

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 149
98TH GENERAL ASSEMBLY

Reported from the Committee on Ways and Means, February 5, 2015, with recommendation that the Senate Committee Substitute do pass.

0754S.04C

ADRIANE D. CROUSE, Secretary.

AN ACT

To amend chapters 67 and 144, RSMo, by adding thereto two new sections relating to tax incentives for data storage.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapters 67 and 144, RSMo, are amended by adding thereto two new sections, to be known as sections 67.2050 and 144.810, to read as follows:

67.2050. 1. As used in this section, unless the context clearly indicates otherwise, the following terms mean:

(1) "Facility", a location composed of real estate, buildings, fixtures, machinery, and equipment;

(2) "Municipality", any county, city, incorporated town, or village of the state;

(3) "NAICS", the 2007 edition of the North American Industry Classification System developed under the direction and guidance of the federal Office of Management and Budget. Any NAICS sector, subsector, industry group, or industry identified in this section shall include its corresponding classification in previous and subsequent federal industry classification systems;

(4) "Technology business facility", a facility purchased, constructed, extended, or improved under this section, provided that such business facility is engaged in:

(a) Wired telecommunications carriers (NAICS 517110);

(b) Data processing, hosting, and related services (NAICS 518210);

or

(c) Internet publishing and broadcasting and web search portals (NAICS 519130) at the business facility;

(5) "Technology business facility project" or "project", the purchase, construction, extension, and improvement of technology

23 **business facilities, whether of the facility as a whole or of any one or**
24 **more of the facility's components of real estate, buildings, fixtures,**
25 **machinery, and equipment.**

26 **2. The governing body of any municipality may:**

27 **(1) Carry out technology business facility projects for economic**
28 **development under this section;**

29 **(2) Accept grants from the federal and state governments for**
30 **technology business facility project purposes, and may enter into such**
31 **agreements as are not contrary to the laws of this state and which may**
32 **be required as a condition of grants by the federal government or its**
33 **agencies; and**

34 **(3) Receive gifts and donations from private sources to be used**
35 **for technology business facility project purposes.**

36 **3. The governing body of the municipality may enter into loan**
37 **agreements, sell, lease, or mortgage to private persons, partnerships,**
38 **or corporations any one or more of the components of a facility**
39 **received, purchased, constructed, or extended by the municipality for**
40 **development of a technology business facility project. The loan**
41 **agreement, installment sale agreement, lease, or other such document**
42 **shall contain such other terms as are agreed upon between the**
43 **municipality and the obligor, provided that such terms shall be**
44 **consistent with this section. If, in the judgment of the governing body**
45 **of the municipality, the technology business facility project will result**
46 **in economic benefits to the municipality, the governing body may**
47 **lawfully enter into an agreement that includes nominal monetary**
48 **consideration to the municipality in exchange for the use of one or**
49 **more components of the facility.**

50 **4. Transactions involving the lease or rental of any components**
51 **of a project under this section shall be specifically exempted from the**
52 **provisions of the local sales tax law as defined in section 32.085, section**
53 **238.235, and sections 144.010 to 144.525 and sections 144.600 to 144.761,**
54 **and from the computation of the tax levied, assessed, or payable under**
55 **the local sales tax law as defined in section 32.085, section 238.235, and**
56 **sections 144.010 to 144.525 and sections 144.600 to 144.745.**

57 **5. Leasehold interests granted and held under this section shall**
58 **not be subject to property taxes.**

59 **6. Any payments in lieu of taxes expected to be made by any**

60 lessee of the project shall be applied in accordance with this
61 section. The lessee may reimburse the municipality for its actual costs
62 of administering the plan. All amounts paid in excess of such actual
63 costs shall, immediately upon receipt thereof, be disbursed by the
64 municipality's treasurer or other financial officer to each affected
65 taxing entity in proportion to the current ad valorem tax levy of each
66 affected taxing entity.

67 7. The county assessor shall include the current assessed value
68 of all property within the affected taxing entities in the aggregate
69 valuation of assessed property entered upon the assessor's book and
70 verified under section 137.245, and such value shall be used for the
71 purpose of the debt limitation on local government under article VI,
72 section 26(b) of the Constitution of Missouri.

73 8. The governing body of any municipality may sell or otherwise
74 dispose of the property, buildings, or plants acquired under this section
75 to private persons or corporations for technology business facility
76 project purposes upon approval by the governing body. The terms and
77 method of the sale or other disposal shall be established by the
78 governing body so as to reasonably protect the economic well-being of
79 the municipality and to promote the development of technology
80 business facility projects. A private person or corporation that initially
81 transfers property to the municipality for the purposes of a technology
82 business facility project and does not charge a purchase price to the
83 municipality shall retain the right, upon request to the municipality,
84 to have the municipality retransfer the donated property to the person
85 or corporation at no cost.

86 9. The provisions of this section shall not be construed to allow
87 political subdivisions to provide telecommunications services or
88 telecommunications facilities to the extent that they are prohibited
89 from doing so by section 392.410.

144.810. 1. As used in this section, unless the context clearly
2 indicates otherwise, the following terms mean:

3 (1) "Commencement of commercial operations", shall be deemed
4 to occur during the first calendar year for which the data storage
5 center is first available for use by the operating taxpayer, or first
6 capable of being used by the operating taxpayer, as a data storage
7 center;

8 (2) "Constructing taxpayer", if more than one taxpayer is
9 responsible for a project, the taxpayer responsible for the construction
10 of the facility, as opposed to the taxpayer responsible for the ongoing
11 operations of the facility;

12 (3) "County average wage", the average wages in each county as
13 determined by the department for the most recently completed full
14 calendar year. However, if the computed county average wage is above
15 the statewide average wage, the statewide average wage shall be
16 deemed the county average wage for such county for the purpose of
17 determining eligibility;

18 (4) "Data storage center" or "facility", a facility constructed,
19 extended, improved, or operating under this section, provided that such
20 business facility is engaged primarily in:

21 (a) Data processing, hosting, and related services (NAICS
22 518210); or

23 (b) Internet publishing and broadcasting and web search portals
24 (NAICS 519130), at the business facility;

25 (5) "Existing facility", an operational data storage center in this
26 state as it existed prior to August 28, 2015, as determined by the
27 department;

28 (6) "Expanding facility" or "expanding data storage center", an
29 existing facility or replacement facility that expands its operations in
30 this state on or after August 28, 2015, and has net new investment
31 related to the expansion of operations in this state of at least five
32 million dollars during a period of up to twelve consecutive months and
33 results in the creation of at least five new jobs during a period of up to
34 twenty-four consecutive months from the date of conditional approval
35 for an exemption under this section, if the average wage of the new
36 jobs equals or exceeds one hundred fifty percent of the county average
37 wage. An expanding facility shall continue to be an expanding facility
38 regardless of a subsequent change in or addition of operating taxpayers
39 or constructing taxpayers;

40 (7) "Expanding facility project" or "expanding data storage center
41 project", the construction, extension, improvement, equipping, and
42 operation of an expanding facility;

43 (8) "Investment" shall include the value of real and depreciable
44 personal property, acquired as part of the new or expanding facility

45 project which is used in the operation of the facility following
46 conditional approval of an exemption under this section;

47 (9) "NAICS", the 2007 edition of the North American Industry
48 Classification System as prepared by the Executive Office of the
49 President, Office of Management and Budget. Any NAICS sector,
50 subsector, industry group, or industry identified in this section shall
51 include its corresponding classification in previous and subsequent
52 federal industry classification systems;

53 (10) "New data storage center project" or "new facility project",
54 the construction, extension, improvement, equipping, and operation of
55 a new facility;

56 (11) "New facility" or "new data storage center", a facility in this
57 state meeting the following requirements:

58 (a) The facility is acquired by or leased to an operating taxpayer
59 on or after August 28, 2015. A facility shall be deemed to have been
60 acquired by or leased to an operating taxpayer on or after August 28,
61 2015, if the transfer of title to an operating taxpayer, the transfer of
62 possession under a binding contract to transfer title to an operating
63 taxpayer, or an operating taxpayer takes possession of the facility
64 under the terms of the lease on or after August 28, 2015, or if the
65 facility is constructed, erected, or installed by or on behalf of an
66 operating taxpayer, such construction, erection, or installation is
67 completed on or after August 28, 2015;

68 (b) If such facility was acquired by an operating or constructing
69 taxpayer from another person or persons on or after August 28, 2015,
70 and such facility was employed prior to August 28, 2015, by any other
71 person or persons in the operation of a data storage center the facility
72 shall not be considered a new facility;

73 (c) Such facility is not an expanding or replacement facility, as
74 defined in this section;

75 (d) The new facility project investment is at least twenty-five
76 million dollars during a period of up to thirty-six consecutive months
77 from the date of the conditional approval for an exemption under this
78 section. If more than one taxpayer is responsible for a project, the
79 investment requirement may be met by an operating taxpayer, a
80 constructing taxpayer, or a combination of constructing taxpayers and
81 operating taxpayers;

82 **(e) At least ten new jobs are created at the new facility during**
83 **a period of up to thirty-six consecutive months from the date of**
84 **conditional approval for an exemption under this section if the average**
85 **wage of the new jobs equals or exceeds one hundred fifty percent of the**
86 **county average wage;**

87 **(f) A new facility shall continue to be a new facility regardless**
88 **of a subsequent change in or addition of operating taxpayers or**
89 **constructing taxpayers; and**

90 **(g) Any new facility which submits a notice of intent to the**
91 **department of economic development to expand its facility by**
92 **additional construction, extension, improvement, or equipping within**
93 **five years of the date such new facility became operational;**

94 **(12) "New job", in the case of a new data center project, the total**
95 **number of full-time employees located at a new data storage center for**
96 **a period of up to thirty-six consecutive months from the date of**
97 **conditional approval for an exemption under this section. In the case**
98 **of an expanding data storage center project, the total number of full-**
99 **time employees located at the expanding data storage center that**
100 **exceeds the greater of the number of full-time employees located at the**
101 **project facility on the date of the submission of a project plan under**
102 **this section or for the twelve-month period prior to the date of the**
103 **submission of a project plan, the average number of full-time employees**
104 **located at the expanding data storage center facility. In the event the**
105 **expanding data storage center facility has not been in operation for a**
106 **full twelve-month period at the time of the submission of a project plan,**
107 **the total number of full-time employees located at the expanded data**
108 **storage center that exceeds the greater of the number of full-time**
109 **employees located at the project facility on the date of the submission**
110 **of a project plan under this section or the average number of full-time**
111 **employees for the number of months the expanding data storage center**
112 **facility has been in operation prior to the date of the submission of the**
113 **project plan;**

114 **(13) "Notice of intent", a form developed by the department of**
115 **economic development, completed by the project taxpayer, and**
116 **submitted to the department, which states the project taxpayer's intent**
117 **to construct or expand a data center and request the exemptions under**
118 **this program;**

119 **(14) "Operating taxpayer", if more than one taxpayer is**
120 **responsible for a project, the taxpayer responsible for the ongoing**
121 **operations of the facility, as opposed to the taxpayer responsible for**
122 **the purchasing or construction of the facility;**

123 **(15) "Project taxpayers", each constructing taxpayer and each**
124 **operating taxpayer for a data storage center project;**

125 **(16) "Replacement facility", a facility in this state otherwise**
126 **described in subdivision (7) of this subsection, but which replaces**
127 **another facility located within the state, which the taxpayer or a**
128 **related taxpayer previously operated but discontinued operating within**
129 **one year prior to the commencement of commercial operations at the**
130 **new facility;**

131 **(17) "Taxpayer", the purchaser of tangible personal property or**
132 **a service that is subject to state or local sales or use tax and from**
133 **whom state or local sales or use tax is owed. Taxpayer shall not mean**
134 **the seller charged by law with collecting the sales tax from the**
135 **purchaser.**

136 **2. In addition to the exemptions granted under chapter 144,**
137 **project taxpayers for a new data storage center project shall be**
138 **entitled, for a project period not to exceed fifteen years from the date**
139 **of conditional approval under this section and subject to the**
140 **requirements of subsection 3 of this section, to an exemption of one**
141 **hundred percent of the state and local sales and use taxes defined,**
142 **levied, or calculated under section 32.085, sections 144.010 to 144.525,**
143 **sections 144.600 to 144.761, or section 238.235, limited to the net fiscal**
144 **benefit of the state calculated over a ten year period, on:**

145 **(1) All electrical energy, gas, water, and other utilities including**
146 **telecommunication and internet services used in a new data storage**
147 **center;**

148 **(2) All machinery, equipment, and computers used in any new**
149 **data storage center; and**

150 **(3) All sales at retail of tangible personal property and materials**
151 **for the purpose of constructing any new data storage center.**

152 **The amount of any exemption provided under this subsection shall not**
153 **exceed the projected net fiscal benefit to the state over a period of ten**
154 **years, as determined by the department of economic development using**
155 **the Regional Economic Modeling, Inc. dataset.**

156 **3. (1) Any data storage center project seeking a tax exemption**
157 **under subsection 2 of this section shall submit a notice of intent and a**
158 **project plan to the department of economic development, which shall**
159 **identify each known constructing taxpayer and known operating**
160 **taxpayer for the project and include any additional information the**
161 **department of economic development may require to determine**
162 **eligibility for the exemption. The department of economic development**
163 **shall review the project plan and determine whether the project is**
164 **eligible for the exemption under subsection 2 of this section,**
165 **conditional upon subsequent verification by the department that the**
166 **project meets the requirements in subsection 1 of this section for a new**
167 **facility project.**

168 **(2) The department of economic development shall convey**
169 **conditional approvals to the department of revenue and the identified**
170 **project taxpayers. After a conditionally approved new facility has met**
171 **the requirements in subsection 1 of this section for a new facility and**
172 **the execution of the agreement specified in subsection 6 of this section,**
173 **the project taxpayers shall provide proof of the same to the department**
174 **of economic development. Upon verification of such proof, the**
175 **department of economic development shall certify the new facility to**
176 **the department of revenue as being eligible for the exemption dating**
177 **retroactively to the first day of construction on the new facility. The**
178 **department of revenue, upon receipt of adequate proof of the amount**
179 **of sales taxes paid since the first day of construction, shall issue a**
180 **refund of taxes paid but eligible for exemption under subsection 2 of**
181 **this section to each operating taxpayer and each constructing taxpayer**
182 **and issue a certificate of exemption to each new project taxpayer for**
183 **ongoing exemptions under subsection 2 of this section.**

184 **(3) Any project that does not meet the minimum investment or**
185 **new job requirements of subsection 1 of this section shall still be**
186 **eligible for the exemption under subsection 2 of this section, as long as**
187 **the exemptions for such project plan do not exceed the projected net**
188 **fiscal benefit to the state over a period of ten years.**

189 **(4) The commencement of the exemption period may be delayed**
190 **at the option of the operating taxpayer, but not more than twenty-four**
191 **months after the execution of the agreement required under subsection**
192 **6 of this section.**

193 4. In addition to the exemptions granted under chapter 144, upon
194 approval by the department of economic development, project
195 taxpayers for expanding data center projects may, for a period not to
196 exceed ten years, be specifically exempted from state and local sales
197 and use taxes defined, levied, or calculated under section 32.085,
198 sections 144.010 to 144.525, sections 144.600 to 144.761, or section
199 238.235 on:

200 (1) All electrical energy, gas, water, and other utilities including
201 telecommunication and internet services used in an expanding data
202 storage center which, on an annual basis, exceeds the amount of
203 electrical energy, gas, water, and other utilities including
204 telecommunication and internet services used in the existing facility or
205 the replaced facility prior to the expansion. For purposes of this
206 subdivision only, "amount" shall be measured in kilowatt hours, gallons,
207 cubic feet, or other measures applicable to a utility service as opposed
208 to in dollars, to account for increases in utility rates;

209 (2) All machinery, equipment, and computers used in any
210 expanding data storage center; and

211 (3) All sales at retail of tangible personal property and materials
212 for the purpose of constructing, repairing, or remodeling any
213 expanding data storage center.

214 The amount of any exemption provided under this subsection shall not
215 exceed the projected net fiscal benefit to the state over a period of ten
216 years, as determined by the department of economic development using
217 the Regional Economic Modeling, Inc., data set or comparable data.

218 5. (1) Any data storage center project seeking a tax exemption
219 under subsection 4 of this section shall submit a notice of intent and a
220 project plan to the department of economic development, which shall
221 identify each known constructing taxpayer and each known operating
222 taxpayer for the project and include any additional information the
223 department of economic development may reasonably require to
224 determine eligibility for the exemption. The department of economic
225 development shall review the project plan and determine whether the
226 project is eligible for the exemption under subsection 4 of this section,
227 conditional upon subsequent verification by the department that the
228 project meets the requirements in subsection 1 of this section for an
229 expanding facility project and the execution of the agreement specified

230 in subsection 6 of this section.

231 (2) The department of economic development shall convey such
232 conditional approval to the department of revenue and the identified
233 project taxpayers. After a conditionally approved facility has met the
234 requirements in subsection 1 of this section, the project taxpayers shall
235 provide proof of the same to the department of economic
236 development. Upon verification of such proof, the department of
237 economic development shall certify the project to the department of
238 revenue as being eligible for the exemption dating retroactively to the
239 first day of the expansion of the facility. The department of revenue,
240 upon receipt of adequate proof of the amount of sales taxes paid since
241 the first day of the expansion of the facility, shall issue a refund of
242 taxes paid but eligible for exemption under subsection 4 of this section
243 to any applicable project taxpayer and issue a certificate of exemption
244 to any applicable project taxpayer for ongoing exemptions under
245 subsection 4 of this section.

246 (3) Any project that does not meet the minimum investment or
247 new job requirements of subsection 1 of this section shall still be
248 eligible for the exemption under subsection 4 of this section, as long as
249 the exemptions for such project plan do not exceed the projected net
250 fiscal benefit to the state over a period of ten years.

251 (4) The commencement of the exemption period may be delayed
252 at the option of the operating taxpayer, but not more than twenty-four
253 months after the execution of the agreement required under subsection
254 6 of this section.

255 6. (1) The exemptions in subsections 2 and 4 of this section shall
256 be tied to the new or expanding facility project. A certificate of
257 exemption in the hands of a taxpayer that is no longer an operating or
258 constructing taxpayer of the new or expanding facility project shall be
259 invalid as of the date the taxpayer was no longer an operating or
260 constructing taxpayer of the new or expanding facility project. New
261 certificates of exemption shall be issued to successor constructing
262 taxpayers and operating taxpayers at such new or expanding facility
263 projects. The right to the exemption by successor taxpayers shall exist
264 without regard to subsequent levels of investment in the new or
265 expanding facility by successor taxpayers.

266 (2) As a condition of receiving an exemption under subsection 2

267 or 4 of this section, the project taxpayers shall enter into an agreement
268 with the department of economic development providing for repayment
269 penalties in the event the data storage center project fails to comply
270 with any of the requirements of this section.

271 (3) The department of revenue shall credit any amounts remitted
272 by the project taxpayers under this subsection to the fund to which the
273 sales and use taxes exempted would have otherwise been credited.

274 7. Any project taxpayer who submits a notice of intent to the
275 department of economic development to expand a new facility by
276 additional construction, extension, improvement, or equipping within
277 five years of the date the new facility became operation shall be
278 entitled to request the department undertake an additional analysis to
279 determine the projected net fiscal benefit of the expansion to the state
280 over a period of ten years as determined by the department using the
281 Regional Economic Modeling, Inc. dataset or comparable data and shall
282 be entitled to an exemption under this section not to exceed such fiscal
283 benefit to the state for a period of not to exceed fifteen years.

284 8. The department of economic development and the department
285 of revenue shall cooperate in conducting random audits to ensure that
286 the intent of this section is followed.

287 9. Notwithstanding any other provision of law to the contrary,
288 no recipient of an exemption pursuant to this section shall be eligible
289 for benefits under any business recruitment tax credit, as defined in
290 section 135.800.

291 10. The department of economic development and the
292 department of revenue shall jointly prescribe such rules and
293 regulations necessary to carry out the provisions of this section. Any
294 rule or portion of a rule, as that term is defined in section 536.010, that
295 is created under the authority delegated in this section shall become
296 effective only if it complies with and is subject to all of the provisions
297 of chapter 536 and, if applicable, section 536.028. This section and
298 chapter 536 are nonseverable, and if any of the powers vested with the
299 general assembly pursuant to chapter 536 to review, to delay the
300 effective date, or to disapprove and annul a rule are subsequently held
301 unconstitutional, then the grant of rulemaking authority and any rule
302 proposed or adopted after August 28, 2015, shall be invalid and void.