

HOUSE BILL NO. 3390

103RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE CUPPS.

7234H.011

JOSEPH ENGLER, Chief Clerk

AN ACT

To amend chapters 67, 386, 620, and 640, RSMo, by adding thereto seven new sections relating to the construction of data centers.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapters 67, 386, 620, and 640, RSMo, are amended by adding thereto seven new sections, to be known as sections 67.5475, 67.5480, 67.5485, 67.5490, 386.1900, 620.3990, and 640.640, to read as follows:

67.5475. 1. As used in this section, the following terms mean:

(1) "Hyperscale data center", a facility that:

(a) Consists of one or more contiguous parcels of land including, but not limited to, a building, subsection, information technology, or other infrastructure, fixture, or personal property located on the land;

(b) Is used to house, store, or operate equipment that receives, stores, aggregates, manages, processes, transforms, retrieves, researches, or transmits data, or is necessary for the proper operation of such equipment; and

(c) Requires at least twenty-five megawatts of energy resources to support its operations;

(2) "Real property", all lands, including improvements and fixtures thereon, and property of any nature appurtenant thereto, or used in connection therewith, and every estate, interest and right, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage or otherwise and the indebtedness secured by such liens.

2. On or after August 28, 2026, a hyperscale data center, shall be a prohibited use for all agricultural, conservation, environmental stewardship, mixed use, and

EXPLANATION — Matter enclosed in bold-faced brackets ~~thus~~ in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 residential land use categories in a local government comprehensive plan and
18 agricultural zoning districts within an unincorporated area.

19 3. Unless a political subdivision approves a more restrictive requirement, a
20 setback of at least five hundred feet between real property on which a hyperscale data
21 center is located shall be maintained by the use of plants native to the state of Missouri,
22 which may include an ornamental barrier that shall be the height of the tallest point of
23 the hyperscale data center at the time construction of the hyperscale data center is
24 completed.

 67.5480. 1. As used in this section, "hyperscale data center" has the same
2 meaning as in section 67.5475.

3 2. The department shall require the use of noise-control methods as part of
4 hyperscale data center construction projects located adjacent to or along a highway or
5 upon request of an owner of property adjacent to such a project or a political
6 subdivision.

7 3. All hyperscale data center construction projects shall be developed in
8 conformity with federal standards for noise abatement as contained in 23 CFR 772 as
9 such regulations existed on July 13, 2011. The department shall, at a minimum, comply
10 with federal requirements in the following areas:

- 11 (1) Noise abatement;
- 12 (2) Information for local officials; and
- 13 (3) Construction noise.

 67.5485. 1. As used in this section, the following terms mean:

- 2 (1) "Data", information in a specific representation, usually as a sequence of
3 symbols that have meaning;
- 4 (2) "Department", the department of agriculture;
- 5 (3) "Hyperscale data center", a facility that:
 - 6 (a) Consists of one or more contiguous parcels of land including, but not limited
7 to, a building, subsection, information technology, or other infrastructure, fixture, or
8 personal property located on the land;
 - 9 (b) Is used to house, store, or operate equipment that receives, stores, aggregates,
10 manages, processes, transforms, retrieves, researches, or transmits data, or is necessary
11 for the proper operation of such equipment; and
 - 12 (c) Requires at least twenty-five megawatts of energy resources to support its
13 operations;
 - 14 (4) "Hyperscale data center property", any real property, or any tangible
15 property associated with a hyperscale data center, which supports, constructs, outfits,

16 operates, powers, cools, dehumidifies, secures, or protects a hyperscale data center and
17 any related substation. The term shall include, but not be limited to:

18 (a) Construction materials;

19 (b) Component parts;

20 (c) Machinery;

21 (d) Equipment;

22 (e) Computers;

23 (f) Computing devices;

24 (g) Information technology;

25 (h) Servers; and

26 (i) Installation, redundancy, and operating or enabling software, including any
27 replacement, update, or new version or upgrade to or for such property, regardless of
28 whether the property is a fixture or is otherwise affixed to or incorporated into the real
29 property. The term also includes any energy or water resources supporting a hyperscale
30 data center;

31 (5) "Real property", all lands, including improvements and fixtures thereon, and
32 property of any nature appurtenant thereto, or used in connection therewith, and every
33 estate, interest and right, legal or equitable, therein, including terms for years and liens
34 by way of judgment, mortgage or otherwise and the indebtedness secured by such liens;

35 (6) "Waters of this state", has the same meaning in section 306.101, including all
36 submerged lands or territorial waters that are not under the jurisdiction of this state.

37 2. On or after August 28, 2026, a hyperscale data center shall not be constructed
38 and operated on:

39 (1) Land classified as agricultural land under section 350.010;

40 (2) Land that, at the time of a proposed reclassification, siting, or construction, is
41 located within ten miles of an area of agricultural, recreational, or conservation land
42 use; or

43 (3) Waters of this state, or any land that is located within five miles of waters of
44 this state.

45 3. Before the construction and operation of any hyperscale data center, in
46 addition to adopting any necessary comprehensive plan amendments or land use
47 changes or issuing a consumptive use permit, the governing body of a political
48 subdivision shall hold a public hearing to approve the project. The public hearing for
49 such approval shall be advertised in newspapers of general circulation within the
50 political subdivision, and any affected political subdivision shall allow for public
51 comment. Notice shall also be sent by certified mail at least thirty days before the
52 hearing to each property owner located within a ten mile radius of the real property

53 associated with the project. A true copy of the notice published shall be posted on the
54 real property associated with the project.

55 4. If a governing body of a political subdivision votes to approve a project for a
56 hyperscale data center, the governing body of the political subdivision shall request
57 approval of such project by the siting board established under section 67.5490.

67.5490. 1. As used in this section, the following terms mean:

2 (1) "Board", the siting board created under this section;

3 (2) "Hyperscale data center", the same as defined in section 67.5485.

4 2. There is hereby established the "Hyperscale Data Center Siting Board". The
5 board shall consist of the governor, the lieutenant governor, the secretary of state, the
6 state auditor, the state treasurer, and the attorney general.

7 3. After August 28, 2026, upon receipt of a request by the governing body of a
8 political subdivision under subsection 4 of section 67.5485, the board shall have
9 published in the Missouri Register notice of the request. The board shall require the
10 political subdivision seeking to construct and operate a hyperscale data center to notify,
11 in writing or by email, each member of the general assembly representing the county or
12 municipality in which the real property associated with the project is located when the
13 notice is published.

14 4. The board shall schedule and hold a hearing no later than thirty days after the
15 date the notice is published in the Missouri Register and notice is provided to each
16 member of the general assembly representing the county or municipality.

17 5. If the board does not approve a request at a hearing held under subsection 4,
18 the hyperscale data center shall not be constructed, and no appeal shall be granted.

386.1900. In fixing rates for hyperscale data centers, as such term is defined in
2 67.5475, a public utility shall not collect impact fees designed to recover capital costs for
3 the construction of a new hyperscale data center from a residential customer or a
4 commercial customer, unless such customer's energy use is comparable to the projected
5 energy use from the hyperscale data center.

620.3990. 1. As used in this section, the following terms mean:

2 (1) "Economic incentive", unless otherwise provided by law, all programs
3 administered by, or for which an applicant for the program shall seek certification,
4 approval, or other action by the department of economic development; and all local
5 economic development programs, grants, or financial benefits administered by a
6 political subdivision or an agent thereof;

7 (2) "Governmental entity", a state agency, a political subdivision, or any other
8 public or private agency, person, partnership, corporation, or business entity acting on
9 behalf of any public agency;

10 (3) "Hyperscale data center", has the same meaning as in section 67.5475.

11 2. A governmental entity shall not knowingly enter into an agreement or
12 contract for an economic incentive with an entity to support the siting, construction,
13 powering, or operation of a hyperscale data center.

14 3. Before providing any economic incentive, a governmental entity shall require
15 the recipient or applicant to provide the governmental entity with an affidavit signed
16 under penalty of perjury attesting that the recipient or applicant is not a hyperscale
17 data center.

18 4. The department shall adopt rules to administer this section, including rules
19 establishing the form for the affidavit required under subsection 3 of this section.

640.640. 1. For the purposes of this section, the following terms mean:

2 (1) "Applicant", any person applying for a major industrial water-user permit;

3 (2) "Beneficial uses", water uses that include, but are not limited to, domestic,
4 agricultural, industrial, recreational, and other legitimate beneficial uses;

5 (3) "Department", the Missouri department of natural resources;

6 (4) "Director", the director of the department of natural resources;

7 (5) "Major industrial water user permit", a permit issued by the department
8 granting the withdrawal of water from a water resource in the amount of two million
9 four hundred thousand gallons per day or more;

10 (6) "Person", any individual, partnership, copartnership, firm, company, public
11 or private corporation, association, joint stock company, trust, estate, political
12 subdivision, water district, or any agency, board, department, or bureau of the
13 federal or any state government, or any other legal entity that is recognized by law as
14 the subject of rights and duties;

15 (7) "Water resources", any Missouri water source occurring on the surface, in
16 natural or artificial channels, lakes, reservoirs, or impoundments, and in subsurface
17 aquifers which are available or which may be made available.

18 2. In order to protect the access, use, and enjoyment of Missouri's water
19 resources, it shall be unlawful for any person to withdraw and use more than two
20 million four hundred thousand gallons of water per day on average in a single month
21 unless such person holds a major industrial water user permit issued by the department
22 or such water is used for agricultural purposes.

23 3. The director shall review each major industrial water user permit application
24 and all supporting materials to ensure all the following conditions have been met prior
25 to approving a major industrial water user permit application:

26 (1) There are water resources available in the volumes and withdrawal rates
27 requested by the applicant;

28 **(2) The volume and withdrawal rates requested by the applicant shall not exceed**
29 **eighty percent of the capacity of the water resource;**

30 **(3) The volume and withdrawal rates requested by the applicant shall not**
31 **interfere with existing and projected in-state beneficial uses; and**

32 **(4) The applicant has demonstrated that water in the amounts and rates**
33 **requested can feasibly be withdrawn.**

34 **4. Whenever a person applies for a major industrial water user permit or major**
35 **industrial water user permit renewal, the department shall send a written notice to the**
36 **county commission of the county where the water resource is located within thirty**
37 **business days after receiving the permit application.**

38 **5. (1) Within one hundred twenty days after the receipt of a complete**
39 **application, the director shall determine whether the applicant complied with the**
40 **provisions of subsection 3 of this section. The director shall, after making such**
41 **determination, hold a thirty-day public comment period regarding the director's**
42 **determination. Within sixty days after the comment period, the director shall approve**
43 **or deny the permit.**

44 **(2) To renew a valid major industrial water user permit, an applicant shall file a**
45 **renewal application for a major industrial water user permit with the department no**
46 **later than two hundred seventy-one days prior to the expiration of the existing permit.**
47 **The applicant and director shall follow the same procedures and timelines as required**
48 **for the issuance of a new major industrial water user permit under this section. The**
49 **director may impose additional conditions to address any substantial or material change**
50 **in factors under subsection 3 of this section or may deny a renewal application as**
51 **necessary to comply with this section based on any such substantial or material changes**
52 **in factors under subsection 3 of this section. If the director is in the process of reviewing**
53 **the renewal application before the final decision is made and the existing applicant's**
54 **major industrial water user permit expires, such applicant shall be able to operate**
55 **under the terms of the expired permit until a final decision is made by the director on**
56 **the renewal of such permit.**

57 **(3) In the absence of an appeal as provided under chapter 536, the decision of the**
58 **director shall be final.**

59 **6. A major industrial water user permit shall be in effect for five years from the**
60 **date of issuance. The permit holder shall annually report the water use volumes and**
61 **withdrawal rates to the department in a manner and on timelines determined by the**
62 **department. Such report shall be made available to the public on the department's**
63 **website.**

64 7. The major industrial water user permit may be approved in whole or in part
65 by the director.

66 8. Any other major water user, as defined in section 256.400, may request the
67 department to reevaluate any existing major industrial water user permit using the
68 criteria under subsection 3 of this section. The department shall create a mechanism for
69 a major water user to submit a request for reevaluation and shall provide the major
70 water user with the director's findings within one hundred twenty days of the request
71 for reevaluation. After reevaluating the permit, the director shall impose additional
72 conditions necessary for the continued withdrawal if the director determines that the
73 existing permit is negatively impacting the requesting major water user's beneficial use
74 of his or her water resources. The director's decision to modify or to decline to modify
75 the conditions in an existing permit pursuant to this subsection shall be subject to
76 approval by the commission.

77 9. Nothing in this section shall preclude a person from bringing any
78 constitutional, statutory, or common law claim to vindicate or otherwise defend the
79 person's water rights. A permit issued under this section shall not serve as a defense to
80 any claim brought against a major industrial water user permit holder for the
81 infringement of water rights. In addition, any person harmed by the issuance of a major
82 industrial water user permit may bring an injunctive action or other appropriate action
83 to enforce the provisions of this section. Suits may be brought in the county where the
84 defendant's principal place of business is located or where the withdrawal of water
85 occurred in violation of this section.

86 10. If the attorney general receives a complaint that provisions of this section
87 have been violated, or at the request of the department, the attorney general shall bring
88 an injunctive action or other appropriate action in the name of the people of the state to
89 enforce provisions of this section. Suit may be brought in Cole County, or in any county
90 where the defendant's principal place of business is located or where the withdrawal of
91 water occurred in violation of this section. Any member of the commission deemed to
92 have violated any provision of this section shall forfeit their office upon such finding of a
93 violation.

94 11. Whenever a state of emergency is declared by the governor under section
95 44.100 for all or any part of the state based on drought conditions, the department shall
96 reevaluate any existing major industrial water user permit. Any reevaluation
97 completed under this section shall use the criteria under subsection 3 of this section.
98 After reevaluation of the permit is complete, the department shall have the authority to
99 impose additional conditions or revoke the permit if necessary for the continued

100 **withdrawal of water if the director determines that the existing permit negatively**
101 **impacts beneficial use of water resources.**

102 **12. If any provision of subsection 3 of this section or the application thereof to**
103 **anyone or to any circumstance is held invalid, the remainder of those sections and the**
104 **application of such provisions to others or other circumstances shall not be affected**
105 **thereby.**

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