

FIRST REGULAR SESSION

SENATE BILL NO. 343

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR WASSON.

Read 1st time January 28, 2015, and ordered printed.

ADRIANE D. CROUSE, Secretary.

0298S.05I

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);

(5) "Technology business facility project" or "project", the

22 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 or comparable data.

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. The department shall make such conditional
168 determination within thirty days of submission by the operating
169 taxpayer. Failure of the department to respond within thirty days shall
170 result in a project plan being deemed conditionally approved.

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

189 (3) Any project that does not meet the minimum investment or
190 new job requirements of subsection 1 of this section may still be
191 eligible for the exemption under subsection 2 of this section, as long as

192 the exemptions for such project plan do not exceed the projected net
193 fiscal benefit to the state over a period of ten years.

194 (4) The commencement of the exemption period may be delayed
195 at the option of the operating taxpayer, but not more than twenty-four
196 months after the execution of the agreement required under subsection
197 6 of this section.

198 4. In addition to the exemptions granted under chapter 144, upon
199 approval by the department of economic development, project
200 taxpayers for expanding data center projects may, for a period not to
201 exceed ten years, be specifically exempted from state and local sales
202 and use taxes defined, levied, or calculated under section 32.085,
203 sections 144.010 to 144.525, sections 144.600 to 144.761, or section
204 238.235 on:

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

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

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

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

223 5. (1) Any data storage center project seeking a tax exemption
224 under subsection 4 of this section shall submit a notice of intent and a
225 project plan to the department of economic development, which shall
226 identify each known constructing taxpayer and each known operating
227 taxpayer for the project and include any additional information the
228 department of economic development may reasonably require to

229 determine eligibility for the exemption. The department of economic
230 development shall review the project plan and determine whether the
231 project is eligible for the exemption under subsection 4 of this section,
232 conditional upon subsequent verification by the department that the
233 project meets the requirements in subsection 1 of this section for an
234 expanding facility project and the execution of the agreement specified
235 in subsection 6 of this section. The department shall make such
236 conditional determination within thirty days of submission by the
237 operating taxpayer. Failure of the department to respond within thirty
238 days shall result in a project plan being deemed conditionally
239 approved.

240 (2) The department of economic development shall convey such
241 conditional approval to the department of revenue and the identified
242 project taxpayers. After a conditionally approved facility has met the
243 requirements in subsection 1 of this section, the project taxpayers shall
244 provide proof of the same to the department of economic
245 development. Upon verification of such proof, the department of
246 economic development shall certify the project to the department of
247 revenue as being eligible for the exemption dating retroactively to the
248 first day of the expansion of the facility. The department of revenue,
249 upon receipt of adequate proof of the amount of sales taxes paid since
250 the first day of the expansion of the facility, shall issue a refund of
251 taxes paid but eligible for exemption under subsection 4 of this section
252 to any applicable project taxpayer and issue a certificate of exemption
253 to any applicable project taxpayer for ongoing exemptions under
254 subsection 4 of this section. The department of revenue shall issue
255 such a refund within thirty days of receipt of certification from the
256 department of economic development.

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

262 (4) The commencement of the exemption period may be delayed
263 at the option of the operating taxpayer, but not more than twenty-four
264 months after the execution of the agreement required under subsection
265 6 of this section.

266 **6. (1) The exemptions in subsections 2 and 4 of this section shall**
267 **be tied to the new or expanding facility project. A certificate of**
268 **exemption in the hands of a taxpayer that is no longer an operating or**
269 **constructing taxpayer of the new or expanding facility project shall be**
270 **invalid as of the date the taxpayer was no longer an operating or**
271 **constructing taxpayer of the new or expanding facility project. New**
272 **certificates of exemption shall be issued to successor constructing**
273 **taxpayers and operating taxpayers at such new or expanding facility**
274 **projects. The right to the exemption by successor taxpayers shall exist**
275 **without regard to subsequent levels of investment in the new or**
276 **expanding facility by successor taxpayers.**

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

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

285 **7. Any project taxpayer who submits a notice of intent to the**
286 **department of economic development to expand a new facility by**
287 **additional construction, extension, improvement, or equipping within**
288 **five years of the date the new facility became operational shall be**
289 **entitled to request the department undertake an additional analysis to**
290 **determine the projected net fiscal benefit of the expansion to the state**
291 **over a period of ten years as determined by the department using the**
292 **Regional Economic Modeling, Inc. dataset or comparable data and shall**
293 **be entitled to an exemption under this section not to exceed such fiscal**
294 **benefit to the state for a period of not to exceed fifteen years.**

295 **8. The department of economic development and the department**
296 **of revenue shall cooperate in conducting random audits to ensure that**
297 **the intent of this section is followed.**

298 **9. Notwithstanding any other provision of law to the contrary,**
299 **no recipient of an exemption pursuant to this section shall be eligible**
300 **for benefits under any business recruitment tax credit, as defined in**
301 **section 135.800.**

302 **10. The department of economic development and the**

303 department of revenue shall jointly prescribe such rules and
304 regulations necessary to carry out the provisions of this section. Any
305 rule or portion of a rule, as that term is defined in section 536.010, that
306 is created under the authority delegated in this section shall become
307 effective only if it complies with and is subject to all of the provisions
308 of chapter 536 and, if applicable, section 536.028. This section and
309 chapter 536 are nonseverable, and if any of the powers vested with the
310 general assembly pursuant to chapter 536 to review, to delay the
311 effective date, or to disapprove and annul a rule are subsequently held
312 unconstitutional, then the grant of rulemaking authority and any rule
313 proposed or adopted after August 28, 2015, shall be invalid and void.

✓

Bill

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