

FIRST REGULAR SESSION  
HOUSE COMMITTEE SUBSTITUTE FOR  
**HOUSE BILL NO. 497**  
**98TH GENERAL ASSEMBLY**

1174H.04C

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 data storage.

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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);**

**(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;**

**(5) "Technology business facility project" or "project", the purchase, construction, extension, and improvement of technology business facilities, whether of the facility as a**

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.

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) Such facility is not an expanding or replacement facility, as defined in this**  
55 **section;**

56           **(c) The new facility project investment is at least twenty-five million dollars during**  
57 **a period of up to thirty-six consecutive months from the date of the conditional approval**  
58 **for an exemption under this section. If more than one taxpayer is responsible for a project,**  
59 **the investment requirement may be met by an operating taxpayer, a constructing taxpayer,**  
60 **or a combination of constructing taxpayers and operating taxpayers; and**

61           **(d) At least ten new jobs are created at the new facility during a period of up to**  
62 **thirty-six consecutive months from the date of conditional approval for an exemption**  
63 **under this section if the average wage of the new jobs equals or exceeds one hundred fifty**  
64 **percent of the county average wage.**

65

66 **Any facility which was acquired by an operating or constructing taxpayer from another**  
67 **person or persons on or after August 28, 2015, and such facility was employed prior to**  
68 **August 28, 2015, by any other person or persons in the operation of a data storage center**  
69 **shall not be considered a new facility. A new facility shall continue to be a new facility**  
70 **regardless of a subsequent change in or addition of operating taxpayers or constructing**  
71 **taxpayers;**

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 total number of full-time employees located at the**  
83 **expanded data storage center that exceeds the greater of the number of full-time employees**  
84 **located at the project facility on the date of the submission of a project plan under this**  
85 **section or the average number of full-time employees for the number of months the**  
86 **expanding data storage center facility has been in operation prior to the date of the**  
87 **submission of the project plan;**

88           **(13) "Notice of intent", a form developed by the department of economic**  
89 **development, completed by the project taxpayer, and submitted to the department, which**

90 states the project taxpayer's intent to construct or expand a data center and request the  
91 exemptions under this program;

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

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

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

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

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

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

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

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

119

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

123 3. (1) Any data storage center project seeking a tax exemption under subsection  
124 2 of this section shall submit a notice of intent and a project plan to the department of  
125 economic development, which shall identify each known constructing taxpayer and known

126 operating taxpayer for the project and include any additional information the department  
127 of economic development may require to determine eligibility for the exemption. The  
128 department of economic development shall review the project plan and determine whether  
129 the project is eligible for the exemption under subsection 2 of this section, conditional upon  
130 subsequent verification by the department that the project meets the requirements in  
131 subsection 1 of this section for a new facility project. The department shall make such  
132 conditional determination within thirty days of submission by the operating taxpayer.  
133 Failure of the department to respond within thirty days shall result in a project plan being  
134 deemed conditionally approved.

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. The department of revenue shall  
148 issue such a refund within thirty days of receipt of certification from the department of  
149 economic development.

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

153 4. In addition to the exemptions granted under chapter 144, upon approval by the  
154 department of economic development, project taxpayers for expanding data center projects  
155 may, for a period not to exceed ten years, be specifically exempted from state and local  
156 sales and use taxes defined, levied, or calculated under section 32.085, sections 144.010 to  
157 144.525, sections 144.600 to 144.761, or section 238.235 on:

158 (1) All electrical energy, gas, water, and other utilities including telecommunication  
159 and internet services used in an expanding data storage center which, on an annual basis,  
160 exceeds the amount of electrical energy, gas, water, and other utilities including  
161 telecommunication and internet services used in the existing facility or the replaced facility

162 prior to the expansion. For purposes of this subdivision only, "amount" shall be measured  
163 in kilowatt hours, gallons, cubic feet, or other measures applicable to a utility service as  
164 opposed to in dollars, to account for increases in utility rates;

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

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

169

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

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

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



198 **4 of this section. The department of revenue shall issue such a refund within thirty days**  
199 **of receipt of certification from the department of economic development.**

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

203 **6. (1) The exemptions in subsections 2 and 4 of this section shall be tied to the new**  
204 **or expanding facility project. A certificate of exemption in the hands of a taxpayer that is**  
205 **no longer an operating or constructing taxpayer of the new or expanding facility project**  
206 **shall be invalid as of the date the taxpayer was no longer an operating or constructing**  
207 **taxpayer of the new or expanding facility project. New certificates of exemption shall be**  
208 **issued to successor constructing taxpayers and operating taxpayers at such new or**  
209 **expanding facility projects. The right to the exemption by successor taxpayers shall exist**  
210 **without regard to subsequent levels of investment in the new or expanding facility by**  
211 **successor taxpayers.**

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

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

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

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

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

232 **10. The department of economic development and the department of revenue shall**  
233 **jointly prescribe such rules and regulations necessary to carry out the provisions of this**

234 **section. Any rule or portion of a rule, as that term is defined in section 536.010, that is**  
235 **created under the authority delegated in this section shall become effective only if it**  
236 **complies with and is subject to all of the provisions of chapter 536 and, if applicable,**  
237 **section 536.028. This section and chapter 536 are nonseverable, and if any of the powers**  
238 **vested with the general assembly pursuant to chapter 536 to review, to delay the effective**  
239 **date, or to disapprove and annul a rule are subsequently held unconstitutional, then the**  
240 **grant of rulemaking authority and any rule proposed or adopted after August 28, 2015,**  
241 **shall be invalid and void.**

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