

FIRST EXTRAORDINARY SESSION

# SENATE BILL NO. 5

96TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCHAAF.

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TERRY L. SPIELER, Secretary.

0034S.011

## AN ACT

To amend chapters 67 and 144, RSMo, by adding thereto two new sections relating to 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  
2 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 shall mean:**

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

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

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) Wired telecommunications carriers (NAICS 517110);

17 (b) Data processing, hosting, and related services (NAICS  
18 518210); or

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

21 (5) "Technology business facility project" or "project", the

22 purchase, construction, extension, and improvement of technology  
23 business facilities, whether of the facility as a whole or of any one or  
24 more of the facility's components of real estate, buildings, fixtures,  
25 machinery, and equipment.

26 2. The governing body of any municipality may:

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

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

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

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

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

57 5. Leasehold interests granted and held under this section shall  
58 not be subject to property taxes.

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

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

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

86           **9. The provisions of this section shall not be construed to allow**  
87 **political subdivisions to provide telecommunications services or**  
88 **telecommunications facilities to the extent that they are prohibited**  
89 **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); or

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

25 (5) "Existing facility", a data storage center in this state as it  
26 existed prior to the effective date of this act, as determined by the  
27 department;

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

40 (7) "Expanding facility project" or "expanding data storage center  
41 project", the construction, extension, improvement, equipping, and  
42 operation of an expanding facility;

43 (8) "Investment" shall include the value of real and depreciable

44 **personal property, acquired as part of the new or expanding facility**  
45 **project which is used in the operation of the facility following**  
46 **conditional approval of an exemption under this section;**

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

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

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

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

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

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

80 **(e) At least thirty new jobs are created at the new facility during**

81 a period of up to thirty-six consecutive months from the date of  
82 conditional approval for an exemption under this section if the average  
83 wage of the new jobs equals or exceeds one hundred fifty percent of the  
84 county average wage; and

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

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

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

107 (13) "Operating taxpayer", where more than one taxpayer is  
108 responsible for a project, a taxpayer responsible for the equipping and  
109 ongoing operations of the facility, as opposed to a taxpayer responsible  
110 for the purchasing or construction of the facility;

111 (14) "Project taxpayers", each constructing taxpayer and each  
112 operating taxpayer for a data storage center project;

113 (15) "Replacement facility", a facility in this state otherwise  
114 described in subdivision (7) of this subsection, but which replaces  
115 another facility located within the state, which the taxpayer or a  
116 related taxpayer previously operated but discontinued operating within  
117 one year prior to the commencement of commercial operations at the

118 new facility;

119 (16) "Taxpayer", the purchaser of tangible personal property or  
120 a service that is subject to state or local sales or use tax and from  
121 whom state or local sales or use tax is owed. Taxpayer shall not mean  
122 the seller charged by law with collecting the sales tax from the  
123 purchaser.

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

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

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

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

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

144 3. Any data storage center project seeking a tax exemption under  
145 subsection 2 of this section shall submit a project plan to the  
146 department of economic development, which shall identify each known  
147 constructing taxpayer and known operating taxpayer for the project  
148 and include any additional information the department of economic  
149 development may require to determine eligibility for the  
150 exemption. The department of economic development shall review the  
151 project plan and determine whether the project is eligible for the  
152 exemption under subsection 2 of this section, conditional upon  
153 subsequent verification by the department that the project meets the  
154 requirements in subsection 1 of this section for a new facility. The

155 department of economic development shall convey such conditional  
156 approval to the department of revenue and the identified project  
157 taxpayers. After a conditionally approved new facility has met the  
158 requirements in subsection 1 of this section for a new facility and the  
159 execution of the agreement specified in subsection 6 of this section, the  
160 project taxpayers shall provide proof of the same to the department of  
161 economic development. Upon verification of such proof, the  
162 department of economic development shall certify the new facility to  
163 the department of revenue as being eligible for the exemption dating  
164 retroactively to the first day of the thirty-six month period. The  
165 department of revenue, upon receipt of adequate proof of the amount  
166 of sales taxes paid since the first day of the thirty-six month period,  
167 shall issue a refund of taxes paid but eligible for exemption under  
168 subsection 2 of this section to each operating taxpayer and each  
169 constructing taxpayer and issue a certificate of exemption to each new  
170 project taxpayer for ongoing exemptions under subsection 2 of this  
171 section.

172 4. In addition to the exemptions granted under chapter 144, upon  
173 approval by the department of economic development, project  
174 taxpayers for expanding data center projects may, for a period not to  
175 exceed ten years, be specifically exempted from state and local sales  
176 and use taxes defined, levied, or calculated under section 32.085,  
177 sections 144.010 to 144.525, sections 144.600 to 144.761, or section  
178 238.235 on:

179 (1) All electrical energy, gas, water, and other utilities including  
180 telecommunication and internet services used in an expanding data  
181 storage center which, on an annual basis, exceeds the amount of  
182 electrical energy, gas, water, and other utilities including  
183 telecommunication and internet services used in the existing facility or  
184 the replaced facility prior to the expansion. For purposes of this  
185 subdivision only, "amount" shall be measured in kilowatt hours, gallons,  
186 cubic feet, or other measures applicable to a utility service as opposed  
187 to in dollars, to account for increases in utility rates;

188 (2) All machinery, equipment, and computers used in any  
189 expanding data storage center, the cost of which, on an annual basis,  
190 exceeds the average of the previous three years' expenditures on  
191 machinery, equipment, and computers at the existing facility or the



192 replaced facility prior to the expansion. Existing facilities or replaced  
193 facilities in existence for less than three years shall have the average  
194 expenditures calculated based upon the applicable time of existence;  
195 and

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

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

202 5. Any data storage center project seeking a tax exemption under  
203 subsection 4 of this section shall submit a project plan to the  
204 department of economic development, which shall identify each known  
205 constructing taxpayer and each known operating taxpayer for the  
206 project and include any additional information the department of  
207 economic development may reasonably require to determine eligibility  
208 for the exemption. The department of economic development shall  
209 review the project plan and determine whether the project is eligible  
210 for the exemption under subsection 4 of this section, conditional upon  
211 subsequent verification by the department that the project meets the  
212 requirements in subsection 1 of this section for an expanding facility  
213 project and the execution of the agreement specified in subsection 6 of  
214 this section. The department of economic development shall convey  
215 such conditional approval to the department of revenue and the  
216 identified project taxpayers. After a conditional approved facility has  
217 met the requirements in subsection 1 of this section, the project  
218 taxpayers shall provide proof of the same to the department of  
219 economic development. Upon verification of such proof, the  
220 department of economic development shall certify the project to the  
221 department of revenue as being eligible for the exemption dating  
222 retroactively to the first day of the thirty-six month period. The  
223 department of revenue, upon receipt of adequate proof of the amount  
224 of sales taxes paid since the first day of the thirty-six month period,  
225 shall issue a refund of taxes paid but eligible for exemption under  
226 subsection 4 of this section to any applicable project taxpayer and issue  
227 a certificate of exemption to any applicable project taxpayer for  
228 ongoing exemptions under subsection 4 of this section.

229           **6. (1) The exemptions in subsections 2 and 4 of this section shall**  
230 **be tied to the new or expanding facility project. A certificate of**  
231 **exemption in the hands of a taxpayer that is no longer an operating or**  
232 **constructing taxpayer of the new or expanding facility project shall be**  
233 **invalid as of the date the taxpayer was no longer an operating or**  
234 **constructing taxpayer of the new or expanding facility project. New**  
235 **certificates of exemption shall be issued to successor constructing**  
236 **taxpayers and operating taxpayers at such new or expanding facility**  
237 **projects. The right to the exemption by successor taxpayers shall exist**  
238 **without regard to subsequent levels of investment in the new or**  
239 **expanding facility by successor taxpayers.**

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

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

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

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

255           **9. The department of economic development and the department**  
256 **of revenue shall jointly prescribe such rules and regulations necessary**  
257 **to carry out the provisions of this section. Any rule or portion of a**  
258 **rule, as that term is defined in section 536.010, that is created under**  
259 **the authority delegated in this section shall become effective only if it**  
260 **complies with and is subject to all of the provisions of chapter 536 and,**  
261 **if applicable, section 536.028. This section and chapter 536 are**  
262 **nonseverable and if any of the powers vested with the general assembly**  
263 **pursuant to chapter 536 to review, to delay the effective date, or to**  
264 **disapprove and annul a rule are subsequently held unconstitutional,**  
265 **then the grant of rulemaking authority and any rule proposed or**

266 adopted after the effective date of this act, shall be invalid and void.

✓

Unofficial

Bill

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