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Energy & Real Estate Alert

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# Data center site selection strategy update

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Recent legislation, regulation, policy, and community action are now shaping US data center site selection decisions as much as dedicated power access.

## What's the impact?

- Power access alone no longer ensures a viable US data center project—success in 2026 requires aligning power strategy with regulatory readiness and site flexibility.
- Legislative, regulatory, political, and community developments are reshaping if, how, when, and where US data center projects are built across the country.
- Federal initiatives, state legislation, utility cost-allocation reforms, and local opposition are creating an asymmetric US market—redefining data center project viability, timelines, risks, and economics.

In 2025, we examined "*energy-first*" data center site selection strategies. Since then, 2026 legislation, regulation, policy, and community action have fundamentally altered the US data center landscape—site selection now hinges on regulatory, legislative, political, and community risks alongside power access.

# From "energy-first" to "power-plus-permission"

US data center policy has shifted to a "*power-plus-permission*" model: 300+ bills filed in 30+ states, 12+ moratorium bills proposed, and 140+ local groups blocking or delaying ~$60B+ in investment. The "*energy-first*" data center siting era in the US is over.

Projects now also require a "*social license to operate*"—legislative durability, ratepayer-protection commitments, transparent operations, utility relationships, and earned community acceptance—alongside power access and interconnection.

This alert highlights March–May 2026 legislative, regulatory, utility, and community actions impacting data center project siting, viability, timelines, risks, and economics, and offers practical site selection strategies for data center projects.

# Federal layer—New guardrails

### THE WHITE HOUSE RATEPAYER PROTECTION PLEDGE

Amazon, Google, Meta, Microsoft, OpenAI, Oracle, and xAI signed the White House Ratepayer Protection Pledge, on March 4, committing to (1) **build, bring, or buy** all new generation; (2) pay for delivery upgrades; (3) negotiate separate take-or-pay rate structures; (4) fund local workforce development; and (5) coordinate backup generation with grid operators. The Pledge is voluntary, but its vocabulary already appears in 18+ state bills—**TX SB 6, OR POWER Act, IL SB 4016, VA HB 1393, AL SB 270, AZ HB 2756, MD SB 596, DE SB 205/HB 233, AK HB 259, NJ S680**, among others.

***Impact***: Expect additional states to introduce special rate classes or cost-sharing mandates mirroring these principles. Treat the Pledge as a de facto national standard and structure agreements accordingly.

***Reality:*** Practical constraints—such as limited grid capacity, delayed infrastructure, and reliance on interim power sources are creating execution challenges making it more difficult for hyperscalers to sustainably deliver on the Pledge as structured—signaling that prioritized sites will have firm, scalable power, faster approvals, and integrated energy strategies.

### EIA MANDATORY ENERGY SURVEY

EIA's (US Energy Information Administration) voluntary pilot survey covers 196 companies in Texas, Washington, and Northern Virginia–Washington D.C. On April 15, Administrator Tristan Abbey confirmed a mandatory nationwide survey will follow, with completion of the pilots expected by September 30, 2026.* The survey instrument captures **grid-supplied electricity, behind-the-meter (BTM) generation, cooling efficiency, square footage, and IT specifications**—making previously proprietary data center asset metrics matters of public record for the first time.

***Impact***: Pilot surveys were launched March 25, 2026. Mandatory nationwide survey is pending. Data centers in any pilot regions may already be within scope. Start tracking hourly energy usage, BTM generation, and cooling metrics for all data center assets now, and review NDAs and utility contracts for mandatory-disclosure conflicts.

## FERC LARGE-LOAD INTERCONNECTION RULEMAKING

FERC (Federal Energy Regulatory Commission) issued an Order Regarding Intent to Act in Docket RM26-4-000 on April 16, with action expected by end of June 2026** on uniform rules for large electrical loads (≥20 MW)—expressly including data centers—governing interconnection to the interstate transmission system and cost responsibility for grid upgrades. This follows FERC's December 2025 PJM Co-Location Directive on December 18, 2025 (which PJM compliance filing FERC accepted in part and rejected in part by order on April 16, with 30-day revisions period for PJM), and January 14, 2026 acceptance of SPP's High Impact Large Loads (HILL) Framework.

***Impact:*** *Expect* a Notice of Proposed Rulemaking (NOPR) or final rule in June, Regional Transmission Organization (RTO) compliance filings 60–90 days later, full implementation extending into early 2027. ***The new rules will likely require***: (a) BTM generation reported and modeled in load forecasts; (b) co-located loads above 50 MW to pay full transmission charges without netting; and (c) generators serving co-located load to reduce Capacity Interconnection Rights dollar-for-dollar. ***Key point***: The prior cost advantage of "masking" or "hiding" load BTM is being eliminated—draft interconnection and power purchase agreements accordingly.

## NERC LEVEL 3 ESSENTIAL ACTION ALERT ON DATA CENTER LOAD RISKS

On May 4, NERC (North American Electric Reliability Corporation) issued a **Level 3 Essential Action Alert on Computational Load Risks** requiring registered entities to take seven actions to address grid reliability risks from computational loads (including data centers)—covering enhanced data monitoring, reporting, testing, commissioning, and operational controls—and published an aligned **Reliability Guideline: Risk Mitigation for Emerging Large Loads** (Guideline) that sets forth voluntary technical expectations, and created a Computational Load Entity (CLE) registration class for end users/hosts with ≥20 MW aggregate connected capacity at a single ≥60 kV point of interconnection (POI) and ≥1 MW of IT load. **Key due dates include**: Acknowledgments by May 11, comments by May 15, reporting by August 3, and revised registry criteria filing by December 31.

***Impact***: For in-scope data centers and utilities, expect enforceable obligations starting in 2027; for CLE-class projects, plan for potential direct registration. Expect increased scrutiny, higher infrastructure and testing costs, longer permitting timelines, and potential siting limits due to capacity concerns. Sites with robust transmission and utility partners implementing NERC's large-load guidance will be advantaged. Act now to diligence POI and load thresholds, embed updated monitoring, commissioning, and testing rights into interconnection and site-control

documents, and reserve easements, space, and access for required recorders and telemetry to reduce compliance risk and preserve timelines and budgets.

### FEDERAL MORATORIUM BILL

The Artificial Intelligence (AI) Data Center Moratorium Act, a federal moratorium bill (Sanders/Ocasio-Cortez), was introduced in March, that would temporarily halt new AI data center construction in the US pending a nationwide grid impact study.

***Impact:*** Passage is uncertain, but the bill is already fueling state-level moratorium momentum.

***Counterpoint***: A December 2025 Executive Order threatens states that restrict AI growth—creating a contradictory federal-state environment that should be navigated carefully.

## The 50-state landscape

### STATE-BY-STATE OVERVIEW[1]

Below is an overview of the US data center landscape organized into five categories based on legislative posture and siting risks, with details on certain material changes in key states to follow.

### MORATORIA AND BANS *(HIGHEST RISK)*[2]

- **States**: Maryland, Michigan, Minnesota, New Hampshire[3], New York, Oklahoma, Pennsylvania, South Carolina, South Dakota, Vermont, Virginia†, Georgia†, and Wisconsin†. (*Broader restriction trend also emerging in Illinois, Kansas, and Missouri*)
- 12+ states with moratorium bills, including:
  - **New York**: **S.9144/A.10141** (3-year halt) (*Pending*)
  - **Vermont S.205** (ban through July 2030) (*Pending*)
  - **Oklahoma SB 1488/**HB 2992 (Data Center Consumer Protection Act—advanced from committee) (*Pending*)
  - **Maryland**: **HB 120** (halt pending co-location regulations)
  - **South Dakota**: SB 232 proposes a 1-year moratorium on expansion or new hyperscale data center construction (pending)

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[1] This legend applies to the overview above: † = VA, GA, WI, and WA, each in multiple categories; ‡ = Special session April 23rd; and § = Effective July 1st, 2026.

[2] ME's LD 307 (moratorium on ≥20 MW until Nov. 2027 and permit freeze) **never took effect (veto upheld)**—but, LD 713 excluding data centers from tax incentives and requiring policy review process was enacted.

[3] NH's HB 1265 failed—it proposed a 1-year data center construction moratorium.

- **Georgia**: HB 1059 proposes to forbid local governments from permitting data centers until December 2028 (introduced)

## REGULATED GROWTH (*COMPLEX COMPLIANCE*)

- **States**: California, Connecticut, Florida, Illinois, Massachusetts, North Carolina†, New Jersey, Oregon, Virginia†, Washington†, and Wisconsin†.
- **Snapshot**:
  - **Virginia†**: 15 bills enacted, including: (i) HB 1393 (cost-shifting), (ii) HB 153 (siting), and (iii) HB 496/SB 553 (water reporting); $1.6B tax exemption unresolved. ‡
  - **Illinois**: POWER Act / **SB 4016/HB 5513** targets facilities ≥50 MW with self-funded renewable generation, water transparency, and binding community benefit agreements near environmental justice communities. In committee.
  - **Oregon**: **POWER Act** creates separate rate class ≥20 MW. (*Enacted*)
  - **New Jersey**: S-680 (PJM-conditional clean-power mandate), A796 (large-load tariff authority), and S3379 (energy/water reporting)—positioning the state as a national leader.[4]
  - **Florida**: **SB 484**§ creates water-permitting framework.
  - **North Carolina**: HB 1063 (Ratepayer and Resource Protection Act) proposes to shift all hyperscale costs for consumed power, water, and infrastructure to data centers (*pending*).
  - **Wisconsin**: Decision issued by Public Service Commission of Wisconsin that overhauls an earlier data center tariff proposal and shifts all generation and infrastructure costs onto data centers.

## TAX INCENTIVES UNDER FIRE

- **States**: Georgia†, Indiana, North Carolina†, Oklahoma, Virginia,† and Washington†.
  - **Georgia**: SB 476 eliminates tax credits for data centers (among other repealed tax credits for businesses); $2.5B annual revenue loss; CIR "*bring your own power*" now live. (*Enacted*)
  - **Indiana**: HB 1210 requires 1% tax-savings sharing with localities. (*Enacted*)
  - **Oklahoma**: HB 4424 would end incentives for non-operational centers (not online by January 2027).
  - **Washington**: WA HB 2515 / SB 6171 bars data center operators from earning emissions credits under cap and invest emissions trading program. (*Pending*)
  - **North Carolina**: HB 1063 (Ratepayer and Resource Protection Act) also proposes limits on hyperscale data centers' access to certain public incentives. (*Pending*)
  - **Maine**: LD 713, eliminates key tax incentives for data centers and requires state study and policy and regulation review process via an advisory council (report due Nov. 2026) (*Enacted*).

[4] See Nixon Peabody Client Alert, *New Jersey Pushes for Data Center Clean Power Mandates* (Apr. 9, 2026) for further details regarding New Jersey's push for data center power mandates — covers S3379, SR18, A796, and S-680 in detail.

#### PRO-GROWTH / TIGHTENING

- **States**: Alabama, Arizona, Indiana, Iowa, Nebraska, Nevada, Ohio, Texas, Utah, and Wyoming.
  - **Texas**: SB 6 regulates ≥75 MW loads with disconnection protocols; $1B+ in tax breaks; local opposition is growing as Midwest counties absorb spillover demand. (*Enacted*)
  - **Alabama**: **AL SB 270** requires ≥150 MW contracts to pass a ratepayer benefit test and pre-execution contract review; local opposition growing. (*Enacted*)

#### NEUTRAL / LOCAL CONTROL

- **States**: Arkansas, Kansas, Kentucky, Mississippi, Missouri, Montana, North Dakota, Tennessee, and others.
  - No statewide data center mandates, but local moratoria are spreading rapidly (e.g., St. Charles, MO; Denver, CO; multiple IN counties). ***Silence ≠ safety***.

## Material changes in key jurisdictions

#### VIRGINIA—61 BILLS FILED; 15 ENACTED; $1.6B AT STAKE.[5]

HB 1393 requires ≥25 MW loads to pay for new generation capacity (no data center exemption). HB 153 creates a High Energy Use Facility permit ≥100 MW with pre-zoning acoustic studies. HB 496/SB 553 mandates water reporting.

***Impact***: $1.6B tax exemption unresolved—Senate seeks elimination, House wants it tied to environmental compliance. *Pending.*‡ ***Expect:*** 6–12-month interconnection delays as Dominion stands up new rate schedules.

#### GEORGIA—"BRING YOUR OWN POWER" GOES LIVE (ENACTED).[6]

PSC approved the Customer-Identified Resource (CIR) program April 15, requiring large customers to "bring their own clean power" via sleeved PPAs—shifting stranded asset risk to developers.

***Impact***: CIR participation is a de facto interconnection prerequisite; the model is spreading.

[5] Special Session April 23; outcome pending as of May 5.

[6] Approved April 15, 2026.

#### NEW JERSEY—PJM-CONDITIONAL CLEAN POWER MANDATES (PENDING).

Senate passed S3379 (water/energy reporting) and SR18 (regional PJM coordination). Assembly passed A796 (large-load tariff authority) and S-680 (PJM-state-triggered clean power mandate, pending).

***Impact***: PJM data center demand drove a 20% NJ household bill increase in 2025. New Brunswick blocked an AI facility; Monroe Township banned data centers; Vineland faces aquifer scrutiny.

#### FLORIDA—WATER IS NOW A GATEKEEPER.

SB 484 (effective July 1, 2026) creates a consumptive-use permitting framework for ≥50 MW data centers, requires full cost of service, and prohibits utilities from serving foreign-controlled large-load customers.

***Impact***: The Fort Meade decision—halting a project due to water permitting constraints despite local approvals—demonstrates that consumptive-use permitting is now outcome-determinative, with water availability effectively controlling project viability.[§]

## Community opposition is a national phenomenon

More than 140 local community groups[7] have mobilized across the US. Ohio residents are pursuing a ballot measure to permanently ban hyperscale centers. Missouri voters replaced half of the city council over a data center. Mississippi's NAACP filed a federal Clean Air Act suit against xAI for unpermitted turbines. Developers arriving with transparency and community benefits are winning approval; those arriving with secrecy are meeting zoning denials.

## New siting map: Where capital is going and why

The following four shifts are reshaping where and how US data centers get built:

#### SITING IS MIGRATING TO THE MIDWEST AND TEXAS

OH, IN, IA, NE are absorbing displaced VA, NY, and NJ projects; TX leads via ERCOT and SB 6. Even these markets are tightening—IN now conditions incentives on community benefit sharing; local moratoria are spreading.

#### BTM GENERATION IS BECOMING A BRIDGE (OR A POTENTIAL CORE) STRATEGY

With queues at ~5–7 years in constrained markets and FERC poised to impose BTM and co-location transparency rules, on-site natural gas, solar-plus-storage, and fuel cells are coming

[7] *See* Data Center Watch Report.

online faster—moving from "bridge" solutions to potential longer term power strategies. Structure every BTM arrangement for the FERC trajectory and align with evolving framework.

### MODULAR, PREFABRICATED INFRASTRUCTURE IS ACCELERATING DEPLOYMENT

Factory-built units enable faster, phased deployment—often in months—aligned to available power, and can relocate. Paired with BTM and phased interconnection, modular design supports early operations and incremental scaling—though regulatory treatment of phased loads is tightening.

### "BUILD, BRING, OR BUY" IS EMERGING AS THE DEFAULT

Plan to self-fund or obtain secured dedicated generation for hyperscale facilities, with site control designed to accommodate microgrids/storage/co-located generation. In major markets (e.g., GA, VA, IL, OR, WA), utilities increasingly expect early-stage power-procurement strategies, making a pre-negotiated clean energy supply partner a *de facto* prerequisite for timely interconnection.

## Next steps

- **Rewrite due diligence**: Add legislative risk scans, EIA readiness, and water-license viability to every site checklist. Require a utility "Will-Serve" letter before committing material capital.
- **Build in legislative and regulatory exits**: Acquisition and site control contracts need extended feasibility periods, moratorium-termination rights, and Cost Reimbursement Agreements for pre-lease design and equipment. Stage option-to-PSA and option-to-ground-lease conversions to interconnection study milestones, tariff certainty, and legislative stability—avoid stranded predevelopment spend.
- **Structure for self-supply on day 1**: Accommodate BTM generation, microgrids, and battery storage in site control—including easements for near-site resources and gas/transmission interconnects—and coordinate procurement with interconnection sequencing.
- **Earn your "social license to operate" early**: Community Benefit Agreements—covering grid resilience, waste heat, workforce, and property tax contributions—are permitting prerequisites. Arrive with transparency.
- **Prepare for EIA reporting**: Track hourly energy, BTM generation, and cooling metrics now. Review NDAs and utility contracts for mandatory-disclosure conflicts.
- **Stress-test Virginia**: Model financials with and without the $1.6B tax exemption, and price in rate-class migration risk across all states. The April 23 outcome in Virginia set a national precedent.‡
- **Anticipate FERC'S June action**: Audit pipeline assets crossing new large-load thresholds.

Expect stricter queue-entry screens requiring evidence of site control, milestone deposits, and financial assurance up front—stage that evidence (site control, financial assurance, interconnection studies) in advance.**

- **Prepare for NERC CLE Compliance**: Expect enforceable obligations for in-scope data centers and utilities in 2027. Diligence POI and load thresholds against CLE criteria, embed data monitoring and testing/commissioning rights into interconnection and site control documents, reserve easements, space, and access for recorders and telemetry—in advance.
- **Don't mistake silence for safety**: Neutral states (e.g., KS, MO, MT, ND) lack statewide mandates, but local moratoria are proliferating, and many lack regulatory infrastructure to process large-load interconnections efficiently. Run a political durability index on every candidate site at every stage.

## The bottom line

For data center stakeholders, 2026 marks a repricing of execution risk. The market has bifurcated: power access is necessary but not sufficient on its own; projects well-positioned for success will likely pair credible speed-to-power plans with earned community buy-in, transparent operations, reliable utility relationships, and ratepayer-protective cost allocations. Market entry is now measured not just in dollars per megawatt, but in **legislative, regulatory, and political risk, community acceptance, operational transparency, ratepayer-protection commitments, utility relationships, dedicated and scalable power access, water rights, tax incentive durability, and grid interconnection cost accountability**.

**Two upcoming dates and actions will set the future industry trajectory**:[8] (1) FERC's June action on RM26-4 and (2) EIA's September pilot results.**

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[8] ***Pending and time-sensitive matters.*** Items marked with asterisk(s) (*) or "Pending" remain in flux—readers should monitor same closely for any developments as state data center legislation is changing rapidly. *See* State Data Center Policy 101 (Report).