

SENATE SUBSTITUTE
FOR
SENATE COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 149

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:

1 Section A. Chapters 67 and 144, RSMo, are amended by adding
2 thereto two new sections, to be known as sections 67.2050 and
3 144.810, to read as follows:

4 67.2050. 1. As used in this section, unless the context
5 clearly indicates otherwise, the following terms mean:

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

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

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

16 (4) "Technology business facility", a facility purchased,

1 constructed, extended, or improved under this section, provided
2 that such business facility is engaged in:

3 (a) Wired telecommunications carriers (NAICS 517110);

4 (b) Data processing, hosting, and related services (NAICS
5 518210); or

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

8 (5) "Technology business facility project" or "project",
9 the purchase, construction, extension, and improvement of
10 technology business facilities, whether of the facility as a
11 whole or of any one or more of the facility's components of real
12 estate, buildings, fixtures, machinery, and equipment.

13 2. The governing body of any municipality may:

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

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

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

23 3. The governing body of the municipality may enter into
24 loan agreements, sell, lease, or mortgage to private persons,
25 partnerships, or corporations any one or more of the components
26 of a facility received, purchased, constructed, or extended by
27 the municipality for development of a technology business
28 facility project. The loan agreement, installment sale

1 agreement, lease, or other such document shall contain such other
2 terms as are agreed upon between the municipality and the
3 obligor, provided that such terms shall be consistent with this
4 section. If, in the judgment of the governing body of the
5 municipality, the technology business facility project will
6 result in economic benefits to the municipality, the governing
7 body may lawfully enter into an agreement that includes nominal
8 monetary consideration to the municipality in exchange for the
9 use of one or more components of the facility.

10 4. Transactions involving the lease or rental of any
11 components of a project under this section shall be specifically
12 exempted from the provisions of the local sales tax law as
13 defined in section 32.085, section 238.235, and sections 144.010
14 to 144.525 and sections 144.600 to 144.761, and from the
15 computation of the tax levied, assessed, or payable under the
16 local sales tax law as defined in section 32.085, section
17 238.235, and sections 144.010 to 144.525 and sections 144.600 to
18 144.745.

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

21 6. Any payments in lieu of taxes expected to be made by any
22 lessee of the project shall be applied in accordance with this
23 section. The lessee may reimburse the municipality for its
24 actual costs of administering the plan. All amounts paid in
25 excess of such actual costs shall, immediately upon receipt
26 thereof, be disbursed by the municipality's treasurer or other
27 financial officer to each affected taxing entity in proportion to
28 the current ad valorem tax levy of each affected taxing entity.

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

8 8. The governing body of any municipality may sell or
9 otherwise dispose of the property, buildings, or plants acquired
10 under this section to private persons or corporations for
11 technology business facility project purposes upon approval by
12 the governing body. The terms and method of the sale or other
13 disposal shall be established by the governing body so as to
14 reasonably protect the economic well-being of the municipality
15 and to promote the development of technology business facility
16 projects. A private person or corporation that initially
17 transfers property to the municipality for the purposes of a
18 technology business facility project and does not charge a
19 purchase price to the municipality shall retain the right, upon
20 request to the municipality, to have the municipality retransfer
21 the donated property to the person or corporation at no cost.

22 9. The provisions of this section shall not be construed to
23 allow political subdivisions to provide telecommunications
24 services or telecommunications facilities to the extent that they
25 are prohibited from doing so by section 392.410.

26 144.810. 1. As used in this section, unless the context
27 clearly indicates otherwise, the following terms mean:

28 (1) "Commencement of commercial operations", shall be

1 deemed to occur during the first calendar year for which the data
2 storage center is first available for use by the operating
3 taxpayer, or first capable of being used by the operating
4 taxpayer, as a data storage center;

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

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

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

18 (a) Data processing, hosting, and related services (NAICS
19 518210); or

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

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

25 (6) "Expanding facility" or "expanding data storage
26 center", an existing facility or replacement facility that
27 expands its operations in this state on or after August 28, 2015,
28 and has net new investment related to the expansion of operations

1 in this state of at least five million dollars during a period of
2 up to twelve consecutive months and results in the creation of at
3 least five new jobs during a period of up to twenty-four
4 consecutive months from the date of conditional approval for an
5 exemption under this section, if the average wage of the new jobs
6 equals or exceeds one hundred fifty percent of the county average
7 wage. An expanding facility shall continue to be an expanding
8 facility regardless of a subsequent change in or addition of
9 operating taxpayers or constructing taxpayers;

10 (7) "Expanding facility project" or "expanding data storage
11 center project", the construction, extension, improvement,
12 equipping, and operation of an expanding facility;

13 (8) "Investment" shall include the value of real and
14 depreciable personal property, acquired as part of the new or
15 expanding facility project which is used in the operation of the
16 facility following conditional approval of an exemption under
17 this section;

18 (9) "NAICS", the 2007 edition of the North American
19 Industry Classification System as prepared by the Executive
20 Office of the President, Office of Management and Budget. Any
21 NAICS sector, subsector, industry group, or industry identified
22 in this section shall include its corresponding classification in
23 previous and subsequent federal industry classification systems;

24 (10) "New data storage center project" or "new facility
25 project", the construction, extension, improvement, equipping,
26 and operation of a new facility;

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

1 (a) The facility is acquired by or leased to an operating
2 taxpayer on or after August 28, 2015. A facility shall be deemed
3 to have been acquired by or leased to an operating taxpayer on or
4 after August 28, 2015, if the transfer of title to an operating
5 taxpayer, the transfer of possession under a binding contract to
6 transfer title to an operating taxpayer, or an operating taxpayer
7 takes possession of the facility under the terms of the lease on
8 or after August 28, 2015, or if the facility is constructed,
9 erected, or installed by or on behalf of an operating taxpayer,
10 such construction, erection, or installation is completed on or
11 after August 28, 2015;

12 (b) Such facility is not an expanding or replacement
13 facility, as defined in this section;

14 (c) The new facility project investment is at least twenty-
15 five million dollars during a period of up to thirty-six
16 consecutive months from the date of the conditional approval for
17 an exemption under this section. If more than one taxpayer is
18 responsible for a project, the investment requirement may be met
19 by an operating taxpayer, a constructing taxpayer, or a
20 combination of constructing taxpayers and operating taxpayers;
21 and

22 (d) At least ten new jobs are created at the new facility
23 during a period of up to thirty-six consecutive months from the
24 date of conditional approval for an exemption under this section
25 if the average wage of the new jobs equals or exceeds one hundred
26 fifty percent of the county average wage;

27
28 Any facility which was acquired by an operating or constructing

1 taxpayer from another person or persons on or after August 28,
2 2015, and such facility was employed prior to August 28, 2015, by
3 any other person or persons in the operation of a data storage
4 center shall not be considered a new facility. A new facility
5 shall continue to be a new facility regardless of a subsequent
6 change in or addition of operating taxpayers or constructing
7 taxpayers;

8 (12) "New job", in the case of a new data center project,
9 the total number of full-time employees located at a new data
10 storage center for a period of up to thirty-six consecutive
11 months from the date of conditional approval for an exemption
12 under this section. In the case of an expanding data storage
13 center project, the total number of full-time employees located
14 at the expanding data storage center that exceeds the greater of
15 the number of full-time employees located at the project facility
16 on the date of the submission of a project plan under this
17 section or for the twelve-month period prior to the date of the
18 submission of a project plan, the average number of full-time
19 employees located at the expanding data storage center facility.
20 In the event the expanding data storage center facility has not
21 been in operation for a full twelve-month period at the time of
22 the submission of a project plan, the total number of full-time
23 employees located at the expanded data storage center that
24 exceeds the greater of the number of full-time employees located
25 at the project facility on the date of the submission of a
26 project plan under this section or the average number of full-
27 time employees for the number of months the expanding data
28 storage center facility has been in operation prior to the date

1 of the submission of the project plan;

2 (13) "Notice of intent", a form developed by the department
3 of economic development, completed by the project taxpayer, and
4 submitted to the department, which states the project taxpayer's
5 intent to construct or expand a data center and request the
6 exemptions under this program;

7 (14) "Operating taxpayer", if more than one taxpayer is
8 responsible for a project, the taxpayer responsible for the
9 ongoing operations of the facility, as opposed to the taxpayer
10 responsible for the purchasing or construction of the facility;

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

13 (16) "Replacement facility", a facility in this state
14 otherwise described in subdivision (7) of this subsection, but
15 which replaces another facility located within the state, which
16 the taxpayer or a related taxpayer previously operated but
17 discontinued operating within one year prior to the commencement
18 of commercial operations at the new facility;

19 (17) "Taxpayer", the purchaser of tangible personal
20 property or a service that is subject to state or local sales or
21 use tax and from whom state or local sales or use tax is owed.
22 Taxpayer shall not mean the seller charged by law with collecting
23 the sales tax from the purchaser.

24 2. In addition to the exemptions granted under chapter 144,
25 project taxpayers for a new data storage center project shall be
26 entitled, for a project period not to exceed fifteen years from
27 the date of conditional approval under this section and subject
28 to the requirements of subsection 3 of this section, to an

1 exemption of one hundred percent of the state and local sales and
2 use taxes defined, levied, or calculated under section 32.085,
3 sections 144.010 to 144.525, sections 144.600 to 144.761, or
4 section 238.235, limited to the net fiscal benefit of the state
5 calculated over a ten year period, on:

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

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

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

14
15 The amount of any exemption provided under this subsection shall
16 not exceed the projected net fiscal benefit to the state over a
17 period of ten years, as determined by the department of economic
18 development using the Regional Economic Modeling, Inc. dataset.

19 3. (1) Any data storage center project seeking a tax
20 exemption under subsection 2 of this section shall submit a
21 notice of intent and a project plan to the department of economic
22 development, which shall identify each known constructing
23 taxpayer and known operating taxpayer for the project and include
24 any additional information the department of economic development
25 may require to determine eligibility for the exemption. The
26 department of economic development shall review the project plan
27 and determine whether the project is eligible for the exemption
28 under subsection 2 of this section, conditional upon subsequent

1 verification by the department that the project meets the
2 requirements in subsection 1 of this section for a new facility
3 project. The department shall make such conditional
4 determination within thirty days of submission by the operating
5 taxpayer. Failure of the department to respond within thirty
6 days shall result in a project plan being deemed conditionally
7 approved.

8 (2) The department of economic development shall convey
9 conditional approvals to the department of revenue and the
10 identified project taxpayers. After a conditionally approved new
11 facility has met the requirements in subsection 1 of this section
12 for a new facility and the execution of the agreement specified
13 in subsection 6 of this section, the project taxpayers shall
14 provide proof of the same to the department of economic
15 development. Upon verification of such proof, the department of
16 economic development shall certify the new facility to the
17 department of revenue as being eligible for the exemption dating
18 retroactively to the first day of construction on the new
19 facility. The department of revenue, upon receipt of adequate
20 proof of the amount of sales taxes paid since the first day of
21 construction, shall issue a refund of taxes paid but eligible for
22 exemption under subsection 2 of this section to each operating
23 taxpayer and each constructing taxpayer and issue a certificate
24 of exemption to each new project taxpayer for ongoing exemptions
25 under subsection 2 of this section. The department of revenue
26 shall issue such a refund within thirty days of receipt of
27 certification from the department of economic development.

28 (3) The commencement of the exemption period may be delayed

1 at the option of the operating taxpayer, but not more than
2 twenty-four months after the execution of the agreement required
3 under subsection 6 of this section.

4 4. In addition to the exemptions granted under chapter 144,
5 upon approval by the department of economic development, project
6 taxpayers for expanding data center projects may, for a period
7 not to exceed ten years, be specifically exempted from state and
8 local sales and use taxes defined, levied, or calculated under
9 section 32.085, sections 144.010 to 144.525, sections 144.600 to
10 144.761, or section 238.235 on:

11 (1) All electrical energy, gas, water, and other utilities
12 including telecommunication and internet services used in an
13 expanding data storage center which, on an annual basis, exceeds
14 the amount of electrical energy, gas, water, and other utilities
15 including telecommunication and internet services used in the
16 existing facility or the replaced facility prior to the
17 expansion. For purposes of this subdivision only, "amount" shall
18 be measured in kilowatt hours, gallons, cubic feet, or other
19 measures applicable to a utility service as opposed to in
20 dollars, to account for increases in utility rates;

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

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

26
27 The amount of any exemption provided under this subsection shall
28 not exceed the projected net fiscal benefit to the state over a

1 period of ten years, as determined by the department of economic
2 development using the Regional Economic Modeling, Inc., data set
3 or comparable data.

4 5. (1) Any data storage center project seeking a tax
5 exemption under subsection 4 of this section shall submit a
6 notice of intent and a project plan to the department of economic
7 development, which shall identify each known constructing
8 taxpayer and each known operating taxpayer for the project and
9 include any additional information the department of economic
10 development may reasonably require to determine eligibility for
11 the exemption. The department of economic development shall
12 review the project plan and determine whether the project is
13 eligible for the exemption under subsection 4 of this section,
14 conditional upon subsequent verification by the department that
15 the project meets the requirements in subsection 1 of this
16 section for an expanding facility project and the execution of
17 the agreement specified in subsection 6 of this section. The
18 department shall make such conditional determination within
19 thirty days of submission by the operating taxpayer. Failure of
20 the department to respond within thirty days shall result in a
21 project plan being deemed conditionally approved.

22 (2) The department of economic development shall convey
23 such conditional approval to the department of revenue and the
24 identified project taxpayers. After a conditionally approved
25 facility has met the requirements in subsection 1 of this
26 section, the project taxpayers shall provide proof of the same to
27 the department of economic development. Upon verification of
28 such proof, the department of economic development shall certify

1 the project to the department of revenue as being eligible for
2 the exemption dating retroactively to the first day of the
3 expansion of the facility. The department of revenue, upon
4 receipt of adequate proof of the amount of sales taxes paid since
5 the first day of the expansion of the facility, shall issue a
6 refund of taxes paid but eligible for exemption under subsection
7 4 of this section to any applicable project taxpayer and issue a
8 certificate of exemption to any applicable project taxpayer for
9 ongoing exemptions under subsection 4 of this section. The
10 department of revenue shall issue such a refund within thirty
11 days of receipt of certification from the department of economic
12 development.

13 (3) The commencement of the exemption period may be delayed
14 at the option of the operating taxpayer, but not more than
15 twenty-four months after the execution of the agreement required
16 under subsection 6 of this section.

17 6. (1) The exemptions in subsections 2 and 4 of this
18 section shall be tied to the new or expanding facility project.
19 A certificate of exemption in the hands of a taxpayer that is no
20 longer an operating or constructing taxpayer of the new or
21 expanding facility project shall be invalid as of the date the
22 taxpayer was no longer an operating or constructing taxpayer of
23 the new or expanding facility project. New certificates of
24 exemption shall be issued to successor constructing taxpayers and
25 operating taxpayers at such new or expanding facility projects.
26 The right to the exemption by successor taxpayers shall exist
27 without regard to subsequent levels of investment in the new or
28 expanding facility by successor taxpayers.

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

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

11 7. Any project taxpayer who submits a notice of intent to
12 the department of economic development to expand a new facility
13 by additional construction, extension, improvement, or equipping
14 within five years of the date the new facility became operation
15 shall be entitled to request the department undertake an
16 additional analysis to determine the projected net fiscal benefit
17 of the expansion to the state over a period of ten years as
18 determined by the department using the Regional Economic
19 Modeling, Inc. dataset or comparable data and shall be entitled
20 to an exemption under this section not to exceed such fiscal
21 benefit to the state for a period of not to exceed fifteen years.

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

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

1 10. The department of economic development and the
2 department of revenue shall jointly prescribe such rules and
3 regulations necessary to carry out the provisions of this
4 section. Any rule or portion of a rule, as that term is defined
5 in section 536.010, that is created under the authority delegated
6 in this section shall become effective only if it complies with
7 and is subject to all of the provisions of chapter 536 and, if
8 applicable, section 536.028. This section and chapter 536 are
9 nonseverable, and if any of the powers vested with the general
10 assembly pursuant to chapter 536 to review, to delay the
11 effective date, or to disapprove and annul a rule are
12 subsequently held unconstitutional, then the grant of rulemaking
13 authority and any rule proposed or adopted after August 28, 2015,
14 shall be invalid and void.