

SECOND REGULAR SESSION

# SENATE BILL NO. 584

96TH GENERAL ASSEMBLY

INTRODUCED BY SENATORS RICHARD AND KEHOE.

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TERRY L. SPIELER, Secretary.

4469S.011

## AN ACT

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

*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  
2 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  
2 indicates otherwise, the following terms mean:**

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

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

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

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

16 **(a) Data processing, hosting, and related services (NAICS  
17 518210);**

18 **(b) Internet publishing and broadcasting and web search portals  
19 (NAICS 519130), at the business facility; or**

20 **(c) The transmission of voice, data, text, sound, and video using  
21 wired telecommunication networks (NAICS 517110);**

22           (5) "Technology business facility project" or "project", the  
23 purchase, construction, extension, and improvement of technology  
24 business facilities, whether of the facility as a whole or of any one or  
25 more of the facility's components of real estate, buildings, fixtures,  
26 machinery, and equipment.

27           2. The governing body of any municipality may:

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

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

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

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

51           4. Transactions involving the lease or rental of any components  
52 of a project under this section shall be specifically exempted from the  
53 provisions of the local sales tax law as defined in section 32.085, section  
54 238.235, and sections 144.010 to 144.525 and 144.600 to 144.761, and from  
55 the computation of the tax levied, assessed, or payable under the local  
56 sales tax law as defined in section 32.085, section 238.235, and sections  
57 144.010 to 144.525 and 144.600 to 144.745.

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

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

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

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

144.810. 1. As used in this section, unless the context clearly  
2 indicates otherwise, the following terms shall 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", where more than one taxpayer is**  
9 **responsible for a project, a taxpayer responsible for the purchase or**  
10 **construction of the facility, as opposed to a taxpayer responsible for the**  
11 **equipping and ongoing operations of the facility;**

12           (3) "Data storage center" or "facility", a facility purchased,  
13 constructed, extended, improved, or operating pursuant to this section,  
14 provided that such business facility is engaged in:

15           (a) Data processing, hosting, and related services (NAICS  
16 518210);

17           (b) Internet publishing and broadcasting and web search portals  
18 (NAICS 519130), at the business facility; or

19           (c) The transmission of voice, data, text, sound, and video using  
20 wired telecommunication networks (NAICS 517110);

21           (4) "Existing facility", a data storage center in this state as it  
22 existed prior to August 28, 2012, as determined by the department;

23           (5) "Expanding facility" or "expanding data storage center", an  
24 existing facility or replacement facility that expands its operations in  
25 this state on or after August 28, 2012, and has net new investment  
26 related to the expansion of operations in this state of at least one  
27 million dollars during a period of up to twelve consecutive months. An  
28 expanding facility shall continue to be an expanding facility regardless  
29 of a subsequent change in or addition of operating taxpayers or  
30 constructing taxpayers;

31           (6) "Expanding facility project" or "expanding data storage center  
32 project", the purchase, construction, extension, improvement equipping,  
33 and operation of an expanding facility;

34           (7) "NAICS", the 2007 edition of the North American Industry  
35 Classification System as prepared by the Executive Office of the  
36 President, Office of Management and Budget. Any NAICS sector,  
37 subsector, industry group, or industry identified in this section shall  
38 include its corresponding classification in previous and subsequent  
39 federal industry classification systems;

40           (8) "New facility" or "new data storage center", a facility in this  
41 state meeting the following requirements:

42           (a) The facility is acquired by, or leased to, an operating  
43 taxpayer on or after August 28, 2012. A facility shall be deemed to have  
44 been acquired by, or leased to, an operating taxpayer on or after  
45 August 28, 2012, if the transfer of title to an operating taxpayer, the  
46 transfer of possession pursuant to a binding contract to transfer title  
47 to an operating taxpayer, or the commencement of the term of the lease  
48 to an operating taxpayer occurs on or after August 28, 2012, or, if the  
49 facility is constructed, erected, or installed by or on behalf of an

50 operating taxpayer, such construction, erection, or installation is  
51 commenced on or after August 28, 2012;

52 (b) If such facility was acquired by an operating taxpayer from  
53 another person or persons on or after August 28, 2012, and such facility  
54 was employed prior to August 28, 2012, by any other person or persons  
55 in the operation of a data storage center, the facility shall not be  
56 considered a new facility;

57 (c) Such facility is not a replacement facility, as defined in  
58 subdivision (12) of this section;

59 (d) The new facility project investment is at least five million  
60 dollars during a period of up to thirty-six consecutive months. Where  
61 more than one taxpayer is responsible for a project, the investment  
62 requirement may be met by an operating taxpayer, a constructing  
63 taxpayer, or a combination of constructing taxpayers and operating  
64 taxpayers; and

65 (e) A new facility shall continue to be a new facility regardless  
66 of a subsequent change in or addition of operating taxpayers or  
67 constructing taxpayers;

68 (9) "New data storage center project" or "new facility project", the  
69 purchase, construction, extension, improvement equipping, and  
70 operation of a new facility;

71 (10) "Operating taxpayer", where more than one taxpayer is  
72 responsible for a project, a taxpayer responsible for the equipping and  
73 ongoing operations of the facility, as opposed to a taxpayer responsible  
74 for the purchasing or construction of the facility;

75 (11) "Project taxpayers", each constructing taxpayer and each  
76 operating taxpayer for a data storage center project;

77 (12) "Replacement facility" or "replacement data storage center",  
78 a facility in this state otherwise described in subdivision (8) of this  
79 section, but which replaces another facility located within the state,  
80 which the taxpayer or a related taxpayer previously operated but  
81 discontinued operating within one year prior to the commencement of  
82 commercial operations at the new facility;

83 (13) "Taxpayer", the purchaser of tangible personal property or  
84 a service that is subject to state or local sales or use tax and from  
85 whom state or local sales or use tax is owed. Taxpayer shall not mean  
86 the seller charged by law with collecting the sales tax from the  
87 purchaser.

88           **2. Beginning August 28, 2012, in addition to the exemptions**  
89 **granted under chapter 144, there shall also be specifically exempted**  
90 **from state and local sales and use taxes defined, levied, or calculated**  
91 **under section 32.085, sections 144.010 to 144.525, sections 144.600 to**  
92 **144.761, or section 238.235:**

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

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

98           **(3) All sales at retail of tangible personal property and materials**  
99 **for the purpose of constructing, repairing, or remodeling any new data**  
100 **storage center.**

101           **3. Any data storage center project seeking a tax exemption under**  
102 **subsection 2 of this section shall submit a project plan to the**  
103 **department of economic development, including identifying each**  
104 **known constructing taxpayer and each known operating taxpayer for**  
105 **the project. The department of economic development shall determine**  
106 **whether the project is eligible for the exemption under subsection 2 of**  
107 **this section conditional upon subsequent verification by the**  
108 **department that the project meets the requirement in paragraph (d) of**  
109 **subdivision (8) of subsection 1 of this section of at least five million**  
110 **dollars of new facility investment over a time period not to exceed**  
111 **thirty-six consecutive months. The department of economic**  
112 **development shall convey such conditional approval to the department**  
113 **of revenue and the identified project taxpayers. After a conditionally**  
114 **approved new facility project has met the investment amount, the**  
115 **project taxpayers shall provide proof of such investment to the**  
116 **department of economic development. Upon verification of such proof,**  
117 **the department of economic development shall certify the project to the**  
118 **department of revenue as being eligible for the exemption dating**  
119 **retroactively to the first day of the thirty six month period or the first**  
120 **day of the new investment in the event the investment is met in less**  
121 **than thirty six months. The department of revenue, upon receipt of**  
122 **adequate proof of the amount of sales taxes paid since the first day of**  
123 **the thirty six month period, or the first day of the new investment in**  
124 **the event the investment is met in less than thirty six months, shall**  
125 **issue a refund of sales taxes paid as set forth in this section to each**

126 operating taxpayer and each constructing taxpayer and issue a  
127 certificate of exemption to each new project taxpayer for ongoing  
128 exemptions under subdivisions (1), (2), and (3) of subsection 2 of this  
129 section.

130 4. Beginning August 28, 2012, in addition to the exemptions  
131 granted under chapter 144, there shall also be specifically exempted  
132 from state and local sales and use taxes defined, levied, or calculated  
133 under section 32.085, sections 144.010 to 144.525, sections 144.600 to  
134 144.761, or section 238.235:

135 (1) All electrical energy, gas, water, and other utilities including  
136 telecommunication and internet services used in an expanding data  
137 storage center which, on an annual basis, exceeds the amount of  
138 electrical energy, gas, water, and other utilities including  
139 telecommunication services used in the existing facility or the replaced  
140 facility prior to the expansion. "Amount" shall be measured in kilowatt  
141 hours, gallons, cubic feet or other measures applicable to a utility  
142 service as opposed to in dollars, to account for increases in rates;

143 (2) All machinery, equipment, and computers used in any new  
144 data storage center, the cost of which, on an annual basis, exceeds the  
145 average of the previous three years' expenditures on machinery,  
146 equipment, and computers at the existing facility or the replaced  
147 facility prior to the expansion. Existing facilities or replaced facilities  
148 in existence for less than three years shall have the average  
149 expenditures calculated based upon the applicable time of existence;  
150 and

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

154 5. Any data storage center project seeking a tax exemption under  
155 subsection 4 of this section shall submit an expanding project plan to  
156 the department of economic development, including identifying each  
157 known constructing taxpayer and each known operating taxpayer for  
158 the project. The project applicants shall also provide proof satisfactory  
159 to the department of economic development that the facility is an  
160 expanding facility and has net new investment related to the expansion  
161 of operations in this state of at least one million dollars during a time  
162 period not to exceed twelve consecutive months. Upon verification of  
163 such proof, the department of economic development shall certify the

164 project to the department of revenue as being eligible for the  
165 exemption. The department of revenue shall issue a certificate of  
166 exemption to each expanding project taxpayer for ongoing exemptions  
167 under subdivisions (1), (2) and (3) of subsection 4 of this section.

168         6. The sales tax exemptions in subsections 2 and 4 of this section  
169 shall be tied to the new or expanding facility project. A certificate of  
170 exemption in the hands of a taxpayer that is no longer an operating or  
171 constructing taxpayer of the new or expanding facility project shall be  
172 invalid as of the date the taxpayer was no longer an operating or  
173 constructing taxpayer of the new or expanding facility project. New  
174 certificates of exemption shall be issued to successor constructing  
175 taxpayers and operating taxpayers at such new or expanding facility  
176 projects. The right to the exemption by successor taxpayers shall exist  
177 without regard to subsequent levels of investment in the new or  
178 expanding facility by successor taxpayers.

179         7. The department of economic development and the department  
180 of revenue shall cooperate in conducting random audits to make  
181 certain the intent of this section is followed.

182         8. The department of economic development and the department  
183 of revenue shall jointly prescribe such rules and regulations necessary  
184 to carry out the provisions of this section. Any rule or portion of a  
185 rule, as that term is defined in section 536.010 that is created under the  
186 authority delegated in this section shall become effective only if it  
187 complies with and is subject to all of the provisions of chapter 536, and,  
188 if applicable, section 536.028. This section and chapter 536 are  
189 nonseverable and if any of the powers vested with the general assembly  
190 pursuant to chapter 536, to review, to delay the effective date, or to  
191 disapprove and annul a rule are subsequently held unconstitutional,  
192 then the grant of rulemaking authority and any rule proposed or  
193 adopted after August 28, 2012, shall be invalid and void.

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