

SESSION OF 2024

SUPPLEMENTAL NOTE ON SENATE BILL NO. 545

As Recommended by Senate Committee on
Commerce

Brief*

SB 545 would provide a sales tax exemption to certain firms making investments in a qualified data center, as defined by the bill.

The exemption would be for:

- Purchases for the development, acquisition, construction, and operation of a qualified data center made by a qualified firm, including, but not limited to, costs of:
 - Land or site improvements;
 - Buildings or modular data centers;
 - Data center equipment, including acquisition and permitting;
 - Lease payments;
 - Site characterization and assessment; and
 - Engineering and design;
- All electricity used by the qualified data center;
- Labor services pertaining to the installation and maintenance of data center equipment; and
- Purchases made by a contractor for the purposes of constructing or modifying a qualified data center for a qualified firm.

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

The bill would define “qualified data center” as one or more buildings constructed or modified in Kansas to house networked computer servers connected by a fiber transmission network for the purposes of centralizing data storage, management, and dissemination.

A “qualified firm” would be defined as a business registered in Kansas that is engaged in data processing, storage, and dissemination.

Duration

The duration of the sales tax exemption would vary depending on the size of investment in a qualified data center. The exemption would be valid:

- For investments of at least \$1 billion, indefinitely;
- For investments of at least \$800 million, 40 years after beginning construction; and
- For investments of at least \$600 million, 30 years after beginning construction.

Eligibility

In order to be eligible for the exemption, a qualified firm would be required to:

- Submit an application as required by the Secretary of Commerce (Secretary) and enter into an agreement upon approval;
- Commit to making an aggregate investment of at least \$600 million in a qualified data center to be completed within 5 calendar years of beginning its construction;

- Commit to begin construction of the project within 10 years of the agreement with the Secretary; and
- Create and maintain at least 20 new jobs at such data center within 2 calendar years of beginning operations.

The Secretary would be required to certify to the Secretary of Revenue when the qualified firm has met the conditions to receive the sales tax exemption and to provide notice if the exemption is modified, suspended, or terminated.

Additional Conditions

As a condition of receiving the exemption, the qualifying firm would be required to:

- Provide information required by the Secretary for:
 - Publication of the economic development incentive program database provided for in continuing law;
 - The Secretary's annual report required by continuing law; and
 - Periodic review of standing and eligibility as described below.
- Cooperate with audits undertaken by the Department of Revenue or an applicable third party as requested by the Secretary.

Periodic Review

The Secretary would be permitted to conduct a review every five years of the activity of a qualified firm to ensure good standing with the State and compliance with the requirements of the bill and any pursuant rules or regulations. The Secretary would be required to certify to the Secretary of

Revenue that firms receiving the exemption continue to meet qualifications for eligibility.

Confidential financial information and trade secrets necessary to protect legitimate competitive business interests would not be subject to disclosure, except that it would be required to be provided to the Legislative Division of Post Audit upon request.

Books and records pertaining to determination of eligibility would be required to be available for inspection during business hours by the Secretary or a duly authorized agent upon 60 days prior written notice.

Breach of Agreement

If the Secretary determines a breach in the agreement has occurred, the Secretary would be required to provide written notice the firm has 120 days to cure the breach. If the breach is not cured within 120 days, the Secretary could require the firm to repay all or a part of the amount of the sales tax exemption received and wholly or partially terminate the exemption.

Rules and Regulations Authority

The Secretary would be authorized to adopt rules and regulations pursuant to the implementation of the bill.

Background

The bill was introduced by the Senate Committee on Assessment and Taxation at the request of a representative of NetChoice.

Senate Committee on Commerce

In the Senate Committee hearing, **proponent** testimony was provided by representatives of NetChoice and Polsinelli PC. The proponents generally stated the bill would incentivize data center investments in Kansas, which would result in substantial long-term economic impacts to the state, including the attraction of firms in economic sectors that rely on infrastructure provided by the presence of data centers.

Written-only proponent testimony was submitted by a representative of the Wyandotte Economic Development Council.

No other testimony was provided.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on the bill, the Department of Revenue indicates enactment of the bill would have the potential to reduce state revenues to the State General Fund and State Highway Fund by unknown amounts beginning in FY 2024.

The Department of Commerce indicates administrative costs associated with enactment of the bill would likely be accomplished within existing staff levels and resources.

Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2025 Governor's Budget Report*.

Economic development; data centers; tax exemptions; sales tax