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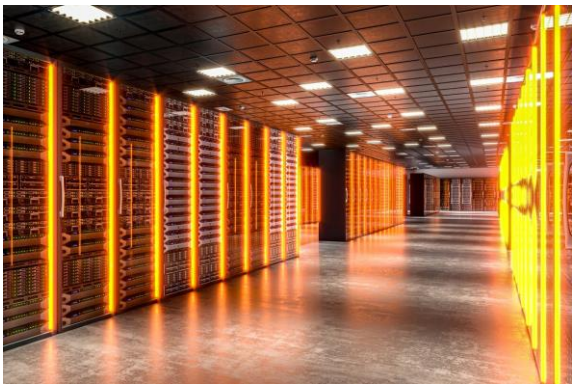
6 States Attys Are Watching For Data Center Energy Policy

By **Charlie Innis**

Law360 (July 2, 2025, 7:32 PM EDT) -- Lawmakers and regulators across the country are mulling new policies to address data center energy needs, and while Virginia tends to get a lot of attention on the issue, several other states are also worth keeping tabs on for possible rule changes, according to attorneys.

No state is untouched by today's data center craze. Many energy providers, utility commissions and state legislatures are grappling with how they can get power to new projects while not burdening the grid or overbuilding electrical infrastructure.



While considering new policies to address their data center energy needs, states like Texas, Virginia and Georgia are keeping a close eye on potential upcoming rule changes. (iStock/tiero)

While all 50 states are trying to figure out how they can attract more data centers, many are simultaneously hearing members of the public push back on development, noted F. Joseph Warin, a litigation partner at Gibson Dunn & Crutcher LLP.

"It is a dialectic that is unusual, because you have the economic development people saying, 'I want nothing better than this,' and then you have some subset of the citizenry that might say, 'Well, I don't want a data center in my backyard,'" Warin said.

Numerous states have recently passed or considered policies on the issue, including some that industry players as well as other states might look to as a model, attorneys told Law360 Real Estate Authority.

"The utility industry has not faced anything like this at this pace, at this size, and data centers are used to moving fast and being able to shift and change as the winds blow," said Kira Loehr, an energy partner at Perkins Coie LLP. "That's not how utilities are set up, so it'll be fun."

Here is a look at states that attorneys say will be interesting to watch due to recent and ongoing energy policy changes, as the data center industry continues on its skyward trajectory.

A 'Kill Switch' Provision for Data Centers in Texas

Texas Gov. Greg Abbott signed a bill in June that puts forth several momentous rules for digital infrastructure operators and developers, including a provision that gives electric grid operators the ability to cut back power from data centers during energy crises.

Under what the energy industry refers to as a "kill switch" provision, Senate Bill 6 allows grid operators to cut back power from large, noncritical consumers, including most data centers, during emergencies when the operator needs to implement rolling blackouts.

Such emergencies include severe weather that knocks out energy grids, like when winter storm Uri wreaked havoc in Texas in 2021, an event that is "kind of etched in everybody's mind" in the state, according to Winston Skinner, an energy regulation partner at Vinson & Elkins LLP.

"How do you avoid having data centers soak up all the power so that the ordinary residential consumers of power are not left in the cold? That's what I think this is primarily aimed to avoid," Skinner said.

The "kill switch" provision concerned data center operators the most, given the costs of losing power to a facility without advance notice, he noted.

But the provision only applies to power loads that interconnect starting Jan. 1, 2026, and high-energy customers can opt in to a reliability service wherein they will receive more notice, Skinner said. A data center considered to be a "critical" industrial power user may also be exempt.

S.B. 6 also has a range of disclosure requirements for data centers and other high-energy use facilities, including some that intend to weed out the more speculative projects.

A 'Predictable' Regulatory Environment in Georgia

The Atlanta area has emerged in recent years as one of the hottest regions for digital infrastructure development. Net absorption in the Atlanta market for data centers, a key metric for assessing demand, surpassed northern Virginia in 2024, according to CBRE.

Georgia is an example of a state that has generally accessible land and power for digital infrastructure projects and a "thoughtful" regulatory structure that data center developers can feel more comfortable in, according to Tory Lauterbach, an energy partner at Gibson Dunn & Crutcher LLP.

"What it seems to me that a state like Georgia is doing is not just having an attractive environment, but also a predictable environment, where the data centers know what they're getting into when they step into a process," Lauterbach said.

Georgia has a sales and use tax exemption for data center equipment that project owners can receive if they meet a minimum investment threshold by creating a certain number of jobs during their investment period and adhere to expenditure requirements.

The state's utilities regulator, the Georgia Public Service Commission, also approved a rule earlier this year that requires energy customers that use over 100 megawatts, such as data centers, to pay for electrical transmission and distribution costs as the construction of their facilities progresses.

The rule also allows for contract lengths of five to 10 years for data center power usage, which the commission described as a measure to ensure that "high-usage customers do not shut down and leave

the state before paying for new infrastructure built specifically to handle the needs of their businesses."

"There has to be not just a commitment to a time period, but also a way to make sure that the cost of the utilities infrastructure investments are recovered in a just and reasonable manner from those customers," Lauterbach said. "And the data centers are paying for the upgrades that are necessary to serve the data centers, and that those costs are not being outsourced to other customer classes."

"That's something that the utilities have to be really thoughtful about," she added.

Innovative Rate Structures in Nevada and North Carolina

Nevada's utility regulator approved an agreement this year between a major technology company and an energy supplier to bring clean energy to a data center under a special rate structure.

In May, the Public Utilities Commission of Nevada greenlighted the clean transition tariff, a premium rate structure that Google worked out with NV Energy to power one of the tech giant's data centers with geothermal energy. Rate structures are known as "tariffs" in the utility industry.

Loehr of Perkins Coie noted the agreement is unique because energy customers typically don't designate where they get their power from. A data center owner may want to receive power from a particular source — such as wind, solar, geothermal, battery or another kind of project — but usually can't do so unless the source they want is directly next to their facility.

The rate structure NV Energy and Google adopted "is being looked at as one of the models across the country for how to handle when a data center is interested in a particular facility, as opposed to just getting power from the utility generically," Loehr said.

Teresa Hill, an energy and infrastructure partner at Orrick Herrington & Sutcliffe LLP, noted some of the first companies to pursue renewable energy commitments were in the technology sector, and those types of companies have been pushing utilities to adopt contract structures to procure renewable energy.

"They have often been the source of pressure for utilities to facilitate these transactions, because in a lot of areas in the country, there's no clear path for them to buy renewable energy directly," Hill said.

North Carolina is another state where technology companies have developed a clean transition tariff with an energy supplier. The North Carolina Utilities Commission approved a clean transition tariff for Amazon, Google and Microsoft for their data centers last year.

The clean transition tariffs in both states present models that can be adopted by utilities in other areas, said Patrick Ferguson, also an energy partner at Orrick.

"In areas that are dominated by monopoly utility, this is a good approach," Ferguson said.

Efforts to Ward Off Speculation in Arizona and Elsewhere

Attorneys said one of the long-running questions that utility companies and regulators across states have faced for years has been: How much of the energy demand from data center proposals are for shovel-ready, clearly realistic projects, and how much are for speculative, less feasible projects?

Figuring this out continues to be important for states where resources have been scarce, such as Arizona, which is one of the country's biggest data center markets.

"Arizona is obviously water-constrained and energy-constrained," Loehr said. "The volume of data centers that are looking to locate there would completely stress the existing grid."

The number of estimated data centers that have been considered for the state would require it to nearly double the amount of electrical infrastructure it already has, she noted.

"Trying to figure out which portions are real, when it is actually going to come in and who pays, is the thing that is looming in every single jurisdiction," Loehr said. "Existing customers generally do not want to pay for new data center load. Many data centers are indicating that they do want to pay their own costs, their own fair share. It will ultimately be up to the utility commissions what those rates are."

The state's major energy providers have all filed their integrated resource plans this year and are currently discussing with Arizona's energy regulator how they can accurately determine which power load requests are for speculative projects and which aren't, she noted.

James Grice, chair of Akerman LLP's data center and digital infrastructure practice, said the issue of what is and isn't speculative and how much of the demand is real or, from the utility companies' point of view, false is top of mind across a range of states.

"This is the kind of the struggle that everybody's trying to deal with," Grice said.

Some utility companies are requiring six- to seven-figure deposits from data center developers with large power requests, he said.

He also noted utility companies need to be delicate with their requirements for data center developers because if they chase off load requests by making it too cumbersome for applicants to seek power, developers could look to other, nearby states in which to site their facilities.

"It's a balancing act for all these utilities to not go too far with some of these measures, but go far enough to make sure that they don't get left in a hardship position," Grice said.

Continued Deliberation in Virginia

Energy constraints have been a significant challenge in Northern Virginia, home of the world's largest data center market, and the Virginia Legislature has taken a cautious approach so far to enacting new regulations for the industry.

Some counties in the state have meanwhile adopted their own regulations, such as eliminating by-right development for data centers.

Virginia's legislative session lasted from January to late February, and a range of bills proposing restrictions and disclosure requirements for data centers failed to gain enough votes to survive.

Gov. Glenn Youngkin vetoed bills in May that had passed the state Senate and House, and would have directed local governments to require site assessments from data centers under certain conditions.

One piece of data center-related legislation received the governor's approval: a bill that tells Virginia's utility regulator, the State Corporation Commission, to use its existing authority to study whether energy companies are using reasonable rate classifications for customers.

"The state corporation commission is still working through those questions that were posed to it a number of months ago," said Mark Looney, a Virginia-based land use partner at Cooley LLP.

Virginia is holding its next gubernatorial election this November, and the outcome may have an impact on future data center regulations in the state, he said.

"That may influence the direction that the next administration goes in terms of energy policy and how to interact with the data center industry, or more broadly, any users of significant power," Looney said.

--Editing by Haylee Pearl and Philip Shea.
