

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 237

A bill to amend 1937 PA 94, entitled
"Use tax act,"
by amending section 4cc (MCL 205.94cc), as added by 2015 PA 252.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 4cc. (1) Subject to subsections (2) and (3), beginning
2 January 1, 2016 through December 31, ~~2035~~, **2050**, the tax under this
3 act does not apply to the storage, use, or consumption of data
4 center equipment sold to the owner or operator of a qualified data
5 center or a colocated business for assembly, use, or consumption in
6 the operations of the qualified data center or data center
7 equipment sold or provided to a person engaged in the business of
8 constructing, altering, repairing, or improving real estate for
9 others to the extent the data center equipment is to be affixed to

1 or made a structural part of a qualified data center.

2 (2) The exemption under ~~this section only~~ **subsection (1)**
3 continues to apply after January 1, 2022, **only** if the numbers
4 gathered by the local economic development corporations are
5 certified and reported to the ~~department of talent and economic~~
6 ~~development~~ **Michigan strategic fund** and subsequently forwarded to
7 the department and demonstrate that the qualified data centers, the
8 colocated businesses, and the contractors of the qualified data
9 centers, collectively, have, in aggregate, established in this
10 state at least 400 data center industry jobs or data center
11 industry related jobs, or a combination of both, since January 1,
12 2016. The ~~department of talent and economic development~~ **Michigan**
13 **strategic fund** shall submit a report no later than April 1, 2022
14 related to the number of data center industry jobs or data center
15 industry related jobs that have been established since January 1,
16 2016 to the speaker and minority leader of the house of
17 representatives, the majority and minority leaders of the senate,
18 and the governor. **As used in this subsection and subsection (3),**
19 **"data center industry jobs" and "data center industry related jobs"**
20 **do not include qualified new jobs as that term is defined in**
21 **subsection (10) (e) (v) (C).**

22 (3) The exemption under ~~this section only~~ **subsection (1)**
23 continues to apply after January 1, 2026, **only** if the numbers
24 gathered by the local economic development corporations are
25 certified and reported to the ~~department of talent and economic~~
26 ~~development~~ **Michigan strategic fund** and subsequently forwarded to
27 the department and demonstrate that the qualified data centers, the
28 colocated businesses, and the contractors of the qualified data
29 centers, collectively, have, in aggregate, established in this

1 state at least 1,000 data center industry jobs or data center
2 industry related jobs, or a combination of both, since January 1,
3 2016. The ~~department of talent and economic development~~ **Michigan**
4 **strategic fund** shall submit a report no later than April 1, 2026
5 related to the number of data center industry jobs or data center
6 industry related jobs that have been established since January 1,
7 2016 to the speaker and minority leader of the house of
8 representatives, the majority and minority leaders of the senate,
9 and the governor.

10 (4) Subject to subsections (5) and (6), beginning on the
11 effective date of the amendatory act that added this subsection
12 through December 31, 2050 or, with respect to an enterprise data
13 center subject to a certificate that is located on the property
14 included in a brownfield plan under the brownfield redevelopment
15 financing act, 1996 PA 381, MCL 125.2651 to 125.2670, or on
16 property that was once an industrial site used primarily as a power
17 plant to generate electricity for sale, through December 31, 2065,
18 the storage, use, or consumption of data center equipment sold to
19 either of the following is exempt from the tax imposed by this act:

20 (a) A qualified entity or its affiliates for assembly, use, or
21 consumption in the operations of an enterprise data center subject
22 to a certificate.

23 (b) A person engaged in the business of constructing,
24 altering, repairing, or improving real estate for others to the
25 extent the data center equipment is to be affixed to or made a
26 structural part of an enterprise data center subject to a
27 certificate.

28 (5) In order for a purchaser to claim an exemption under
29 subsection (4), at the time the data center equipment is sold to

1 the purchaser, the qualified entity must have received a
2 certificate for that facility which is in good standing.

3 (6) All of the following apply with respect to the exemption
4 under subsection (4):

5 (a) A person seeking a certificate for an enterprise data
6 center must apply to the Michigan strategic fund on a form and in
7 the manner prescribed by the Michigan strategic fund. The
8 application must include an affirmation signed by the applicant
9 stating that it expects the facility to satisfy each of the
10 criteria for an enterprise data center under subsection (10) (e) and
11 the anticipated time frame for doing so, which must not exceed 6
12 years. Subject to subsection (9), not later than 120 days after
13 receiving a complete and correct application, the Michigan
14 strategic fund or its designees, which may include authorized
15 employees, officers, and agents of the Michigan strategic fund and
16 employees of the Michigan economic development corporation, shall
17 review the application and either issue a certificate to the
18 applicant or provide written reasons for its denial. The
19 certificate must specify a time frame for a facility to satisfy
20 each of the criteria for an enterprise data center under subsection
21 (10) (e), which time frame must be the lesser of 6 years or the time
22 frame identified by the applicant on the application. The Michigan
23 strategic fund shall provide the department with a copy of each
24 certificate issued under this subdivision.

25 (b) The qualified entity of a facility for which a certificate
26 has been issued shall report to the Michigan strategic fund
27 purchases for which an exemption is claimed under subsection (4),
28 and employment, tax withholding, capital investment, and other
29 information required by the Michigan strategic fund to determine

1 whether the facility continues to qualify as an enterprise data
2 center. The Michigan strategic fund shall provide the department
3 with a copy of each report received under this subdivision from a
4 qualified entity. The report required by this subdivision is
5 subject to audit and must be made on an annual basis following
6 issuance of the certificate. The report required by this
7 subdivision must not include any remittance for tax and does not
8 constitute a return or otherwise alleviate any obligations under
9 section 6. Except for the provision of a copy of each report to the
10 department as required under this subdivision and the provision of
11 each certificate to the department as required under subdivision
12 (a), the Michigan strategic fund shall not disclose any information
13 that is not aggregated or any information that could be used to
14 identify a specific person or data center.

15 (c) All of the following apply regarding certifications to the
16 Michigan strategic fund:

17 (i) Not later than 3 years after a facility for which a
18 certificate has been issued is placed in service, the qualified
19 entity of the facility shall certify to the Michigan strategic
20 fund, in the form and manner prescribed by the Michigan strategic
21 fund, that the facility has attained certification under 1 or more
22 of the green building standards described in subsection (10) (e) (vii) .

23 (ii) At the time an exemption is claimed under subsection (4) ,
24 a qualified entity or its affiliates claiming the exemption shall
25 certify to the Michigan strategic fund, in the form and manner
26 prescribed by the Michigan strategic fund, that the facility is in
27 compliance with subsection (10) (e) (viii) .

28 (iii) At the time an exemption is claimed under subsection (4) ,
29 a qualified entity or its affiliates claiming the exemption shall

1 certify to the Michigan strategic fund, in the form and manner
2 prescribed by the Michigan strategic fund, that the facility has
3 procured or will procure clean energy as described in section 51 of
4 the clean and renewable energy and energy waste reduction act, 2008
5 PA 295, MCL 460.1051, equivalent to 90% of the facility's
6 forecasted electricity usage on an annual basis as required under
7 subsection (10) (e) (ix) .

8 (d) The Michigan strategic fund shall revoke a certificate
9 issued under subdivision (a) if it determines a facility no longer
10 meets the definition of an enterprise data center. If the Michigan
11 strategic fund determines revocation is appropriate, it shall
12 provide written notice to the qualified entity and the department
13 not less than 60 days, but not more than 180 days, before
14 revocation, notifying the qualified entity of its preliminary
15 determination to revoke the certificate and providing the qualified
16 entity an opportunity to demonstrate, within the time period
17 specified in the notice, that the facility continues to meet the
18 definition of an enterprise data center. Following the expiration
19 of the time period specified in the notice, if the Michigan
20 strategic fund determines that the facility does not meet the
21 definition of an enterprise data center, the Michigan strategic
22 fund shall revoke the certificate. If revocation occurs not more
23 than 10 years after issuance of the certificate, the former
24 qualified entity shall pay to the department an amount equal to the
25 entire amount of the tax exemptions stemming from the certificate
26 that have been received under subsection (4) by all persons, plus
27 interest as specified in section 23(2) of 1941 PA 122, MCL 205.23,
28 calculated from January 1 of the year the exemption was received
29 until the amount is paid to the department under this subdivision.

1 If revocation occurs more than 10 years after issuance of the
2 certificate, the former qualified entity shall pay to the
3 department an amount equal to the entire amount of the tax
4 exemptions stemming from the certificate that have been received
5 under subsection (4) by all persons, plus interest as specified in
6 section 23(2) of 1941 PA 122, MCL 205.23, calculated from January 1
7 of the year the exemption was received until the amount is paid to
8 the department under this subdivision, unless the Michigan
9 strategic fund determines, pursuant to published guidelines, that a
10 lesser amount, but not less than an amount equal to 50% of the
11 entire amount of the tax exemptions stemming from the certificate
12 that have been received by all persons under subsection (4), is
13 appropriate after evaluating the circumstances. During the time
14 period specified in the notice described in this subdivision, all
15 persons must cease claiming a tax exemption stemming from the
16 certificate under subsection (4). If a certificate is revoked, the
17 Michigan strategic fund shall notify the department not later than
18 5 days after the revocation.

19 (e) The Michigan strategic fund may charge and collect
20 reasonable administrative fees to effectuate the purpose of this
21 section.

22 (7) A person engaged in the business of constructing,
23 altering, repairing, or improving real estate for others that has
24 claimed an exemption under subsection (4)(b) for a particular
25 facility must submit an annual summary report to the qualified
26 entity or former qualified entity to which a certificate for that
27 facility was issued on or before January 1 of each year that
28 provides, at a minimum, information sufficient to identify the
29 person that made the purchases and the purchase price of all items

1 purchased each month of that year. That person must also maintain
2 all invoices, bills of sale, or similar documents for all claimed
3 exempt purchases that indicate the date of purchase, the items
4 purchased, and the purchase price of the property that is
5 identified in the summary report for 4 years after the date of the
6 purchase. Except as otherwise provided in subsection (6) (a) and
7 (b), the Michigan strategic fund shall not disclose any information
8 that is not aggregated or any information that could be used to
9 identify a specific person or data center.

10 (8) The legislature encourages a person claiming an exemption
11 under this section to take direct steps to adopt practices to
12 mitigate negative environmental impacts resulting from expanded use
13 of data centers, including through all of the following:

14 (a) To the extent possible, procuring or contracting for power
15 from renewable sources.

16 (b) Adopting practices to improve the energy efficiency of
17 existing data centers, including through upgrading and
18 consolidating technology, managing data center airflow, and
19 adjusting and improving heating, ventilation, and air conditioning
20 systems.

21 (c) Taking actions to conserve, reuse, and replace water,
22 including, but not limited to, all of the following:

23 (i) Using water efficient fixtures and practices.

24 (ii) Treating, infiltrating, and harvesting rainwater.

25 (iii) Recycling water before discharging.

26 (iv) Partnering with local water utilities to use discharged
27 water for irrigation and other water conservation purposes.

28 (v) Using reclaimed water if possible for data center
29 operations.

1 (vi) Supporting water restoration in local watersheds.

2 (9) The Michigan strategic fund shall not issue any new
3 certificates under subsection (6) (a) after December 31, 2029. This
4 subsection does not affect any existing certificates that are in
5 effect on December 31, 2029.

6 (10) ~~(4)~~—As used in this section:

7 (a) "Affiliate" means a person that directly, or indirectly
8 through 1 or more intermediaries, controls, is controlled by, or is
9 under common control with a specified person.

10 (b) "Certificate" means the document issued by the Michigan
11 strategic fund to an applicant under subsection (6) (a) that
12 certifies or otherwise establishes that the facility developed,
13 owned, and operated by the applicant or an affiliate of the
14 applicant, or to be developed, owned, and operated by the applicant
15 or an affiliate of the applicant, and identified in that document
16 qualifies as an enterprise data center under this section.

17 (c) ~~(b)~~—"Colocated business" means a person that has entered
18 into a contract with the owner or operator of a qualified data
19 center to use or deploy data center equipment physically located
20 within the qualified data center for a period of 1 or more years.

21 (d) ~~(e)~~—"Data center equipment" means only computers, servers,
22 routers, switches, peripheral computer devices, racks, shelving,
23 cabling, wiring, storage batteries, back-up generators,
24 uninterrupted power supply units, environmental control equipment,
25 other redundant power supply equipment, and prewritten computer
26 software used in operating, managing, or maintaining the qualified
27 data center **or enterprise data center** or the business of the
28 qualified data center or a colocated business. Data center
29 equipment also includes any construction materials used or

1 assembled for the construction or modification of an enterprise
2 data center or, under the qualified data center's proprietary
3 method, for the construction or modification of a qualified data
4 center, including, but not limited to, building materials,
5 infrastructure, machinery, wiring, cabling, devices, tools, and
6 equipment that would otherwise be considered a fixture or related
7 equipment. Data center equipment does not include any equipment
8 owned by a third party that is used to supply the qualified data
9 center's primary power.

10 (e) "Enterprise data center" means, subject to subdivision
11 (f), a facility that the Michigan strategic fund determines meets,
12 or is expected to meet within the time frame set forth in the
13 certificate, all of the following requirements:

14 (i) The facility is located in this state.

15 (ii) The facility is composed of 1 or more buildings.

16 (iii) The facility is designed and intended for housing, and
17 does house, data center equipment to centralize the storage and
18 processing of data.

19 (iv) The aggregate capital investment in the facility described
20 in this subdivision made by the qualified entity, and any of its
21 affiliates that will develop, own, and operate the facility, is not
22 less than \$250,000,000.00. As used in this subparagraph, "aggregate
23 capital investment" means the capital investment made and
24 maintained in the facility to the extent that investment results in
25 an increase in the total capital investment that the qualified
26 entity and its affiliates, in the aggregate, maintain in this state
27 when compared to the total capital investment that the qualified
28 entity and its affiliates, in the aggregate, maintained in this
29 state before issuance of the certificate, as determined and

1 verified by the Michigan strategic fund.

2 (v) The qualified entity and any of its affiliates, in the
3 aggregate, create and maintain a minimum of 30 qualified new jobs
4 in this state with an annual wage that is equal to 150% or more of
5 the prosperity region median wage through December 31, 2050 or, for
6 a facility that is located on the property included in a brownfield
7 plan under the brownfield redevelopment financing act, 1996 PA 381,
8 MCL 125.2651 to 125.2670, or on property that was once an
9 industrial site used primarily as a power plant to generate
10 electricity for sale, through December 31, 2065. As used in this
11 subparagraph:

12 (A) "Prosperity region" means each of the 10 prosperity
13 regions identified by the department of technology, management, and
14 budget on August 25, 2017.

15 (B) "Prosperity region median wage" means the median annual
16 wage for the prosperity region where the facility is located based
17 on the most recent data made available by the Michigan bureau of
18 labor market information and strategic initiatives.

19 (C) "Qualified new job" means a full-time job created by the
20 qualified entity or its affiliates at the facility that is in
21 excess of the number of full-time jobs that the applicant and its
22 affiliates maintained in this state before issuance of the
23 certificate, as determined and verified by the Michigan strategic
24 fund.

25 (vi) Except as otherwise provided in this subparagraph, the
26 facility does not receive and, through the applicable date, will
27 not receive any state or local property tax benefit, including, but
28 not limited to, property tax benefits available under the general
29 property tax act, 1893 PA 206, MCL 211.1 to 211.155, the Michigan

1 renaissance zone act, 1996 PA 376, MCL 125.2681 to 125.2696, and
2 1974 PA 198, 207.551 to 207.572. This subparagraph does not apply
3 if the governing body of each local unit of government affected by
4 the property tax benefit approves the receipt of the property tax
5 benefit by resolution. As used in this subparagraph:

6 (A) "Applicable date" means the date specified in sub-sub-
7 subparagraph (I) or (II), as applicable:

8 (I) For a facility that is located on the property included in
9 a brownfield plan under the brownfield redevelopment financing act,
10 1996 PA 381, MCL 125.2651 to 125.2670, or on property that was once
11 an industrial site used primarily as a power plant to generate
12 electricity for sale, December 31, 2065.

13 (II) For any facility not described in sub-sub-subparagraph
14 (I), December 31, 2050.

15 (B) "Governing body" means the body in which the legislative
16 powers of a local unit of government are vested.

17 (C) "Local unit of government" means a city, village,
18 township, or county.

19 (D) "Property tax benefits" means any benefits that reduce the
20 property tax burden on the facility for purposes of encouraging
21 economic development, such as property tax exemptions, millage rate
22 or valuation reductions, and property tax capture, other than
23 property tax capture under a brownfield plan that has been approved
24 by the governing board under the brownfield redevelopment financing
25 act, 1996 PA 381, MCL 125.2651 to 125.2670, and that is in effect
26 at the time of the application under subsection (6) (a).

27 (vii) Not later than 3 years after being placed in service, the
28 facility will attain certification under, and the qualified entity
29 of the facility will certify to the Michigan strategic fund in

1 accordance with subsection (6)(c) that the facility has obtained
2 certification under, 1 or more of the following green building
3 standards:

4 (A) BREEAM for New Construction or BREEAM for In-Use.

5 (B) ENERGY STAR.

6 (C) Envision.

7 (D) ISO 50001 - energy management.

8 (E) LEED for Building Design and Construction or LEED for
9 Operations and Maintenance.

10 (F) Green Globes for New Construction or Green Globes for
11 Existing Buildings.

12 (G) UL 3223.

13 (viii) On being placed in service, the facility will use
14 municipal water sourced from a municipal water system that has
15 available capacity to serve the facility, and a qualified entity or
16 its affiliates claiming the exemption will certify to the Michigan
17 strategic fund in accordance with subsection (6)(c) that this
18 requirement is met.

19 (ix) At the time an exemption is claimed under subsection (4),
20 the facility will have procured or will procure clean energy as
21 that term is defined in section 51 of the clean and renewable
22 energy and energy waste reduction act, 2008 PA 295, MCL 460.1051,
23 equivalent to 90% of the facility's forecasted electricity usage on
24 an annual basis, and a qualified entity or its affiliates claiming
25 the exemption will certify to the Michigan strategic fund in
26 accordance with subsection (6)(c) that this requirement is met.
27 Demonstration that this requirement is met may be made by any of
28 the following and electric utilities, cooperative electric
29 utilities, and municipal utilities shall identify and, if

1 necessary, develop tariffs, contracts, and other mechanisms that
2 support the enterprise data center in making this demonstration:

3 (A) Self-supply through on-site generation that meets the
4 definition of renewable energy as that term is defined in section
5 11 of the clean and renewable energy and energy waste reduction
6 act, 2008 PA 295, MCL 460.1011.

7 (B) Long-term contract with the electric utility, cooperative
8 electric utility, or municipal utility serving the geographic area
9 where the facility is located, which ensures no costs to serve the
10 facility are passed onto other customers of the electric utility,
11 cooperative electricity utility, or municipal utility. This sub-
12 subparagraph shall not be interpreted to require the facility to be
13 allocated costs of network transmission upgrades that would
14 otherwise be allocated to other customers through the electric
15 utility, cooperative electric utility, or municipal utility's
16 generally applicable rate-making processes for the recovery of such
17 costs, such as power supply cost recovery proceedings under section
18 6j of 1939 PA 3, MCL 460.6j.

19 (C) Participation in a voluntary green pricing program as set
20 forth in section 61 of the clean and renewable energy and energy
21 waste reduction act, 2008 PA 295, MCL 460.1061.

22 (x) The facility will not take electric service under any of
23 the following rates:

24 (A) The long-term industrial load rate established under
25 section 10gg of 1939 PA 3, MCL 460.10gg, unless the designated
26 power supply resource on which the long-term industrial load rate
27 is based was placed in operation after January 1, 2024, and the
28 rate is at least equivalent to the average industrial rate charged
29 to other industrial customers of the electric utility that serves

1 the facility.

2 (B) A tariff rate approved in Michigan Public Service
3 Commission Case No. U-21160, U-21163, or U-21646.

4 (C) A rate that causes residential customers to subsidize the
5 costs incurred to provide electric service to the facility.

6 (f) Enterprise data center does not include a facility that
7 the Michigan strategic fund determines no longer meets, or is no
8 longer expected to meet within the time frame set forth in the
9 certificate, the requirements in subdivision (e).

10 (g) "Michigan economic development corporation" means that
11 term as defined in section 4 of the Michigan strategic fund act,
12 1984 PA 270, MCL 125.2004.

13 (h) "Michigan strategic fund" means the Michigan strategic
14 fund as described in the Michigan strategic fund act, 1984 PA 270,
15 MCL 125.2001 to 125.2094.

16 (i) ~~(d)~~—"Qualified data center" means a facility composed of 1
17 or more buildings located in this state and the facility is owned
18 or operated by an entity engaged at that facility in operating,
19 managing, or maintaining a group of networked computers or
20 networked facilities for the purpose of centralizing, or allowing 1
21 or more colocated businesses to centralize, the storage,
22 processing, management, or dissemination of data of 1 or more other
23 persons who is not an affiliate of the owner or operator of a
24 qualified data center or of a colocated business and the entity
25 receives 75% or more of its revenue from colocated businesses that
26 are not an affiliate of the owner or operator of the qualified data
27 center.

28 (j) "Qualified entity" means an applicant to whom a
29 certificate is issued for a particular enterprise data center

1 project under subsection (6) (a) and who is in compliance with the
2 requirements of subsections (5) and (6).

3 Enacting section 1. This amendatory act takes effect 90 days
4 after the date it is enacted into law.