

Second Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 14-1016.01 Nicole Myers x4326

HOUSE BILL 14-1389

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A BILL FOR AN ACT

101 **CONCERNING A SALES AND USE TAX EXEMPTION FOR INFORMATION**
102 **TECHNOLOGY EQUIPMENT THAT IS USED IN CERTAIN DATA**
103 **CENTERS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

Beginning July 1, 2015, the bill allows a sales and use tax exemption for the sale, storage, and use of information technology equipment (IT equipment) that will be used in a qualified data center or a qualified refurbished data center. The bill includes IT equipment that is

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

purchased to replace or upgrade IT equipment and IT equipment that is relocated to the state. The bill requires that the IT equipment be used in a qualified data center or qualified refurbished data center within 20 years of the date of the sale, use, storage, or relocation of the IT equipment. The exemption applies to all IT equipment that is used and maintained within a qualified data center or qualified refurbished data center, regardless of whether the owner of the IT equipment is the owner of the qualified data center or qualified refurbished data center.

The bill specifies the criteria to be a qualified data center or a qualified refurbished data center and requires the owner of such a data center to certify to the Colorado office of economic development (office) that the data center satisfies that criteria. The office is required to determine whether a data center is a qualified data center or qualified refurbished data center and notify the department of revenue and the data center owner of such determination.

The office is required to submit a periodic report to the general assembly regarding the economic benefits of the sales and use tax exemption on IT equipment used in qualified data centers or qualified refurbished data centers. In addition, the office is required to make a presentation to the joint technology committee of the general assembly prior to finalizing the certification for any qualified data center or qualified refurbished data center.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **add** 39-26-727 as
3 follows:

4 **39-26-727. Qualified data centers - legislative declaration -**
5 **definitions.** (1) (a) THE GENERAL ASSEMBLY HEREBY FINDS AND
6 DECLARES THAT:

7 (I) COLORADO'S ADVANCED TECHNOLOGY INDUSTRY DIRECTLY
8 PROVIDES AND CONTRIBUTES BILLIONS OF DOLLARS TO THE STATE'S
9 ECONOMY;

10 (II) AS A COMPONENT OF THAT INDUSTRY, DATA CENTERS ARE AN
11 IMPORTANT ASSET AND CREATE A SIGNIFICANT AMOUNT OF ECONOMIC
12 BENEFIT TO THE STATE, INCLUDING HIGH-END INFORMATION TECHNOLOGY,
13 CONSULTING, AND CONSTRUCTION EMPLOYMENT;

1 (III) THESE ASSETS, ONCE BUILT, ARE A KEY COMPONENT OF A
2 COMPANY'S OVERALL OPERATING ENVIRONMENT AND CAN CREATE A
3 LONG-TERM INVESTMENT IN A COMMUNITY;

4 (IV) STUDIES INDICATE THAT THE STATE WOULD BENEFIT
5 SIGNIFICANTLY FROM STATE-IMPLEMENTED INCENTIVES DESIGNED TO
6 STIMULATE PRIVATE-SECTOR INDUSTRY GROWTH;

7 (V) DATA CENTERS CAN BE A SIGNIFICANT SOURCE OF NEW
8 REVENUE, EVEN MORE SO THAN TYPICAL ECONOMIC GROWTH SUCH AS
9 MANUFACTURING, HEADQUARTERS, AND DISTRIBUTION CENTERS; AND

10 (VI) SINCE 2005, APPROXIMATELY SEVENTEEN STATES HAVE
11 PASSED LEGISLATION TO PROVIDE CUSTOMIZED INCENTIVES FOR DATA
12 CENTERS, AND THOSE STATES ARE ACTIVELY RECRUITING DATA CENTER
13 INVESTMENTS.

14 (b) THE GENERAL ASSEMBLY FURTHER FINDS AND DECLARES THAT
15 ENACTING A TAX INCENTIVE TO ENCOURAGE THE EXPANSION OF CURRENT
16 DATA CENTER BUSINESSES, ENCOURAGE NEW DATA CENTER BUSINESSES TO
17 LOCATE TO THE STATE, AND INVIGORATE THE STATE'S CURRENT
18 ADVANCED TECHNOLOGY INDUSTRY'S BUSINESS ACTIVITIES IS SOUND
19 PUBLIC POLICY.

20 (2) AS USED IN THIS SECTION:

21 (a) "FACILITY TO HOUSE INFORMATION TECHNOLOGY EQUIPMENT"
22 MEANS A FACILITY THAT IS USED TO HOUSE INFORMATION TECHNOLOGY
23 EQUIPMENT THAT HAS SOME OR ALL OF THE FOLLOWING
24 CHARACTERISTICS:

25 (I) UNINTERRUPTIBLE POWER SUPPLIES, GENERATOR BACKUP
26 POWER, OR ON-SITE POWER GENERATION;

27 (II) SOPHISTICATED FIRE SUPPRESSION AND PREVENTION SYSTEMS;

1 AND

2 (III) ENHANCED SECURITY. A FACILITY IS CONSIDERED TO HAVE
3 ENHANCED SECURITY IF IT HAS RESTRICTED ACCESS TO SELECTED
4 PERSONNEL, PERMANENT SECURITY GUARDS, VIDEO CAMERA
5 SURVEILLANCE, AN ELECTRONIC SYSTEM REQUIRING PASS CODES,
6 KEYCARDS, OR BIOMETRIC SCANS, SUCH AS HAND SCANS OR RETINAL OR
7 FINGERPRINT RECOGNITION, OR SIMILAR SECURITY FEATURES.

8 (b) "INFORMATION TECHNOLOGY EQUIPMENT" INCLUDES BUT IS
9 NOT LIMITED TO:

10 (I) COMPUTERS AND EQUIPMENT SUPPORTING COMPUTING,
11 NETWORKING, OR DATA STORAGE, INCLUDING SERVERS, TABLETS,
12 SWITCHES, CROSS-CONNECTS, ROUTERS, AND THE APPLICATION SYSTEMS
13 AND OPERATING SYSTEMS THAT ENABLE THE INFORMATION TECHNOLOGY
14 EQUIPMENT;

15 (II) COOLING SYSTEMS, COOLING TOWERS, AND OTHER
16 TEMPERATURE CONTROL INFRASTRUCTURE;

17 (III) POWER INFRASTRUCTURE FOR TRANSFORMATION,
18 DISTRIBUTION, OR MANAGEMENT OF ELECTRICITY USED FOR THE
19 MAINTENANCE AND OPERATION OF A QUALIFIED DATA CENTER OR
20 QUALIFIED REFURBISHED DATA CENTER, INCLUDING BUT NOT LIMITED TO
21 EXTERIOR DEDICATED BUSINESS-OWNED SUBSTATIONS, BACKUP POWER
22 GENERATION SYSTEMS, BATTERY SYSTEMS, STRUCTURES ERECTED TO
23 PROTECT ALL INFORMATION TECHNOLOGY EQUIPMENT FROM ANY
24 ENVIRONMENTAL CONDITIONS, AND OTHER RELATED INFRASTRUCTURE;

25 AND

26 (IV) RACKING SYSTEMS, CABLING, AND TRAYS, WHICH ARE
27 NECESSARY FOR THE MAINTENANCE AND OPERATION OF THE QUALIFIED

1 DATA CENTER OR QUALIFIED REFURBISHED DATA CENTER.

2 (c) "QUALIFIED DATA CENTER" MEANS A FACILITY THAT IS
3 LOCATED IN THE STATE THAT SATISFIES THE FOLLOWING CRITERIA:

4 (I) THE FACILITY IS COMPRISED OF ONE OR MORE BUILDINGS THAT
5 CONSIST IN THE AGGREGATE OF AT LEAST TWENTY-FIVE THOUSAND
6 SQUARE FEET. IN DETERMINING WHETHER THE FACILITY HAS THE
7 REQUIRED SQUARE FOOTAGE, THE SQUARE FOOTAGE OF OFFICE SPACE,
8 MEETING SPACE, AND MECHANICAL AND OTHER SUPPORT FACILITIES SHALL
9 BE INCLUDED IF THE SPACES SUPPORT THE OPERATION OF INFORMATION
10 TECHNOLOGY EQUIPMENT.

11 (II) THE FACILITY IS LOCATED ON A SINGLE PARCEL OR ON
12 CONTIGUOUS OR ADJACENT PARCELS;

13 (III) INVESTMENT IN THE FACILITY COMMENCED ON OR AFTER
14 JUNE 30, 2010;

15 (IV) THE TOTAL COST OF CONSTRUCTION OF THE FACILITY AND
16 INVESTMENT IN INFORMATION TECHNOLOGY EQUIPMENT FOR THE FACILITY
17 IS AT LEAST THIRTY MILLION DOLLARS WITHIN A FIVE-YEAR PERIOD. THE
18 TOTAL COST OF CONSTRUCTION AND INVESTMENT INCLUDES THE
19 INVESTMENTS BY THE OWNER OF THE FACILITY AND ALL OTHER
20 TAXPAYERS THAT OWN INFORMATION TECHNOLOGY EQUIPMENT LOCATED
21 WITHIN THE SQUARE FOOTAGE OF THE FACILITY.

22 (V) THE FACILITY IS TO HOUSE INFORMATION TECHNOLOGY
23 EQUIPMENT.

24 (d) "QUALIFIED REFURBISHED DATA CENTER" MEANS A FACILITY
25 THAT IS LOCATED IN THE STATE THAT SATISFIES THE FOLLOWING CRITERIA:

26 (I) THE FACILITY IS COMPRISED OF ONE OR MORE BUILDINGS THAT
27 CONSIST IN THE AGGREGATE OF AT LEAST TWENTY-FIVE THOUSAND

1 SQUARE FEET. IN DETERMINING WHETHER THE FACILITY HAS THE
2 REQUIRED SQUARE FOOTAGE, THE SQUARE FOOTAGE OF OFFICE SPACE,
3 MEETING SPACE, AND MECHANICAL AND OTHER SUPPORT FACILITIES SHALL
4 BE INCLUDED IF THE SPACES SUPPORT THE OPERATION OF INFORMATION
5 TECHNOLOGY EQUIPMENT.

6 (II) THE FACILITY IS LOCATED ON A SINGLE PARCEL OR ON
7 CONTIGUOUS OR ADJACENT PARCELS;

8 (III) THE FACILITY IS SUBSTANTIALLY REFURBISHED AFTER JUNE
9 30, 2013. A FACILITY WILL BE CONSIDERED SUBSTANTIALLY REFURBISHED
10 IF AT LEAST TWENTY-FIVE THOUSAND SQUARE FEET IN THE FACILITY HAS
11 BEEN REBUILT OR MODIFIED, INCLUDING THE INSTALLATION OF
12 INFORMATION TECHNOLOGY EQUIPMENT, ENVIRONMENTAL CONTROL,
13 ENERGY EFFICIENCY IMPROVEMENTS, AND OTHER BUILDING
14 IMPROVEMENTS FOR THE PURPOSE OF HOUSING INFORMATION
15 TECHNOLOGY EQUIPMENT.

16 (IV) THE TOTAL COST OF REFURBISHMENT OF THE FACILITY AND
17 INVESTMENT IN INFORMATION TECHNOLOGY EQUIPMENT IS AT LEAST
18 FIFTEEN MILLION DOLLARS WITHIN A TWO-YEAR PERIOD. THE TOTAL COST
19 OF REFURBISHMENT AND INVESTMENT INCLUDES THE INVESTMENTS BY
20 THE OWNER OF THE FACILITY AND ALL OTHER TAXPAYERS THAT OWN
21 INFORMATION TECHNOLOGY EQUIPMENT LOCATED WITHIN THE SQUARE
22 FOOTAGE OF THE FACILITY.

23 (V) THE FACILITY IS TO HOUSE INFORMATION TECHNOLOGY
24 EQUIPMENT.

25 (3) (a) SUBJECT TO THE LIMITATIONS IN PARAGRAPHS (b) AND (c)
26 OF THIS SUBSECTION (3), ON AND AFTER JULY 1, 2015, ALL SALES,
27 STORAGE, AND USE OF INFORMATION TECHNOLOGY EQUIPMENT THAT IS

1 USED IN A QUALIFIED DATA CENTER OR QUALIFIED REFURBISHED DATA
2 CENTER, INCLUDING INFORMATION TECHNOLOGY EQUIPMENT THAT IS
3 PURCHASED TO REPLACE OR UPGRADE INFORMATION TECHNOLOGY
4 EQUIPMENT IN A QUALIFIED DATA CENTER OR QUALIFIED REFURBISHED
5 DATA CENTER AND INFORMATION TECHNOLOGY EQUIPMENT THAT IS
6 RELOCATED TO A QUALIFIED DATA CENTER OR QUALIFIED REFURBISHED
7 DATA CENTER FROM OUTSIDE OF THE STATE, ARE EXEMPT FROM TAXATION
8 UNDER THE PROVISIONS OF PARTS 1 AND 2 OF THIS ARTICLE. THE
9 EXEMPTION APPLIES TO ALL INFORMATION TECHNOLOGY EQUIPMENT THAT
10 IS USED AND MAINTAINED WITHIN THE QUALIFIED DATA CENTER OR
11 QUALIFIED REFURBISHED DATA CENTER, REGARDLESS OF WHETHER THE
12 OWNER OF THE INFORMATION TECHNOLOGY EQUIPMENT IS THE OWNER OF
13 THE QUALIFIED DATA CENTER OR QUALIFIED REFURBISHED DATA CENTER.

14 (b) THE EXEMPTION ALLOWED IN PARAGRAPH (a) OF THIS
15 SUBSECTION (3) APPLIES TO ANY INFORMATION TECHNOLOGY EQUIPMENT
16 THAT IS SOLD, STORED, USED, OR RELOCATED TO THE STATE TO BE USED IN
17 A QUALIFIED DATA CENTER OR A QUALIFIED REFURBISHED DATA CENTER
18 WITHIN TWENTY YEARS AFTER THE DATE OF THE FIRST INVESTMENT IN THE
19 FACILITY FOR THE PURPOSE OF BECOMING A QUALIFIED DATA CENTER OR
20 A QUALIFIED REFURBISHED DATA CENTER.

21 (c) INFORMATION TECHNOLOGY EQUIPMENT MUST BE USED IN A
22 QUALIFIED DATA CENTER OR A QUALIFIED REFURBISHED DATA CENTER FOR
23 AT LEAST ONE YEAR DURING THE PERIOD THAT THE DATA CENTER IS A
24 QUALIFIED DATA CENTER OR QUALIFIED REFURBISHED DATA CENTER.

25 (4) (a) FOR PURPOSES OF THE EXEMPTION SPECIFIED IN SUBSECTION
26 (3) OF THIS SECTION, THE OWNER OF A FACILITY SHALL CERTIFY ON A FORM
27 PRESCRIBED BY THE COLORADO OFFICE OF ECONOMIC DEVELOPMENT THAT

1 THE FACILITY WHERE THE INFORMATION TECHNOLOGY EQUIPMENT IS USED
2 MEETS THE CRITERIA TO BE A QUALIFIED DATA CENTER OR A QUALIFIED
3 REFURBISHED DATA CENTER. THE OWNER SHALL INCLUDE DETAILED
4 INFORMATION REGARDING:

5 (I) THE COST TO CONSTRUCT OR REFURBISH THE FACILITY, AS
6 APPLICABLE, AND THE AMOUNT OF THE INVESTMENT IN INFORMATION
7 TECHNOLOGY EQUIPMENT; AND

8 (II) WHEN THE COSTS TO CONSTRUCT OR REFURBISH THE FACILITY
9 WERE INCURRED AND WHEN THE INVESTMENT COSTS IN INFORMATION
10 TECHNOLOGY WERE INCURRED.

11 (b) IN SUBMITTING THE INFORMATION REQUIRED BY PARAGRAPH
12 (a) OF THIS SUBSECTION (4), IF THE OWNER IS NOT ABLE TO OBTAIN
13 ORIGINAL PURCHASE DOCUMENTATION FROM THIRD PARTIES THAT
14 MAINTAIN EQUIPMENT WITHIN THE FACILITY, THE OWNER MAY USE
15 REASONABLE ESTIMATION METHODS TO PROJECT THE INVESTMENT COSTS.

16 (5) (a) BASED ON THE INFORMATION PROVIDED PURSUANT TO
17 SUBSECTION (4) OF THIS SECTION, THE COLORADO OFFICE OF ECONOMIC
18 DEVELOPMENT SHALL DETERMINE WHETHER A FACILITY TO HOUSE
19 INFORMATION TECHNOLOGY EQUIPMENT IS A QUALIFIED DATA CENTER OR
20 A QUALIFIED REFURBISHED DATA CENTER FOR PURPOSES OF THIS SECTION.
21 IF A FACILITY TO HOUSE INFORMATION TECHNOLOGY IS DETERMINED TO BE
22 A QUALIFIED DATA CENTER OR A QUALIFIED REFURBISHED DATA CENTER,
23 IT SHALL RETAIN ITS QUALIFIED STATUS FOR TWENTY YEARS FROM THE
24 DATE OF THE FIRST EXEMPTION ALLOWED PURSUANT TO SUBSECTION (3)
25 OF THIS SECTION.

26 (b) AFTER MAKING A DETERMINATION THAT A FACILITY TO HOUSE
27 INFORMATION TECHNOLOGY EQUIPMENT IS A QUALIFIED DATA CENTER OR

1 A QUALIFIED REFURBISHED DATA CENTER, THE OFFICE SHALL NOTIFY THE
2 DEPARTMENT OF REVENUE AND ISSUE A CERTIFICATION TO THE OWNER OF
3 THE QUALIFIED DATA CENTER OR QUALIFIED REFURBISHED DATA CENTER
4 STATING THAT INFORMATION TECHNOLOGY EQUIPMENT THAT IS STORED
5 IN THE QUALIFIED DATA CENTER OR QUALIFIED REFURBISHED DATA
6 CENTER IS ELIGIBLE FOR THE EXEMPTION ALLOWED PURSUANT TO
7 SUBSECTION (3) OF THIS SECTION FOR TWENTY YEARS AFTER THE DATE OF
8 THE FIRST INVESTMENT IN THE FACILITY FOR THE PURPOSE OF BECOMING
9 A QUALIFIED DATA CENTER OR A QUALIFIED REFURBISHED DATACENTER.

10 (6) NOTWITHSTANDING THE PROVISIONS OF SECTION 39-26-703 (2)
11 (d), ALL SALES, STORAGE, AND USE OF INFORMATION TECHNOLOGY
12 EQUIPMENT THAT IS USED IN A QUALIFIED DATA CENTER IS ELIGIBLE FOR
13 THE EXEMPTION ALLOWED PURSUANT TO SUBSECTION (3) OF THIS SECTION
14 FOR FIVE YEARS AFTER THE DATE OF THE SALE, STORAGE, OR USE OF SUCH
15 INFORMATION TECHNOLOGY EQUIPMENT.

16 (7) PRIOR TO FINALIZING THE CERTIFICATION OF A QUALIFIED DATA
17 CENTER OR A QUALIFIED REFURBISHED DATA CENTER, THE COLORADO
18 OFFICE OF ECONOMIC DEVELOPMENT SHALL MAKE AN ORAL PRESENTATION
19 REGARDING THE QUALIFIED DATA CENTER OR THE QUALIFIED REFURBISHED
20 DATA CENTER AND THE CERTIFICATION PROCESS AND REQUIREMENTS TO
21 THE JOINT TECHNOLOGY COMMITTEE OF THE GENERAL ASSEMBLY,
22 CREATED PURSUANT TO SECTION 2-3-1702, C.R.S.

23 (8) ON OR BEFORE JULY 1, 2021, AND ON OR BEFORE JULY 1 EVERY
24 SIX YEARS THEREAFTER, THE COLORADO OFFICE OF ECONOMIC
25 DEVELOPMENT SHALL SUBMIT A REPORT TO THE MEMBERS OF THE
26 GENERAL ASSEMBLY THAT ANALYZES AND ESTIMATES THE ECONOMIC
27 BENEFITS OF THE EXEMPTION ALLOWED IN THIS SECTION.

1 **SECTION 2.** In Colorado Revised Statutes, 29-2-105, **add** (1) (d)
2 (I) (M) as follows:

3 **29-2-105. Contents of sales tax ordinances and proposals.**

4 (1) The sales tax ordinance or proposal of any incorporated town, city,
5 or county adopted pursuant to this article shall be imposed on the sale of
6 tangible personal property at retail or the furnishing of services, as
7 provided in paragraph (d) of this subsection (1). Any countywide or
8 incorporated town or city sales tax ordinance or proposal shall include the
9 following provisions:

10 (d) (I) A provision that the sale of tangible personal property and
11 services taxable pursuant to this article shall be the same as the sale of
12 tangible personal property and services taxable pursuant to section
13 39-26-104, C.R.S., except as otherwise provided in this paragraph (d).
14 The sale of tangible personal property and services taxable pursuant to
15 this article shall be subject to the same sales tax exemptions as those
16 specified in part 7 of article 26 of title 39, C.R.S.; except that the sale of
17 the following may be exempted from a town, city, or county sales tax only
18 by the express inclusion of the exemption either at the time of adoption
19 of the initial sales tax ordinance or resolution or by amendment thereto:

20 (M) THE EXEMPTION FOR SALES, STORAGE, AND USE OF
21 INFORMATION TECHNOLOGY EQUIPMENT USED IN A QUALIFIED DATA
22 CENTER OR QUALIFIED REFURBISHED DATA CENTER AS SPECIFIED IN
23 SECTION 39-26-727, C.R.S.

24 **SECTION 3. Act subject to petition - effective date.** This act
25 takes effect at 12:01 a.m. on the day following the expiration of the
26 ninety-day period after final adjournment of the general assembly (August
27 6, 2014, if adjournment sine die is on May 7, 2014); except that, if a

1 referendum petition is filed pursuant to section 1 (3) of article V of the
2 state constitution against this act or an item, section, or part of this act
3 within such period, then the act, item, section, or part will not take effect
4 unless approved by the people at the general election to be held in
5 November 2014 and, in such case, will take effect on the date of the
6 official declaration of the vote thereon by the governor.