

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 366

96TH GENERAL ASSEMBLY

1090L.03C

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, server farm, and technology business facilities.

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

(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. 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.**

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 or server farm facility is first**
5 **available for use by the operating taxpayer, or first capable of being used by the operating**
6 **taxpayer, as a data storage center or server farm facility;**

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

10 **(3) "Data storage center" or "server farm facility" or "facility", a facility**
11 **purchased, constructed, extended, improved, or operating under this section, provided that**
12 **such business facility is engaged in:**

13 **(a) Wired telecommunications carriers (NAICS 517110); or**

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

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

17 **(4) "Existing facility", a data storage center or server farm facility in this state as**
18 **it existed prior to August 28, 2011, as determined by the department;**

19 **(5) "Expanding facility" or "expanding data storage center or server farm**
20 **facility", an existing facility or replacement facility that expands its operations in this state**
21 **on or after August 28, 2011, and has net new investment related to the expansion of**

22 operations in this state of at least one million dollars during a period of up to twelve
23 consecutive months. An expanding facility shall continue to be an expanding facility
24 regardless of a subsequent change in or addition of operating taxpayers or constructing
25 taxpayers;

26 (6) "Expanding facility project" or "expanding data storage center or server farm
27 facility project", the purchase, construction, extension, improvement, equipping, and
28 operation of an expanding facility;

29 (7) "NAICS", the 2007 edition of the North American Industry Classification
30 System as prepared by the Executive Office of the President, Office of Management and
31 Budget. Any NAICS sector, subsector, industry group, or industry identified in this section
32 shall include its corresponding classification in previous and subsequent federal industry
33 classification systems;

34 (8) "New facility" or "new data storage center or server farm facility", a facility
35 in this state meeting the following requirements:

36 (a) The facility is acquired by, or leased to, an operating taxpayer on or after
37 August 28, 2011. A facility shall be deemed to have been acquired by, or leased to, an
38 operating taxpayer on or after August 28, 2011, if the transfer of title to an operating
39 taxpayer, the transfer of possession under a binding contract to transfer title to an
40 operating taxpayer, or the commencement of the term of the lease to an operating taxpayer
41 occurs on or after August 28, 2011, or, if the facility is constructed, erected, or installed by
42 or on behalf of an operating taxpayer, such construction, erection, or installation is
43 commenced on or after August 28, 2011;

44 (b) If such facility was acquired by an operating taxpayer from another person or
45 persons on or after August 28, 2011, and such facility was employed prior to August 28,
46 2011, by any other person or persons in the operation of a data storage center or server
47 farm facility, the facility shall not be considered a new facility;

48 (c) Such facility is not a replacement facility, as defined in this section;

49 (d) The new facility project investment is at least five million dollars during a
50 period of up to thirty-six consecutive months. Where more than one taxpayer is
51 responsible for a project, the investment requirement may be met by an operating
52 taxpayer, a constructing taxpayer, or a combination of constructing taxpayers and
53 operating taxpayers; and

54 (e) A new facility shall continue to be a new facility regardless of a subsequent
55 change in or addition of operating taxpayers or constructing taxpayers;

56 (9) "New data storage center or server farm facility project", or "new facility
57 project", the purchase, construction, extension, improvement, equipping, and operation
58 of a new facility;

59 (10) "Operating taxpayer", where more than one taxpayer is responsible for a
60 project, a taxpayer responsible for the equipping and ongoing operations of the facility, as
61 opposed to a taxpayer responsible for the purchasing or construction of the facility;

62 (11) "Project taxpayers", each constructing taxpayer and each operating taxpayer
63 for a data storage center or server farm facility project;

64 (12) "Replacement facility" or "replacement data storage center or server farm
65 facility", a facility in this state otherwise described in subdivision (8) of this subsection, but
66 which replaces another facility located within the state, which the taxpayer or a related
67 taxpayer previously operated but discontinued operating within one year prior to the
68 commencement of commercial operations at the new facility;

69 (13) "Taxpayer", the purchaser of tangible personal property or a service that is
70 subject to state or local sales or use tax and from whom state or local sales or use tax is
71 owed. "Taxpayer" shall not mean the seller charged by law with collecting the sales tax
72 from the purchaser.

73 2. Beginning August 28, 2011, in addition to the exemptions granted under chapter
74 144, there shall also be specifically exempted from state and local sales and use taxes
75 defined, levied, or calculated under section 32.085, sections 144.010 to 144.525, sections
76 144.600 to 144.761, or section 238.235:

77 (1) All electrical energy, gas, water, and other utilities including telecommunication
78 and internet services used in a new data storage center or server farm facility;

79 (2) All machinery, equipment, and computers used in any new data storage center
80 or server farm facility; and

81 (3) All sales at retail of tangible personal property and materials for the purpose
82 of constructing, repairing, or remodeling any new data storage center or server farm
83 facility.

84 3. Any data storage center and server farm facility project seeking a tax exemption
85 under subsection 2 of this section shall submit a project plan to the department of economic
86 development, including identifying each known constructing taxpayer and each known
87 operating taxpayer for the project. The department of economic development shall
88 determine whether the project is eligible for the exemption under subsection 2 of this
89 section conditional upon subsequent verification by the department that the project meets
90 the requirement in paragraph (d) of subdivision (8) of subsection 1 of this section of at least
91 five million dollars of new facility investment over a time period not to exceed thirty-six

92 consecutive months. The department of economic development shall convey such
93 conditional approval to the department of revenue and the identified project taxpayers.
94 After a conditionally approved new facility project has met the investment amount, the
95 project taxpayers shall provide proof of such investment to the department of economic
96 development. Upon verification of such proof, the department of economic development
97 shall certify the project to the department of revenue as being eligible for the exemption
98 dating retroactively to the first day of the thirty-six month period or the first day of the
99 new investment in the event the investment is met in less than thirty-six months. The
100 department of revenue, upon receipt of adequate proof of the amount of sales taxes paid
101 since the first day of the thirty-six month period, or the first day of the new investment in
102 the event the investment is met in less than thirty-six months, shall issue a refund of sales
103 taxes paid as set forth in this section to each operating taxpayer and each constructing
104 taxpayer and issue a certificate of exemption to each new project taxpayer for ongoing
105 exemptions under subsection 2 of this section.

106 **4. Beginning August 28, 2011, in addition to the exemptions granted under chapter**
107 **144, there shall also be specifically exempted from state and local sales and use taxes**
108 **defined, levied, or calculated under section 32.085, sections 144.010 to 144.525, sections**
109 **144.600 to 144.761, or section 238.235:**

110 (1) All electrical energy, gas, water, and other utilities including telecommunication
111 and internet services used in an expanding data storage center or server farm facility
112 which, on an annual basis, exceeds the amount of electrical energy, gas, water, and other
113 utilities including telecommunication and internet services used in the existing facility or
114 the replaced facility prior to the expansion. "Amount" shall be measured in kilowatt
115 hours, gallons, cubic feet, or other measures applicable to a utility service as opposed to in
116 dollars, to account for increases in rates;

117 (2) All machinery, equipment, and computers used in any expanding data storage
118 center or server farm facility, the cost of which, on an annual basis, exceeds the average of
119 the previous three years' expenditures on machinery, equipment, and computers at the
120 existing facility or the replaced facility prior to the expansion. Existing facilities or
121 replaced facilities in existence for less than three years shall have the average expenditures
122 calculated based upon the applicable time of existence; and

123 (3) All sales at retail of the tangible personal property and materials for the
124 purpose of constructing, repairing, or remodeling any expanding data storage center or
125 server farm facility.

126 **5. Any data storage center and server farm facility project seeking a tax exemption**
127 **under subsection 4 of this section shall submit an expanding project plan to the department**

128 of economic development, including identifying each known constructing taxpayer and
129 each known operating taxpayer for the project. The project applicants shall also provide
130 proof satisfactory to the department of economic development that the facility is an
131 expanding facility and has net new investment related to the expansion of operations in this
132 state of at least one million dollars during a time period not to exceed twelve consecutive
133 months. Upon verification of such proof, the department of economic development shall
134 certify the project to the department of revenue as being eligible for the exemption. The
135 department of revenue shall issue a certificate of exemption to each expanding project
136 taxpayer for ongoing exemptions under subsection 4 of this section.

137 6. The sales tax exemptions in subsections 2 and 4 of this section shall be tied to the
138 new or expanding facility project. A certificate of exemption in the hands of a taxpayer
139 that is no longer an operating or constructing taxpayer of the new or expanding facility
140 project shall be invalid as of the date the taxpayer was no longer an operating or
141 constructing taxpayer of the new or expanding facility project. New certificates of
142 exemption shall be issued to successor constructing taxpayers and operating taxpayers at
143 such new or expanding facility projects. The right to the exemption by successor taxpayers
144 shall exist without regard to subsequent levels of investment in the new or expanding
145 facility by successor taxpayers.

146 7. The department of economic development and the department of revenue shall
147 cooperate in conducting random audits to make certain the intent of this section is
148 followed.

149 8. The department of economic development and the department of revenue shall
150 jointly prescribe such rules and regulations necessary to carry out the provisions of this
151 section. Any rule or portion of a rule, as that term is defined in section 536.010, that is
152 created under the authority delegated in this section shall become effective only if it
153 complies with and is subject to all of the provisions of chapter 536 and, if applicable,
154 section 536.028. This section and chapter 536 are nonseverable and if any of the powers
155 vested with the general assembly pursuant to chapter 536 to review, to delay the effective
156 date, or to disapprove and annul a rule are subsequently held unconstitutional, then the
157 grant of rulemaking authority and any rule proposed or adopted after August 28, 2011,
158 shall be invalid and void.