

**First Regular Session  
Seventy-first General Assembly  
STATE OF COLORADO**

**INTRODUCED**

LLS NO. 17-1147.01 Esther van Mourik x4215

**SENATE BILL 17-299**

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**SENATE SPONSORSHIP**

**Holbert and Moreno,**

**HOUSE SPONSORSHIP**

**Van Winkle and Kraft-Tharp,**

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**Senate Committees**  
Finance

**House Committees**

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**A BILL FOR AN ACT**

101      **CONCERNING THE APPORTIONMENT OF INCOME FOR STATE INCOME**  
102              **TAX FOR TAXPAYERS WITH ENTERPRISE DATA CENTERS IN THE**  
103              **STATE.**

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**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://leg.colorado.gov>.)*

The bill allows a taxpayer that makes a capital investment in an enterprise data center operation in the state of a specified dollar amount within a consecutive 5-year period to enter into a memorandum of understanding with the office of economic development to transition to a different apportionment method for apportioning the income of the

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.*

taxpayer. The memorandum of understanding must describe the amount of the capital investment and any other investments or actions on the part of the taxpayer that will support the economic development of the state. The bill specifies that a transition schedule must be included in the memorandum of understanding.

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

2           **SECTION 1.** In Colorado Revised Statutes, **add** 39-22-303.9 as  
3 follows:

4           **39-22-303.9. Apportionment of the income of a taxpayer with**  
5 **enterprise data center operations in the state - definitions.** (1) As  
6 USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

7           (a) (I) "AFFILIATED GROUP" MEANS ONE OR MORE CHAINS OF  
8 PERSONS CONNECTED THROUGH STOCK OR OTHER OWNERSHIP INTERESTS  
9 WITH A PERSON IF:

10           (A) ONE OR MORE OF THE OTHER PERSONS IN THE CHAIN OWNS  
11 INTERESTS POSSESSING MORE THAN FIFTY PERCENT OF THE VOTING POWER  
12 OF ALL CLASSES OF OWNERSHIP INTERESTS EXCEPT OWNERSHIP INTERESTS  
13 OF THE COMMON PARENT AND MORE THAN FIFTY PERCENT OF EACH CLASS  
14 OF NONVOTING OWNERSHIP INTERESTS OF EACH OF THE PERSONS EXCEPT  
15 OWNERSHIP INTERESTS OF THE COMMON PARENT; AND

16           (B) THE COMMON PARENT OWNS INTERESTS POSSESSING MORE  
17 THAN FIFTY PERCENT OF THE VOTING POWER OF ALL CLASSES OF  
18 OWNERSHIP INTERESTS AND MORE THAN FIFTY PERCENT OF EACH CLASS OF  
19 THE NONVOTING OWNERSHIP INTERESTS OF AT LEAST ONE OF THE OTHER  
20 PERSONS IN THE CHAIN.

21           (II) AS USED IN THIS SUBSECTION (1)(a), THE TERM "OWNERSHIP  
22 INTEREST" DOES NOT INCLUDE NONVOTING STOCK THAT IS LIMITED AND  
23 PREFERRED AS TO DIVIDENDS; EMPLOYER SECURITIES, WITHIN THE

1 MEANING OF SECTION 409 (a) OF THE INTERNAL REVENUE CODE, WHILE  
2 SUCH SECURITIES ARE HELD UNDER A TAX CREDIT EMPLOYEE STOCK  
3 OWNERSHIP PLAN; OR QUALIFYING EMPLOYER SECURITIES, WITHIN THE  
4 MEANING OF SECTION 4975 (e)(8) OF THE INTERNAL REVENUE CODE,  
5 WHILE SUCH SECURITIES ARE HELD UNDER AN EMPLOYEE STOCK  
6 OWNERSHIP PLAN THAT MEETS THE REQUIREMENTS OF SECTION 4975 (e)(7)  
7 OF THE INTERNAL REVENUE CODE.

8 (III) AS USED IN THIS SUBSECTION (1)(a), THE TERM "PERSON"  
9 DOES NOT INCLUDE INDIVIDUALS.

10 (b) "CAPITAL INVESTMENT" MEANS THE:

11 (I) PURCHASE AND CONSTRUCTION OF REAL ESTATE; OR

12 (II) PURCHASE AND DEPLOYMENT OF CAPITAL EQUIPMENT,  
13 MACHINES, BUILDING SYSTEMS, INFRASTRUCTURE, OR OTHER DEPRECIABLE  
14 ASSETS, INCLUDING CAPITAL LEASES.

15 (c) "ENTERPRISE DATA CENTER OPERATION" MEANS A BUSINESS  
16 THAT:

17 (I) PHYSICALLY HOUSES INFORMATION TECHNOLOGY EQUIPMENT  
18 SUCH AS SERVERS, SWITCHES, ROUTERS, DATA STORAGE DEVICES, OR  
19 RELATED EQUIPMENT;

20 (II) MANAGES AND PROCESSES DIGITAL DATA AND INFORMATION  
21 TO PROVIDE APPLICATION SERVICES OR MANAGEMENT FOR DATA  
22 PROCESSING, SUCH AS WEB HOSTING, INTERNET, INTRANET,  
23 TELECOMMUNICATION, AND INFORMATION TECHNOLOGY SERVICES;

24 (III) IS OWNED BY A TAXPAYER; AND

25 (IV) IS OPERATED SUBSTANTIALLY FOR THE TAXPAYER'S OWN USE.

26 (d) "OFFICE OF ECONOMIC DEVELOPMENT" OR "OFFICE" MEANS THE  
27 COLORADO OFFICE OF ECONOMIC DEVELOPMENT CREATED IN SECTION

1 24-48.5-101.

2 (e) "PERSON" HAS THE SAME MEANING AS PROVIDED IN SECTION  
3 39-21-101 (3).

4 (f) "TAXPAYER" MEANS A PERSON OR AN AFFILIATED GROUP.

5 (2) NOTWITHSTANDING ANY PROVISION OF SECTION 39-22-303.5,  
6 FOR TAXABLE YEARS COMMENCING ON OR AFTER THE JANUARY 1 IN THE  
7 YEAR IN WHICH THE OFFICE PROVIDES WRITTEN CERTIFICATION TO THE  
8 TAXPAYER AND TO THE DEPARTMENT OF REVENUE THAT THE  
9 REQUIREMENTS DESCRIBED IN SUBSECTION (3)(a) OF THIS SECTION HAVE  
10 BEEN MET BY THE TAXPAYER, BUT NO SOONER THAN THE TAXABLE YEAR  
11 COMMENCING JANUARY 1, 2018, PURSUANT TO THE SCHEDULE SET BY THE  
12 OFFICE AS DESCRIBED IN SUBSECTION (3)(c)(II) OF THIS SECTION, IN  
13 APPORTIONING THE INCOME OF A TAXPAYER WITH ENTERPRISE DATA  
14 CENTER OPERATIONS IN THE STATE, SALES FROM SERVICES ARE COLORADO  
15 SALES FOR PURPOSES OF SECTION 39-22-303.5 (4)(c)(I) TO THE EXTENT  
16 SUCH SALES CONSTITUTE REVENUES FROM SERVICES THAT ARE DELIVERED  
17 TO THE TAXPAYER'S CUSTOMER'S LOCATION IN THE STATE, AS  
18 DEMONSTRATED BY THE CUSTOMER'S BILLING ADDRESS.

19 (3) (a) EXCEPT AS PROVIDED IN SUBSECTION (3)(d) OF THIS  
20 SECTION, IF A TAXPAYER MAKES A CAPITAL INVESTMENT IN AN ENTERPRISE  
21 DATA CENTER OPERATION IN THE STATE AS DESCRIBED IN SUBSECTION  
22 (3)(b) OF THIS SECTION AND ENTERS INTO A MEMORANDUM OF  
23 UNDERSTANDING WITH THE OFFICE AS DESCRIBED IN SUBSECTION (3)(c) OF  
24 THIS SECTION, THEN THE TAXPAYER IS AUTHORIZED TO USE THE  
25 APPORTIONMENT METHOD SET FORTH IN SUBSECTION (2) OF THIS SECTION  
26 PURSUANT TO THE SCHEDULE SET FORTH IN THE MEMORANDUM OF  
27 UNDERSTANDING WHEN THE CAPITAL INVESTMENT IS FULLY FUNDED.

1 (b) THE TAXPAYER SHALL MAKE A CAPITAL INVESTMENT IN AN  
2 ENTERPRISE DATA CENTER IN THE STATE EQUAL TO AT LEAST ONE  
3 HUNDRED FIFTY MILLION DOLLARS WITHIN ANY CONSECUTIVE FIVE-YEAR  
4 PERIOD COMMENCING ON OR AFTER JANUARY 1, 2013.

5 (c) (I) THE TAXPAYER SHALL ENTER INTO A MEMORANDUM OF  
6 UNDERSTANDING WITH THE OFFICE THAT SETS FORTH:

7 (A) THE AMOUNT OF THE CAPITAL INVESTMENT;

8 (B) THE SPECIFIC CONSECUTIVE FIVE-YEAR PERIOD IN WHICH THE  
9 CAPITAL INVESTMENT WILL OCCUR;

10 (C) THE MINIMUM NUMBER OF NET NEW EMPLOYEES THAT WILL BE  
11 HIRED BY THE TAXPAYER; AND

12 (D) ANY OTHER INVESTMENTS OR ACTIONS ON THE PART OF THE  
13 TAXPAYER THAT WILL SUPPORT THE ECONOMIC DEVELOPMENT OF THE  
14 STATE.

15 (II) THE MEMORANDUM OF UNDERSTANDING MUST INCLUDE A  
16 SCHEDULE, TO BE SET BY THE OFFICE, THAT INCREMENTALLY TRANSITIONS  
17 THE TAXPAYER, OVER A PERIOD NOT TO EXCEED EIGHT YEARS, TO THE  
18 APPORTIONMENT METHOD DESCRIBED IN SUBSECTION (2) OF THIS SECTION.

19 (III) WHEN NEGOTIATING THE TERMS OF THE MEMORANDUM OF  
20 UNDERSTANDING WITH THE TAXPAYER, THE OFFICE MAY SEEK INPUT FROM  
21 THE DEPARTMENT OF REVENUE. THE DEPARTMENT OF REVENUE SHALL  
22 PROVIDE TAXPAYER-SPECIFIC INFORMATION THAT WILL ASSIST THE OFFICE  
23 IN SETTING THE TERMS OF THE MEMORANDUM OF UNDERSTANDING.  
24 NOTWITHSTANDING SECTION 39-21-113, IT IS LAWFUL FOR THE  
25 DEPARTMENT OF REVENUE TO PROVIDE SUCH TAXPAYER-SPECIFIC  
26 INFORMATION TO THE OFFICE. THE OFFICE SHALL NOT DISCLOSE  
27 TAXPAYER-SPECIFIC INFORMATION TO THE PUBLIC THAT IT RECEIVES

1 PURSUANT TO THIS SUBSECTION (3)(c)(III) AND SUBSECTION (3)(c)(V) OF  
2 THIS SECTION AND SHALL KEEP SUCH TAXPAYER-SPECIFIC INFORMATION  
3 CONFIDENTIAL. ALL EMPLOYEES OF THE OFFICE ARE SUBJECT TO THE  
4 LIMITATIONS SET FORTH IN SECTION 39-21-113 (4) AND THE PENALTIES SET  
5 FORTH IN SECTION 39-21-113 (6).

6 (IV) (A) THE MEMORANDUM OF UNDERSTANDING MUST BE SIGNED  
7 BY THE OFFICE AND THE TAXPAYER NO LATER THAN ONE YEAR AFTER THE  
8 LAST YEAR OF THE CONSECUTIVE FIVE-YEAR CAPITAL INVESTMENT PERIOD  
9 DESCRIBED IN SUBSECTION (3)(b) OF THIS SECTION.

10 (B) WHEN THE TAXPAYER FULLY FUNDS THE CAPITAL INVESTMENT  
11 AND SIGNS THE MEMORANDUM OF UNDERSTANDING, THE OFFICE SHALL  
12 PROVIDE WRITTEN CERTIFICATION TO THE TAXPAYER AND THE  
13 DEPARTMENT OF REVENUE THAT THE REQUIREMENTS DESCRIBED IN  
14 SUBSECTION (3)(a) OF THIS SECTION HAVE BEEN MET BY THE TAXPAYER  
15 AND THE TAXPAYER SHALL ATTACH A COPY OF THE SIGNED MEMORANDUM  
16 OF UNDERSTANDING WITH ITS TAX RETURN IN ORDER TO PROVIDE THE  
17 DEPARTMENT OF REVENUE WITH THE TRANSITION SCHEDULE DESCRIBED  
18 IN SUBSECTION (3)(c)(II) OF THIS SECTION FOR THE APPORTIONMENT  
19 METHOD.

20 (V) THE TAXPAYER SHALL PROVIDE ANY INFORMATION REQUIRED  
21 BY THE OFFICE FOR THE OFFICE TO DETERMINE COMPLIANCE WITH THE  
22 TERMS OF THE MEMORANDUM OF UNDERSTANDING.

23 (VI) THE OFFICE AND THE DEPARTMENT OF REVENUE HAVE THE  
24 RIGHT TO AUDIT COMPLIANCE WITH THE MEMORANDUM OF  
25 UNDERSTANDING AND REVIEW ANY INFORMATION PROVIDED BY THE  
26 TAXPAYER PURSUANT TO THE MEMORANDUM OF UNDERSTANDING OR  
27 REQUESTED BY THE OFFICE AS ALLOWED UNDER SUBSECTION (3)(c)(V) OF

1 THIS SECTION.

2 (d) IF THE TAXPAYER FAILS TO FULLY FUND THE CAPITAL  
3 INVESTMENT OR FAILS TO FULFILL THE OBLIGATIONS ESTABLISHED IN THE  
4 MEMORANDUM OF UNDERSTANDING, THE TAXPAYER MAY NO LONGER USE  
5 THE APPORTIONMENT METHOD SET FORTH IN SUBSECTION (2) OF THIS  
6 SECTION AND APPORTIONMENT SHALL BE DETERMINED PURSUANT TO  
7 SECTION 39-22-303.5.

8 (4) NOTWITHSTANDING SECTION 24-1-136 (11), ON NOVEMBER 1,  
9 2019, AND EACH NOVEMBER 1 THEREAFTER, THE OFFICE AND THE  
10 DEPARTMENT OF REVENUE SHALL SUBMIT A REPORT TO THE FINANCE  
11 COMMITTEE OF THE HOUSE OF REPRESENTATIVES AND THE FINANCE  
12 COMMITTEE OF THE SENATE, OR ANY SUCCESSOR COMMITTEES, THAT  
13 INCLUDES A SUMMARY OF THE USE OF THIS SECTION, THE CAPITAL  
14 INVESTMENTS MADE, AND THE NUMBER OF MEMORANDA OF  
15 UNDERSTANDING ENTERED INTO AND THAT INCLUDES AN UPDATE ON THE  
16 USE OF MARKET-BASED APPORTIONMENT IN THE STATE.

17 **SECTION 2. Act subject to petition - effective date.** This act  
18 takes effect at 12:01 a.m. on the day following the expiration of the  
19 ninety-day period after final adjournment of the general assembly (August  
20 9, 2017, if adjournment sine die is on May 10, 2017); except that, if a  
21 referendum petition is filed pursuant to section 1 (3) of article V of the  
22 state constitution against this act or an item, section, or part of this act  
23 within such period, then the act, item, section, or part will not take effect  
24 unless approved by the people at the general election to be held in  
25 November 2018 and, in such case, will take effect on the date of the  
26 official declaration of the vote thereon by the governor.