Using Temporary Pauses to Develop Permanent Regulation: The Growing Use of Data Center Moratoria

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State and Local Data Center Moratoria Becoming More Commonplace

In a February 2026 client alert, we examined the rapidly evolving legal landscape surrounding data center development, focusing first on emerging state and local regulatory initiatives. We described state regulation of data centers as a rapidly expanding patchwork, driven by various concerns over perceived externalities created by data center growth. In that context, we identified zoning moratoria and site restrictions emerging tools that states and municipalities were looking at in order to regulate data centers. As predicted, since publication, recent developments suggest that the examples discussed therein were not isolated responses to these concerns but part of a broader movement toward using temporary pauses, environmental review and community-benefit frameworks as front-end tools for governing AI infrastructure. As discussed below, these developments highlight both the expanding regulatory tool kit available to governments and the growing range of legal challenges available to developers, with key takeaways and practical considerations summarized at the end of this alert.

At the federal level, on March 25, 2026, US Senator Bernie Sanders introduced the Artificial Intelligence Data Center Moratorium Act, a bill to "impose a moratorium on the construction of new data centers until legislation is enacted that safeguards the public from the dangers of artificial intelligence."[1] US Representative Alexandria Ocasio-Cortez then introduced an identical bill in the House of Representatives on June 24, 2026.[2] At the state level, legislators in six states have introduced ten similar bills.[3]

Local governments are moving in a similar direction. Our previous client alert discussed county-level examples, and now cities have also begun attempting to assert regulatory authority over data centers. For example, Seattle recently passed a city moratorium on new data center siting while the city conducts comprehensive impact studies.[4] While it remains to be seen how states will react to AI regulation at the city level, any increase in local regulation will only exacerbate the potential patchwork nature of state and county—and now municipal—laws and regulations applicable to new data center projects.

New York's Statewide Moratorium: A Milestone in a Broader Regulatory Shift

The clearest recent escalation of moratoria usage was in New York. On June 4, 2026, both the New York Senate and State Assembly passed the Responsible Data Center Development Act—comprehensive legislation that placed a one-year moratorium on the issuance of data center permits for data centers expected to draw more than 20 megawatts of power; required utilities to establish an independent classification of service for large data centers; set energy efficiency goals for data centers; and provided for benefits for host communities.[5]

Then, instead of signing the bill, on July 14, 2026, Governor Kathy Hochul signed the narrower Executive Order No. 62, creating the first statewide moratorium on new data centers.[6] Specifically, the executive order imposes a one-year moratorium on discretionary environmental permitting for data centers expected to draw more than 50 megawatts of power (a higher threshold than the 20-megawatt threshold that the legislature enacted). During this one-year period, New York's Department of Public Service will evaluate the general environmental impacts of data center construction and operation, including effects on energy demand, water use and quality, and air quality, and direct issuance of a Community Investment Framework to guide local negotiations over infrastructure improvements, childcare investments, direct financial support, prevailing wage standards, project labor agreements, local hiring, apprenticeships and workforce development.

Executive Order No. 62 is notable not only because of its breadth but also because it connects several themes identified in our previous client alert—large-load cost allocation, water-use disclosure, clean-energy conditions, environmental measures, and zoning limits—into a single regulatory architecture through the permitting pause and environmental review, as well as through stated concerns over ratepayer protection and community benefits.

Moratoria such as this could provide a structure to slow projects while operating as governmental leverage to develop generally applicable standards, establish negotiating baselines for local governments and reshape the economics of large-load development before a project receives an entitlement. However, by not signing bicameral state legislation in order to further evaluate impacts, Executive Order No. 62 also potentially signals hesitancy by Governor Hochul over whether concerns are well founded or what would be the best regulatory mechanism to deal with them.

Moratoria Face Early Legal Challenges

Yet these moratoria have not gone unchallenged. Developers have begun taking them to court, and the early results may suggest that hastily adopted pauses are legally vulnerable. In Texas, after Hill County became the first Texas county to adopt a moratorium, RCM Hill, LLC, responded with a federal lawsuit seeking $100 million in damages, arguing that the county had "exceeded its lawful powers" because Texas counties, unlike cities, generally lack zoning authority.[7] The Hill County commissioners then voted unanimously to rescind the moratorium—just two weeks after its adoption—in favor of a development checklist.[8] The developer ultimately dismissed its suit in exchange for $100,000 in legal fees.[9]

In North Carolina, ECO TIP West LLC has sued to invalidate Chatham County's moratorium, alleging that the company spent more than $11 million on a planned 750 megawatt data center in reliance on a county zoning permit confirming the project was a "use permitted by right," giving rise to statutory vested rights that the moratorium cannot displace.[10]

And in California, the developer of what would be the state's largest data center is challenging Imperial County's moratorium on the ground that an emergency interim ordinance requires a "current and immediate threat" to the public health, safety or welfare—a showing, the developer argues, that community opposition alone cannot make.[11] At a July 28, 2026, hearing, the court pressed the county to identify the "irreparable harm" supporting its freeze.[12]

Many moratoria are transitional measures that jurisdictions later rescind or allow to lapse once permanent standards (siting checklists, setback and noise requirements, water-use conditions) are in place. For project planning purposes, the pause itself may therefore matter less than do the substantive requirements adopted during it, which will govern projects after the moratorium ends.

Community Benefits and Public Engagement Take Center Stage

A related lesson from these disputes is the importance of community engagement. The moratoria that have generated the most controversy arose in part from processes that residents and local officials viewed as exclusionary. The ECO TIP West complaint, for example, alleges that Chatham County's moratorium emerged from "closed-door" discussions among county officials.[13] Now, community engagement requirements are being formalized into law.

For example, Michigan legislators recently introduced legislation that would bar local site plan approvals and utility interconnections until a data center operator enters into a legally binding community benefit agreement addressing topics such as local hiring, water use, infrastructure cost allocation and community investment.[14] New York's Community Investment Framework under Executive Order No. 62 reflects the same approach, and at least six other states have considered similar community benefit requirements this year.[15] Republican US Representative Robert Bresnahan also introduced federal legislation that would similarly condition eligibility for federal data center tax credits on community benefit agreements.[16] Developers should accordingly treat community benefit commitments as an emerging category of permitting requirements, and they should plan and budget for them early in the development process.

For developers, operators and investors, the practical consequence is that moratorium risk should now be treated as a core element of project diligence. That means assessing not only whether a jurisdiction currently permits data centers, but also whether pending legislative sessions, local planning studies, utility cost debates or community benefit campaigns could alter the timeline or the cost-benefit calculations after a site is selected but before all approvals are complete. The shifting landscape also needs to be considered in the context of local zoning approvals, state environmental permits, interconnection requests and community negotiations.

Meanwhile, we continue to expect that the increasing burdens placed on data centers will invite further legal challenges, not only under the state law and vested-rights theories described above but also pursuant to the equal protection clause, Federal Power Act or dormant commerce clause or under federal preemption, First Amendment, takings, contract impairment or related theories. However, those challenges will be fact-dependent and may not provide near-term certainty for projects already in the pipeline. These challenges and how jurisdictions respond—whether by rescission of moratoria, implementation of alternative measures or codification of engagement requirements—will continue to be an important area to watch in the second half of 2026 and beyond.

Bottom Line: What Companies Should Be Doing Now

- **Evaluate moratorium risk early in site selection.** Developers should assess not only current zoning and permitting requirements, but also pending legislation, planning studies and political initiatives that could result in development pauses or new restrictions.
- **Preserve vested-rights and grandfathering arguments where possible.** Obtaining key permits and documenting project reliance expenditures may prove important if jurisdictions later impose moratoria or change zoning rules.
- **Plan for community benefit commitments.** Community benefit agreements, workforce commitments, infrastructure investments and similar obligations are increasingly becoming part of the regulatory conversation and should be incorporated into project budgeting and stakeholder-engagement strategies.
- **Monitor litigation developments.** Early challenges like those in Texas, North Carolina and California may help define the legal limits of data center moratoria and provide guidance regarding local authority, emergency ordinances and vested-rights protections, as well as potential litigation strategies.
- **Coordinate regulatory, land-use, environmental, and litigation strategy.** Because moratoria increasingly intersect with permitting, utility regulation, environmental review and community engagement requirements, a siloed approach to project development strategy may create unnecessary legal and business risk.

WilmerHale's lawyers regularly counsel clients across the AI and infrastructure sectors and are well positioned to help companies assess and mitigate these emerging risks, defend against novel claims and navigate the rapidly developing intersection of data centers, environmental law and the communities in which these facilities operate.

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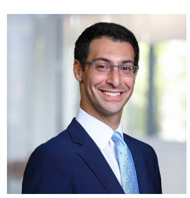

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2. H.R. 9442, 119th Cong. (2026).

3. S.B. 353, 153rd Gen. Assemb. (Del. 2026); H.B. 5594 (Mich. 2026); H.B. 5595 (Mich. 2026); H.F. 4298, 94th Leg. (Minn. 2026); H.F. 4888, 94th Leg. (Minn. 2026); S.B. 1359, Gen. Assemb., Reg. Sess. (Penn. 2026); H.B. 2533, Gen. Assemb., Reg. Sess. (Penn. 2026); H. 5526, Gen. Assemb. 126th Sess. (S.C. 2026); S.B. 1061 (Wisc. 2026); S.B. 1099 (Wisc. 2026).

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5. A11560/S10642 (N.Y. 2026).

6. Press Release, Governor Kathy Hochul's Press Office, *First Statewide Moratorium on New Hyperscale Data Centers Launched by Governor Kathy Hochul* (July 14, 2026), https://www.governor.ny.gov/news/first-statewide-moratorium-new-hyperscale-data-centers-launched-governor-kathy-hochul.

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8. KWTX, *supra* note 7.

9. *Id*.

10. Complaint, *ECO TIP West LLC v. Chatham County*, No. 26CV000456-180 (N.C. Super. Ct. Apr. 23, 2026), https://nsjonline.com/wp-content/uploads/2026/04/26CV000456-180_COMPLAINT_without-exhibits.pdf; A.P. Dillon*, Chatham County Faces Lawsuit Over Data Center Moratorium*, N. State J. (May 9, 2026), https://nsjonline.com/article/2026/05/chatham-county-faces-lawsuit-over-data-center-moratorium; *see* N.C. Gen. Stat. § 160D-107.

11. Quinn Welsch, *Desert Data Center Developer Challenges County Moratorium in Court*, Courthouse News Serv. (July 28, 2026), https://www.courthousenews.com/desert-data-center-developer-challenges-county-moratorium-in-court; *see* Cal. Gov't Code § 65858(c).

12. Welsch, *supra* note 11.

13. Complaint, *ECO TIP West LLC v. Chatham County*, No. 26CV000456-180 at 2.

14. Kim Miller, *Michigan Data Center Legislation Targets Energy Use and Community Benefits*, MultiState (July 15, 2026), https://www.multistate.us/insider/2026/7/15/michigan-data-center-legislation-targets-energy-use-and-community-benefits (discussing H.B. 6137 and S.B. 1050 (Mich. 2026)); *see also Community Benefits Agreements and Data Center Development*, Colum. Climate L. Blog (May 28, 2026), https://blogs.law.columbia.edu/climatechange/2026/05/28/community-benefits-agreements-and-data-center-development.

15. Miller, *supra* note 14.

16. *Id.*; H.R. 9262, 119th Cong. (2026).