

KANSAS OFFICE of
REVISOR of STATUTES

LEGISLATURE of THE STATE of KANSAS

Legislative Attorneys transforming ideas into legislation.

300 SW TENTH AVENUE ■ SUITE 24-E ■ TOPEKA, KS 66612 ■ (785) 296-2321

MEMORANDUM

To: Chairperson Erickson and Senate Committee on Commerce
From: Office of Revisor of Statutes
Date: 3/19/2023
Subject: SB 545

SB 545 proposes an economic development program that would provide broad sales tax exemptions for data centers in Kansas that make a minimum investment of at least \$600,000,000 and meet other requirements including new jobs. The exemptions would include sales tax on purchases of goods and services for construction or remodeling of the data center, data center equipment and other data center costs, electricity, and certain labor costs. The secretary of commerce would manage the program.

Section 1 defines terms for purposes of the bill, including an extensive definition for “data center equipment.” (Pages 1-2) This includes purchased or leased computer equipment, servers and software, modular data centers, installations and upgrades, electrical equipment including substations, generators and uninterruptible energy equipment, cooling, refrigeration and air conditioning equipment, water conservation systems, fiber optic and cabling related to connecting distributed data center locations; monitoring and security equipment, and equipment used for administration. The term includes such property whether or not the property is affixed to or incorporated into real property.

“Eligible data center costs” are defined on page 2. This term means expenditures for the development, acquisition, construction and operation of a data center, including development, engineering, design, acquisition of land or buildings, site improvements, construction, and operation of a data center, lease payments and data center equipment.

“New jobs” means jobs with a qualified firm at a qualified data center or directly associated with the data center filled by Kansas residents and with the primary work locations in Kansas.

“Qualified firm” means a business or an affiliate that is registered with the Secretary of State that is engaged in data processing, storage and dissemination.

“Qualified data center” means one or more buildings that are constructed or remodeled to house a group of networked computer servers in Kansas to centralize the storage, management and dissemination of data pertaining to a particular business or body of knowledge, and connected to each other via a fiber transmission network between data center buildings and internet points for the purpose of providing redundancy and resiliency for the data center services provided in each building.

Section 2 provides the requirements and process for a qualified firm to receive the sales tax exemptions. An investment is required of at least \$600,000,000 in the aggregate within the first five calendar years after commencement of construction of the data center, or an earlier date if specified in an agreement with the secretary. The qualified firm must also create and maintain at least 20 new jobs at the data center within two calendar years after commencement of operations. Construction of the project must begin within 10 years of the date of the agreement with the secretary, or an earlier date if specified in the agreement. If the qualified firm commits to these requirements and enters into an agreement with the secretary of commerce, the qualified firm will receive a sales tax exemption for:

- (1) Eligible data center costs;
- (2) all electricity used by the data center;
- (3) and labor services to install, apply, repair, service, alter or maintain data center equipment.

(Page 3.)

Section 2 also provides for a process if the qualified firm breaches the terms or conditions of the agreement. After written notice by the secretary, the qualified firm has 120 days to cure the breached terms or conditions. If no cure occurs, the secretary may require repayment of all or a part of the amount of the sales tax exemption received by the qualified firm, terminate the exemption or suspend all or part of the exemption until the breach is cured. (Page 3.)

The qualified firm must also agree to cooperate with audits by the department of revenue, if requested by the secretary, and provide information to the secretary for matters such as publication in the economic development database, the secretary's report to legislative committees, and the discretionary five-year review by the secretary described below. (Page 3; page 4.)

The secretary may conduct a review every five years of the qualified firm to ensure compliance with this act and the agreement. The secretary of commerce shall certify every five years to the secretary of revenue whether the qualified firm meets the requirements for eligibility for the sales tax exemptions. (Page 4.) The qualified firm shall provide the secretary with all information reasonably necessary to determine eligibility.

Section 2 provides for exceptions to disclosure under the Kansas open records act for confidential information provided to address eligibility questions, confidential financial information, and trade secrets. (Page 4.)

The secretary may inspect books and records pertaining to eligibility and compliance during business hours on at least 60 days' prior written notice.

The secretary of commerce is to certify to the secretary of revenue when the qualified firm has met the conditions to receive the sales tax exemptions and also provide notice of any modification, suspension or termination of the exemption. (Page 4-5)

The bill grants the secretary of commerce and the secretary of revenue authority to adopt rules and regulations. (Page 5)

Section 3 provides additional particulars regarding the sales tax exemption. The length of the sales tax exemption varies based on the amount of the qualified firm's investment in a qualified data center. An exemption for 30 years from the date of commencement of construction is allowed for the minimum investment required of \$600,000,000. An investment of \$800,000,000 earns an exemption for 40 years. The sales tax exemption continues indefinitely for an investment of at least \$1,000,000,000. (Page 5.)

The sales tax exemption shall not be approved by the secretary of revenue unless the qualified firm has been certified by the secretary of commerce as meeting all requirements of the act, any rules and regulations, and the agreement with the secretary of commerce. (Page 5.) The secretary of revenue shall revoke, suspend or modify the sales tax exemption as requested by the secretary of commerce upon notification that the qualified firm has been disapproved. (Page 5.)

Section 4 amends K.S.A. 2023 Supp. 79-3606 to set forth the sales tax exemption in that statute. (Page 44)

If enacted, the bill would become effective July 1, 2024.