

## **BILL ANALYSIS**

C.S.H.B. 2712  
By: Geren  
Ways & Means  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested parties note that many states are currently providing economic incentives to attract large data center projects, and they emphasize that these projects have come to represent a growing market segment in the technology industry that generates economic activity in the cities and states where they are located. Texas is well-positioned to attract large data center projects because of its strong infrastructure, major population centers, educated workforce, and favorable construction costs and permitting processes. There are concerns that recent legislation enacted to attract data centers was limited in its effectiveness because of the attempts to control the fiscal note. C.S.H.B. 2712 seeks to make Texas a leader in this segment of the technology industry.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the comptroller of public accounts in SECTION 1 of this bill.

### **ANALYSIS**

C.S.H.B. 2712 amends the Tax Code to exempt tangible personal property that is necessary and essential to the operation of a qualifying large data center project, as defined by the bill, from taxes imposed by the Limited Sales, Excise, and Use Tax Act. The bill describes the tangible personal property that is so exempted and specifies certain items, property, and services that are exempted from application of such an exemption.

C.S.H.B. 2712 authorizes the certification of a large data center project by the comptroller of public accounts as a qualifying large data center project for purposes of the tax exemption if, on or after June 1, 2015, a single qualifying occupant contracts with a qualifying owner or qualifying operator to lease space in which the qualifying occupant will locate a large data center project or 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 if, on or after that date, the qualifying owner, qualifying operator, or qualifying occupant, independently or jointly, 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 Texas to another county; 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, the amount of which may not include a capital investment to replace personal property previously placed in service in that project, over a five-year period beginning on the earlier of the date the large data center project submits the application for certification by the comptroller as a qualifying large data center project or the date the large data center project is certified by the

comptroller as a qualifying large data center project; and agrees to contract for at least 20 megawatts of transmission capacity for operation of the large data center project.

C.S.H.B. 2712 defines, among other terms, "qualifying job" to mean a full-time, permanent job that pays at least 120 percent of the county average weekly wage in the county in which the job is based, including a new employment position staffed by a third-party employer if a written contract exists between the third-party employer and a qualifying owner, qualifying operator, or qualifying occupant that provides that the employment position is permanently assigned to an associated qualifying large data center project.

C.S.H.B. 2712 requires a large data center project eligible for certification 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. The bill requires the application to be made on a form prescribed by the comptroller and to include certain specified information.

C.S.H.B. 2712 specifies that the tax exemption begins on the date of certification by the comptroller 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 the applicable certification requirement. The bill requires each person eligible to claim the exemption to hold a registration number issued by the comptroller and 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.

C.S.H.B. 2712 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 certification requirements. The bill makes each person who has the person's registration number revoked by the comptroller liable for taxes, including penalty and interest from the date of purchase, imposed under the Limited Sales, Excise, and Use Tax Act on purchases for which the person claimed the exemption, regardless of whether the purchase occurred before the date the registration number was revoked.

C.S.H.B. 2712 requires the comptroller to adopt rules consistent with and necessary to implement the exemption, including rules relating to a qualifying large data center project, qualifying owner, qualifying operator, and qualifying occupant; rules relating to the issuance and revocation of a required registration number; and rules relating to reporting and other procedures necessary to ensure that a qualifying large data center project, qualifying owner, qualifying operator, and qualifying occupant comply with and remain entitled to the exemption.

C.S.H.B. 2712 exempts gas and electricity from taxes imposed by the Limited Sales, Excise, and Use Tax Act when sold for use directly by a large data center project that is certified by the comptroller as a qualifying large data center project in the processing, storage, and distribution of data.

#### **EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2015.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 2712 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Subchapter H, Chapter 151, Tax Code, is amended by adding Section 151.3595 to read as follows:

Sec. 151.3595. PROPERTY USED IN CERTAIN LARGE DATA CENTER PROJECTS; TEMPORARY EXEMPTION.

(a) In this section:

(1) "County average weekly wage" means the average weekly wage in a county for all jobs during the most recent four quarterly periods for which data is available, as computed by the Texas Workforce Commission, at the time a data center creates a job used to qualify under this section.

(2) "Large data center project" means a project comprised of a building or series of buildings located or to be located on a single parcel of land or on contiguous parcels of land that are commonly owned or owned by affiliation with the operator of the with at least 250,000 square feet of space, which space:

(A) is located in this state;

(B) 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;

(C) is used by a single qualifying occupant for the processing, storage, and distribution of data;

(D) is not used primarily by a telecommunications provider to place tangible personal property that is used to deliver telecommunications services; and

(E) has an uninterruptible power source, generator backup power, a fire suppression and prevention system, and physical security that includes restricted access, video surveillance, and electronic systems.

(3) "Permanent job" means an employment position that will exist for at least five years after the date the job is created.

(4) "Qualifying large data center project" means a data center that meets the qualifications prescribed by Subsection (d).

(5) "Qualifying job" means a full-time, permanent job that pays at least 120 percent of the county average weekly wage in the county in which the job is based. A

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Subchapter H, Chapter 151, Tax Code, is amended by adding Section 151.3595 to read as follows:

Sec. 151.3595. PROPERTY USED IN CERTAIN LARGE DATA CENTER PROJECTS; TEMPORARY EXEMPTION.

(a) In this section:

(1) "County average weekly wage" means the average weekly wage in a county for all jobs during the most recent four quarterly periods for which data is available, as computed by the Texas Workforce Commission, at the time a large data center project creates a job used to qualify under this section.

(2) "Large data center project" means a project that:

(A) is located in this state;

(B) is composed of one or more buildings comprising at least 250,000 square feet of space located or to be located on a single parcel of land or on contiguous parcels of land that are commonly owned or owned by affiliation with the qualifying operator;

(C) 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;

(D) is used by a single qualifying occupant for the processing, storage, and distribution of data;

(E) is not used primarily by a telecommunications provider to place tangible personal property used to deliver telecommunications services; and

(F) has an uninterruptible power source, a backup generator, a fire suppression and prevention system, and physical security that includes restricted access, video surveillance, and electronic systems.

(3) "Permanent job" means an employment position that will exist for at least five years after the date the job is created.

*(See Subdivision (5) below.)*

(4) "Qualifying job" means a full-time, permanent job that pays at least 120 percent of the county average weekly wage in the county in which the job is based. The term

qualifying job includes a new employment position staffed by a third-party employer if there is a written contract between the third-party employer and a qualifying owner, qualifying operator, or qualifying occupant that provides the third-party employment position is permanently assigned to the associated qualifying large data center project.

*(See Subdivision (4) above.)*

(6) "Qualifying operator" means a person who controls access to a qualifying large data center project, regardless of whether that person owns each item of tangible personal property located at the qualifying large data center project. A qualifying operator may also be the qualifying owner.

(7) "Qualifying owner" means a person who owns the building or buildings 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:

(A) contracts with a qualifying owner or qualifying operator to place, or cause to be placed, and to use tangible personal property at the qualifying large data center project; or  
(B) in the case of a qualifying occupant who is also the qualifying owner and the qualifying operator, places or causes to be placed, and uses tangible personal property at the qualifying large data center project.

(b) Except as otherwise provided by this section, tangible personal property that is necessary and essential to the operation of a qualified 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 Subdivision (1), use in a qualifying large data center project by a qualifying owner, qualifying operator, or qualifying occupant, and the tangible personal property is:

- (1) electricity;
- (2) an electrical system;
- (3) a cooling system;
- (4) an emergency generator;

includes a new employment position staffed by a third-party employer if a written contract exists between the third-party employer and a qualifying owner, qualifying operator, or qualifying occupant that provides that the employment position is permanently assigned to an associated qualifying large data center project.

(5) "Qualifying large data center project" means a large data center project that meets the qualifications prescribed by Subsection (d).

(6) "Qualifying operator" means a person who controls access to a qualifying large data center project, regardless of whether that person owns each item of tangible personal property located at the qualifying large data center project. A qualifying operator may 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:

(A) contracts with a qualifying owner or qualifying operator to place, or cause to be placed, and to use tangible personal property at the qualifying large data center project; or  
(B) in the case of a qualifying occupant who is also the qualifying owner and the qualifying operator, places or causes to be placed and uses tangible personal property at the qualifying large data center project.

(b) 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 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;  
(9) a peripheral component or system;  
(10) software;  
(11) a mechanical, electrical, or plumbing system that is necessary to operate any tangible personal property described by Subdivisions (2)-(10);  
(12) any other item of equipment or system necessary to operate any tangible personal property described by Subdivisions (2)-(11), including a fixture; and  
(13) a component part of any tangible personal property described by Subdivisions (2)-(10).  
(c) The exemption provided by this section does not apply to:  
(1) office equipment or supplies;  
(2) maintenance or janitorial supplies or equipment;  
(3) equipment or supplies used primarily in sales activities or transportation activities;  
(4) tangible personal property on which the purchaser has received or has a pending application for a refund under Section 151.429;  
(5) tangible personal property not otherwise exempted under Subsection (b) that is incorporated into real estate or into an improvement of real estate;  
(6) tangible personal property that is rented or leased for a term of one year or less; or  
(7) notwithstanding Section 151.3111, a taxable service that is performed on tangible personal property exempted under this section.  
(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:  
(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

(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;  
(9) a peripheral component or system;  
(10) software;  
(11) a mechanical, electrical, or plumbing system that is necessary to operate any tangible personal property described by Subdivisions (2)-(10);  
(12) any other item of equipment or system necessary to operate any tangible personal property described by Subdivisions (2)-(11), including a fixture; and  
(13) a component part of any tangible personal property described by Subdivisions (2)-(10).  
(c) The exemption provided by this section does not apply to:  
(1) office equipment or supplies;  
(2) maintenance or janitorial supplies or equipment;  
(3) equipment or supplies used primarily in sales activities or transportation activities;  
(4) tangible personal property on which the purchaser has received or has a pending application for a refund under Section 151.429;  
(5) tangible personal property not otherwise exempted under Subsection (b) that is incorporated into real estate or into an improvement of real estate;  
(6) tangible personal property that is rented or leased for a term of one year or less; or  
(7) notwithstanding Section 151.3111, a taxable service that is performed on tangible personal property exempted under this section.  
(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:  
(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, jointly or independently:

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

(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 beginning on the application submission date for certification by the comptroller as a qualifying large data center project or beginning on the date the data center is certified by the comptroller as a qualifying large data center project; and

(C) will contract for at least 20 megawatts of transmission capacity for operations of the large data center project.

(e) A large data center project that is eligible under Subsection (d) to be certified by the comptroller as a qualified large data center project shall apply to the comptroller for certification as a qualifying large data center project and for issuance of a registration number or numbers by the comptroller. The application must be made on a form prescribed by the comptroller and include the information required by the comptroller. The application must 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. 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 jointly by the qualifying occupant, qualifying owner, or qualifying 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 data center and expires on the 20th anniversary of that date, if the qualifying occupant, qualifying owner, or

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) 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 certification and for the issuance of a registration number or 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 applicable, the name and contact information for the qualifying owner and the qualifying operator who will claim the exemption 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 jointly by the qualifying occupant, qualifying owner, or qualifying 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 anniversary of that date, if the qualifying occupant, qualifying owner,

qualifying operator independently or jointly makes a capital investment of at least \$500 million or more as provided by Subsection (d)(2)(B).

(g) Each person who is eligible to claim an exemption authorized by this section must hold a registration number issued by the comptroller. The registration number must be stated on the 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 issued in connection with a qualifying large data center project that the comptroller determines does not meet the requirements 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 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) 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 owner, qualifying operator, and qualifying occupant;

(2) issuance and revocation of a registration number required under this section; and

(3) 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. Section 151.317(a), Tax Code, is amended to read as follows:

(a) 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:

(1) residential use;

(2) use in powering equipment exempt under Section 151.318 or 151.3185 by a person processing tangible personal property for sale as tangible personal property, other than preparation or storage

or qualifying operator, independently or jointly makes the capital investment of at least \$500 million as provided by Subsection (d)(2)(B).

(g) Each person who is eligible to claim an exemption authorized by this section must hold a registration number issued by the comptroller. The registration number must be stated on the 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 issued in connection with a qualifying large data center project that the comptroller determines does not meet the requirements 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 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) 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 owner, qualifying operator, and qualifying occupant;

(2) issuance and revocation of a registration number required under this section; and

(3) 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. Section 151.317(a), Tax Code, is amended to read as follows:

(a) Subject to Sections 151.1551, 151.359, and 151.3595 [~~151.1551~~] and Subsection (d) of this section, gas and electricity are exempted from the taxes imposed by this chapter when sold for:

(1) residential use;

(2) use in powering equipment exempt under Section 151.318 or 151.3185 by a person processing tangible personal property for sale as tangible personal property, other than preparation or storage

of prepared food described by Section 151.314(c-2);

(3) use in lighting, cooling, and heating in the 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 Section 151.314(c-2);

(4) use directly in exploring for, producing, or transporting, a material extracted from the earth;

(5) use in agriculture, including dairy or poultry operations and pumping for farm or ranch irrigation;

(6) use directly in electrical processes, such as electroplating, electrolysis, and cathodic protection;

(7) use directly in the off-wing processing, overhaul, or repair of a jet turbine engine or its parts for a certificated or licensed carrier of persons or property;

(8) use directly in providing, under contracts with or on behalf of the United States government or foreign governments, defense or national security-related electronics, classified intelligence data processing and handling systems, or defense-related platform modifications or upgrades;

(9) use directly by a data center 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;

(10) a direct or indirect use, consumption, or loss of electricity by an electric utility engaged in the purchase of electricity for resale; or

(11) use in timber operations, including pumping for irrigation of timberland.

SECTION 3. The change in law made by this Act does not affect tax liability accruing before the effective date of this Act. 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.

of prepared food described by Section 151.314(c-2);

(3) use in lighting, cooling, and heating in the 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 Section 151.314(c-2);

(4) use directly in exploring for, producing, or transporting, a material extracted from the earth;

(5) use in agriculture, including dairy or poultry operations and pumping for farm or ranch irrigation;

(6) use directly in electrical processes, such as electroplating, electrolysis, and cathodic protection;

(7) use directly in the off-wing processing, overhaul, or repair of a jet turbine engine or its parts for a certificated or licensed carrier of persons or property;

(8) use directly in providing, under contracts with or on behalf of the United States government or foreign governments, defense or national security-related electronics, classified intelligence data processing and handling systems, or defense-related platform modifications or upgrades;

(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 project under Section 151.3595 in the processing, storage, and distribution of data;

(10) a direct or indirect use, consumption, or loss of electricity by an electric utility engaged in the purchase of electricity for resale; or

(11) use in timber operations, including pumping for irrigation of timberland.

SECTION 3. Same as introduced version.

SECTION 4. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2015.

SECTION 4. Same as introduced version.