25.1425.02000

Sixty-ninth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2406

Introduced by

Senators Mathern, Sorvaag

Representatives Heilman, Warrey, C. Brown

A BILL for an Act to create and enact chapter 44-04.1 of the North Dakota Century Code, relating to prohibiting agencies from entering nondisclosure agreements concerning data centers and industrial projects; to provide a penalty; to provide an effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 44-04.1 of the North Dakota Century Code is created and enacted as follows:

44-04.1-01. Definitions.

As used in this chapter:

1. "Agency" means the state or a political subdivision or a person or contractor acting on behalf of or an employee or an elected or appointed official acting in an official capacity of the state or a political subdivision.
2. "Data center" means a facility constructed primarily for the storage, management, and processing of digital data, which houses computer and network systems, including associated components such as servers, network equipment and appliances, telecommunications systems, internet-related equipment and services, data communications connections, environmental control systems, fire protection systems, security systems, and other equipment and infrastructure necessary to support the operation of the facility.
3. "Developer" means a person that proposes, owns, operates, or seeks approval for a data center or industrial project.
4. "Industrial project" means a project relating to the development of a business, industry, utility, or infrastructure.

5. "Nondisclosure agreement" means an agreement, provision, clause, or contractual term that has the purpose or effect of:
   a. Restricting an agency from disclosing information about a potential data center or industrial project to a member of the public, including information about the location, siting, construction, modification, expansion, energy demand and type, water usage, utility interconnection, and other potential community and environmental impacts;
   b. Designating the construction, proposed construction, modification, expansion, or other information concerning a data center or industrial project as confidential;
   c. Prohibiting an agency from disclosing, discussing, describing, or commenting on the proposed construction, modification, or expansion of a data center or industrial project; or
   d. Requiring an agency to obtain advance approval from a developer before disclosing information about a data center or industrial project.

44-04.1-02. Prohibition on nondisclosure agreements.

1. An agency may not enter a nondisclosure agreement with a developer regarding an operating data center or industrial project, a proposed data center or industrial project, a data center or industrial project for which the developer is seeking approval from the agency, or a data center or industrial project under construction.
2. If a developer has entered a nondisclosure agreement in violation of this chapter, an agency may not approve, issue, or grant a license, permit, certification, zoning approval, tax incentive, or other authorization for the data center or industrial project.
3. A nondisclosure agreement entered in violation of this chapter is void and unenforceable.

44-04.1-03. Public records.

1. This chapter does not limit or diminish the public's right of access to records of an agency under section 44-04-18.
2. This chapter does not modify, expand, or create an exemption from disclosure under section 44-04-18.4.

44-04.1-04. Application requirements - Enforcement - Penalty.

1. As part of an application submitted to an agency, a developer shall declare under penalty of perjury the developer has not entered a nondisclosure agreement in violation of this chapter.
2. A violation of this section constitutes grounds for suspension, revocation, or rescission of a permit or approval issued by an agency.
3. An agency that violates this chapter is subject to a civil penalty not to exceed one thousand dollars for each violation. The attorney general or the state's attorney of the county in which the violation occurred may bring an action to recover the civil penalty.

SECTION 2. EFFECTIVE DATE. This Act becomes effective upon its filing with the secretary of state.

SECTION 3. EXPIRATION DATE. This Act is effective through June 30, 2027, and after that date is ineffective.