From Incentives to Moratoriums: How Several Key States Are Responding to Data Center Development

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Data centers have become a significant driver of new infrastructure development in the United States. According to recent Census Bureau data, construction spending on data center "shells" (the massive warehouse-like structures that house computing infrastructure) rose nearly 60% in July compared with July 2025 levels.

As demand for cloud computing, artificial intelligence (AI), and large-scale data processing continues to increase, state and local governments are debating how to attract the economic benefits of data center investment while addressing the substantial impacts facilities can have on energy grids, water resources, and surrounding communities.

Employment figures vary considerably by project size, location, and operator, but the private and public infrastructure investment and the promise of direct and indirect job creation have been a central justification for incentive programs. The result is a rapidly evolving patchwork of legislative and regulatory activity, ranging from state and local tax incentives to state and local moratoriums or even bans on new construction, varying meaningfully from state to state.

The following state survey of Kentucky, New Jersey, Indiana, Ohio, and Texas highlights recent legislative and regulatory activity affecting data center development and identifies emerging trends across these jurisdictions.

State Survey

Kentucky

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- **Data Center Incentive Program (HB 8).** Establishes an economic development program for data centers, including a 50-year sale and use tax exemption. Requires a memorandum agreement and prohibits rehabilitation or replacement of existing data centers.
- **Population-Based Incentive Expansion (HB 775).** Amends KRS 154.20-220 to extend data center incentives to facilities located in areas meeting certain population thresholds.
- **Kentucky Local Government Data Center Regulation.** Over 30 local governments have taken or are considering action to regulate data centers or issue moratoriums in response to concerns from constituents.

Pending

- **Electric Service Requirements (HB 593).** Establishes tariffs, fees, and contract requirements for electric service to data centers. Prohibits shifting data center infrastructure costs to other utility customers and requires qualifying projects to certify compliance with applicable local requirements.
- **Ratepayer Protection (HB 544).** Requires Public Service Commission approval of electric service agreements for data centers exceeding 100 megawatts, and requires data centers to bear the costs of new infrastructure needed to serve the facility. Exempts certain existing large-load agreements.
- **Water Feasibility and Usage Reporting (HB 856)**. Requires data centers to submit a water feasibility study to the Energy and Environment Cabinet before commencing operations and to file annual water usage reports.
- **Decommissioning Requirement (SB 319)**. Requires certain data centers constructed on agricultural land to submit decommissioning plans prior to operation and engage with local government officials to regularly review and adopt practices to improve energy and water use efficiency.
- **Transparency Requirements (SB 330)**. Requires public disclosure of certain data center project information and prohibits public agencies from using nondisclosure

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agreements to limit transparency regarding data center development and impacts.

New Jersey

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- **AI Tax Credits – End Data Center Tax Credits Act (S4390/A5165).** Reduces the amount of tax credits available under the Next New Jersey Program from $500 million to $250 million for qualifying AI and AI-related projects, including large-scale AI data centers, subject to major investment and job-creation thresholds. As of Q2 2026, one project had been awarded $250 million in tax credits, which was not impacted by S4390/A5165.
- **Capacity Cost Allocation (S731/A796).** Requires data centers with electricity demands of 100 megawatts or more to pay for at least 85% of the electric capacity they request for a minimum of 10 years.
- **Semiannual Usage Reporting (S3379/A4096).** Requires data center owners and operators to submit semiannual energy and water usage reports to the Board of Public Utilities.
- **Prevailing Wage (S4928/A6237).** Establishes prevailing wage requirements for qualifying data center construction projects.

Pending

- **Grid Modernization Fund Surcharge (A2770).** Establishes surcharge for electric public utility service to certain data centers during certain periods; establishes "Grid Modernization Fund" in the Board of Public Utilities (BPU).
- **Expedited SMR Approval and Permitting (A4769).** Requires certain state agencies to establish expedited approval and permitting procedures for AI data centers powered by small modular nuclear reactors.
- **Public Disclosure Requirement (A5224).** Requires data center developers to disclose certain information to public

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and elected officials before preliminary site plan consideration under the Municipal Land Use Law (MLUL).

- **New Jersey Water Data Center (S1213).** Establishes NJ Water Data Center at public institution of higher education; appropriates $1 million.
- **Quarterly Usage Reporting (S2274/A4696).** Requires owner or operator of data center to submit water and energy usage reports to the BPU.
- **Review and Subsidy Restriction (S3611).** Directs planning boards to submit certain data center development plans to BPU and State Planning Commission (SPC), and requires SPC approval for data center development under MLUL. Excludes data centers from economic development subsidies.
- **Transparency Requirements (S4304/A2774).** Prohibits non-disclosure agreements and similar arrangements that conceal information related to data center development from public review under MLUL.
- **Water Use Impact Study (S4400/A3966).** Requires the Department of Environmental Protection (DEP) to conduct studies of short- and long-term effects of water use by large-scale data centers.
- **Data Center Impact Study (S4401/A4945).** Requires BPU to conduct a study on environmental, infrastructural, and financial impacts of data center development in the state.
- **Data Center Resource Impact Submission (S4402/A5294).** "Responsible Data Center Development and Resource Protection Act"; establishes statewide framework concerning siting, land use approval, energy sourcing, water use, and environmental impacts of large-load data center development.
- **Clean Energy Requirement (S680/A1170).** Requires proposed AI data centers and cryptocurrency mining facilities to submit an energy usage plan and obtain electricity from new clean energy sources.
- **Regional Clean Energy Resolution (SR18).** Urges states within the Pennsylvania-New Jersey-Maryland Interconnection

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region to adopt clean energy requirements for data centers similar to those proposed in New Jersey.

- **AI Safety Disclosures (A5275/S4446).** Requires AI developers to disclose risk management protocols to the Attorney General.
- **AI Apprenticeship Tax Credits (S2860/A5416).** Establishes "Artificial Intelligence Apprenticeship Program" and tax credits for participating businesses.

Pending Introduction

- **Notice Abatement (A5373).** Concerns notice abatement of data centers.
- **Contingency Plan (A5396).** Requires data centers to submit water supply emergency contingency plan to DEP.
- **Water Usage Plan (A5397).** Requires data centers to submit construction-phase water usage plans to DEP.

Indiana

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- **Sales Tax Exemption (IC 6-2.5-15).** Exempts qualified data center equipment from Indiana's 7% sales tax. Certificates are valid for 25 years, or 50 years if investment reaches $750 million.
- **2025 Amendment (IC 6-2.5-15).** Extends the exemption to quantum computing, advanced computing, defense infrastructure, and quantum-safe fiber networks. Introduces a $50 million minimum investment threshold; certificate extendable to 50 years if met within 3 years.
- **Local Revenue Share (IC 6-2.5-15-15.5).** For certificates issued after June 30, 2026, requires qualified users to pay up to 1% of exempt state sales tax on electricity quarterly to local treasurers.
- **Investment Thresholds (IC 6-2.5-15).** Tiered by county population: $150M (>100,000), $100M (50,000–100,000),

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$25M (≤50,000), each within five years. Noncompliance triggers claw-back plus interest and penalties.

- **Property Tax Abatement (IC 6-1.1-10-44).** Exempts enterprise IT equipment with ≥$25M investment and wages ≥125% of county average. Terms set by negotiated local agreement.
- **Expedited Generation Pathways (IC 8-1-7.9).** Provides expedited Indiana Utility Regulatory Commission (IURC) approval for utilities building generation to serve large-load customers (demand >5% of utility peak or 150 MW, investment >$500M, 50+ employees). Decision windows of 90–150 days.
- **Multi-Year Rate Plans (IC 8-1-46).** Allows utilities to adjust base rates annually for new capital investment. Penalizes utilities whose residential bills rise faster than the national average, pressuring cost allocation to large-load customers.
- **Foreign Adversary Construction Ban (IC 8-1-45)**. Prohibits a foreign company from constructing or causing to be constructed a data center unless the IURC and Indiana Economic Development Corporation conduct a study of the anticipated electricity use of the prospective data center.
- **Evolving Indiana Data Center Regulation.** Nearly one-third of Indiana counties have adopted restrictions, moratoriums, ordinances, or bans affecting data center development, reflecting growing concerns regarding land use, infrastructure, and utility demand. At the same time, the Indianapolis Metropolitan Development Commission has adopted a moratorium on data center development through 2027, following earlier efforts to advance a dedicated zoning framework for data centers. These developments highlight the tension between accommodating growth and imposing project-specific regulatory standards.

Pending

- **Data Center Electricity Study (HB 1245).** Requires the IURC to study data center electricity demand effects on utility

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costs and retail rates for all customer classes.

Ohio

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- **Sales and Use Tax Exemptions (O.R.C. § 122.175) (On Pause).** Allows the Ohio Tax Credit Authority to fully or partially exempt sales or use tax on eligible data center equipment. Financial and other information submitted as part of an application are not public records subject to disclosure. In May 2026, Governor Mike DeWine paused the program.
- **Energy Service Tariff (O.R.C. § 4909.18).** Authorizes the Public Utilities Commission of Ohio (PUCO) to approve changes to electricity rates. In July 2025, PUCO approved a landmark tariff structure requiring new data center customers to pay for a minimum of 85% of their subscribed electricity usage, regardless of actual consumption, for up to 12 years.
- **Water Use (O.R.C. 1522.01).** Requires, as part of Ohio's participation in the Great Lakes–St. Lawrence River Basin Water Resources Compact, registration and reporting for withdrawals of 100,000 gallons per day or more. The Compact establishes standards for water conservation and management within the Basin.

Pending

- **Sweeping Data Center Restrictions (HB 646).** Places restrictions on electric use, creating a separate electric rate class for data centers, and requires data centers to pay all direct costs for retail electric services. As for water use, imposes extensive reporting obligations and requires data centers to implement water conservation and water use efficiency measures. Also limits property and sales tax exemptions.

Texas

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- **Sales/Use Tax Exemptions (Tax Code §§ 151.359, 151.3595).** Provides 10- to 20-year exemptions depending on the certification tier. Standard tier requires ≥$200M investment and ≥20 jobs; large-project tier requires ≥$500M, ≥40 jobs, and ≥20 MW transmission capacity.
- **Property Tax Abatements (Tax Code Ch. 312).** Functions as a general economic development tool (not data-center-specific), with a max 10-year term set by local governments. Bexar County's 2025–2026 guidelines explicitly exclude data centers.
- **Large-Load Interconnection (SB 6).** Governs interconnection of loads ≥75 MW in the Electric Reliability Council of Texas (ERCOT) grid. Directs ERCOT and the Public Utility Commission of Texas (PUCT) to set reliability standards and infrastructure cost allocation to prevent cost-shifting to residential ratepayers.
- **Nuclear Energy Development (HB 14).** Supports nuclear energy resources in Texas. Relevant to data centers exploring firm generation, co-location, or small modular reactor opportunities.
- **Water Infrastructure (SB 7).** Expands water infrastructure financing for supply, desalination, and reuse projects. The Texas House Natural Resources Committee has a 2026 interim charge to study data center water usage in constrained regions.
- **Reporting & Transparency (SB 1642).** Requires public disclosure of transmission and distribution of utility rate information, aiding transparency into cost allocation among customer classes.
- **Comprehensive Data Center Audit.** Governor Greg Abbott directed PUCT and ERCOT to conduct a comprehensive verification and audit of all data centers advancing through ERCOT's interconnection process before any data center project moves forward.

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Survey Insights

Common themes depicted in the state survey above include incentive programs designed to attract development, efforts to ensure data centers bear a greater share of electricity and infrastructure costs, and increased attention to energy and water consumption. While no single approach has been adopted across jurisdictions, proposed and enacted data center legislation generally reflects a balancing act between attracting investment and creating jobs, on the one hand, and managing the environmental and financial impacts on communities, on the other.

The legislative landscape governing data center development remains fluid. Several states have significant pending legislation and executive directives, most notably Texas, where Governor Abbott's June 2026 directive has signaled a potential shift away from the state's historically incentive-friendly posture and where the 90th Texas Legislature (convening January 2027) is expected to consider measures addressing infrastructure cost allocation, generation-capacity requirements, water-efficient cooling, annual usage reporting, incentive reform, and community-impact mitigation standards. By contrast, New York has moved toward a more restrictive framework, recently becoming the first state in the nation to enact a temporary statewide moratorium on new large-scale data center development for up to one year.

In New Jersey, public backlash has already paused a major tax incentive program, while Governor Mikie Sherrill's proposed Statewide Data Center Plan — encompassing clean energy and grid cost-sharing requirements, enhanced transparency, community benefits standards, and workforce development measures — signals a comprehensive regulatory approach that could serve as a model for other jurisdictions. At the same time, states continue to pursue large-scale AI and data center investments, as illustrated by Kentucky's recently announced AI data center project expected to support a major AI company's models, highlighting the economic development opportunities that continue to drive legislation.

Key Takeaway

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Whether these trends transform into a more uniform regulatory framework or continue to develop on a jurisdiction-by-jurisdiction basis remains uncertain. What is clear is that the pace of legislative and regulatory activity is accelerating, and continued evolution in the months and years ahead should be anticipated in the data center industry.

For help evaluating how these legislative developments may affect proposed or existing data center projects, or for guidance on incentive eligibility, compliance obligations, and community-impact considerations, please contact the authors or any member of FBT Gibbons' Public Finance and Data Center Development teams.

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