

House \_\_\_\_\_ Amendment NO. \_\_\_\_\_

**Offered By**

1 AMEND House Committee Substitute for Senate Committee Substitute for Senate Bill No. 908,  
2 Page 38, Section 137.115, Line 210, by inserting after all of said section and line the following:  
3

4 "144.030. 1. There is hereby specifically exempted from the provisions of sections 144.010  
5 to 144.525 and from the computation of the tax levied, assessed or payable pursuant to sections  
6 144.010 to 144.525 such retail sales as may be made in commerce between this state and any other  
7 state of the United States, or between this state and any foreign country, and any retail sale which  
8 the state of Missouri is prohibited from taxing pursuant to the Constitution or laws of the United  
9 States of America, and such retail sales of tangible personal property which the general assembly of  
10 the state of Missouri is prohibited from taxing or further taxing by the constitution of this state.

11 2. There are also specifically exempted from the provisions of the local sales tax law as  
12 defined in section 32.085, section 238.235, and sections 144.010 to 144.525 and 144.600 to 144.761  
13 and from the computation of the tax levied, assessed or payable pursuant to the local sales tax law as  
14 defined in section 32.085, section 238.235, and sections 144.010 to 144.525 and 144.600 to  
15 144.745:

16 (1) Motor fuel or special fuel subject to an excise tax of this state, unless all or part of such  
17 excise tax is refunded pursuant to section 142.824; or upon the sale at retail of fuel to be consumed  
18 in manufacturing or creating gas, power, steam, electrical current or in furnishing water to be sold  
19 ultimately at retail; or feed for livestock or poultry; or grain to be converted into foodstuffs which  
20 are to be sold ultimately in processed form at retail; or seed, limestone or fertilizer which is to be  
21 used for seeding, liming or fertilizing crops which when harvested will be sold at retail or will be  
22 fed to livestock or poultry to be sold ultimately in processed form at retail; economic poisons  
23 registered pursuant to the provisions of the Missouri pesticide registration law, sections 281.220 to  
24 281.310, which are to be used in connection with the growth or production of crops, fruit trees or  
25 orchards applied before, during, or after planting, the crop of which when harvested will be sold at  
26 retail or will be converted into foodstuffs which are to be sold ultimately in processed form at retail;

27 (2) Materials, manufactured goods, machinery and parts which when used in manufacturing,  
28 processing, compounding, mining, producing or fabricating become a component part or ingredient  
29 of the new personal property resulting from such manufacturing, processing, compounding, mining,  
30 producing or fabricating and which new personal property is intended to be sold ultimately for final

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1 use or consumption; and materials, including without limitation, gases and manufactured goods,  
2 including without limitation slagging materials and firebrick, which are ultimately consumed in the  
3 manufacturing process by blending, reacting or interacting with or by becoming, in whole or in part,  
4 component parts or ingredients of steel products intended to be sold ultimately for final use or  
5 consumption;

6 (3) Materials, replacement parts and equipment purchased for use directly upon, and for the  
7 repair and maintenance or manufacture of, motor vehicles, watercraft, railroad rolling stock or  
8 aircraft engaged as common carriers of persons or property;

9 (4) Replacement machinery, equipment, and parts and the materials and supplies solely  
10 required for the installation or construction of such replacement machinery, equipment, and parts,  
11 used directly in manufacturing, mining, fabricating or producing a product which is intended to be  
12 sold ultimately for final use or consumption; and machinery and equipment, and the materials and  
13 supplies required solely for the operation, installation or construction of such machinery and  
14 equipment, purchased and used to establish new, or to replace or expand existing, material recovery  
15 processing plants in this state. For the purposes of this subdivision, a "material recovery processing  
16 plant" means a facility that has as its primary purpose the recovery of materials into a usable product  
17 or a different form which is used in producing a new product and shall include a facility or  
18 equipment which are used exclusively for the collection of recovered materials for delivery to a  
19 material recovery processing plant but shall not include motor vehicles used on highways. For  
20 purposes of this section, the terms motor vehicle and highway shall have the same meaning pursuant  
21 to section 301.010. For the purposes of this subdivision, subdivision (5) of this subsection, and  
22 section 144.054, as well as the definition in subdivision (9) of subsection 1 of section 144.010, the  
23 term "product" includes telecommunications services and the term "manufacturing" shall include the  
24 production, or production and transmission, of telecommunications services. The preceding  
25 sentence does not make a substantive change in the law and is intended to clarify that the term  
26 "manufacturing" has included and continues to include the production and transmission of  
27 "telecommunications services", as enacted in this subdivision and subdivision (5) of this subsection,  
28 as well as the definition in subdivision (9) of subsection 1 of section 144.010. The preceding two  
29 sentences reaffirm legislative intent consistent with the interpretation of this subdivision and  
30 subdivision (5) of this subsection in *Southwestern Bell Tel. Co. v. Director of Revenue*, 78 S.W.3d  
31 763 (Mo. banc 2002) and *Southwestern Bell Tel. Co. v. Director of Revenue*, 182 S.W.3d 226 (Mo.  
32 banc 2005), and accordingly abrogates the Missouri supreme court's interpretation of those  
33 exemptions in *IBM Corporation v. Director of Revenue*, 491 S.W.3d 535 (Mo. banc 2016) to the  
34 extent inconsistent with this section and *Southwestern Bell Tel. Co. v. Director of Revenue*, 78  
35 S.W.3d 763 (Mo. banc 2002) and *Southwestern Bell Tel. Co. v. Director of Revenue*, 182 S.W.3d 226  
36 (Mo. banc 2005). The construction and application of this subdivision as expressed by the Missouri  
37 supreme court in *DST Systems, Inc. v. Director of Revenue*, 43 S.W.3d 799 (Mo. banc 2001);  
38 *Southwestern Bell Tel. Co. v. Director of Revenue*, 78 S.W.3d 763 (Mo. banc 2002); and  
39 *Southwestern Bell Tel. Co. v. Director of Revenue*, 182 S.W.3d 226 (Mo. banc 2005), is hereby

1 affirmed. Material recovery is not the reuse of materials within a manufacturing process or the use  
2 of a product previously recovered. The material recovery processing plant shall qualify under the  
3 provisions of this section regardless of ownership of the material being recovered;

4 (5) Machinery and equipment, and parts and the materials and supplies solely required for  
5 the installation or construction of such machinery and equipment, purchased and used to establish  
6 new or to expand existing manufacturing, mining or fabricating plants in the state if such machinery  
7 and equipment is used directly in manufacturing, mining or fabricating a product which is intended  
8 to be sold ultimately for final use or consumption. The construction and application of this  
9 subdivision as expressed by the Missouri supreme court in *DST Systems, Inc. v. Director of Revenue*,  
10 43 S.W.3d 799 (Mo. banc 2001); *Southwestern Bell Tel. Co. v. Director of Revenue*, 78 S.W.3d 763  
11 (Mo. banc 2002); and *Southwestern Bell Tel. Co. v. Director of Revenue*, 182 S.W.3d 226 (Mo. banc  
12 2005), is hereby affirmed;

13 (6) Tangible personal property which is used exclusively in the manufacturing, processing,  
14 modification or assembling of products sold to the United States government or to any agency of the  
15 United States government;

16 (7) Animals or poultry used for breeding or feeding purposes, or captive wildlife;

17 (8) Newsprint, ink, computers, photosensitive paper and film, toner, printing plates and  
18 other machinery, equipment, replacement parts and supplies used in producing newspapers  
19 published for dissemination of news to the general public;

20 (9) The rentals of films, records or any type of sound or picture transcriptions for public  
21 commercial display;

22 (10) Pumping machinery and equipment used to propel products delivered by pipelines  
23 engaged as common carriers;

24 (11) Railroad rolling stock for use in transporting persons or property in interstate  
25 commerce and motor vehicles licensed for a gross weight of twenty-four thousand pounds or more  
26 or trailers used by common carriers, as defined in section 390.020, in the transportation of persons  
27 or property;

28 (12) Electrical energy used in the actual primary manufacture, processing, compounding,  
29 mining or producing of a product, or electrical energy used in the actual secondary processing or  
30 fabricating of the product, or a material recovery processing plant as defined in subdivision (4) of  
31 this subsection, in facilities owned or leased by the taxpayer, if the total cost of electrical energy so  
32 used exceeds ten percent of the total cost of production, either primary or secondary, exclusive of  
33 the cost of electrical energy so used or if the raw materials used in such processing contain at least  
34 twenty-five percent recovered materials as defined in section 260.200. There shall be a rebuttable  
35 presumption that the raw materials used in the primary manufacture of automobiles contain at least  
36 twenty-five percent recovered materials. For purposes of this subdivision, "processing" means any  
37 mode of treatment, act or series of acts performed upon materials to transform and reduce them to a  
38 different state or thing, including treatment necessary to maintain or preserve such processing by the  
39 producer at the production facility;

1           (13) Anodes which are used or consumed in manufacturing, processing, compounding,  
2 mining, producing or fabricating and which have a useful life of less than one year;

3           (14) Machinery, equipment, appliances and devices purchased or leased and used solely for  
4 the purpose of preventing, abating or monitoring air pollution, and materials and supplies solely  
5 required for the installation, construction or reconstruction of such machinery, equipment,  
6 appliances and devices;

7           (15) Machinery, equipment, appliances and devices purchased or leased and used solely for  
8 the purpose of preventing, abating or monitoring water pollution, and materials and supplies solely  
9 required for the installation, construction or reconstruction of such machinery, equipment,  
10 appliances and devices;

11           (16) Tangible personal property purchased by a rural water district;

12           (17) All amounts paid or charged for admission or participation or other fees paid by or  
13 other charges to individuals in or for any place of amusement, entertainment or recreation, games or  
14 athletic events, including museums, fairs, zoos and planetariums, owned or operated by a  
15 municipality or other political subdivision where all the proceeds derived therefrom benefit the  
16 municipality or other political subdivision and do not inure to any private person, firm, or  
17 corporation, provided, however, that a municipality or other political subdivision may enter into  
18 revenue-sharing agreements with private persons, firms, or corporations providing goods or  
19 services, including management services, in or for the place of amusement, entertainment or  
20 recreation, games or athletic events, and provided further that nothing in this subdivision shall  
21 exempt from tax any amounts retained by any private person, firm, or corporation under such  
22 revenue-sharing agreement;

23           (18) All sales of insulin, and all sales, rentals, repairs, and parts of durable medical  
24 equipment, prosthetic devices, and orthopedic devices as defined on January 1, 1980, by the federal  
25 Medicare program pursuant to Title XVIII of the Social Security Act of 1965, including the items  
26 specified in Section 1862(a)(12) of that act, and also specifically including hearing aids and hearing  
27 aid supplies and all sales of drugs which may be legally dispensed by a licensed pharmacist only  
28 upon a lawful prescription of a practitioner licensed to administer those items, including samples  
29 and materials used to manufacture samples which may be dispensed by a practitioner authorized to  
30 dispense such samples and all sales or rental of medical oxygen, home respiratory equipment and  
31 accessories including parts, and hospital beds and accessories and ambulatory aids including parts,  
32 and all sales or rental of manual and powered wheelchairs including parts, and stairway lifts, Braille  
33 writers, electronic Braille equipment and, if purchased or rented by or on behalf of a person with  
34 one or more physical or mental disabilities to enable them to function more independently, all sales  
35 or rental of scooters including parts, and reading machines, electronic print enlargers and  
36 magnifiers, electronic alternative and augmentative communication devices, and items used solely  
37 to modify motor vehicles to permit the use of such motor vehicles by individuals with disabilities or  
38 sales of over-the-counter or nonprescription drugs to individuals with disabilities, and drugs  
39 required by the Food and Drug Administration to meet the over-the-counter drug product labeling

requirements in 21 CFR 201.66, or its successor, as prescribed by a health care practitioner licensed to prescribe;

(19) All sales made by or to religious and charitable organizations and institutions in their religious, charitable or educational functions and activities and all sales made by or to all elementary and secondary schools operated at public expense in their educational functions and activities;

(20) All sales of aircraft to common carriers for storage or for use in interstate commerce and all sales made by or to not-for-profit civic, social, service or fraternal organizations, including fraternal organizations which have been declared tax-exempt organizations pursuant to Section 501(c)(8) or (10) of the 1986 Internal Revenue Code, as amended, in their civic or charitable functions and activities and all sales made to eleemosynary and penal institutions and industries of the state, and all sales made to any private not-for-profit institution of higher education not otherwise excluded pursuant to subdivision (19) of this subsection or any institution of higher education supported by public funds, and all sales made to a state relief agency in the exercise of relief functions and activities;

(21) All ticket sales made by benevolent, scientific and educational associations which are formed to foster, encourage, and promote progress and improvement in the science of agriculture and in the raising and breeding of animals, and by nonprofit summer theater organizations if such organizations are exempt from federal tax pursuant to the provisions of the Internal Revenue Code and all admission charges and entry fees to the Missouri state fair or any fair conducted by a county agricultural and mechanical society organized and operated pursuant to sections 262.290 to 262.530;

(22) All sales made to any private not-for-profit elementary or secondary school, all sales of feed additives, medications or vaccines administered to livestock or poultry in the production of food or fiber, all sales of pesticides used in the production of crops, livestock or poultry for food or fiber, all sales of bedding used in the production of livestock or poultry for food or fiber, all sales of propane or natural gas, electricity or diesel fuel used exclusively for drying agricultural crops, natural gas used in the primary manufacture or processing of fuel ethanol as defined in section 142.028, natural gas, propane, and electricity used by an eligible new generation cooperative or an eligible new generation processing entity as defined in section 348.432, and all sales of farm machinery and equipment, other than airplanes, motor vehicles and trailers, and any freight charges on any exempt item. As used in this subdivision, the term "feed additives" means tangible personal property which, when mixed with feed for livestock or poultry, is to be used in the feeding of livestock or poultry. As used in this subdivision, the term "pesticides" includes adjuvants such as crop oils, surfactants, wetting agents and other assorted pesticide carriers used to improve or enhance the effect of a pesticide and the foam used to mark the application of pesticides and herbicides for the production of crops, livestock or poultry. As used in this subdivision, the term "farm machinery and equipment" ~~[means]~~ shall mean:

(a) New or used farm tractors and such other new or used farm machinery and equipment, including utility vehicles used for any agricultural use, and repair or replacement parts thereon and any accessories for and upgrades to such farm machinery and equipment~~[-]~~ and rotary mowers used

1 ~~[exclusively]~~ for any agricultural purposes~~[-and]~~;

2 (b) Supplies and lubricants used exclusively, solely, and directly for producing crops, raising  
3 and feeding livestock, fish, poultry, pheasants, chukar, quail, or for producing milk for ultimate sale  
4 at retail, including field drain tile~~[-]~~; and

5 (c) One-half of each purchaser's purchase of diesel fuel therefor which is:

6 ~~[(a)]~~ a. Used exclusively for agricultural purposes;

7 ~~[(b)]~~ b. Used on land owned or leased for the purpose of producing farm products; and

8 ~~[(c)]~~ c. Used directly in producing farm products to be sold ultimately in processed form or  
9 otherwise at retail or in producing farm products to be fed to livestock or poultry to be sold  
10 ultimately in processed form at retail;

11  
12 For the purposes of this subdivision, "utility vehicle" shall mean any motorized vehicle  
13 manufactured and used exclusively for off-highway use which is more than fifty inches but no more  
14 than eighty inches in width, measured from outside of tire rim to outside of tire rim, with an unladen  
15 dry weight of three thousand five hundred pounds or less, traveling on four or six wheels.

16 (23) Except as otherwise provided in section 144.032, all sales of metered water service,  
17 electricity, electrical current, natural, artificial or propane gas, wood, coal or home heating oil for  
18 domestic use and in any city not within a county, all sales of metered or unmetered water service for  
19 domestic use:

20 (a) "Domestic use" means that portion of metered water service, electricity, electrical  
21 current, natural, artificial or propane gas, wood, coal or home heating oil, and in any city not within  
22 a county, metered or unmetered water service, which an individual occupant of a residential  
23 premises uses for nonbusiness, noncommercial or nonindustrial purposes. Utility service through a  
24 single or master meter for residential apartments or condominiums, including service for common  
25 areas and facilities and vacant units, shall be deemed to be for domestic use. Each seller shall  
26 establish and maintain a system whereby individual purchases are determined as exempt or  
27 nonexempt;

28 (b) Regulated utility sellers shall determine whether individual purchases are exempt or  
29 nonexempt based upon the seller's utility service rate classifications as contained in tariffs on file  
30 with and approved by the Missouri public service commission. Sales and purchases made pursuant  
31 to the rate classification "residential" and sales to and purchases made by or on behalf of the  
32 occupants of residential apartments or condominiums through a single or master meter, including  
33 service for common areas and facilities and vacant units, shall be considered as sales made for  
34 domestic use and such sales shall be exempt from sales tax. Sellers shall charge sales tax upon the  
35 entire amount of purchases classified as nondomestic use. The seller's utility service rate  
36 classification and the provision of service thereunder shall be conclusive as to whether or not the  
37 utility must charge sales tax;

38 (c) Each person making domestic use purchases of services or property and who uses any  
39 portion of the services or property so purchased for a nondomestic use shall, by the fifteenth day of

1 the fourth month following the year of purchase, and without assessment, notice or demand, file a  
2 return and pay sales tax on that portion of nondomestic purchases. Each person making  
3 nondomestic purchases of services or property and who uses any portion of the services or property  
4 so purchased for domestic use, and each person making domestic purchases on behalf of occupants  
5 of residential apartments or condominiums through a single or master meter, including service for  
6 common areas and facilities and vacant units, under a nonresidential utility service rate  
7 classification may, between the first day of the first month and the fifteenth day of the fourth month  
8 following the year of purchase, apply for credit or refund to the director of revenue and the director  
9 shall give credit or make refund for taxes paid on the domestic use portion of the purchase. The  
10 person making such purchases on behalf of occupants of residential apartments or condominiums  
11 shall have standing to apply to the director of revenue for such credit or refund;

12 (24) All sales of handicraft items made by the seller or the seller's spouse if the seller or the  
13 seller's spouse is at least sixty-five years of age, and if the total gross proceeds from such sales do  
14 not constitute a majority of the annual gross income of the seller;

15 (25) Excise taxes, collected on sales at retail, imposed by Sections 4041, 4071, 4081, 4091,  
16 4161, 4181, 4251, 4261 and 4271 of Title 26, United States Code. The director of revenue shall  
17 promulgate rules pursuant to chapter 536 to eliminate all state and local sales taxes on such excise  
18 taxes;

19 (26) Sales of fuel consumed or used in the operation of ships, barges, or waterborne vessels  
20 which are used primarily in or for the transportation of property or cargo, or the conveyance of  
21 persons for hire, on navigable rivers bordering on or located in part in this state, if such fuel is  
22 delivered by the seller to the purchaser's barge, ship, or waterborne vessel while it is afloat upon  
23 such river;

24 (27) All sales made to an interstate compact agency created pursuant to sections 70.370 to  
25 70.441 or sections 238.010 to 238.100 in the exercise of the functions and activities of such agency  
26 as provided pursuant to the compact;

27 (28) Computers, computer software and computer security systems purchased for use by  
28 architectural or engineering firms headquartered in this state. For the purposes of this subdivision,  
29 "headquartered in this state" means the office for the administrative management of at least four  
30 integrated facilities operated by the taxpayer is located in the state of Missouri;

31 (29) All livestock sales when either the seller is engaged in the growing, producing or  
32 feeding of such livestock, or the seller is engaged in the business of buying and selling, bartering or  
33 leasing of such livestock;

34 (30) All sales of barges which are to be used primarily in the transportation of property or  
35 cargo on interstate waterways;

36 (31) Electrical energy or gas, whether natural, artificial or propane, water, or other utilities  
37 which are ultimately consumed in connection with the manufacturing of cellular glass products or in  
38 any material recovery processing plant as defined in subdivision (4) of this subsection;

39 (32) Notwithstanding other provisions of law to the contrary, all sales of pesticides or

1 herbicides used in the production of crops, aquaculture, livestock or poultry;

2 (33) Tangible personal property and utilities purchased for use or consumption directly or  
3 exclusively in the research and development of agricultural/biotechnology and plant genomics  
4 products and prescription pharmaceuticals consumed by humans or animals;

5 (34) All sales of grain bins for storage of grain for resale;

6 (35) All sales of feed which are developed for and used in the feeding of pets owned by a  
7 commercial breeder when such sales are made to a commercial breeder, as defined in section  
8 273.325, and licensed pursuant to sections 273.325 to 273.357;

9 (36) All purchases by a contractor on behalf of an entity located in another state, provided  
10 that the entity is authorized to issue a certificate of exemption for purchases to a contractor under the  
11 provisions of that state's laws. For purposes of this subdivision, the term "certificate of exemption"  
12 shall mean any document evidencing that the entity is exempt from sales and use taxes on purchases  
13 pursuant to the laws of the state in which the entity is located. Any contractor making purchases on  
14 behalf of such entity shall maintain a copy of the entity's exemption certificate as evidence of the  
15 exemption. If the exemption certificate issued by the exempt entity to the contractor is later  
16 determined by the director of revenue to be invalid for any reason and the contractor has accepted  
17 the certificate in good faith, neither the contractor or the exempt entity shall be liable for the  
18 payment of any taxes, interest and penalty due as the result of use of the invalid exemption  
19 certificate. Materials shall be exempt from all state and local sales and use taxes when purchased by  
20 a contractor for the purpose of fabricating tangible personal property which is used in fulfilling a  
21 contract for the purpose of constructing, repairing or remodeling facilities for the following:

22 (a) An exempt entity located in this state, if the entity is one of those entities able to issue  
23 project exemption certificates in accordance with the provisions of section 144.062; or

24 (b) An exempt entity located outside the state if the exempt entity is authorized to issue an  
25 exemption certificate to contractors in accordance with the provisions of that state's law and the  
26 applicable provisions of this section;

27 (37) All sales or other transfers of tangible personal property to a lessor who leases the  
28 property under a lease of one year or longer executed or in effect at the time of the sale or other  
29 transfer to an interstate compact agency created pursuant to sections 70.370 to 70.441 or sections  
30 238.010 to 238.100;

31 (38) Sales of tickets to any collegiate athletic championship event that is held in a facility  
32 owned or operated by a governmental authority or commission, a quasi-governmental agency, a  
33 state university or college or by the state or any political subdivision thereof, including a  
34 municipality, and that is played on a neutral site and may reasonably be played at a site located  
35 outside the state of Missouri. For purposes of this subdivision, "neutral site" means any site that is  
36 not located on the campus of a conference member institution participating in the event;

37 (39) All purchases by a sports complex authority created under section 64.920, and all sales  
38 of utilities by such authority at the authority's cost that are consumed in connection with the  
39 operation of a sports complex leased to a professional sports team;



1 (40) All materials, replacement parts, and equipment purchased for use directly upon, and  
2 for the modification, replacement, repair, and maintenance of aircraft, aircraft power plants, and  
3 aircraft accessories;

4 (41) Sales of sporting clays, wobble, skeet, and trap targets to any shooting range or similar  
5 places of business for use in the normal course of business and money received by a shooting range  
6 or similar places of business from patrons and held by a shooting range or similar place of business  
7 for redistribution to patrons at the conclusion of a shooting event;

8 (42) All sales of motor fuel, as defined in section 142.800, used in any watercraft, as defined  
9 in section 306.010;

10 (43) Any new or used aircraft sold or delivered in this state to a person who is not a resident  
11 of this state or a corporation that is not incorporated in this state, and such aircraft is not to be based  
12 in this state and shall not remain in this state more than ten business days subsequent to the last to  
13 occur of:

14 (a) The transfer of title to the aircraft to a person who is not a resident of this state or a  
15 corporation that is not incorporated in this state; or

16 (b) The date of the return to service of the aircraft in accordance with 14 CFR 91.407 for  
17 any maintenance, preventive maintenance, rebuilding, alterations, repairs, or installations that are  
18 completed contemporaneously with the transfer of title to the aircraft to a person who is not a  
19 resident of this state or a corporation that is not incorporated in this state;

20 (44) Motor vehicles registered in excess of fifty-four thousand pounds, and the trailers  
21 pulled by such motor vehicles, that are actually used in the normal course of business to haul  
22 property on the public highways of the state, and that are capable of hauling loads commensurate  
23 with the motor vehicle's registered weight; and the materials, replacement parts, and equipment  
24 purchased for use directly upon, and for the repair and maintenance or manufacture of such vehicles.  
25 For purposes of this subdivision, "motor vehicle" and "public highway" shall have the meaning as  
26 ascribed in section 390.020;

27 (45) All internet access or the use of internet access regardless of whether the tax is imposed  
28 on a provider of internet access or a buyer of internet access. For purposes of this subdivision, the  
29 following terms shall mean:

30 (a) "Direct costs", costs incurred by a governmental authority solely because of an internet  
31 service provider's use of the public right-of-way. The term shall not include costs that the  
32 governmental authority would have incurred if the internet service provider did not make such use  
33 of the public right-of-way. Direct costs shall be determined in a manner consistent with generally  
34 accepted accounting principles;

35 (b) "Internet", computer and telecommunications facilities, including equipment and  
36 operating software, that comprises the interconnected worldwide network that employ the  
37 transmission control protocol or internet protocol, or any predecessor or successor protocols to that  
38 protocol, to communicate information of all kinds by wire or radio;

39 (c) "Internet access", a service that enables users to connect to the internet to access content,

1 information, or other services without regard to whether the service is referred to as  
2 telecommunications, communications, transmission, or similar services, and without regard to  
3 whether a provider of the service is subject to regulation by the Federal Communications  
4 Commission as a common carrier under 47 U.S.C. Section 201, et seq. For purposes of this  
5 subdivision, internet access also includes: the purchase, use, or sale of communications services,  
6 including telecommunications services as defined in section 144.010, to the extent the  
7 communications services are purchased, used, or sold to provide the service described in this  
8 subdivision or to otherwise enable users to access content, information, or other services offered  
9 over the internet; services that are incidental to the provision of a service described in this  
10 subdivision, when furnished to users as part of such service, including a home page, electronic mail,  
11 and instant messaging, including voice-capable and video-capable electronic mail and instant  
12 messaging, video clips, and personal electronic storage capacity; a home page electronic mail and  
13 instant messaging, including voice-capable and video-capable electronic mail and instant  
14 messaging, video clips, and personal electronic storage capacity that are provided independently or  
15 that are not packed with internet access. As used in this subdivision, internet access does not  
16 include voice, audio, and video programming or other products and services, except services  
17 described in this paragraph or this subdivision, that use internet protocol or any successor protocol  
18 and for which there is a charge, regardless of whether the charge is separately stated or aggregated  
19 with the charge for services described in this paragraph or this subdivision;

20 (d) "Tax", any charge imposed by the state or a political subdivision of the state for the  
21 purpose of generating revenues for governmental purposes and that is not a fee imposed for a  
22 specific privilege, service, or benefit conferred, except as described as otherwise under this  
23 subdivision, or any obligation imposed on a seller to collect and to remit to the state or a political  
24 subdivision of the state any gross retail tax, sales tax, or use tax imposed on a buyer by such a  
25 governmental entity. The term tax shall not include any franchise fee or similar fee imposed or  
26 authorized under section 67.1830 or 67.2689; Section 622 or 653 of the Communications Act of  
27 1934, 47 U.S.C. Section 542 and 47 U.S.C. Section 573; or any other fee related to obligations of  
28 telecommunications carriers under the Communications Act of 1934, 47 U.S.C. Section 151, et seq.,  
29 except to the extent that:

30 a. The fee is not imposed for the purpose of recovering direct costs incurred by the  
31 franchising or other governmental authority from providing the specific privilege, service, or benefit  
32 conferred to the payer of the fee; or

33 b. The fee is imposed for the use of a public right-of-way based on a percentage of the  
34 service revenue, and the fee exceeds the incremental direct costs incurred by the governmental  
35 authority associated with the provision of that right-of-way to the provider of internet access service.  
36

37 Nothing in this subdivision shall be interpreted as an exemption from taxes due on goods or services  
38 that were subject to tax on January 1, 2016.

39 3. Any ruling, agreement, or contract, whether written or oral, express or implied, between a

1 person and this state's executive branch, or any other state agency or department, stating, agreeing,  
2 or ruling that such person is not required to collect sales and use tax in this state despite the presence  
3 of a warehouse, distribution center, or fulfillment center in this state that is owned or operated by the  
4 person or an affiliated person shall be null and void unless it is specifically approved by a majority  
5 vote of each of the houses of the general assembly. For purposes of this subsection, an "affiliated  
6 person" means any person that is a member of the same controlled group of corporations as defined  
7 in Section 1563(a) of the Internal Revenue Code of 1986, as amended, as the vendor or any other  
8 entity that, notwithstanding its form of organization, bears the same ownership relationship to the  
9 vendor as a corporation that is a member of the same controlled group of corporations as defined in  
10 Section 1563(a) of the Internal Revenue Code, as amended."; and

11  
12 Further amend said bill by amending the title, enacting clause, and intersectional references  
13 accordingly.