

FIRST REGULAR SESSION

SENATE BILL NO. 353

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SILVEY.

Read 1st time January 29, 2015, and ordered printed.

ADRIANE D. CROUSE, Secretary.

1812S.011

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
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 shall 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) Wired telecommunications carriers (NAICS 517110);**

17 **(b) Data processing, hosting, and related services (NAICS
18 518210); or**

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

21 **(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. When, in the judgment of the governing
45 body of the municipality, the technology business facility project will
46 result 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 144.600 to 144.761, and from
54 the computation of the tax levied, assessed, or payable under the local
55 sales tax law as defined in section 32.085, section 238.235, and sections
56 144.010 to 144.525 and 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 section 26(b),**
72 **article VI, 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", 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, 2015, 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, 2015, 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, 2015. A facility shall be deemed to have
56 been acquired by, or leased to, an operating taxpayer on or after
57 August 28, 2015, 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, 2015, 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, 2015;

64 (b) If such facility was acquired by an operating or constructing
65 taxpayer from another person or persons on or after August 28, 2015,
66 and such facility was employed prior to August 28, 2015, 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
94 full-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 total number of full-time employees located at the expanded data
103 storage center that exceeds the greater of the number of full-time
104 employees located at the project facility on the date of the submission
105 of a project plan under this section, or the average number of full-time
106 employees for the number of months the expanding data storage center
107 facility has been in operation prior to the date of the submission of the
108 project plan;

109 (13) "Operating taxpayer", where more than one taxpayer is
110 responsible for a project, a taxpayer responsible for the equipping and
111 ongoing operations of the facility, as opposed to a taxpayer responsible
112 for the purchasing or construction of the facility;

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

115 (15) "Replacement facility", a facility in this state otherwise
116 described in subdivision (7) of this subsection, but which replaces
117 another facility located within the state, which the taxpayer or a

118 related taxpayer previously operated but discontinued operating within
119 one year prior to the commencement of commercial operations at the
120 new facility;

121 (16) "Taxpayer", the purchaser of tangible personal property or
122 a service that is subject to state or local sales or use tax and from
123 whom state or local sales or use tax is owed. Taxpayer shall not mean
124 the seller charged by law with collecting the sales tax from the
125 purchaser.

126 2. Beginning on August 28, 2015, in addition to the exemptions
127 granted under chapter 144, project taxpayers for a new data storage
128 center project shall be entitled, for a project period not to exceed
129 fifteen years from the date of conditional approval under this section
130 and subject to the requirements of subsection 3 of this section, to an
131 exemption of one hundred percent of the state and local sales and use
132 taxes defined, levied, or calculated under section 32.085, sections
133 144.010 to 144.525, sections 144.600 to 144.761, or section 238.235, limited
134 to the net fiscal benefit of the state calculated over a ten year period,
135 on:

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

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

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

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

147 3. Any data storage center project seeking a tax exemption under
148 subsection 2 of this section shall submit a project plan to the
149 department of economic development, which shall identify each known
150 constructing taxpayer and known operating taxpayer for the project
151 and include any additional information the department of economic
152 development may require to determine eligibility for the
153 exemption. The department of economic development shall review the
154 project plan and determine whether the project is eligible for the

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

175 4. Beginning on August 28, 2015, in addition to the exemptions
176 granted under chapter 144, upon approval by the department of
177 economic development, project taxpayers for expanding data center
178 projects may, for a period not to exceed ten years, be specifically
179 exempted from state and local sales and use taxes defined, levied, or
180 calculated under section 32.085, sections 144.010 to 144.525, sections
181 144.600 to 144.761, or section 238.235 on:

182 (1) All electrical energy, gas, water, and other utilities including
183 telecommunication and internet services used in an expanding data
184 storage center which, on an annual basis, exceeds the amount of
185 electrical energy, gas, water, and other utilities including
186 telecommunication and internet services used in the existing facility or
187 the replaced facility prior to the expansion, provided that any
188 substantial renovation, as defined in section 8.800, at an expanding
189 facility shall meet applicable provisions of the International Energy
190 Conservation Code 2009 or most recent version thereof. For purposes
191 of this subdivision only, "amount" shall be measured in kilowatt hours,

192 gallons, cubic feet, or other measures applicable to a utility service as
193 opposed to in dollars, to account for increases in utility rates;

194 (2) All machinery, equipment, and computers used in any
195 expanding data storage center, the cost of which, on an annual basis,
196 exceeds the average of the previous three years' expenditures on
197 machinery, equipment, and computers at the existing facility or the
198 replaced facility prior to the expansion. Existing facilities or replaced
199 facilities in existence for less than three years shall have the average
200 expenditures calculated based upon the applicable time of existence;
201 and

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

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

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

229 department of revenue, upon receipt of adequate proof of the amount
230 of sales taxes paid since the first day of the thirty-six month period,
231 shall issue a refund of taxes paid but eligible for exemption under
232 subsection 4 of this section to any applicable project taxpayer and issue
233 a certificate of exemption to any applicable project taxpayer for
234 ongoing exemptions under subsection 4 of this section.

235 6. (1) The exemptions in subsections 2 and 4 of this section shall
236 be tied to the new or expanding facility project. A certificate of
237 exemption in the hands of a taxpayer that is no longer an operating or
238 constructing taxpayer of the new or expanding facility project shall be
239 invalid as of the date the taxpayer was no longer an operating or
240 constructing taxpayer of the new or expanding facility project. New
241 certificates of exemption shall be issued to successor constructing
242 taxpayers and operating taxpayers at such new or expanding facility
243 projects. The right to the exemption by successor taxpayers shall exist
244 without regard to subsequent levels of investment in the new or
245 expanding facility by successor taxpayers.

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

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

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

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

261 9. The department of economic development and the department
262 of revenue shall jointly prescribe such rules and regulations necessary
263 to carry out the provisions of this section. Any rule or portion of a
264 rule, as that term is defined in section 536.010, that is created under
265 the authority delegated in this section shall become effective only if it

266 **complies with and is subject to all of the provisions of chapter 536 and,**
267 **if applicable, section 536.028. This section and chapter 536 are**
268 **nonseverable and if any of the powers vested with the general assembly**
269 **pursuant to chapter 536 to review, to delay the effective date, or to**
270 **disapprove and annul a rule are subsequently held unconstitutional,**
271 **then the grant of rulemaking authority and any rule proposed or**
272 **adopted after August 28, 2015, shall be invalid and void.**

✓
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Bill

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