

**HOUSE BILL NO. 1579**

Introduced by

Representatives Novak, Porter, Heinert

Senators Kessel, Patten

1 A BILL for an Act to amend and reenact sections 49-03.1-01, 49-03.1-02, 49-03.1-03, and  
2 49-03.1-05 of the North Dakota Century Code, relating to the requirement for data centers to  
3 obtain a certificate of public convenience and necessity.

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

5 **SECTION 1. AMENDMENT.** Section 49-03.1-01 of the North Dakota Century Code is  
6 amended and reenacted as follows:

7 **49-03.1-01. Certificates of public convenience and necessity - Who to secure.**

8 ~~No~~A public utility shall ~~or data center may not~~ begin construction or operation of a public  
9 utility plant or ~~system~~data center infrastructure without first obtaining from the commission a  
10 certificate that public convenience and necessity require or will require ~~such~~the construction and  
11 operation, provided that this certification may not be required for a cooperative-operated data  
12 center.

13 **SECTION 2. AMENDMENT.** Section 49-03.1-02 of the North Dakota Century Code is  
14 amended and reenacted as follows:

15 **49-03.1-02. Definitions.**

16 In this chapter, unless the context or subject matter otherwise requires:

- 17 1. "Commission" means the public service commission.
- 18 2. "Data center" means a structure that primarily contains electronic equipment used to  
19 process, store, and transit digital information, or conduct data mining, owned by an  
20 investor-owned utility, which consumes twenty megawatts or more of energy, which  
21 may be:
- 22 a. A freestanding structure;
- 23 b. A portion of a larger structure which uses environmental control equipment to  
24 maintain the proper conditions for the operation of electronic equipments; or

1           c. A structure that accommodates infrastructure, including servers, storage  
2           systems, and networking equipment, ensuring access to information, operating  
3           data mining, facilitating the operation of websites, applications, and services, and  
4           maintaining optimal performance and uninterrupted data availability for an  
5           enterprise or organization.

6           3. "Public utility" includes any association, person, firm, corporation, limited liability  
7           company, or agency engaged or employed in this state to furnish its product or  
8           services to the public generally which is statutorily subject to the jurisdiction of the  
9           commission. The words "public utility" as used in this chapter do not apply to electric  
10          public utilities, telecommunications companies that are not incumbent  
11          telecommunications companies under chapter 49-21, or motor carriers of persons or  
12          property for hire.

13          **SECTION 3. AMENDMENT.** Section 49-03.1-03 of the North Dakota Century Code is  
14          amended and reenacted as follows:

15          **49-03.1-03. Certificate application.**

16          Application for a certificate of public convenience and necessity shall be made upon forms  
17          prescribed by the commission. The commission shall make regulations for the filing of such  
18          application. The application must contain a financial statement, a description of the type of  
19          service to be offered, a map and description of the area to be served, and a list of all other  
20          public utilities or data centers providing similar service in the area. Upon the filing of an  
21          application for a certificate of public convenience and necessity, the commission shall set a  
22          hearing date which shall not be less than twenty days after the filing. The commission shall  
23          cause notice of the hearing to be served by certified mail, at least ten days before the day of  
24          hearing, upon every public utility or data center which is operating, or which has applied for a  
25          certificate of public convenience and necessity, in the area proposed to be served by the  
26          applicant, and on other interested parties as determined by the commission. The commission  
27          shall impose an application fee of up to ten thousand dollars for an application under this  
28          chapter. With the approval of the emergency commission, the commission may impose an  
29          additional amount. The commission shall pay the expenses of processing an application under  
30          this chapter from the application fee paid by the public utility or data center in accordance with  
31          section 49-02-02.

1       **SECTION 4. AMENDMENT.** Section 49-03.1-05 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3       **49-03.1-05. Prerequisites to issuance of certificate of public convenience and**  
4 **necessity - Waiver of hearing.**

- 5       1. Before any certificate may be issued under this chapter, a certified copy of the articles  
6 of incorporation, charter, or organization of the public utility or data center, if the  
7 applicant is a corporation or a limited liability company, shall be filed with the  
8 commission. At the hearing on the application as provided in section 49-03.1-03, the  
9 applicant shall submit evidence showing that the applicant has received the consent,  
10 franchise, permit, ordinance, or other authority of the proper municipality or other  
11 public authority, if required, or has or is about to make application therefor. The  
12 commission shall have the power, after notice and hearing, to do any of the following:
- 13       ~~1.~~ a. Issue the certificate.  
14       ~~2.~~ b. Refuse to issue the certificate.  
15       ~~3.~~ c. Issue the certificate for the construction or operation of only a portion of the  
16 contemplated facility, line, plant, ~~or system,~~ or data center.  
17       ~~4.~~ d. Issue the certificate for the partial exercise of the right or privilege sought,  
18 conditioned upon the applicant's having secured or upon the applicant's securing  
19 the consent, franchise, permit, ordinance, or other authority of the proper  
20 municipality or other public authority, and may attach to the exercise of the rights  
21 granted by any certificate such terms and conditions as in its judgment the public  
22 convenience and necessity may require.
- 23       2. Notwithstanding any of the foregoing provisions, the commission may grant a  
24 certificate if no interested party has requested a hearing on the application after  
25 receiving at least twenty days' notice of opportunity to request such hearing.