2026 JOINT POLICY

SB 2406

2026 JOINT STANDING COMMITTEE MINUTES

Policy Committee
Pioneer Room, State Capitol

SB 2406
9/2/2026

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.

11:06 a.m. Chairman Klein opened the hearing.

Members present: Co-Chairman Klein, Senators Axtman, Braunberger, Cory, Dever, Roers, Rummel, Weber, Co-Chairman Ruby, Representatives Anderson, Beltz, Foss, Frelich, Heinert, Karls, Porter, Rohr, and Warrey.

Discussion Topics:

- Open records
- Confidentiality
- Committee action

11:06 a.m. Representative Warrey introduced amendment LC# 25.1425.02004, testimony #45658 in favor.

11:07 a.m. Representative Warrey moved to adopt amendment LC # 25.1425.02004.
11:08 a.m. Senator Axtman seconded the motion.

Roll Call Vote

Representatives	
Representative Matt Ruby	Y
Representative Dick Anderson	Y
Representative Mike Beltz	Y
Representative Austin Foss	Y
Representative Kathy Frelich	Y
Representative Pat Heinert	N
Representative Karen Karls	Y
Representative Todd Porter	N
Representative Karen Rohr	Y
Representative Jonathan Warrey	Y

Motion Passed 8-2-0.

Roll Call Vote

Senators	
Senator Jerry Klein	Y
Senator Michelle Axtman	Y
Senator Ryan Braunberger	Y
Senator Claire Cory	Y
Senator Dick Dever	Y

Senator Kristin Roers	Y
Senator Dean Rummel	Y
Senator Mark Weber	Y

Motion Passed 8-0-0.

11:13 a.m. Representative Porter moved a Do Not Pass as Amended.
11:13 a.m. Senator Roers seconded the motion.

Roll Call Vote

Representatives	
Representative Matt Ruby	Y
Representative Dick Anderson	Y
Representative Mike Beltz	Y
Representative Austin Foss	N
Representative Kathy Frelich	N
Representative Pat Heinert	Y
Representative Karen Karls	Y
Representative Todd Porter	Y
Representative Karen Rohr	N
Representative Jonathan Warrey	Y

Motion Passed 7-3-0.

Roll Call Vote

Senators	
Senator Jerry Klein	Y
Senator Michelle Axtman	Y
Senator Ryan Braunberger	N
Senator Claire Cory	Y
Senator Dick Dever	Y
Senator Kristin Roers	Y
Senator Dean Rummel	Y
Senator Mark Weber	N

Motion Passed 6-2-0.

Representative Warrey will carry the bill.
Senator Klein will carry the bill.

Additional written testimony:
Cecile Wehrman, Executive Director, North Dakota Newspaper Association, submitted testimony in favor #45603.
Tim Mathern, Senator, ND Legislative Assembly, submitted testimony in favor #45636.
Andrea Pfennig, Vice President of Government Affairs, Greater North Dakota Chamber submitted testimony in opposition #45639.

11:21 a.m. Chairman Klein closed the hearing and recessed the meeting until 12:30 p.m.

Melissa Ingram, Committee Clerk

25.1425.02004
Title.

Prepared by the Legislative Council staff for Representative Warrey
September 1, 2026

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO

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.

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9/2/26

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.

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2. This chapter does not modify, expand, or create an exemption from disclosure under ~~section 44-04-18.4~~state law.

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

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

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.

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REPORT OF STANDING COMMITTEE
SB 2406

Joint Policy Committee (Sen. Klein, Co-Chairman) recommends **AMENDMENTS (25.1425.02004)** and when so amended, recommends **DO NOT PASS** (6 YEAS, 2 NAYS, 0 ABSENT OR EXCUSED AND NOT VOTING). SB 2406 was placed on the Sixth order on the calendar. This bill does not affect workforce development.

REPORT OF STANDING COMMITTEE
SB 2406

Joint Policy Committee (Rep. M. Ruby, Co-Chairman) recommends **AMENDMENTS (25.1425.02004)** and when so amended, recommends **DO NOT PASS** (7 YEAS, 3 NAYS, 0 ABSENT OR EXCUSED AND NOT VOTING). SB 2406 was placed on the Sixth order on the calendar.

NDNA
NORTH DAKOTA NEWSPAPER ASSOCIATION
Cecile Wehrman, director@ndna.com 701-648-8697

JOINT POLICY COMMITTEE
SB 2406 -- IN FAVOR

CHAIRMEN KLEIN AND RUBY, AND COMMITTEE MEMBERS:

My name is Cecile Wehrman, executive director of the North Dakota Newspaper Association (NDNA). I provide this letter **IN FAVOR** of SB 2406.

SB 2406 will protect transparency around development of data centers and other industrial projects, to the benefit of citizens who will have to live with them in their neighborhoods for many years to come.

Of course newspapers prefer as much sunshine on government actions as possible, but we also note this bill does not intend to usurp existing exemptions in the economic development realm and should be adequate protection against the release of truly proprietary information.

This is a new technology and a new scale of development than North Dakota has seen in the past. These are not just buildings that sit near communities, but facilities that change the complexion of communities and create burdens on community resources and residents. Citizens, therefore, should be apprised of the potential for such community-altering developments to impact their lives.

As with any economic development project, if it's a good deal for the community, the promoters should have nothing to hide.

When looking at the advent of AI, and the data centers that power them, I can only imagine what voters would have chosen at the advent of Facebook if they'd known social media would harm children, disrupt industries, and spread disinformation. Given that North Dakota officials at all levels of government have a great deal more to learn about the pros and cons of data centers, providing extra transparency to the public at this time (and until July 2027) is a prudent protection.

SB 2406 September 2, 2026- Nondisclosure Agreements Testimony

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 2406 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 concerned about affordability on everything they buy.

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

GREATER NORTH DAKOTA CHAMBER
SB 2406
Joint Policy Committee
Chairman Klein and Chairman Ruby
Sept. 2, 2026

Mr. Chairmen and members of the Committee, my name is Andrea Pfennig, and I am the Vice President of Government Affairs for the Greater North Dakota Chamber. GNDC is North Dakota's largest statewide business advocacy organization, with membership represented by small and large businesses, local chambers, and trade and industry associations across the state.

We previously testified in **opposition** of Senate Bill 2406 and would like to address the amendment proposed by Rep. Warrey. We appreciate the proposed amendment and believe it improves the bill. Specifically, it addresses an important concern by clarifying that agencies may enter into agreements to protect information that is confidential or exempt under state law.

However, several of the concerns raised in our original testimony remain:

- **Broad scope.** The definitions of "agency," "industrial project," and "nondisclosure agreement" remain broad, potentially affecting a wide range of businesses, projects, and agreements.
- **Disclosure process.** A business may have no opportunity to respond before information is determined to be an open record and disclosed. Once sensitive information is released, that disclosure cannot be undone.
- **Permits and approvals.** The bill continues to allow violations to be grounds for suspension or revocation of permits and approvals, with questions remaining about how broadly that provision could be applied.
- **Information sharing.** Businesses may choose to share less information or delay working with public entities if they lack certainty about how sensitive information will be handled.
- **Existing law.** North Dakota already has an established open records framework that determines what information is open, confidential, or exempt. NDAs cannot override those laws, and we continue to question the need for a broad statutory restriction on their use.
- **Special session timing.** Given the breadth of the bill and the potential impact across industries and public entities, we remain concerned that a special session does not provide adequate time to fully evaluate the implications of this policy change.

We appreciate the effort to address concerns with Senate Bill 2406. While the proposed amendment is an improvement, it does not resolve the broader concerns that led to our opposition.

For those reasons, GNDC remains opposed to Senate Bill 2406.

25.1425.02004
Title.03000

Prepared by the Legislative Council
staff for Representative Warrey
September 1, 2026

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO

SENATE BILL NO. 2406

Introduced by

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Representatives Heilman, Warrey, C. Brown

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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.

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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.