

Sixty-ninth
Legislative Assembly
of North Dakota

FIRST ENGROSSMENT

ENGROSSED SENATE BILL NO. 2406

Introduced by

Senators Mathern, Sorvaag

Representatives Heilman, Warrey, C. Brown

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

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

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

8 **44-04.1-01. Definitions.**

9 As used in this chapter:

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

- 1 4. "Industrial project" means a project relating to the development of a business, industry,
2 utility, or infrastructure.
- 3 5. "Nondisclosure agreement" means an agreement, provision, clause, or contractual
4 term that has the purpose or effect of:
- 5 a. Restricting an agency from disclosing information about a potential data center or
6 industrial project to a member of the public, including information about the
7 location, siting, construction, modification, expansion, energy demand and type,
8 water usage, utility interconnection, and other potential community and
9 environmental impacts;
- 10 b. Designating the construction, proposed construction, modification, expansion, or
11 other information concerning a data center or industrial project as confidential;
- 12 c. Prohibiting an agency from disclosing, discussing, describing, or commenting on
13 the proposed construction, modification, or expansion of a data center or
14 industrial project; or
- 15 d. Requiring an agency to obtain advance approval from a developer before
16 disclosing information about a data center or industrial project.

17 **44-04.1-02. Prohibition on nondisclosure agreements.**

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

27 **44-04.1-03. Public records.**

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

1 3. This chapter does not prohibit an agency from entering a nondisclosure agreement or
2 other agreement to maintain the confidentiality of a record or information that is
3 confidential or exempt from disclosure under state law.

4 4. An agency may disclose or comment on the substance of an open record. Any
5 agreement prohibiting the disclosure or comment is void and against public policy.

6 **44-04.1-04. Application requirements - Enforcement - Penalty.**

7 1. As part of an application submitted to an agency, a developer shall declare under
8 penalty of perjury the developer has not entered a nondisclosure agreement in
9 violation of this chapter.

10 2. A violation of this section constitutes grounds for suspension, revocation, or rescission
11 of a permit or approval issued by an agency.

12 3. An agency that violates this chapter is subject to a civil penalty not to exceed one
13 thousand dollars for each violation. The attorney general or the state's attorney of the
14 county in which the violation occurred may bring an action to recover the civil penalty.

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

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