

FIRST REGULAR SESSION

HOUSE BILL NO. 497

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE AUSTIN.

1174H.031

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 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) at the business facility;

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 **(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. If, in the judgment of the governing body of the municipality,**
37 **the technology business facility project will result in economic benefits to the municipality,**
38 **the governing body may lawfully enter into an agreement that includes nominal monetary**
39 **consideration to the municipality in exchange for the use of one or more components of the**
40 **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 sections**
44 **144.600 to 144.761, and from the computation of the tax levied, assessed, or payable under**
45 **the local sales tax law as defined in section 32.085, section 238.235, and sections 144.010 to**
46 **144.525 and sections 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 article VI, section 26(b)
59 of the 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", if more than one taxpayer is responsible for a project,
8 the taxpayer responsible for the construction of the facility, as opposed to the taxpayer
9 responsible for the 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); or**

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

21 **(5) "Existing facility", an operational data storage center in this state as it existed**
22 **prior to August 28, 2015, 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 August 28, 2015,**
25 **and has net new investment related to the expansion of operations in this state of at least**
26 **five million dollars during a period of up to twelve consecutive months and results in the**
27 **creation of at least five new jobs during a period of up to twenty-four consecutive months**
28 **from the date of conditional approval for an exemption under this section, if the average**
29 **wage of the new jobs equals or exceeds one hundred fifty percent of the county average**
30 **wage. An expanding facility shall continue to be an expanding facility regardless of a**
31 **subsequent change in or addition of operating taxpayers or constructing taxpayers;**

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

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

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

42 **(10) "New data storage center project" or "new facility project", the construction,**
43 **extension, improvement, equipping, and operation of a new facility;**

44 **(11) "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 August**
47 **28, 2015. A facility shall be deemed to have been acquired by or leased to an operating**
48 **taxpayer on or after August 28, 2015, if the transfer of title to an operating taxpayer, the**
49 **transfer of possession under a binding contract to transfer title to an operating taxpayer,**
50 **or an operating taxpayer takes possession of the facility under the terms of the lease on or**

51 after August 28, 2015, or if the facility is constructed, erected, or installed by or on behalf
52 of an operating taxpayer, such construction, erection, or installation is completed on or
53 after August 28, 2015;

54 (b) If such facility was acquired by an operating or constructing taxpayer from
55 another person or persons on or after August 28, 2015, and such facility was employed
56 prior to August 28, 2015, 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 twenty-five 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 ten 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;

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; and

71 (g) Any new facility which submits a notice of intent to the department of economic
72 development to expand its facility by additional construction, extension, improvement, or
73 equipping within five years of the date such new facility became operational;

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

87 section or the average number of full-time employees for the number of months the
88 expanding data storage center facility has been in operation prior to the date of the
89 submission of the project plan;

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

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

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

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

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

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

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

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

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

121

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

126 **3. (1) Any data storage center project seeking a tax exemption under subsection**
127 **2 of this section shall submit a notice of intent and a project plan to the department of**
128 **economic development, which shall identify each known constructing taxpayer and known**
129 **operating taxpayer for the project and include any additional information the department**
130 **of economic development may require to determine eligibility for the exemption. The**
131 **department of economic development shall review the project plan and determine whether**
132 **the project is eligible for the exemption under subsection 2 of this section, conditional upon**
133 **subsequent verification by the department that the project meets the requirements in**
134 **subsection 1 of this section for a new facility project.**

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

148 **4. In addition to the exemptions granted under chapter 144, upon approval by the**
149 **department of economic development, project taxpayers for expanding data center projects**
150 **may, for a period not to exceed ten years, be specifically exempted from state and local**
151 **sales and use taxes defined, levied, or calculated under section 32.085, sections 144.010 to**
152 **144.525, sections 144.600 to 144.761, or section 238.235 on:**

153 **(1) All electrical energy, gas, water, and other utilities including telecommunication**
154 **and internet services used in an expanding data storage center which, on an annual basis,**
155 **exceeds the amount of electrical energy, gas, water, and other utilities including**
156 **telecommunication and internet services used in the existing facility or the replaced facility**
157 **prior to the expansion. For purposes of this subdivision only, "amount" shall be measured**

158 in kilowatt hours, gallons, cubic feet, or other measures applicable to a utility service as
159 opposed to in dollars, to account for increases in utility rates;

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

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

168

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

173 5. (1) Any data storage center project seeking a tax exemption under subsection
174 4 of this section shall submit a notice of intent and a project plan to the department of
175 economic development, which shall identify each known constructing taxpayer and each
176 known operating taxpayer for the project and include any additional information the
177 department of economic development may reasonably require to determine eligibility for
178 the exemption. The department of economic development shall review the project plan and
179 determine whether the project is eligible for the exemption under subsection 4 of this
180 section, conditional upon subsequent verification by the department that the project meets
181 the requirements in subsection 1 of this section for an expanding facility project and the
182 execution of the agreement specified in subsection 6 of this section.

183 (2) The department of economic development shall convey such conditional
184 approval to the department of revenue and the identified project taxpayers. After a
185 conditionally approved facility has met the requirements in subsection 1 of this section, the
186 project taxpayers shall provide proof of the same to the department of economic
187 development. Upon verification of such proof, the department of economic development
188 shall certify the project to the department of revenue as being eligible for the exemption
189 dating retroactively to the first day of the expansion of the facility. The department of
190 revenue, upon receipt of adequate proof of the amount of sales taxes paid since the first day
191 of the expansion of the facility, shall issue a refund of taxes paid but eligible for exemption
192 under subsection 4 of this section to any applicable project taxpayer and issue a certificate

193 of exemption to any applicable project taxpayer for ongoing exemptions under subsection
194 4 of this section.

195 **6. (1) The exemptions in subsections 2 and 4 of this section shall be tied to the new**
196 **or expanding facility project. A certificate of exemption in the hands of a taxpayer that is**
197 **no longer an operating or constructing taxpayer of the new or expanding facility project**
198 **shall be invalid as of the date the taxpayer was no longer an operating or constructing**
199 **taxpayer of the new or expanding facility project. New certificates of exemption shall be**
200 **issued to successor constructing taxpayers and operating taxpayers at such new or**
201 **expanding facility projects. The right to the exemption by successor taxpayers shall exist**
202 **without regard to subsequent levels of investment in the new or expanding facility by**
203 **successor taxpayers.**

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

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

211 **7. Any project taxpayer who submits a notice of intent to the department of**
212 **economic development to expand a new facility by additional construction, extension,**
213 **improvement, or equipping within five years of the date the new facility became operation**
214 **shall be entitled to request the department undertake an additional analysis to determine**
215 **the projected net fiscal benefit of the expansion to the state over a period of ten years as**
216 **determined by the department using the Regional Economic Modeling, Inc. dataset or**
217 **comparable data and shall be entitled to an exemption under this section not to exceed such**
218 **fiscal benefit to the state for a period of not to exceed fifteen years.**

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

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

224 **10. The department of economic development and the department of revenue shall**
225 **jointly prescribe such rules and regulations necessary to carry out the provisions of this**
226 **section. Any rule or portion of a rule, as that term is defined in section 536.010, that is**
227 **created under the authority delegated in this section shall become effective only if it**
228 **complies with and is subject to all of the provisions of chapter 536 and, if applicable,**

229 **section 536.028. This section and chapter 536 are nonseverable, and if any of the powers**
230 **vested with the general assembly pursuant to chapter 536 to review, to delay the effective**
231 **date, or to disapprove and annul a rule are subsequently held unconstitutional, then the**
232 **grant of rulemaking authority and any rule proposed or adopted after August 28, 2015,**
233 **shall be invalid and void.**

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