Senate Bill 2406 Testimony of Dustin Gawrylow,
Managing Director of the North Dakota Watchdog Network

The Public's Business Belongs in the Light

When an elected official or government bureaucrat takes the oath of office, they enter into a straightforward, non-negotiable contract with the public. That contract is based on accountability, transparency, and the fundamental principle that sovereignty lies with the citizens, not corporate boardrooms.

Yet across the country, and increasingly right here in North Dakota, we are seeing a quiet, corporate maneuver take hold: public officials signing (or, at least being asked/expected to sign) private Non-Disclosure Agreements (NDAs) to negotiate taxpayer-funded projects behind closed doors.

Whether it's backroom negotiations for massive data centers, brokering deals for regional infrastructure projects, or handing out economic development subsidies, government officials are swearing themselves to secrecy. By signing these NDAs, public officials are agreeing that their primary loyalty belongs to private developers rather than the taxpayers who fund their salaries.

This isn't free enterprise; it is textbook crony capitalism.

A Direct Attack on Public Scrutiny and Open Records

The entire foundation of open government rests on open records laws and sunshine statutes. These protections exist so taxpayers can scrutinize how their money is spent and determine whether a policy serves the community or enriches a handful of well-connected corporate interests.

When corporations demand NDAs as a condition of talking to government entities, they create an artificial legal wall behind which public resources are pledged.

Communities often wake up after the fact to find that infrastructure commitments, water rights, grid access, and multi-year property tax abatements have already been negotiated under code names—completely insulated from public hearings or independent economic analysis. By the time the public finds out what is happening, the permits are queued, the deal is signed, and local leverage has vanished.

A secret negotiation transforms public governance into a private shell game.

The False Narrative of "Competitive Advantage"

Proponents of government NDAs hide behind the claim that secrecy is necessary for economic development. They claim that without strict confidentiality, proprietary business models could leak or neighboring jurisdictions might poach potential investments.

This confuses private market competition with public stewardship.

A private business is fully entitled to protect proprietary trade secrets in the free market. But the moment a corporation walks into a government office asking for taxpayer subsidies, infrastructure concessions, utility access, or regulatory variances, it is no longer engaged in private commerce—it is seeking public wealth.

Taxpayers are the ultimate investors, not passive bystanders. Shielding the terms of public-private negotiations under the guise of "economic development" deprives citizens of weighing the real trade-offs:

- Strain on local utility grids and higher rates passed down to everyday consumers.
- Increased local government debt and long-term liabilities.
- The loss of local tax revenue to offset special exemptions.

Real economic growth is built on transparent, predictable rules and open markets, not backdoor arrangements insulated from public oversight.

Fracturing Local Representation

The practice of signing NDAs also breaks representative governance internally. In many cases, a handful of economic development directors, agency heads, or executives sign agreements that legally bar them from sharing details with the rest of the elected body.

City council members, county commissioners, and legislators find themselves pressured to vote on complex zoning changes, bonding packages, or appropriations while being denied the actual data by their own staff.

This replaces institutional checks and balances with an insular club of gatekeepers. It places public servants in legal jeopardy if they choose to blow the whistle on flawed economic

projections or conflicts of interest.

Time for Lawmakers to Act

Allowing public officials to sign corporate NDAs breeds understandable cynicism.

If you want more conspiracy theories, NDAs will make that happen.

When taxpayers see government operating in the shadows, they reasonably conclude that public policy is being rigged for corporate cronies at their expense.

The solution is simple: state legislatures and local governing bodies must enact clear statutory bans prohibiting any public official, agency employee, or appointed board member from entering into non-disclosure agreements with private entities regarding public actions, resources, tax incentives, or regulatory decisions.

If a private corporation wants to do business with government, build within our communities, or tap into public resources, they must accept a simple rule: the public's business must always be done in the public square.

North Dakota Watchdog Network
Preliminary Memo On Data Center Policy Activism

Executive Summary

The rapid proliferation of digital infrastructure and generative Artificial Intelligence (AI) has triggered a localized crisis across North Dakota. Over the past two years, intense local conflicts between residents and data center developers have erupted in at least a half-dozen jurisdictions, including Oliver, Mercer, Dickey, Burleigh, Williams, and Cass counties.
Too often, local officials are caught completely flat-footed without modern rules, ordinances, or home rule charters in place. This leaves them vulnerable to predatory development, corporate secrecy, and structural pressure from state-level actors.

This policy paper outlines a **fiscally conservative, local-control blueprint**. It strips away subjective regulatory overreach while delivering concrete protections for the local tax base and utility ratepayer. It establishes a clear, market-driven baseline: data center developers must pay their own way, operate in the open, and fully insulate local citizens from localized infrastructure liabilities.

Real Risks vs. Distractions: The "Watchdog" Reality Check

The Water Diversion

- **The Claim:** Opponents often assert that data center cooling infrastructure will completely deplete localized aquifers, jeopardizing agricultural sustainability.
- **The Watchdog Perspective:** When measured against the high-volume water consumption required by hydraulic fracturing in the state's oil patch, data center water demands are minor. Rather than halting development through blanket water bans, local zoning should simply require **closed-loop industrial cooling technology** as a standard permit condition, resolving the aquifer concern through engineering parameters rather than bureaucratic blocks.

The Power Grid & The "Stealth Tax"

- **The Claim:** Utilities and developers frequently placate local boards by arguing that data centers act as a "curtailable load" that can be dynamically disconnected during peak energy emergencies. They frame this induced demand as a mechanism to absorb surplus energy and keep regional baseload coal plants economically viable.
- **The Watchdog Perspective:** High-performance generative AI clusters demand continuous "five-nines" (99.999%) uptime; they are not dynamically curtailable like legacy crypto-mines. With utilities like Xcel Energy seeking massive rate increases (up to 19% in North Dakota), induced hyperscale demand risks creating a severe **"stealth tax"** on local consumers. Without protective firewalls, the cost of grid expansion is socialized, forcing residential ratepayers to subsidize multi-billion-dollar out-of-state entities.

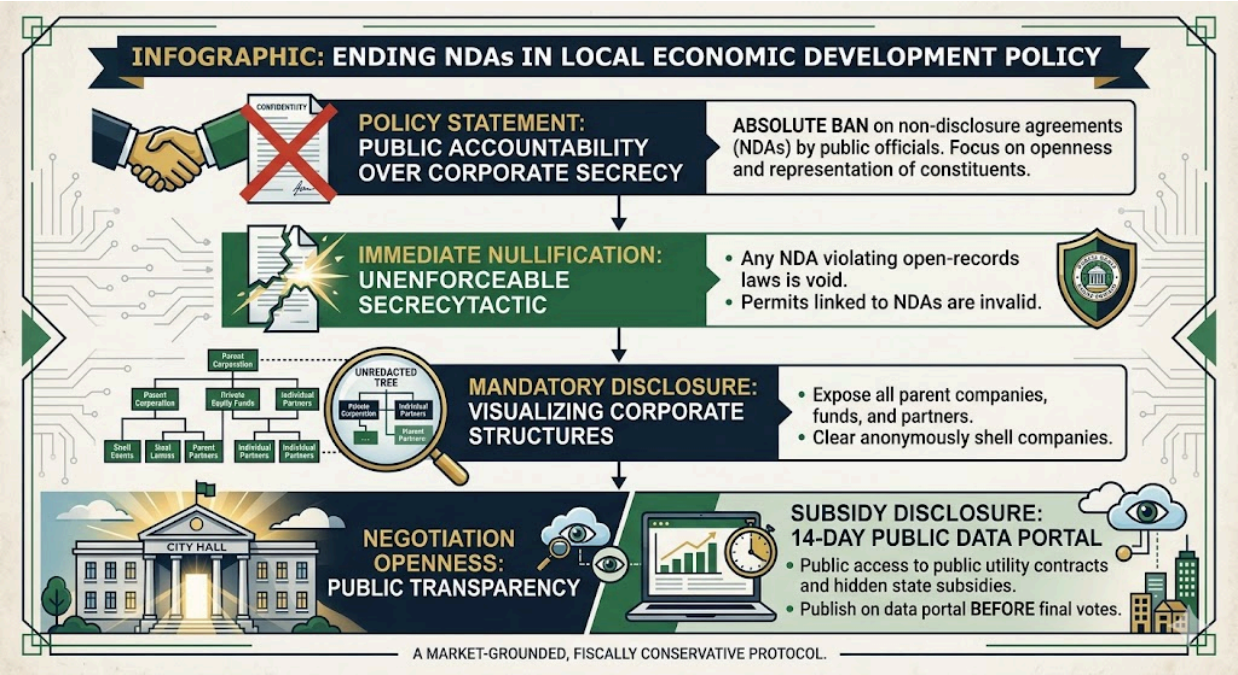
Case Studies in Governance Failures

The NDA Subversion (Fargo-Harwood)

The September 2025 controversy involving Applied Digital's proposed facility in Cass County exposes how transparency is actively undermined. The mayors of Fargo and Harwood executed private confidentiality agreements with the developer. This dynamic creates a "cloak and dagger" planning environment that subverts open-meetings and open-records principles, keeping landowners entirely in the dark until groundbreaking is framed as a "done deal". While the Attorney General has noted that agreements conflicting with state open-record laws are an unenforceable nullity, the use of NDAs establishes a dangerous precedent of corporate secrecy in local governance.

Forced Annexation as a "Cash Grab"

When a data center developer explicitly bypasses discretionary tax incentives (such as TIFs or PILOT programs) and agrees to pay its fair share, municipal governments often pivot from subsidizing development to treating the company as a corporate "cash cow". In late 2025, the City of Fargo initiated forced annexation of land within Harwood's Extra-Territorial Authority (ETA) specifically to capture an estimated $10 million annual electricity **Franchise Tax**. This aggressive poaching behavior by larger cities ignores resident input, pushes out neighboring communities, and demonstrates a predatory approach to economic development fueled by municipal cash-flow challenges and credit downgrades.



The Fiduciary Conflict of Interest

In September 2025, the North Dakota State Land Board—chaired by the Governor and including the Attorney General, State Treasurer, Secretary of State, and Superintendent of Public Instruction—committed **$100 million** of the Common Schools Trust Fund to an infrastructure fund managed by Cloud Capital.
This transaction creates two distinct problems:

1. **The ESG Hypocrisy:** Despite intense statewide rhetoric condemning Environmental, Social, and Governance (ESG) frameworks, state officials proactively placed $100 million into a fund explicitly governed by UN Principles for Responsible Investment and Green Finance Frameworks.

2. **The Regulatory Capture:** Because the state's financial portfolio is now directly tied to the macroeconomic success of the data center industry, a severe fiduciary conflict emerges. State policymakers are disincentivized from protecting local communities or limiting cost-socialization because enacting strict consumer protections could directly devalue state investment assets.

The Actionable Local Blueprint: B.Y.O.P. and Home Rule

Because state policymakers have largely abandoned local officials to navigate these structural pressures alone, counties and cities must proactively deploy their own legal defense mechanisms before developers arrive.

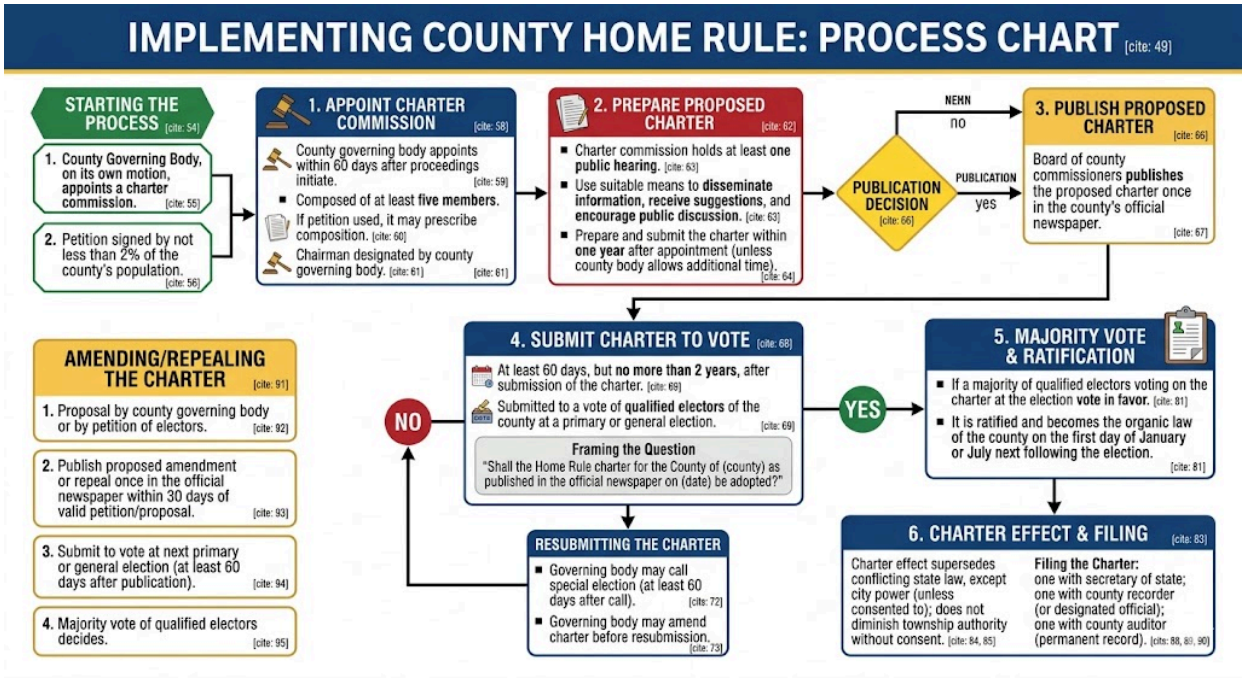
The "Bring Your Own Power" (B.Y.O.P.) Standard

To prevent infrastructure cost-shifting from turning into an involuntary consumer subsidy, local zoning authorities should integrate a B.Y.O.P. (Bring Your Own Power) policy into their Conditional Use Permit (CUP) workflows. Under a B.Y.O.P. framework, mega-users are required to offset or directly secure their own dedicated power generation—whether through wind, solar, co-located natural gas generation, or small-scale nuclear. If they hook into the regional grid, they must be assigned to a specialized user class requiring them to pay 100% of all upfront substation, transmission, and generation expansion costs, ensuring the existing grid's health is entirely protected.

Activating County Home Rule Charters

North Dakota Century Code (N.D.C.C.) Title 11 establishes a clear two-tier system for county governance. Traditional counties possess highly restricted, strictly enumerated statutory powers. However, under N.D.C.C. § 11-09, counties that draft and ratify a **Home Rule Charter** effectively establish a localized constitution. While voters are historically cautious regarding home rule expansions, a citizen-initiated or carefully structured Home Rule Charter can be customized to include explicit regulatory guardrails.

- It expands county authority to pass targeted, ironclad ordinances that go far beyond standard, easily challenged statutory agricultural zoning laws.
- It allows rural communities to mandate explicit noise thresholds (such as low-frequency infrasound limits from industrial cooling fans) and enforce strict right-of-way boundaries.



Conclusion: A Business Transaction, Not a Subsidy Play

Data centers do not have to be blocked entirely, but they must be strictly regulated via local sovereignty. Rural North Dakota counties have the ultimate leverage: they control the ground where the digital infrastructure meets the physical grid.

Local leaders must stop allowing multi-billion-dollar out-of-state tech firms to divide their communities, hide behind NDAs, or use local families as an unpaid insurance policy for the state's investment portfolio. County governance must approach these developments strictly as an arm's-length business transaction: If you want our land and our energy, you will pay your own way, you will respect our transparency, and you will secure the collateral to clean up your own mess.