

SECOND REGULAR SESSION

SENATE BILL NO. 633

97TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR PARSON.

Pre-filed December 17, 2013, and ordered printed.

TERRY L. SPIELER, Secretary.

4720S.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, are amended by adding thereto
2 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
2 indicates otherwise, the following terms mean:**

3 (1) "Facility", a location composed of real estate, buildings,
4 fixtures, machinery, and equipment;

5 (2) "Municipality", any county, city, incorporated town, village of
6 the state, or any utilities board thereof;

7 (3) "NAICS", the 2007 edition of the North American Industry
8 Classification System developed under the direction and guidance of
9 the federal Office of Management and Budget. Any NAICS sector,
10 subsector, industry group, or industry identified in this section shall
11 include its corresponding classification in previous and subsequent
12 federal industry classification systems;

13 (4) "Technology business facility", a facility purchased,
14 constructed, extended, or improved under this section, provided that
15 such business facility is engaged in:

16 (a) Data processing, hosting, and related services (NAICS
17 518210);

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

20 (c) The transmission of voice, data, text, sound, and video using
21 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.

144.810. 1. As used in this section, unless the context clearly
2 indicates otherwise, the following terms mean:

3 (1) "Commencement of commercial operations", shall be deemed
4 to occur during the first calendar year for which the data storage
5 center is first available for use by the operating taxpayer, or first

6 capable of being used by the operating taxpayer, as a data storage
7 center;

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

12 (3) "County average wage", the average wages in each county as
13 determined by the department for the most recently completed full
14 calendar year. However, if the computed county average wage is above
15 the statewide average wage, the statewide average wage shall be
16 deemed the county average wage for such county for the purpose of
17 determining eligibility;

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

21 (a) Data processing, hosting, and related services (NAICS
22 518210);

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

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

28 (5) "Existing facility", a data storage center in this state as it
29 existed prior to August 28, 2014, as determined by the department;

30 (6) "Expanding facility" or "expanding data storage center", an
31 existing facility or replacement facility that expands its operations in
32 this state on or after August 28, 2014, and has net new investment
33 related to the expansion of operations in this state of at least five
34 million dollars during a period of up to twelve consecutive months and
35 results in the creation of at least five new jobs during a period of up to
36 twenty-four consecutive months from the date of conditional approval
37 for an exemption under this section, if the average wage of the new
38 jobs equals or exceeds one hundred and fifty percent of the county
39 average wage. An expanding facility shall continue to be an expanding
40 facility regardless of a subsequent change in or addition of operating
41 taxpayers or constructing taxpayers;

42 (7) "Expanding facility project" or "expanding data storage center

43 project", the construction, extension, improvement, equipping, and
44 operation of an expanding facility;

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

49 (9) "NAICS", the 2007 edition of the North American Industry
50 Classification System as prepared by the Executive Office of the
51 President, Office of Management and Budget. Any NAICS sector,
52 subsector, industry group, or industry identified in this section shall
53 include its corresponding classification in previous and subsequent
54 federal industry classification systems;

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

57 (a) The facility is acquired by, or leased to, an operating
58 taxpayer on or after August 28, 2014. A facility shall be deemed to have
59 been acquired by, or leased to, an operating taxpayer on or after
60 August 28, 2014, if the transfer of title to an operating taxpayer, the
61 transfer of possession under a binding contract to transfer title to an
62 operating taxpayer, or the commencement of the term of the lease to an
63 operating taxpayer occurs on or after August 28, 2014, or, if the facility
64 is constructed, erected, or installed by or on behalf of an operating
65 taxpayer, such construction, erection, or installation is commenced on
66 or after August 28, 2014;

67 (b) If such facility was acquired by an operating or constructing
68 taxpayer from another person or persons on or after August 28, 2014,
69 and such facility was employed prior to August 28, 2014, by any other
70 person or persons in the operation of a data storage center the facility
71 shall not be considered a new facility;

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

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

80 **operating taxpayers;**

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

86 **(f) A new facility shall continue to be a new facility regardless**
87 **of a subsequent change in or addition of operating taxpayers or**
88 **constructing taxpayers;**

89 **(11) "New data storage center project" or "new facility project",**
90 **the construction, extension, improvement, equipping, and operation of**
91 **a new facility;**

92 **(12) "New job" in the case of a new data center project, the total**
93 **number of full-time employees located at a new data storage center for**
94 **a period of up to thirty-six consecutive months from the date of**
95 **conditional approval for an exemption under this section. In the case**
96 **of an expanding data storage center project, the total number of full-**
97 **time employees located at the expanding data storage center that**
98 **exceeds the greater of the number of full-time employees located at the**
99 **project facility on the date of the submission of a project plan under**
100 **this section or for the twelve-month period prior to the date of the**
101 **submission of a project plan, the average number of full-time employees**
102 **located at the expanding data storage center facility. In the event the**
103 **expanding data storage center facility has not been in operation for a**
104 **full twelve-month period at the time of the submission of a project plan,**
105 **the total number of full-time employees located at the expanded data**
106 **storage center that exceeds the greater of the number of full-time**
107 **employees located at the project facility on the date of the submission**
108 **of a project plan under this section or the average number of full-time**
109 **employees for the number of months the expanding data storage center**
110 **facility has been in operation prior to the date of the submission of the**
111 **project plan;**

112 **(13) "Notice of intent", a form developed by the department of**
113 **economic development, completed by the project taxpayer, and**
114 **submitted to the department, which states the project taxpayer's intent**
115 **to construct or expand a data center and request the exemptions under**
116 **this program;**

117 **(14) "Operating taxpayer", where more than one taxpayer is**
118 **responsible for a project, a taxpayer responsible for the equipping and**
119 **ongoing operations of the facility, as opposed to a taxpayer responsible**
120 **for the purchasing or construction of the facility;**

121 **(15) "Project taxpayers", each constructing taxpayer and each**
122 **operating taxpayer for a data storage center project;**

123 **(16) "Replacement facility", a facility in this state otherwise**
124 **described in subdivision (7) of this subsection, but which replaces**
125 **another facility located within the state, which the taxpayer or a**
126 **related taxpayer previously operated but discontinued operating within**
127 **one year prior to the commencement of commercial operations at the**
128 **new facility;**

129 **(17) "Taxpayer", the purchaser of tangible personal property or**
130 **a service that is subject to state or local sales or use tax and from**
131 **whom state or local sales or use tax is owed. Taxpayer shall not mean**
132 **the seller charged by law with collecting the sales tax from the**
133 **purchaser.**

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

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

146 **(2) All machinery, equipment, and computers used in any new**
147 **data storage center; and**

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

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

154 **3. (1) Any data storage center project seeking a tax exemption**
155 **under subsection 2 of this section shall submit a notice of intent and a**
156 **project plan to the department of economic development, which shall**
157 **identify each known constructing taxpayer and known operating**
158 **taxpayer for the project and include any additional information the**
159 **department of economic development may require to determine**
160 **eligibility for the exemption. The department of economic development**
161 **shall review the project plan and determine whether the project is**
162 **eligible for the exemption under subsection 2 of this section,**
163 **conditional upon subsequent verification by the department that the**
164 **project meets the requirements in subsection 1 of this section for a new**
165 **facility project. The department shall make such conditional**
166 **determination within thirty days of submission by the operating**
167 **taxpayer. Failure of the department to respond within thirty days shall**
168 **result in a project plan being deemed conditionally approved.**

169 **(2) The department of economic development shall convey**
170 **conditional approvals to the department of revenue and the identified**
171 **project taxpayers. After a conditionally approved new facility has met**
172 **the requirements in subsection 1 of this section for a new facility and**
173 **the execution of the agreement specified in subsection 6 of this section,**
174 **the project taxpayers shall provide proof of the same to the department**
175 **of economic development. Upon verification of such proof, the**
176 **department of economic development shall certify the new facility to**
177 **the department of revenue as being eligible for the exemption dating**
178 **retroactively to the first day of construction on the new facility. The**
179 **department of revenue, upon receipt of adequate proof of the amount**
180 **of sales taxes paid since the first day of construction, shall issue a**
181 **refund of taxes paid but eligible for exemption under subsection 2 of**
182 **this section to each operating taxpayer and each constructing taxpayer**
183 **and issue a certificate of exemption to each new project taxpayer for**
184 **ongoing exemptions under subsection 2 of this section. The department**
185 **of revenue shall issue such a refund within thirty days of receipt of**
186 **certification from the department of economic development.**

187 **(3) Any project that does not meet the minimum investment or**
188 **new job requirements of subsection 1 of this section may still be**
189 **eligible for the exemption under subsection 2 of this section, as long as**
190 **the exemptions for such project plan do not exceed the projected net**

191 **fiscal benefit to the state over a period of ten years.**

192 **(4) The commencement of the exemption period may be delayed**
193 **at the option of the operating taxpayer, but not more than twenty-four**
194 **months after the execution of the agreement required under subsection**
195 **6 of this section.**

196 **4. In addition to the exemptions granted under chapter 144, upon**
197 **approval by the department of economic development, project**
198 **taxpayers for expanding data center projects may, for a period not to**
199 **exceed ten years, be specifically exempted from state and local sales**
200 **and use taxes defined, levied, or calculated under section 32.085,**
201 **sections 144.010 to 144.525, sections 144.600 to 144.761, or section**
202 **238.235 on:**

203 **(1) All electrical energy, gas, water, and other utilities including**
204 **telecommunication and internet services used in an expanding data**
205 **storage center which, on an annual basis, exceeds the amount of**
206 **electrical energy, gas, water, and other utilities including**
207 **telecommunication and internet services used in the existing facility or**
208 **the replaced facility prior to the expansion. For purposes of this**
209 **subdivision only, "amount" shall be measured in kilowatt hours, gallons,**
210 **cubic feet, or other measures applicable to a utility service as opposed**
211 **to in dollars, to account for increases in utility rates;**

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

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

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

220 **5. (1) Any data storage center project seeking a tax exemption**
221 **under subsection 4 of this section shall submit a notice of intent and a**
222 **project plan to the department of economic development, which shall**
223 **identify each known constructing taxpayer and each known operating**
224 **taxpayer for the project and include any additional information the**
225 **department of economic development may reasonably require to**
226 **determine eligibility for the exemption. The department of economic**
227 **development shall review the project plan and determine whether the**

228 project is eligible for the exemption under subsection 4 of this section,
229 conditional upon subsequent verification by the department that the
230 project meets the requirements in subsection 1 of this section for an
231 expanding facility project and the execution of the agreement specified
232 in subsection 6 of this section. The department shall make such
233 conditional determination within thirty days of submission by the
234 operating taxpayer. Failure of the department to respond within thirty
235 days shall result in a project plan being deemed conditionally
236 approved.

237 (2) The department of economic development shall convey such
238 conditional approval to the department of revenue and the identified
239 project taxpayers. After a conditional approved facility has met the
240 requirements in subsection 1 of this section, the project taxpayers shall
241 provide proof of the same to the department of economic
242 development. Upon verification of such proof, the department of
243 economic development shall certify the project to the department of
244 revenue as being eligible for the exemption dating retroactively to the
245 first day of the expansion of the facility. The department of revenue,
246 upon receipt of adequate proof of the amount of sales taxes paid since
247 the first day of the expansion of the facility, shall issue a refund of
248 taxes paid but eligible for exemption under subsection 4 of this section
249 to any applicable project taxpayer and issue a certificate of exemption
250 to any applicable project taxpayer for ongoing exemptions under
251 subsection 4 of this section. The department of revenue shall issue
252 such a refund within thirty days of receipt of certification from the
253 department of economic development.

254 (3) Any project that does not meet the minimum investment or
255 new job requirements of subsection 1 of this section may still be
256 eligible for the exemption under subsection 4 of this section, as long as
257 the exemptions for such project plan do not exceed the projected net
258 fiscal benefit to the state over a period of ten years.

259 (4) The commencement of the exemption period may be delayed
260 at the option of the operating taxpayer, but not more than twenty-four
261 months after the execution of the agreement required under subsection
262 6 of this section.

263 6. (1) The exemptions in subsections 2 and 4 of this section shall
264 be tied to the new or expanding facility project. A certificate of

265 exemption in the hands of a taxpayer that is no longer an operating or
266 constructing taxpayer of the new or expanding facility project shall be
267 invalid as of the date the taxpayer was no longer an operating or
268 constructing taxpayer of the new or expanding facility project. New
269 certificates of exemption shall be issued to successor constructing
270 taxpayers and operating taxpayers at such new or expanding facility
271 projects. The right to the exemption by successor taxpayers shall exist
272 without regard to subsequent levels of investment in the new or
273 expanding facility by successor taxpayers.

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

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

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

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

289 9. The department of economic development and the department
290 of revenue shall jointly prescribe such rules and regulations necessary
291 to carry out the provisions of this section. Any rule or portion of a
292 rule, as that term is defined in section 536.010, that is created under
293 the authority delegated in this section shall become effective only if it
294 complies with and is subject to all of the provisions of chapter 536 and,
295 if applicable, section 536.028. This section and chapter 536 are
296 nonseverable and if any of the powers vested with the general assembly
297 pursuant to chapter 536 to review, to delay the effective date, or to
298 disapprove and annul a rule are subsequently held unconstitutional,
299 then the grant of rulemaking authority and any rule proposed or
300 adopted after August 28, 2014, shall be invalid and void.