

FIRST REGULAR SESSION

# HOUSE BILL NO. 222

## 97TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES ZERR (Sponsor), DIEHL, HUMMEL, ALLEN, LEARA, SWEARINGEN, OTTO, MCCAHERTY, WALKER, LAUER, KRATKY, SOMMER, TORPEY, WIELAND, SMITH (85) AND ROWDEN (Co-sponsors).

0420H.011

D. ADAM CRUMBLISS, Chief Clerk

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### 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.

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*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); or**

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

15 (c) Internet publishing and broadcasting and web search portals (NAICS 519130),  
16 at the business facility;

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

21 2. The governing body of any municipality may:

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

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

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

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

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

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

49 6. Any payments in lieu of taxes expected to be made by any lessee of the project  
50 shall be applied in accordance with this section. The lessee may reimburse the municipality

51 for its actual costs of administering the plan. All amounts paid in excess of such actual  
52 costs shall, immediately upon receipt thereof, be disbursed by the municipality's treasurer  
53 or other financial officer to each affected taxing entity in proportion to the current ad  
54 valorem tax levy of each affected taxing entity.

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

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

70 9. The provisions of this section shall not be construed to allow political  
71 subdivisions to provide telecommunications services or telecommunications facilities to the  
72 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", where more than one taxpayer is responsible for a  
8 project, 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 wage 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); or**

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

21           **(5) "Existing facility", a data storage center in this state as it existed prior to the**  
22 **effective date of this act, as determined by the department;**

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

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

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

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

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

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

51 erected, or installed by or on behalf of an operating taxpayer, such construction, erection,  
52 or installation is commenced on or after the effective date of this act;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

112

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

117 3. Any data storage center project seeking a tax exemption under subsection 2 of  
118 this section shall submit a project plan to the department of economic development, which  
119 shall identify each known constructing taxpayer and known operating taxpayer for the  
120 project, and include any additional information the department of economic development

121 may require to determine eligibility for the exemption. The department of economic  
122 development shall review the project plan and determine whether the project is eligible for  
123 the exemption under subsection 2 of this section, conditional upon subsequent verification  
124 by the department that the project meets the requirements in subsection 1 of this section  
125 for a new facility. The department of economic development shall convey such conditional  
126 approval to the department of revenue and the identified project taxpayers. After a  
127 conditionally approved new facility has met the requirements in subsection 1 of this section  
128 for a new facility and the execution of the agreement specified in subsection 6 of this  
129 section, the project taxpayers shall provide proof of the same to the department of  
130 economic development. Upon verification of such proof, the department of economic  
131 development shall certify the new facility to the department of revenue as being eligible for  
132 the exemption dating retroactively to the first day of the thirty-six month period. The  
133 department of revenue, upon receipt of adequate proof of the amount of sales taxes paid  
134 since the first day of the thirty-six month period, shall issue a refund of taxes paid but  
135 eligible for exemption under subsection 2 of this section to each operating taxpayer and  
136 each constructing taxpayer and issue a certificate of exemption to each new project  
137 taxpayer for ongoing exemptions under subsection 2 of this section.

138 4. In addition to the exemptions granted under chapter 144, upon approval by the  
139 department of economic development, project taxpayers for expanding data center projects  
140 may, for a period not to exceed ten years, be specifically exempted from state and local  
141 sales and use taxes defined, levied, or calculated under section 32.085, sections 144.010 to  
142 144.525, sections 144.600 to 144.761, or section 238.235 on:

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

150 (2) All machinery, equipment, and computers used in any expanding data storage  
151 center, the cost of which, on an annual basis, exceeds the average of the previous three  
152 years' expenditures on machinery, equipment, and computers at the existing facility or the  
153 replaced facility prior to the expansion. Existing facilities or replaced facilities in existence  
154 for less than three years shall have the average expenditures calculated based upon the  
155 applicable time of existence; and

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

158

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

162           **5. Any data storage center project seeking a tax exemption under subsection 4 of**  
163 **this section shall submit a project plan to the department of economic development, which**  
164 **shall identify each known constructing taxpayer and each known operating taxpayer for**  
165 **the project and include any additional information the department of economic**  
166 **development may reasonably require to determine eligibility for the exemption. The**  
167 **department of economic development shall review the project plan and determine whether**  
168 **the project is eligible for the exemption under subsection 4 of this section, conditional upon**  
169 **subsequent verification by the department that the project meets the requirements in**  
170 **subsection 1 of this section for an expanding facility project and the execution of the**  
171 **agreement specified in subsection 6 of this section. The department of economic**  
172 **development shall convey such conditional approval to the department of revenue and the**  
173 **identified project taxpayers. After a conditional approved facility has met the**  
174 **requirements in subsection 1 of this section, the project taxpayers shall provide proof of**  
175 **the same to the department of economic development. Upon verification of such proof, the**  
176 **department of economic development shall certify the project to the department of revenue**  
177 **as being eligible for the exemption dating retroactively to the first day of the thirty-six**  
178 **month period. The department of revenue, upon receipt of adequate proof of the amount**  
179 **of sales taxes paid since the first day of the thirty-six month period, shall issue a refund of**  
180 **taxes paid but eligible for exemption under subsection 4 of this section to any applicable**  
181 **project taxpayer and issue a certificate of exemption to any applicable project taxpayer for**  
182 **ongoing exemptions under subsection 4 of this section.**

183           **6. (1) The exemptions in subsections 2 and 4 of this section shall be tied to the new**  
184 **or expanding facility project. A certificate of exemption in the hands of a taxpayer that is**  
185 **no longer an operating or constructing taxpayer of the new or expanding facility project**  
186 **shall be invalid as of the date the taxpayer was no longer an operating or constructing**  
187 **taxpayer of the new or expanding facility project. New certificates of exemption shall be**  
188 **issued to successor constructing taxpayers and operating taxpayers at such new or**  
189 **expanding facility projects. The right to the exemption by successor taxpayers shall exist**  
190 **without regard to subsequent levels of investment in the new or expanding facility by**  
191 **successor taxpayers.**



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

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

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

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

204           **9. The department of economic development and the department of revenue shall**  
205 **jointly prescribe such rules and regulations necessary to carry out the provisions of this**  
206 **section. Any rule or portion of a rule, as that term is defined in section 536.010, that is**  
207 **created under the authority delegated in this section shall become effective only if it**  
208 **complies with and is subject to all of the provisions of chapter 536 and, if applicable,**  
209 **section 536.028. This section and chapter 536 are nonseverable and if any of the powers**  
210 **vested with the general assembly pursuant to chapter 536 to review, to delay the effective**  
211 **date, or to disapprove and annul a rule are subsequently held unconstitutional, then the**  
212 **grant of rulemaking authority and any rule proposed or adopted after the effective date**  
213 **of this act, shall be invalid and void.**

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