3595</u> [<u>151.1551</u>] and Subsection (d) of this section, gas and electricity 4-14 4**-**15 4**-**16 are exempted from the taxes imposed by this chapter when sold for: 4-17 (1)residential use; (2) use in powering equipment exempt under Section 151.3185 by a person processing tangible personal 4-18 (2) 4-19 151.318 or 4-20 4-21 property for sale as tangible personal property, other than preparation or storage of prepared food described by Section 4-22 151.314(c-2); (3) 4-23 use in lighting, cooling, and heating in the 4-24 manufacturing area during the actual manufacturing or processing of tangible personal property for sale as tangible personal property, other than preparation or storage of prepared food described by 4**-**25 4**-**26 4-27 Section 151.314(c-2); 4-28 (4) use directly in exploring for, producing, or 4-29 transporting, a material extracted from the earth; 4-30 (5) use in agriculture, including dairy or poultry 4-31 operations and pumping for farm or ranch irrigation; 4-32 (6) use directly in electrical processes, such as electroplating, electrolysis, and cathodic protection; (7) use directly in the off-wing processing, overhaul, 4-33 4-34 or repair of a jet turbine engine or its parts for a certificated or 4-35 4-36 licensed carrier of persons or property; (8) use directly in providing, under contracts with or 4-37 4-38 on behalf of the United States government or foreign governments, 4-39 defense or national security-related electronics, classified 4-40 intelligence data processing and handling systems, or 4-41 defense-related platform modifications or upgrades; 4-42 (9) 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 4-43 4 - 44project under Section 151.3595 in distribution of data; 4-45 the processing, storage, and 4-46 4-47 (10) a direct or indirect use, consumption, or loss of 4-48 electricity by an electric utility engaged in the purchase of electricity for resale; or 4-49 (11) use in timber operations, including pumping for 4-50 4-51 irrigation of timberland. 4-52 SECTION 3. The change in law made by this Act does not 4-53 affect tax liability accruing before the effective date of this 4-54 Act. That liability continues in effect as if this Act had not been 4-55 enacted, and the former law is continued in effect for the collection of taxes due and for civil and criminal enforcement of 4-56 4-57 the liability for those taxes. 4-58 SECTION 4. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as 4-59 provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this 4-60 4-61 4-62 Act takes effect September 1, 2015. * * * * * 4-63