

**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 (9) (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 subsection (5), beginning on the effective date
11 of the amendatory act that added this subsection through December
12 31, 2050 or, with respect to an enterprise data center subject to a
13 certificate that is located on the property included in a
14 brownfield plan under the brownfield redevelopment financing act,
15 1996 PA 381, MCL 125.2651 to 125.2670, or on property that was once
16 an industrial site used primarily as a power plant to generate
17 electricity for sale, through December 31, 2065, the storage, use,
18 or consumption of data center equipment sold to either of the
19 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 (9)(e) and
11 the anticipated time frame for doing so, which must not exceed 6
12 years. Within 120 days after receiving a complete and correct
13 application, the Michigan strategic fund or its designees, which
14 may include authorized employees, officers, and agents of the
15 Michigan strategic fund and employees of the Michigan economic
16 development corporation, shall review the application and either
17 issue a certificate to the applicant or provide written reasons for
18 its denial. The certificate must specify a time frame for a
19 facility to satisfy each of the criteria for an enterprise data
20 center under subsection (9)(e), which time frame must be the lesser
21 of 6 years or the time frame identified by the applicant on the
22 application. The Michigan strategic fund shall provide the
23 department with a copy of each certificate issued under this
24 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, the Michigan
11 strategic fund shall not disclose any information that is not
12 aggregated or any information that could be used to identify a
13 specific person or data center.

14 (c) Not later than 3 years after a facility for which a
15 certificate has been issued is placed in service, the qualified
16 entity of the facility shall certify to the Michigan strategic
17 fund, in the form and manner prescribed by the Michigan strategic
18 fund, that the facility has attained certification under 1 or more
19 of the green building standards described in subsection (9) (e) (vii).

20 (d) The Michigan strategic fund shall revoke a certificate
21 issued under subdivision (a) if it determines a facility no longer
22 meets the definition of an enterprise data center. If the Michigan
23 strategic fund determines revocation is appropriate, it shall
24 provide written notice to the qualified entity and the department
25 not less than 60 days, but not more than 180 days, before
26 revocation, notifying the qualified entity of its preliminary
27 determination to revoke the certificate and providing the qualified
28 entity an opportunity to demonstrate, within the time period
29 specified in the notice, that the facility continues to meet the

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

1 after the revocation.

2 (e) The Michigan strategic fund shall have the powers
3 necessary to charge and collect reasonable administrative fees to
4 effectuate the purpose of this section.

5 (7) A person engaged in the business of constructing,
6 altering, repairing, or improving real estate for others that has
7 claimed an exemption under subsection (4) (b) for a particular
8 facility must submit an annual summary report to the qualified
9 entity or former qualified entity to which a certificate for that
10 facility was issued on or before January 1 of each year that
11 provides, at a minimum, information sufficient to identify the
12 person that made the purchases and the purchase price of all items
13 purchased each month of that year. Such a person must also maintain
14 all invoices, bills of sale, or similar documents for all claimed
15 exempt purchases that indicate the date of purchase, the items
16 purchased, and the purchase price of the property that is
17 identified in the summary report for 4 years after the date of the
18 purchase. Except as otherwise provided in subsection (6) (b), the
19 Michigan strategic fund shall not disclose any information that is
20 not aggregated or any information that could be used to identify a
21 specific person or data center.

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

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

28 (b) Adopting practices to improve the energy efficiency of
29 existing data centers, including through upgrading and

1 consolidating technology, managing data center airflow, and
2 adjusting and improving heating, ventilation, and air conditioning
3 systems.

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

6 (i) Using water efficient fixtures and practices.

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

8 (iii) Recycling water before discharging.

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

11 (v) Using reclaimed water where possible for data center
12 operations.

13 (vi) Supporting water restoration in local watersheds.

14 (9) The Michigan Strategic Fund Board shall not issue any new
15 certificates of exemption under the provisions of this Section
16 after December 31, 2029. This sunset shall not affect any existing
17 certificates of exemption in effect on December 31, 2029.

18 (10) ~~(4)~~—As used in this section:

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

22 (b) "Certificate" means the document issued by the Michigan
23 strategic fund to an applicant under subsection (6)(a) that
24 certifies or otherwise establishes that the facility developed,
25 owned, and operated by the applicant or an affiliate of the
26 applicant, or to be developed, owned, and operated by the applicant
27 or an affiliate of the applicant, and identified in that document
28 qualifies as an enterprise data center under this section.

29 (c) ~~(b)~~—"Colocated business" means a person that has entered

1 into a contract with the owner or operator of a qualified data
2 center to use or deploy data center equipment physically located
3 within the qualified data center, **which contract, including all**
4 **renewals, has been in place** for a period of 1 or more years.

5 (d) ~~(e)~~—"Data center equipment" means only computers, servers,
6 routers, switches, peripheral computer devices, racks, shelving,
7 cabling, wiring, storage batteries, back-up generators,
8 uninterrupted power supply units, environmental control equipment,
9 other redundant power supply equipment, and prewritten computer
10 software used in operating, managing, or maintaining the qualified
11 data center **or enterprise data center** or the business of the
12 qualified data center or a colocated business. Data center
13 equipment also includes any construction materials used or
14 assembled **for the construction or modification of an enterprise**
15 **data center or**, under the qualified data center's proprietary
16 method, for the construction or modification of a qualified data
17 center, including, but not limited to, building materials,
18 infrastructure, machinery, wiring, cabling, devices, tools, and
19 equipment that would otherwise be considered a fixture or related
20 equipment. Data center equipment does not include any equipment
21 owned by a third party that is used to supply the qualified data
22 center's primary power.

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

- 27 (i) The facility is located in this state.
28 (ii) The facility is composed of 1 or more buildings.
29 (iii) The facility is designed and intended for housing, and

1 does house, data center equipment to centralize the storage and
2 processing of data.

3 (iv) The aggregate capital investment in the facility described
4 in this subdivision made by the qualified entity, and any of its
5 affiliates that will develop, own, and operate the facility, is not
6 less than \$250,000,000.00. As used in this subparagraph, "aggregate
7 capital investment" means the capital investment made and
8 maintained in the facility to the extent that investment results in
9 an increase in the total capital investment that the qualified
10 entity and its affiliates, in the aggregate, maintain in this state
11 when compared to the total capital investment that the applicant
12 and its affiliates, in the aggregate, maintained in this state
13 before issuance of the certificate, as determined and verified by
14 the Michigan strategic fund.

15 (v) The qualified entity and any of its affiliates, in the
16 aggregate, create and maintain a minimum of 30 qualified new jobs
17 in this state with an annual wage that is equal to 150% or more of
18 the prosperity region median wage through December 31, 2050 or, for
19 a facility that is located on the property included in a brownfield
20 plan under the brownfield redevelopment financing act, 1996 PA 381,
21 MCL 125.2651 to 125.2670, or on property that was once an
22 industrial site used primarily as a power plant to generate
23 electricity for sale, through December 31, 2065. As used in this
24 subparagraph:

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

28 (B) "Prosperity region median wage" means the median annual
29 wage for the prosperity region where the facility is located based

1 on the most recent data made available by the Michigan bureau of
2 labor market information and strategic initiatives.

3 (C) "Qualified new job" means a full-time job created by the
4 qualified entity or its affiliates at the facility that is in
5 excess of the number of full-time jobs that the applicant and its
6 affiliates maintained in this state before issuance of the
7 certificate, as determined and verified by the Michigan strategic
8 fund.

9 (vi) Except as otherwise provided in this subparagraph, the
10 facility does not receive and, through the applicable date, will
11 not receive any state or local property tax benefit, including, but
12 not limited to, property tax benefits available under the general
13 property tax act, 1893 PA 206, MCL 211.1 to 211.155, the Michigan
14 renaissance zone act, 1996 PA 376, MCL 125.2681 to 125.2696, and
15 1974 PA 198, 207.551 to 207.572. This subparagraph does not apply
16 if the governing body of each local unit of government affected by
17 the property tax benefit approves the receipt of the property tax
18 benefit by resolution. As used in this subparagraph:

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

21 (I) For a facility that is located on the property included in
22 a brownfield plan under the brownfield redevelopment financing act,
23 1996 PA 381, MCL 125.2651 to 125.2670, or on property that was once
24 an industrial site used primarily as a power plant to generate
25 electricity for sale, December 31, 2065.

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

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

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

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

11 (vii) Not later than 3 years after being placed in service, the
12 facility will attain certification under, and the qualified entity
13 of the facility will certify to the Michigan strategic fund in
14 accordance with subsection (6) (c) that the facility has obtained
15 certification under, 1 or more of the following green building
16 standards:

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

18 (B) ENERGY STAR.

19 (C) Envision.

20 (D) ISO 50001 - energy management.

21 (E) LEED for Building Design and Construction or LEED for
22 Operations and Maintenance.

23 (F) Green Globes for New Construction or Green Globes for
24 Existing Buildings.

25 (G) UL 3223.

26 (viii) Before the start of operations, the facility will use
27 municipal water or, if the facility cannot use municipal water
28 before the start of operations, the facility will develop a plan to
29 convert to using municipal water within 5 years after the start of

1 operations.

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

6 (g) "Michigan economic development corporation" means that
7 term as defined in section 4 of the Michigan strategic fund act,
8 1984 PA 270, MCL 125.2004.

9 (h) "Michigan strategic fund" means the Michigan strategic
10 fund as described in the Michigan strategic fund act, 1984 PA 270,
11 MCL 125.2001 to 125.2094.

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

24 (j) "Qualified entity" means an applicant to whom a
25 certificate is issued for a particular enterprise data center
26 project under subsection (6) (a) and who is in compliance with the
27 requirements of subsections (5) and (6).

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