

HB-4906, Senate Concurred, December 12, 2024

HB-4906, House Concurred, November 13, 2024

HB-4906, As Amended, September 25, 2024

**HOUSE SUBSTITUTE FOR SENATE SUBSTITUTE FOR
HOUSE BILL NO. 4906**

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
7 constructing, altering, repairing, or improving real estate for
8 others to the extent the data center equipment is to be affixed to

1 or made a structural part of a qualified data center is exempt from
2 the tax under this act.

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

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

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

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

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

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

29 (5) In order for a purchaser to claim an exemption under

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

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

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

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

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

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

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

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

29 (iii) At the time an exemption is claimed under subsection (4) ,

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

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

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

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

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

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

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

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

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

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

24 (i) Using water efficient fixtures and practices.

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

26 (iii) Recycling water before discharging.

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

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

1 operations.

2 (vi) Supporting water restoration in local watersheds.

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

7 (10) ~~(4)~~—As used in this section:

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

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

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

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

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

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

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

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

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

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. As used in this subparagraph, "aggregate
24 capital investment" means the capital investment made and
25 maintained in the facility to the extent that investment results in
26 an increase in the total capital investment that the qualified
27 entity and its affiliates, in the aggregate, maintain in this state
28 when compared to the total capital investment that the qualified
29 entity and its affiliates, in the aggregate, maintained in this

1 state before issuance of the certificate, as determined and
2 verified by the Michigan strategic fund.

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

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

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

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

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

1 property tax act, 1893 PA 206, MCL 211.1 to 211.155, the Michigan
 2 renaissance zone act, 1996 PA 376, MCL 125.2681 to 125.2696, and
 3 1974 PA 198, 207.551 to 207.572. This subparagraph does not apply
 4 if the governing body of each local unit of government affected by
 5 the property tax benefit approves the receipt of the property tax
 6 benefit by resolution. As used in this subparagraph:

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

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

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

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

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

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

28 (vii) Not later than 3 years after being placed in service, the
 29 facility will attain certification under, and the qualified entity

1 of the facility will certify to the Michigan strategic fund in
2 accordance with subsection (6)(c) that the facility has obtained
3 certification under, 1 or more of the following green building
4 standards:

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

6 (B) ENERGY STAR.

7 (C) Envision.

8 (D) ISO 50001 - energy management.

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

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

13 (G) UL 3223.

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

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

1 utilities, and municipal utilities shall identify and, if
2 necessary, develop tariffs, contracts, and other mechanisms that
3 support the enterprise data center in making this demonstration:

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

8 (B) Long-term contract with the electric utility, cooperative
9 electric utility, or municipal utility serving the geographic area
10 where the facility is located, which ensures no costs to serve the
11 facility are passed onto other customers of the electric utility,
12 cooperative electricity utility, or municipal utility. This sub-
13 subparagraph shall not be interpreted to require the facility to be
14 allocated costs of network transmission upgrades that would
15 otherwise be allocated to other customers through the electric
16 utility, cooperative electric utility, or municipal utility's
17 generally applicable rate-making processes for the recovery of such
18 costs, such as power supply cost recovery proceedings under section
19 6j of 1939 PA 3, MCL 460.6j.

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

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

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

1 to other industrial customers of the electric utility that serves
2 the facility.

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

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

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

11 (g) "Michigan economic development corporation" means that
12 term as defined in section 4 of the Michigan strategic fund act,
13 1984 PA 270, MCL 125.2004.

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

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

29 (j) "Qualified entity" means an applicant to whom a

1 certificate is issued for a particular enterprise data center
2 project under subsection (6) (a) and who is in compliance with the
3 requirements of subsections (5) and (6).

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