

FIRST REGULAR SESSION

SENATE BILL NO. 394

97TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SILVEY.

Read 1st time February 27, 2013, and ordered printed.

TERRY L. SPIELER, Secretary.

1862S.011

AN ACT

To amend chapters 67 and 144, RSMo, by adding thereto two new sections relating to tax incentives for data storage centers.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapters 67 and 144, RSMo, is 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

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

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

27 **2. The governing body of any municipality may:**

28 **(1) Carry out technology business facility projects for economic**
29 **development under this section;**

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

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

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

51 **4. Transactions involving the lease or rental of any components**
52 **of a project under this section shall be specifically exempted from the**
53 **provisions of the local sales tax law as defined in section 32.085, section**
54 **238.235, and sections 144.010 to 144.525 and 144.600 to 144.761, and from**
55 **the computation of the tax levied, assessed, or payable under the local**
56 **sales tax law as defined in section 32.085, section 238.235, and sections**
57 **144.010 to 144.525 and 144.600 to 144.745.**

58 **5. Leasehold interests granted and held under this section shall**

59 not be subject to property taxes.

60 **6. Any payments in lieu of taxes expected to be made by any**
61 **lessee of the project shall be applied in accordance with this**
62 **section. The lessee may reimburse the municipality for its actual costs**
63 **of administering the plan. All amounts paid in excess of such actual**
64 **costs shall, immediately upon receipt thereof, be disbursed by the**
65 **municipality's treasurer or other financial officer to each affected**
66 **taxing entity in proportion to the current ad valorem tax levy of each**
67 **affected taxing entity.**

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

74 **8. The governing body of any municipality may sell or otherwise**
75 **dispose of the property, buildings, or plants acquired under this section**
76 **to private persons or corporations for technology business facility**
77 **project purposes upon approval by the governing body. The terms and**
78 **method of the sale or other disposal shall be established by the**
79 **governing body so as to reasonably protect the economic well-being of**
80 **the municipality and to promote the development of technology**
81 **business facility projects. A private person or corporation that initially**
82 **transfers property to the municipality for the purposes of a technology**
83 **business facility project and does not charge a purchase price to the**
84 **municipality shall retain the right, upon request to the municipality,**
85 **to have the municipality retransfer the donated property to the person**
86 **or corporation at no cost.**

87 **9. The provisions of this section shall not be construed to allow**
88 **political subdivisions to provide telecommunications services or**
89 **telecommunications facilities to the extent that they are prohibited**
90 **from doing so by section 392.410.**

91 **10. This section shall terminate on September 1, 2019. The**
92 **termination of this section shall not be construed to limit or in any way**
93 **impair any agreements entered into or exemptions granted before the**
94 **termination of this section.**

95 **144.810. 1. As used in this section, unless the context clearly**

96 indicates otherwise, the following terms mean:

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

102 (2) "Constructing taxpayer", where more than one taxpayer is
103 responsible for a project, a taxpayer responsible for the construction
104 of the facility, as opposed to a taxpayer responsible for the equipping
105 and ongoing operations of the facility;

106 (3) "County average wage", the average wages in each county as
107 determined by the department for the most recently completed full
108 calendar year. However, if the computed county average wage is above
109 the statewide average wage, the statewide average wage shall be
110 deemed the county average wage for such county for the purpose of
111 determining eligibility;

112 (4) "Data storage center" or "facility", a facility constructed,
113 extended, improved, or operating under this section, provided that such
114 business facility is engaged primarily in:

115 (a) Data processing, hosting, and related services (NAICS
116 518210);

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

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

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

124 (6) "Expanding facility" or "expanding data storage center", an
125 existing facility or replacement facility that expands its operations in
126 this state on or after August 28, 2013, and has net new investment
127 related to the expansion of operations in this state of at least five
128 million dollars during a period of up to twelve consecutive months and
129 results in the creation of at least five new jobs during a period of up to
130 twenty-four consecutive months from the date of conditional approval
131 for an exemption under this section, if the average wage of the new
132 jobs equals or exceeds one hundred and fifty percent of the county

133 average wage. An expanding facility shall continue to be an expanding
134 facility regardless of a subsequent change in or addition of operating
135 taxpayers or constructing taxpayers;

136 (7) "Expanding facility project" or "expanding data storage center
137 project", the construction, extension, improvement, equipping, and
138 operation of an expanding facility;

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

143 (9) "NAICS", the 2007 edition of the North American Industry
144 Classification System as prepared by the Executive Office of the
145 President, Office of Management and Budget. Any NAICS sector,
146 subsector, industry group, or industry identified in this section shall
147 include its corresponding classification in previous and subsequent
148 federal industry classification systems;

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

151 (a) The facility is acquired by, or leased to, an operating
152 taxpayer on or after August 28, 2013. A facility shall be deemed to have
153 been acquired by, or leased to, an operating taxpayer on or after
154 August 28, 2013, if the transfer of title to an operating taxpayer, the
155 transfer of possession under a binding contract to transfer title to an
156 operating taxpayer, or the commencement of the term of the lease to an
157 operating taxpayer occurs on or after August 28, 2013, or, if the facility
158 is constructed, erected, or installed by or on behalf of an operating
159 taxpayer, such construction, erection, or installation is commenced on
160 or after August 28, 2013;

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

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

168 (d) The new facility project investment is at least thirty-seven
169 million dollars during a period of up to thirty-six consecutive months

170 from the date of the conditional approval for an exemption under this
171 section. Where more than one taxpayer is responsible for a project, the
172 investment requirement may be met by an operating taxpayer, a
173 constructing taxpayer, or a combination of constructing taxpayers and
174 operating taxpayers;

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

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

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

186 (12) "New job" in the case of a new data center project, the total
187 number of full-time employees located at a new data storage center for
188 a period of up to thirty-six consecutive months from the date of
189 conditional approval for an exemption under this section. In the case
190 of an expanding data storage center project, the total number of full-
191 time employees located at the expanding data storage center that
192 exceeds the greater of the number of full-time employees located at the
193 project facility on the date of the submission of a project plan under
194 this section or for the twelve-month period prior to the date of the
195 submission of a project plan, the average number of full-time employees
196 located at the expanding data storage center facility. In the event the
197 expanding data storage center facility has not been in operation for a
198 full twelve-month period at the time of the submission of a project plan,
199 the total number of full-time employees located at the expanding data
200 storage center that exceeds the greater of the number of full-time
201 employees located at the project facility on the date of the submission
202 of a project plan under this section or the average number of full-time
203 employees for the number of months the expanding data storage center
204 facility has been in operation prior to the date of the submission of the
205 project plan;

206 (13) "Notice of intent", a form developed by the department of

207 economic development, completed by the project taxpayer, and
208 submitted to the department, which states the project taxpayer's intent
209 to construct or expand a data center and request the exemptions under
210 this program;

211 (14) "Operating taxpayer", where more than one taxpayer is
212 responsible for a project, a taxpayer responsible for the equipping and
213 ongoing operations of the facility, as opposed to a taxpayer responsible
214 for the purchasing or construction of the facility;

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

217 (16) "Replacement facility", a facility in this state otherwise
218 described in subdivision (7) of this subsection, but which replaces
219 another facility located within the state, which the taxpayer or a
220 related taxpayer previously operated but discontinued operating within
221 one year prior to the commencement of commercial operations at the
222 new facility;

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

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

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

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

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

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

248 3. (1) Any data storage center project seeking a tax exemption
249 under subsection 2 of this section shall submit a notice of intent and a
250 project plan to the department of economic development, which shall
251 identify each known constructing taxpayer and known operating
252 taxpayer for the project and include any additional information the
253 department of economic development may require to determine
254 eligibility for the exemption. The department of economic development
255 shall review the project plan and determine whether the project is
256 eligible for the exemption under subsection 2 of this section,
257 conditional upon subsequent verification by the department that the
258 project meets the requirements in subsection 1 of this section for a new
259 facility project. The department shall make such conditional
260 determination within thirty days of submission by the operating
261 taxpayer. Failure of the department to respond within thirty days shall
262 result in a project plan being deemed conditionally approved.

263 (2) The department of economic development shall convey
264 conditional approvals to the department of revenue and the identified
265 project taxpayers. After a conditionally approved new facility has met
266 the requirements in subsection 1 of this section for a new facility and
267 the execution of the agreement specified in subsection 6 of this section,
268 the project taxpayers shall provide proof of the same to the department
269 of economic development. Upon verification of such proof, the
270 department of economic development shall certify the new facility to
271 the department of revenue as being eligible for the exemption dating
272 retroactively to the first day of construction on the new facility. The
273 department of revenue, upon receipt of adequate proof of the amount
274 of sales taxes paid since the first day of construction, shall issue a
275 refund of taxes paid but eligible for exemption under subsection 2 of
276 this section to any applicable taxpayer and issue a certificate of
277 exemption to each new project taxpayer for ongoing exemptions under
278 subsection 2 of this section. The department of revenue shall issue
279 such a refund within thirty days of receipt of certification from the
280 department of economic development.

281 **(3) Any project that does not meet the minimum investment or**
282 **new job requirements of subsection 1 of this section may, at the**
283 **discretion of the department of economic development, be awarded**
284 **exemptions under subsection 2 of this section provided such exemption**
285 **shall not exceed the projected net fiscal benefit to the state over a**
286 **period of ten years.**

287 **(4) The commencement of the exemption period may be delayed**
288 **at the option of the operating taxpayer, but not more than twenty-four**
289 **months after the execution of the agreement required under subsection**
290 **6 of this section.**

291 **4. In addition to the exemptions granted under chapter 144, upon**
292 **approval by the department of economic development, project**
293 **taxpayers for expanding data center projects may, for a period not to**
294 **exceed ten years, be specifically exempted from state and local sales**
295 **and use taxes defined, levied, or calculated under section 32.085,**
296 **sections 144.010 to 144.525, sections 144.600 to 144.761, or section**
297 **238.235 on:**

298 **(1) All electrical energy, gas, water, and other utilities including**
299 **telecommunication and internet services used in an expanding data**
300 **storage center which, on an annual basis, exceeds the amount of**
301 **electrical energy, gas, water, and other utilities including**
302 **telecommunication and internet services used in the existing facility or**
303 **the replaced facility prior to the expansion. For purposes of this**
304 **subdivision only, "amount" shall be measured in kilowatt hours, gallons,**
305 **cubic feet, or other measures applicable to a utility service as opposed**
306 **to in dollars, to account for increases in utility rates;**

307 **(2) All machinery, equipment, and computers used in any**
308 **expanding data storage center; and**

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

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

315 **5. (1) Any data storage center project seeking a tax exemption**
316 **under subsection 4 of this section shall submit a notice of intent and a**
317 **project plan to the department of economic development, which shall**

318 identify each known constructing taxpayer and each known operating
319 taxpayer for the project and include any additional information the
320 department of economic development may reasonably require to
321 determine eligibility for the exemption. The department of economic
322 development shall review the project plan and determine whether the
323 project is eligible for the exemption under subsection 4 of this section,
324 conditional upon subsequent verification by the department that the
325 project meets the requirements in subsection 1 of this section for an
326 expanding facility project and the execution of the agreement specified
327 in subsection 6 of this section. The department shall make such
328 conditional determination within thirty days of submission by the
329 operating taxpayer. Failure of the department to respond within thirty
330 days shall result in a project plan being deemed conditionally
331 approved.

332 (2) The department of economic development shall convey such
333 conditional approval to the department of revenue and the identified
334 project taxpayers. After a conditional approved facility has met the
335 requirements in subsection 1 of this section, the project taxpayers shall
336 provide proof of the same to the department of economic
337 development. Upon verification of such proof, the department of
338 economic development shall certify the project to the department of
339 revenue as being eligible for the exemption dating retroactively to the
340 first day of the expansion of the facility. The department of revenue,
341 upon receipt of adequate proof of the amount of sales taxes paid since
342 the first day of the expansion of the facility, shall issue a refund of
343 taxes paid but eligible for exemption under subsection 4 of this section
344 to any applicable project taxpayer and issue a certificate of exemption
345 to any applicable project taxpayer for ongoing exemptions under
346 subsection 4 of this section. The department of revenue shall issue
347 such a refund within thirty days of receipt of certification from the
348 department of economic development.

349 (3) Any project that does not meet the minimum investment or
350 new job requirements of subsection 1 of this section may, at the
351 discretion of the department of economic development, be awarded
352 exemptions under subsection 4 of this section provided such exemption
353 shall not exceed the projected net fiscal benefit to the state over a
354 period of ten years.

355 **(4) The commencement of the exemption period may be delayed**
356 **at the option of the operating taxpayer, but not more than twenty-four**
357 **months after the execution of the agreement required under subsection**
358 **6 of this section.**

359 **6. (1) The exemptions in subsections 2 and 4 of this section shall**
360 **be tied to the new or expanding facility project. A certificate of**
361 **exemption in the hands of a taxpayer that is no longer an operating or**
362 **constructing taxpayer of the new or expanding facility project shall be**
363 **invalid as of the date the taxpayer was no longer an operating or**
364 **constructing taxpayer of the new or expanding facility project. New**
365 **certificates of exemption shall be issued to successor constructing**
366 **taxpayers and operating taxpayers at such new or expanding facility**
367 **projects. The right to the exemption by successor taxpayers shall exist**
368 **without regard to subsequent levels of investment in the new or**
369 **expanding facility by successor taxpayers.**

370 **(2) In order to receive exemptions under subsection 2 or 4 of this**
371 **section, the project taxpayers shall enter into an agreement with the**
372 **department of economic development providing for repayment**
373 **penalties in the event the data storage center project fails to:**

374 **(a) Comply with any of the requirements of this section; or**
375 **(b) Satisfy the investment or job creation projected in the notice**
376 **of intent submitted for the project;**

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

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

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

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

392 **complies with and is subject to all of the provisions of chapter 536 and,**
393 **if applicable, section 536.028. This section and chapter 536 are**
394 **nonseverable and if any of the powers vested with the general assembly**
395 **pursuant to chapter 536 to review, to delay the effective date, or to**
396 **disapprove and annul a rule are subsequently held unconstitutional,**
397 **then the grant of rulemaking authority and any rule proposed or**
398 **adopted after August 28, 2013, shall be invalid and void.**

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

✓

Bill

Copy