

# SENATE BILL NO. 238

March 23, 2023, Introduced by Senators VICTORY, BELLINO, HERTEL, WOJNO, KLINEFELT and SANTANA and referred to the Committee on Finance, Insurance, and Consumer Protection.

A bill to amend 1933 PA 167, entitled  
"General sales tax act,"  
by amending section 4ee (MCL 205.54ee), as added by 2015 PA 251.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 4ee. (1) Subject to subsections (2) and (3), beginning  
2       January 1, 2016 through December 31, ~~2035~~, **2050**, a sale of data  
3       center equipment to the owner or operator of a qualified data  
4       center or a colocated business for assembly, use, or consumption in  
5       the operations of the qualified data center or a sale of data  
6       center equipment to a person engaged in the business of

1 constructing, altering, repairing, or improving real estate for  
 2 others to the extent the data center equipment is to be affixed to  
 3 or made a structural part of a qualified data center is exempt from  
 4 the tax under this act.

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

25 (3) The exemption under ~~this section only~~ **subsection (1)**  
 26 continues to apply after January 1, 2026, **only** if the numbers  
 27 gathered by the local economic development corporations are  
 28 certified and reported to the ~~department of talent and economic~~  
 29 ~~development~~ **Michigan strategic fund** and subsequently forwarded to

1 the department and demonstrate that the qualified data centers, the  
2 colocated businesses, and the contractors of the qualified data  
3 centers, collectively, have, in aggregate, established in this  
4 state at least 1,000 data center industry jobs or data center  
5 industry related jobs, or a combination of both, since January 1,  
6 2016. ~~The department of talent and economic development~~ **Michigan**  
7 **strategic fund** shall submit a report no later than April 1, 2026  
8 related to the number of data center industry jobs or data center  
9 industry related jobs that have been established since January 1,  
10 2016 to the speaker and minority leader of the house of  
11 representatives, the majority and minority leaders of the senate,  
12 and the governor.

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

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

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

1 certificate.

2 (5) In order for a purchaser to claim an exemption under  
3 subsection (4), at the time the data center equipment is sold to  
4 the purchaser, the qualified entity must have received a  
5 certificate for that facility which is in good standing.

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

8 (a) A person seeking a certificate for an enterprise data  
9 center must apply to the Michigan strategic fund on a form and in  
10 the manner prescribed by the Michigan strategic fund. The  
11 application must include an affirmation signed by the applicant  
12 stating that it expects the facility to satisfy each of the  
13 criteria for an enterprise data center under subsection (8) (e) and  
14 the anticipated time frame for doing so. Within 120 days after  
15 receiving a complete and correct application, the Michigan  
16 strategic fund shall review the application and either issue a  
17 certificate to the applicant or provide written reasons for its  
18 denial. The certificate must specify a time frame for a facility to  
19 satisfy each of the criteria for an enterprise data center under  
20 subsection (8) (e). The Michigan strategic fund shall provide the  
21 department with a copy of each certificate issued under this  
22 section.

23 (b) The qualified entity of a facility for which a certificate  
24 has been issued shall report to the Michigan strategic fund all  
25 information required by the Michigan strategic fund regarding  
26 purchases for which an exemption is claimed under subsection (4)  
27 and such other information as may be required by the Michigan  
28 strategic fund to determine whether the facility continues to  
29 qualify as an enterprise data center. The report required by this

1 subdivision is subject to audit and must be made on an annual basis  
2 following issuance of the certificate. The report required by this  
3 subdivision must not include any remittance for tax and does not  
4 constitute a return or otherwise alleviate any obligations under  
5 section 6.

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

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

17 (7) A person engaged in the business of constructing,  
18 altering, repairing, or improving real estate for others that has  
19 claimed an exemption under subsection (4) (b) for a particular  
20 facility must submit an annual summary report to the qualified  
21 entity or former qualified entity to which a certificate for that  
22 facility was issued on or before January 1 of each year that  
23 provides, at a minimum, information sufficient to identify the  
24 person that made the purchases and the sales price of all items  
25 purchased each month of that year. Such a person must also maintain  
26 all invoices, bills of sale, or similar documents for all claimed  
27 exempt purchases that indicate the date of purchase, the items  
28 purchased, and the sales price of the property that is identified  
29 in the summary report for 4 years after the date of the purchase.

1           (8) ~~(4)~~—As used in this section:

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

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

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

16           (d) ~~(e)~~—"Data center equipment" means only computers, servers,  
17 routers, switches, peripheral computer devices, racks, shelving,  
18 cabling, wiring, storage batteries, back-up generators,  
19 uninterrupted power supply units, environmental control equipment,  
20 other redundant power supply equipment, and prewritten computer  
21 software used in operating, managing, or maintaining the qualified  
22 data center **or enterprise data center** or the business of the  
23 qualified data center or a colocated business. Data center  
24 equipment also includes any construction materials used or  
25 assembled **for the construction or modification of an enterprise  
26 data center or**, under the qualified data center's proprietary  
27 method, for the construction or modification of a qualified data  
28 center, including, but not limited to, building materials,  
29 infrastructure, machinery, wiring, cabling, devices, tools, and

1 equipment that would otherwise be considered a fixture or related  
2 equipment. Data center equipment does not include any equipment  
3 owned by a third party that is used to supply the qualified data  
4 center's primary power.

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

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

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

11 (iii) The facility is primarily designed and intended for  
12 housing, and does house, data center equipment to centralize the  
13 storage and processing of the qualified entity's or any of its  
14 affiliates' own data, and is developed, owned, and operated by a  
15 qualified entity or any of its affiliates for the qualified  
16 entity's or any of its affiliates' exclusive use. As used in this  
17 subparagraph, "exclusive use" includes use by contractors of the  
18 qualified entity or its affiliates for or on behalf of the  
19 qualified entity or its affiliates.

20 (iv) The aggregate capital investment in the facility described  
21 in this subdivision made by the qualified entity, and any of its  
22 affiliates that will develop, own, and operate the facility, is not  
23 less than \$250,000,000.00.

24 (v) The qualified entity and any of its affiliates, in the  
25 aggregate, create and maintain a total of 30 or more qualified new  
26 jobs through December 31, 2050 or, for a facility that is located  
27 on the property included in a brownfield plan under the brownfield  
28 redevelopment financing act, 1996 PA 381, MCL 125.2651 to 125.2670,  
29 or on property that was once an industrial site used primarily as a



1 power plant to generate electricity for sale, through December 31,  
2 2065, with wage rates exceeding 120% of the county average wage.

3 (vi) All qualified new jobs are held by individuals who reside  
4 in this state.

5 (vii) Fifty percent of the qualified new jobs are composed of  
6 individuals with an associate's, bachelor's, or advanced degree in  
7 the field of science, technology, engineering, or mathematics, or  
8 individuals licensed, registered, or certified under the skilled  
9 trades regulation act, 2016 PA 407, MCL 339.5101 to 339.6133. As  
10 used in this subdivision:

11 (A) "Aggregate capital investment" means capital investment  
12 made and maintained in the facility to the extent that investment  
13 results in an increase in the total capital investment that the  
14 qualified entity and its affiliates, in the aggregate, maintain in  
15 this state when compared to the total capital investment that the  
16 applicant and its affiliates, in the aggregate, maintained in this  
17 state before issuance of the certificate, as determined and  
18 verified by the Michigan strategic fund.

19 (B) "County average wage" means the average annual wage for  
20 the county where the facility is located based on the most recent  
21 data made available by the Michigan bureau of labor market  
22 information and strategic initiatives. If the facility is located  
23 in more than 1 county, the county average wage shall be based  
24 solely on the average annual wage for the county with the highest  
25 average annual wage, from among the applicable counties, based on  
26 the most recent data made available by the Michigan bureau of labor  
27 market information and strategic initiatives.

28 (C) "Qualified new job" means a full-time job created by the  
29 qualified entity or its affiliates at the facility that is in

1 excess of the number of full-time jobs that the applicant and its  
2 affiliates maintained at the project location before issuance of  
3 the certificate, as determined and verified by the Michigan  
4 strategic fund.

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

9 (g) "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 (h) ~~(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 that 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 (i) "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.