

FIRST REGULAR SESSION

SENATE BILL NO. 46

97TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR PARSON.

Pre-filed December 1, 2012, and ordered printed.

TERRY L. SPIELER, Secretary.

0374S.01I

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, village of
6 the state, or any utilities board thereof;

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, sale, lease, construction, extension, and improvement of
24 technology business facilities, whether of the facility as a whole or of
25 any one or more of the facility's components of real estate, buildings,
26 fixtures, 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.

87 9. The provisions of this section shall not be construed to allow
88 political subdivisions to provide telecommunications services or
89 telecommunications facilities to the extent that they are prohibited
90 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", where more than one taxpayer is
9 responsible for a project, a taxpayer responsible for the construction
10 of the facility, as opposed to a taxpayer responsible for the equipping
11 and ongoing 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", a data storage center in this state as it
26 existed prior to August 28, 2013, as determined by the department;

27 (6) "Expanding facility" or "expanding data storage center", an
28 existing facility or replacement facility that expands its operations in
29 this state on or after August 28, 2013, and has net new investment
30 related to the expansion of operations in this state of at least five
31 million dollars during a period of up to twelve consecutive months and
32 results in the creation of at least five new jobs during a period of up to
33 twenty-four consecutive months from the date of conditional approval
34 for an exemption under this section, if the average wage of the new
35 jobs equals or exceeds one hundred and fifty percent of the county
36 average wage. An expanding facility shall continue to be an expanding
37 facility regardless of a subsequent change in or addition of operating
38 taxpayers or constructing taxpayers;

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

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

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

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

52 (10) "New facility" or "new data storage center", a facility in this
53 state meeting the following requirements:

54 (a) The facility is acquired by, or leased to, an operating
55 taxpayer on or after August 28, 2013. A facility shall be deemed to have
56 been acquired by, or leased to, an operating taxpayer on or after
57 August 28, 2013, if the transfer of title to an operating taxpayer, the
58 transfer of possession under a binding contract to transfer title to an
59 operating taxpayer, or the commencement of the term of the lease to an
60 operating taxpayer occurs on or after August 28, 2013, or, if the facility
61 is constructed, erected, or installed by or on behalf of an operating
62 taxpayer, such construction, erection, or installation is commenced on
63 or after August 28, 2013;

64 (b) If such facility was acquired by an operating or constructing
65 taxpayer from another person or persons on or after August 28, 2013,
66 and such facility was employed prior to August 28, 2013, by any other
67 person or persons in the operation of a data storage center the facility
68 shall not be considered a new facility;

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

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

78 (e) At least thirty new jobs are created at the new facility during
79 a period of up to thirty-six consecutive months from the date of
80 conditional approval for an exemption under this section if the average

81 wage of the new jobs equals or exceeds one hundred fifty percent of the
82 county average wage; and

83 (f) A new facility shall continue to be a new facility regardless
84 of a subsequent change in or addition of operating taxpayers or
85 constructing taxpayers;

86 (11) "New data storage center project" or "new facility project",
87 the construction, extension, improvement, equipping, and operation of
88 a new facility;

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

105 (13) "Operating taxpayer", where more than one taxpayer is
106 responsible for a project, a taxpayer responsible for the equipping and
107 ongoing operations of the facility, as opposed to a taxpayer responsible
108 for the purchasing or construction of the facility;

109 (14) "Project taxpayers", each constructing taxpayer and each
110 operating taxpayer for a data storage center project;

111 (15) "Replacement facility", a facility in this state otherwise
112 described in subdivision (7) of this subsection, but which replaces
113 another facility located within the state, which the taxpayer or a
114 related taxpayer previously operated but discontinued operating within
115 one year prior to the commencement of commercial operations at the
116 new facility;

117 (16) "Taxpayer", the purchaser of tangible personal property or

118 a service that is subject to state or local sales or use tax and from
119 whom state or local sales or use tax is owed. Taxpayer shall not mean
120 the seller charged by law with collecting the sales tax from the
121 purchaser.

122 2. In addition to the exemptions granted under chapter 144,
123 project taxpayers for a new data storage center project shall be
124 entitled, for a project period not to exceed fifteen years from the date
125 of conditional approval under this section and subject to the
126 requirements of subsection 3 of this section, to an exemption of one
127 hundred percent of the state and local sales and use taxes defined,
128 levied, or calculated under section 32.085, sections 144.010 to 144.525,
129 sections 144.600 to 144.761, or section 238.235, limited to the net fiscal
130 benefit of the state calculated over a ten year period, on:

131 (1) All electrical energy, gas, water, and other utilities including
132 telecommunication and internet services used in a new data storage
133 center;

134 (2) All machinery, equipment, and computers used in any new
135 data storage center; and

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

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

142 3. Any data storage center project seeking a tax exemption under
143 subsection 2 of this section shall submit a project plan to the
144 department of economic development, which shall identify each known
145 constructing taxpayer and known operating taxpayer for the project
146 and include any additional information the department of economic
147 development may require to determine eligibility for the
148 exemption. The department of economic development shall review the
149 project plan and determine whether the project is eligible for the
150 exemption under subsection 2 of this section, conditional upon
151 subsequent verification by the department that the project meets the
152 requirements in subsection 1 of this section for a new facility. The
153 department of economic development shall convey such conditional
154 approval to the department of revenue and the identified project

155 taxpayers. After a conditionally approved new facility has met the
156 requirements in subsection 1 of this section for a new facility and the
157 execution of the agreement specified in subsection 6 of this section, the
158 project taxpayers shall provide proof of the same to the department of
159 economic development. Upon verification of such proof, the
160 department of economic development shall certify the new facility to
161 the department of revenue as being eligible for the exemption dating
162 retroactively to the first day of the thirty-six month period. The
163 department of revenue, upon receipt of adequate proof of the amount
164 of sales taxes paid since the first day of the thirty-six month period,
165 shall issue a refund of taxes paid but eligible for exemption under
166 subsection 2 of this section to each operating taxpayer and each
167 constructing taxpayer and issue a certificate of exemption to each new
168 project taxpayer for ongoing exemptions under subsection 2 of this
169 section.

170 4. In addition to the exemptions granted under chapter 144, upon
171 approval by the department of economic development, project
172 taxpayers for expanding data center projects may, for a period not to
173 exceed ten years, be specifically exempted from state and local sales
174 and use taxes defined, levied, or calculated under section 32.085,
175 sections 144.010 to 144.525, sections 144.600 to 144.761, or section
176 238.235 on:

177 (1) All electrical energy, gas, water, and other utilities including
178 telecommunication and internet services used in an expanding data
179 storage center which, on an annual basis, exceeds the amount of
180 electrical energy, gas, water, and other utilities including
181 telecommunication and internet services used in the existing facility or
182 the replaced facility prior to the expansion. For purposes of this
183 subdivision only, "amount" shall be measured in kilowatt hours, gallons,
184 cubic feet, or other measures applicable to a utility service as opposed
185 to in dollars, to account for increases in utility rates;

186 (2) All machinery, equipment, and computers used in any
187 expanding data storage center, the cost of which, on an annual basis,
188 exceeds the average of the previous three years' expenditures on
189 machinery, equipment, and computers at the existing facility or the
190 replaced facility prior to the expansion. Existing facilities or replaced
191 facilities in existence for less than three years shall have the average

192 expenditures calculated based upon the applicable time of existence;
193 and

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

197 The amount of any exemption provided under this subsection shall not
198 exceed the projected net fiscal benefit to the state over a period of ten
199 years, as determined by the department of economic development.

200 5. Any data storage center project seeking a tax exemption under
201 subsection 4 of this section shall submit a project plan to the
202 department of economic development, which shall identify each known
203 constructing taxpayer and each known operating taxpayer for the
204 project and include any additional information the department of
205 economic development may reasonably require to determine eligibility
206 for the exemption. The department of economic development shall
207 review the project plan and determine whether the project is eligible
208 for the exemption under subsection 4 of this section, conditional upon
209 subsequent verification by the department that the project meets the
210 requirements in subsection 1 of this section for an expanding facility
211 project and the execution of the agreement specified in subsection 6 of
212 this section. The department of economic development shall convey
213 such conditional approval to the department of revenue and the
214 identified project taxpayers. After a conditional approved facility has
215 met the requirements in subsection 1 of this section, the project
216 taxpayers shall provide proof of the same to the department of
217 economic development. Upon verification of such proof, the
218 department of economic development shall certify the project to the
219 department of revenue as being eligible for the exemption dating
220 retroactively to the first day of the thirty-six month period. The
221 department of revenue, upon receipt of adequate proof of the amount
222 of sales taxes paid since the first day of the thirty-six month period,
223 shall issue a refund of taxes paid but eligible for exemption under
224 subsection 4 of this section to any applicable project taxpayer and issue
225 a certificate of exemption to any applicable project taxpayer for
226 ongoing exemptions under subsection 4 of this section.

227 6. (1) The exemptions in subsections 2 and 4 of this section shall
228 be tied to the new or expanding facility project. A certificate of

229 exemption in the hands of a taxpayer that is no longer an operating or
230 constructing taxpayer of the new or expanding facility project shall be
231 invalid as of the date the taxpayer was no longer an operating or
232 constructing taxpayer of the new or expanding facility project. New
233 certificates of exemption shall be issued to successor constructing
234 taxpayers and operating taxpayers at such new or expanding facility
235 projects. The right to the exemption by successor taxpayers shall exist
236 without regard to subsequent levels of investment in the new or
237 expanding facility by successor taxpayers.

238 (2) As a condition of receiving an exemption under subsection 2
239 or 4 of this section, the project taxpayers shall enter into an agreement
240 with the department of economic development providing for repayment
241 penalties in the event the data storage center project fails to comply
242 with any of the requirements of this section.

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

246 7. The department of economic development and the department
247 of revenue shall cooperate in conducting random audits to ensure that
248 the intent of this section is followed.

249 8. Notwithstanding any other provision of law to the contrary,
250 no recipient of an exemption pursuant to this section shall be eligible
251 for benefits under any business recruitment tax credit, as defined in
252 section 135.800.

253 9. The department of economic development and the department
254 of revenue shall jointly prescribe such rules and regulations necessary
255 to carry out the provisions of this section. Any rule or portion of a
256 rule, as that term is defined in section 536.010, that is created under
257 the authority delegated in this section shall become effective only if it
258 complies with and is subject to all of the provisions of chapter 536 and,
259 if applicable, section 536.028. This section and chapter 536 are
260 nonseverable and if any of the powers vested with the general assembly
261 pursuant to chapter 536 to review, to delay the effective date, or to
262 disapprove and annul a rule are subsequently held unconstitutional,
263 then the grant of rulemaking authority and any rule proposed or
264 adopted after August 28, 2013, shall be invalid and void.