

FIRST REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 222

97TH GENERAL ASSEMBLY

0420H.03P

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapters 67 and 144, RSMo, by adding thereto two new sections relating to tax incentives for technology business facilities and 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 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, village of the state, or any utilities board thereof;

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

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

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

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

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

23 2. The governing body of any municipality may:

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

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

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

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

43 4. Transactions involving the lease or rental of any components of a project under
44 this section shall be specifically exempted from the provisions of local sales tax law as
45 defined in sections 32.085, 238.235, 144.010 to 144.525, and 144.600 to 144.761 and from
46 the computation of the tax levied, assessed, or payable under local sales tax law as defined
47 in sections 32.085, 238.235, 144.010 to 144.525, and 144.600 to 144.745.

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

50 6. Any payments in lieu of taxes expected to be made by any lessee of the project
51 shall be applied in accordance with this section. The lessee may reimburse the municipality
52 for its actual costs of administering the plan. All amounts paid in excess of such actual

53 costs shall, immediately upon receipt thereof, be disbursed by the municipality's treasurer
54 or other financial officer to each affected taxing entity in proportion to the current ad
55 valorem tax levy of each affected taxing entity.

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

61 8. The governing body of any municipality may sell or otherwise dispose of the
62 property, buildings, or plants acquired under this section to private persons or
63 corporations for technology business facility project purposes upon approval by the
64 governing body. The terms and method of the sale or other disposal shall be established
65 by the governing body so as to reasonably protect the economic well-being of the
66 municipality and to promote the development of technology business facility projects. A
67 private person or corporation that initially transfers property to the municipality for the
68 purposes of a technology business facility project and does not charge a purchase price to
69 the municipality shall retain the right, upon request to the municipality, to have the
70 municipality retransfer the donated property to the person or corporation at no cost.

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

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

3 (1) "Commencement of commercial operations", shall be deemed to occur during
4 the first calendar year for which the data storage center is first available for use by the
5 operating taxpayer, or first capable of being used by the operating taxpayer, as a data
6 storage center;

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

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

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

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

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

21 **(c) Customer service, customer contact, or customer support operations through**
22 **the use of computer databases and telecommunications services at the business facility;**

23 **(5) "Existing facility", a data storage center in this state as it existed prior to**
24 **August 28, 2013, as determined by the department;**

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

34 **(7) "Expanding facility project" or "expanding data storage center project", the**
35 **construction, extension, improvement, equipping, and operation of an expanding facility;**

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

39 **(9) "NAICS", the 2007 edition of the North American Industry Classification**
40 **System as prepared by the Executive Office of the President, Office of Management and**
41 **Budget. Any NAICS sector, subsector, industry group, or industry identified in this section**
42 **shall include its corresponding classification in previous and subsequent federal industry**
43 **classification systems;**

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

46 **(a) The facility is acquired by, or leased to, an operating taxpayer on or after**
47 **August 28, 2013. A facility shall be deemed to have been acquired by, or leased to, an**
48 **operating taxpayer on or after August 28, 2013, if the transfer of title to an operating**
49 **taxpayer, the transfer of possession under a binding contract to transfer title to an**
50 **operating taxpayer, or the commencement of the term of the lease to an operating taxpayer**

51 occurs on or after August 28, 2013, or, if the facility is constructed, erected, or installed by
52 or on behalf of an operating taxpayer, such construction, erection, or installation is
53 commenced on or after August 28, 2013;

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

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

60 (d) The new facility project investment is at least thirty-seven million dollars during
61 a period of up to thirty-six consecutive months from the date of the conditional approval
62 for an exemption under this section. If more than one taxpayer is responsible for a project,
63 the investment requirement may be met by an operating taxpayer, a constructing taxpayer,
64 or a combination of constructing taxpayers and operating taxpayers;

65 (e) At least thirty new jobs are created at the new facility during a period of up to
66 thirty-six consecutive months from the date of conditional approval for an exemption
67 under this section if the average wage of the new jobs equals or exceeds one hundred fifty
68 percent of the county average wage; and

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

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

73 (12) "New job" in the case of a new data center project, the total number of full-
74 time employees located at a new data storage center for a period of up to thirty-six
75 consecutive months from the date of conditional approval for an exemption under this
76 section. In the case of an expanding data storage center project, the total number of full-
77 time employees located at the expanding data storage center that exceeds the greater of the
78 number of full-time employees located at the project facility on the date of the submission
79 of a project plan under this section or for the twelve-month period prior to the date of the
80 submission of a project plan, the average number of full-time employees located at the
81 expanding data storage center facility. In the event the expanding data storage center
82 facility has not been in operation for a full twelve-month period at the time of the
83 submission of a project plan, the average number of full-time employees for the number
84 of months the expanding data storage center facility has been in operation prior to the date
85 of the submission of the project plan;

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

90 (14) "Operating taxpayer", if more than one taxpayer is responsible for a project,
91 a taxpayer responsible for the equipping and ongoing operations of the facility, as opposed
92 to a taxpayer responsible for the purchasing or construction of the facility;

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

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

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

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

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

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

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

117

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

122 **3. (1) Any data storage center project seeking a tax exemption under subsection**
123 **2 of this section shall submit a notice of intent and a project plan to the department of**
124 **economic development, which shall identify each known constructing taxpayer and known**
125 **operating taxpayer for the project and include any additional information the department**
126 **of economic development may require to determine eligibility for the exemption. The**
127 **department of economic development shall review the project plan and determine whether**
128 **the project is eligible for the exemption under subsection 2 of this section, conditional upon**
129 **subsequent verification by the department that the project meets the requirements in**
130 **subsection 1 of this section for a new facility project. The department shall make such**
131 **conditional determination within thirty days of submission by the operating taxpayer.**
132 **Failure of the department to respond within thirty days shall result in a project plan being**
133 **deemed conditionally approved.**

134 **(2) The department of economic development shall convey conditional approvals**
135 **to the department of revenue and the identified project taxpayers. After a conditionally**
136 **approved new facility has met the requirements in subsection 1 of this section for a new**
137 **facility and the execution of the agreement specified in subsection 6 of this section, the**
138 **project taxpayers shall provide proof of the same to the department of economic**
139 **development. Upon verification of such proof, the department of economic development**
140 **shall certify the new facility to the department of revenue as being eligible for the**
141 **exemption dating retroactively to the first day of construction on the new facility. The**
142 **department of revenue, upon receipt of adequate proof of the amount of sales taxes paid**
143 **since the first day of construction, shall issue a refund of taxes paid but eligible for**
144 **exemption under subsection 2 of this section to each operating taxpayer and each**
145 **constructing taxpayer and issue a certificate of exemption to each new project taxpayer for**
146 **ongoing exemptions under subsection 2 of this section. The department of revenue shall**
147 **issue such a refund within thirty days of receipt of certification from the department of**
148 **economic development.**

149 **(3) Any project that does not meet the minimum investment or new job**
150 **requirements of subsection 1 of this section may still be eligible for the exemption under**
151 **subsection 2 of this section, as long as the exemptions for such project plan do not exceed**
152 **the projected net fiscal benefit to the state over a period of ten years.**

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

156 **4. In addition to the exemptions granted under chapter 144, upon approval by the**
157 **department of economic development, project taxpayers for expanding data center projects**

158 may, for a period not to exceed ten years, be specifically exempted from state and local
159 sales and use taxes defined, levied, or calculated under section 32.085, sections 144.010 to
160 144.525, sections 144.600 to 144.761, or section 238.235 on:

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

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

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

172

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

176 5. (1) Any data storage center project seeking a tax exemption under subsection
177 4 of this section shall submit a notice of intent and a project plan to the department of
178 economic development, which shall identify each known constructing taxpayer and each
179 known operating taxpayer for the project and include any additional information the
180 department of economic development may reasonably require to determine eligibility for
181 the exemption. The department of economic development shall review the project plan and
182 determine whether the project is eligible for the exemption under subsection 4 of this
183 section, conditional upon subsequent verification by the department that the project meets
184 the requirements in subsection 1 of this section for an expanding facility project and the
185 execution of the agreement specified in subsection 6 of this section. The department shall
186 make such conditional determination within thirty days of submission by the operating
187 taxpayer. Failure of the department to respond within thirty days shall result in a project
188 plan being deemed conditionally approved.

189 (2) The department of economic development shall convey such conditional
190 approval to the department of revenue and the identified project taxpayers. After a
191 conditional approved facility has met the requirements in subsection 1 of this section, the
192 project taxpayers shall provide proof of the same to the department of economic
193 development. Upon verification of such proof, the department of economic development

194 shall certify the project to the department of revenue as being eligible for the exemption
195 dating retroactively to the first day of the expansion of the facility. The department of
196 revenue, upon receipt of adequate proof of the amount of sales taxes paid since the first day
197 of the expansion of the facility, shall issue a refund of taxes paid but eligible for exemption
198 under subsection 4 of this section to any applicable project taxpayer and issue a certificate
199 of exemption to any applicable project taxpayer for ongoing exemptions under subsection
200 4 of this section. The department of revenue shall issue such a refund within thirty days
201 of receipt of certification from the department of economic development.

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

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

209 6. (1) The exemptions in subsections 2 and 4 of this section shall be tied to the new
210 or expanding facility project. A certificate of exemption in the hands of a taxpayer that is
211 no longer an operating or constructing taxpayer of the new or expanding facility project
212 shall be invalid as of the date the taxpayer was no longer an operating or constructing
213 taxpayer of the new or expanding facility project. New certificates of exemption shall be
214 issued to successor constructing taxpayers and operating taxpayers at such new or
215 expanding facility projects. The right to the exemption by successor taxpayers shall exist
216 without regard to subsequent levels of investment in the new or expanding facility by
217 successor taxpayers.

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

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

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

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

230 **9. The department of economic development and the department of revenue shall**
231 **jointly prescribe such rules and regulations necessary to carry out the provisions of this**
232 **section. Any rule or portion of a rule, as that term is defined in section 536.010, that is**
233 **created under the authority delegated in this section shall become effective only if it**
234 **complies with and is subject to all of the provisions of chapter 536 and, if applicable,**
235 **section 536.028. This section and chapter 536 are nonseverable and if any of the powers**
236 **vested with the general assembly pursuant to chapter 536 to review, to delay the effective**
237 **date, or to disapprove and annul a rule are subsequently held unconstitutional, then the**
238 **grant of rulemaking authority and any rule proposed or adopted after August 28, 2013,**
239 **shall be invalid and void.**

240 **10. This section shall terminate on September 1, 2019. The termination of this**
241 **section shall not be construed to limit or in any way impair the exemption for any project**
242 **approved prior to the termination of this section.**

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