SB 2406 September 1-2, 2026- NDA Testimony- Capital Building

Chairmen Klein and Ruby, and Members of the Joint Policy Committee.

My name is Tim Mathern. I am the senator from District 11 in Fargo.

Special sessions are important not only for the governor's agenda but for the legislature. What is of concern to people across the state today? More than kratom, though important--it is artificial Intelligence and the associated explosive growth of Data Centers.

SB 2404 comes to you from the Legislative Management committee and is cosponsored by Senator Sorvaag and me along with Representatives Representative Heilman, Brown and Warrey. It is the Non-Disclosure Agreement bill. The bill was amended by Legislative Management to make it also apply to industrial projects and to be effective only until July 1, 2027.

Data centers developing across America have dramatic impacts on communities, the energy grid, and infrastructure demands. Data centers create potential economic benefits but also great stressors. If they are not done correctly, they can bring great harm. 4,000 have been built in the United States and another 4000 are planned. Our citizens are concerned.

Data centers create huge electrical load growth. For example, a new 1450 MW natural gas power plant proposed in Mercer County will not have enough power for one 1700 MW data center. This data center would pull electricity from the grid on top of a new power plant. Furthermore, water would be pulled from the Missouri River. We only know this ahead of time because Mercer County citizens demanded a temporary Data Center Moratorium and had time to do their own research. We need to require all data center developers at the onset to be open and honest with the public about water and electrical use.

Some communities hope to realize potential job creation, capital investment, and tax benefits. At the same time, data centers require significant amounts of utilities and require the construction of additional infrastructure. This may impose additional costs on citizens when we now live in a time of general affordability

concerns. Meanwhile, profits of these businesses are often realized out of North Dakota. Plans for decommissioning data centers are sketchy or unfunded by the data center company. This could be in as little as 5 years. How will this cost be paid?

NEED FOR LEGISLATION

Some data center developers have hidden information from the public. Developers claim information is proprietary and use the enthusiasm for the new tax base to pressure local officials to enter nondisclosure agreements, NDAs. Some threaten to go elsewhere if public officials don't sign. For example, many in Fargo, West Fargo, and Harwood had no idea a data center was planned in their backyard until it was less than a month from the groundbreaking. If a project is positive it can stand up to public scrutiny.

What is being kept secret?

1. Existence of a project.
2. Location.
3. Developer identity.
4. Size and scale.
5. Energy demand.
6. Type of electricity used.
7. Water use.
8. Tax incentives.

Keeping data center development secret is damaging because:

1. It removes the opportunity for public participation.
2. It destroys public confidence in government leaders and staff.

3. Energy and water use information is critical for state regulators, local siting authorities, utilities, and the public to know as they also use these resources

4. The taxation arrangements affect the taxes of every citizen.

State lawmakers nationwide are considering various responses to Al data centers, and we should. This includes red and blue states. Florida, Georgia, Michigan, New Jersey, and Wisconsin all are considering various versions of legislation regarding data centers.

SB 2406 is balanced. This bill does **NOT:**

1. Prohibit companies from building data centers or industrial projects.

2. Have requirements for construction or operation.

3. Expose trade secrets like intellectual property or proprietary internal equipment design.

4. Limit or change our present state public records disclosure laws.

SB 2406 has 3 Sections.

Section 1 provides useful definitions including subsection 5 clearly delineating a " Nondisclosure agreement". The section also clarifies that our present laws stay in place regarding public records. A penalty is noted which includes grounds for revocation of a permit if a non-disclosure agreement has been used.

Section 2 makes the law effective when it is filed with the secretary of state.

Section 3 makes the law ineffective after this biennium giving the regular session of the legislature further opportunity for scrutiny and comfort to legislators and developers before making this permanent law. This was added by Legislative Management Committee.

In summary passage of this bill stops Nondisclosure Agreements. I believe it gets to the heart of citizen concerns by shining the light of day on the deals being made by our cities, townships, and counties throughout the state.

I also have two amendments for you to consider in adding to this bill. These are ready to go as they are prepared by Legislative Council.

1. One is the situation where a public entity is also an energy provider. Proponents will testify, but in summary SB 2406, in its current version, would apply to political subdivisions that have municipal electric utilities like Cavalier, Hillsboro, Lakota, Northwood, Riverdale, and Valley City. Without exemption would mean only rural electric cooperatives (RECs) and investor-owned utilities (IOUs) could be at the table for development of new transmission or generation assets creating an un-level playing field.
2. The second is eliminating our sales tax exemption on data center equipment. We began the exemption a decade ago not realizing that these data centers would become the rage in the AI world with multibillionaire investors. Our Tax Commissioner says we have gone from a $5 million dollar break to a $65 million dollar break and are going higher! Data centers will be built even if we eliminate this subsidy. We should do it immediately. Why give out of state developers this tax break which we could use for North Dakota needs like the Veteran wing of the Heritage Center, childcare, or struggling businesses and farmers in this "price increase" environment.

Chairmen Klein and Ruby, and Committee members; Passage of SB 2406 will assure that our decision makers have time and critical information to make important decisions regarding data centers and industrial projects. We need to use this special session to have an immediate positive impact while being vigilant and responsive to today's economic and social change. I ask you for your Do Pass recommendation. I believe this is what most citizens want us to do in this special session.

Thank you.

Senator Tim Mathern