

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

March 23, 2015

TO: Honorable Dennis Bonnen, Chair, House Committee on Ways & Means

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB2712 by Geren (Relating to the temporary exemption of certain tangible personal property related to large data center projects from the sales and use tax.), **As Introduced**

No significant fiscal implication to the State is anticipated for several biennia. The bill could result in loss of sales tax revenue beginning 15 years after the date a data center is certified as a large data center project.

The bill would amend Chapter 151 of the Tax Code, to add new Section 151.3595 to provide for exemption from sales and use taxation of certain tangible personal property related to large data center projects.

"Large data center project" would mean at least 250,000 square feet of space in a building or series of buildings on a single parcel of land or contiguous parcels of land commonly owned or owned by affiliation with the operator, which space: is located in this state; is specifically constructed or refurbished and actually used primarily to house servers and related equipment and support staff for the processing, storage and distribution of data; is used by a single qualifying occupant for the processing, storage, and distribution of data; is not used primarily by a telecommunications provider to place tangible personal property that is used to deliver telecommunications services; and that meets other standards related to power supply, fire suppression, and physical security.

The bill would define a "qualifying operator," "qualifying owner," and "qualifying occupant," and provide that a data center may be certified by the Comptroller as a "qualifying large data center project" if, on or after June 1, 2015, a single qualifying occupant contracts to lease space from a qualifying owner or operator or occupies a space not previously used as a data center and the qualifying owner, operator, and occupant jointly or independently: a) create at least 40 full-time, permanent jobs that pay at least 120 percent of the county average weekly wage in the county in which the job is based; b) makes or agrees to make a capital investment, on or after May 1, 2015, of at least \$500 million in that particular large data center project over a five-year period; and c) will contract for at least 20 megawatts of transmission capacity for operations of the large data center project.

The bill would exempt from tax tangible personal property that is necessary and essential to the operation of a qualifying large data center if the property is purchased for installation at, incorporation into, or in the case of electricity for use in, a qualifying large data center if the tangible personal property is: electricity; an electrical system; a cooling system; an emergency generator; hardware or a distributed mainframe computer or server; a data storage device; network connectivity equipment; a rack, cabinet, and raised floor system; a peripheral component or

system; software; a mechanical, electrical, or plumbing system necessary to operate the foregoing property; any other item of equipment or system necessary to operate any of the foregoing, including a fixture; and a component part of any of the foregoing. Excluded from exemption would be: office equipment or supplies; maintenance or janitorial supplies or equipment; equipment or supplies used primarily in sales activities or in transportation activities; property for which a refund may be received under Section 151.429 (tax refunds for enterprise projects); tangible personal property not otherwise exempted that is incorporated into real estate or 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, a taxable service that is performed on tangible personal property exempted under Section 151.3595.

The exemption would expire on the twentieth anniversary of the date a large data center was certified as qualifying by the Comptroller.

A registration number would have to be obtained from the Comptroller for each person eligible to claim the exemption and must be stated on the exemption certificate provided by the purchaser to the seller of tangible personal property eligible for the exemption. All registration numbers issued in connection with a qualifying large data center would be revocable by the Comptroller upon determination that the requirements for qualification were not met, and each person whose registration number was revoked would be liable for taxes, including penalty and interest from the date of purchase, on purchases for which the person claimed exemption.

The Comptroller would be granted rulemaking authority to implement the new Section 151.3595.

In as much as a data center meeting the single occupancy, capital investment, and jobs criteria to be a qualifying large data center project under the proposed new Section 151.3595 would surpass the criteria for certification as a qualifying data center under current Section 151.359, there would be no fiscal implication for the state before the fifteenth year after certification as a qualifying large data center project. From the fifteenth through the twentieth year after certification, there would be a reduction in state sales tax revenues due to a certification under 151.3595 relative to a certification under 151.359.

Also, certification under the proposed new Section 151.3595 would allow a qualifying data center to consist of more than one building, versus certification under current law which would require a separate qualifying data center certification for each building; it is probable that the sales tax exempt status of a large data center project that consists of more than one building would expire after 10 years rather than 20 if the capital investment were allocated among more than one certification under current law.

In contrast to a certification under current Section 151.359, certification under proposed new Section 151.3595 would exempt a qualifying data center from local sales and use taxes.

In contrast to a certification under current Section 151.359, certification under proposed new Section 151.3595 would not preclude the data center from entering an agreement to limit the appraised value of property under Chapter 313, Tax Code.

The bill would have immediate effect if it receives a two-thirds vote of the membership of each house of the Legislature, otherwise it would take effect September 1, 2015.

Local Government Impact

Under current law, the sales tax exemption for property used in certain data centers does not apply

to local sales and use taxes. The exemption proposed under the bill would apply to local sales and use taxes, thus there would be a revenue loss to local taxing jurisdictions.

Source Agencies: 304 Comptroller of Public Accounts

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