

DATA CENTER COMMUNITY CONSENT ACT

Draft 3 - Short Legislative Draft

Protecting Property Rights While Preserving American Investment

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**STUDY FIRST. NEGOTIATE. LOCAL AUTHORIZATION.
TWO-THIRDS AFFECTED PROPERTY OWNER CONSENT. THEN BUILD.**

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SECTION 1. SHORT TITLE.

This Act may be cited as the "Data Center Community Consent Act."

SECTION 2. PURPOSE.

The purpose of this Act is to protect private property owners and local communities from substantial off-site impacts of major data-center development while preserving the freedom of businesses to invest, build, and compete.

A covered data center should proceed only after its impacts are independently studied, affected property owners receive the information necessary to negotiate, the project receives applicable local authorization, and at least two-thirds of qualifying affected property owners consent.

SECTION 3. COVERED DATA CENTER.

For this discussion draft, a covered data center is a data-center development with proposed aggregate electrical demand of 20 megawatts or more, or a smaller development whose reasonably foreseeable off-site impacts are determined to be substantial.

Related buildings, phases, parcels, subsidiaries, affiliates, or facilities under common ownership or control shall be aggregated when they form part of one coordinated development or share substantial infrastructure. A project may not be divided or restructured for the purpose of avoiding this Act.

The 20-megawatt threshold is provisional and shall be subject to technical and legislative review before introduction.

SECTION 4. INDEPENDENT IMPACT STUDY.

(a) Study before approval.

Before a covered data center may proceed under the federal requirements of this Act, a comprehensive Independent Community Impact Assessment shall be completed and made available to the public, affected property owners, and relevant State and local governments.

(b) Government supervised; developer funded.

The responsible governmental authority shall establish the scope of the study and select or approve qualified independent experts. The developer shall pay the reasonable cost of the study but shall not control, edit, suppress, or condition payment upon its conclusions.

(c) Minimum subjects.

The study shall examine, as applicable, noise; water use and water resources; air emissions and backup generation; electrical demand; substations and transmission infrastructure; traffic; effects on neighboring property; and other material off-site impacts reasonably associated with the project.

(d) Conflict protection.

Experts conducting the study shall disclose material conflicts of interest. The responsible governmental authority shall independently review the completed assessment.

SECTION 5. AFFECTED PROPERTY OWNERS.

(a) Minimum protection area.

For this discussion draft, all qualifying privately owned property located wholly or partly within one mile of the proposed facility boundary shall receive notice and shall be considered for inclusion in the affected-property process.

(b) Expansion beyond one mile.

The independent study shall expand the affected area beyond one mile when credible evidence demonstrates that material noise, water, transmission, emissions, traffic, or other project impacts extend farther.

(c) Property ownership controls.

The special consent right created by this Act belongs to qualifying affected property owners rather than residents. Developer-owned or developer-controlled property shall not count toward the consent threshold.

(d) Anti-manipulation.

Common ownership, affiliated entities, trusts, nominees, subdivisions, acquisitions, or other arrangements may not be used by either the developer or another person to manufacture additional consent positions. The comprehensive version of this Act shall establish a clear ownership record date and voting formula.

SECTION 6. NEGOTIATION AND CASH COMPENSATION.

(a) Voluntary negotiation.

After publication of the independent study and before the affected-property-owner consent process, the developer may negotiate directly or through a lawful representative with affected property owners concerning project impacts.

(b) Compensation.

Negotiated terms may include one-time cash compensation, annual or other recurring cash compensation, and reasonable measures directly mitigating the effects of the project on affected property.

(c) No federally dictated amount.

The Federal Government shall not establish a standard payment, percentage of profits, or mandatory compensation amount. Compensation shall be negotiated voluntarily, subject to the protections and dispute procedures established by law.

(d) Written terms.

Any compensation or mitigation offered as a basis for affected-property-owner consent shall be stated in a written, enforceable agreement before the consent process.

SECTION 7. LOCAL AUTHORIZATION.

A covered project must obtain the approvals required by applicable State and local law. Nothing in this Act shall be construed to compel a State or locality to approve or reject a data center or to enact a particular zoning ordinance.

The federal requirements of this Act are intended to supplement, not replace, lawful State and local land-use authority.

SECTION 8. TWO-THIRDS AFFECTED PROPERTY OWNER CONSENT.

(a) Required consent.

In addition to applicable local authorization, at least two-thirds (66 2/3 percent) of qualifying affected property owners participating in the certified consent process must approve the covered project before the project may satisfy the community-consent requirement of this Act.

(b) Limited electorate.

The two-thirds threshold applies only to qualifying affected property owners identified under this Act. It is not a countywide or citywide referendum.

(c) Independent administration.

The developer shall pay the reasonable incremental administrative cost of the consent process but shall not control eligibility, ballots, tabulation, certification, or administration.

(d) Individual rights preserved.

Approval by two-thirds of affected property owners shall not waive or extinguish otherwise applicable property, contract, nuisance, contamination, trespass, or other lawful rights of an owner who voted against the project.

SECTION 9. SMALL-NUMBER AFFECTED PROPERTY SAFEGUARD.

When the affected area contains only a very small number of independently owned qualifying properties, the comprehensive version of this Act shall provide a fair and expedited mechanism to prevent either unreasonable holdout demands or uncompensated project impacts.

That mechanism shall preserve voluntary negotiation first, provide independent valuation of genuine property impacts when negotiations reach an impasse, and prevent the special consent process from becoming either an unlimited financial veto for a small number of owners or a means for a developer to impose substantial uncompensated harm.

The numerical definition of a small-number case and the precise dispute-resolution procedure shall be determined after constitutional, property-law, and valuation review.

SECTION 10. MATERIAL EXPANSION OR MATERIAL CHANGE.

(a) Consent is project-specific.

Approval attaches to the project as studied and approved. It does not constitute permanent consent to unlimited future expansion.

(b) New review.

A material expansion or material change shall require an updated cumulative impact study, updated identification of affected property owners, renewed negotiation opportunity, applicable new or amended local authorization, and a new two-thirds affected-property-owner consent process.

(c) Total impact.

The updated assessment shall evaluate the resulting total facility or campus and its cumulative impacts, not merely the incremental capacity being added.

(d) Material change includes more than megawatts.

A material change may include a significant increase in electrical demand or a significant change in water use, noise, emissions, generators, transmission infrastructure, traffic, land disturbance, or another material off-site impact.

Accordingly, approval of a 20-megawatt facility does not automatically authorize expansion to 30 megawatts.

SECTION 11. DEVELOPER RESPONSIBILITY FOR PROCESS COSTS.

The developer shall bear the reasonable costs directly attributable to the independent impact assessment and the special affected-property-owner consent process required by this Act.

The purpose of this section is to prevent unrelated taxpayers from being required to finance the special review and consultation process made necessary by a private covered development.

SECTION 12. TRANSPARENCY.

Affected property owners shall receive timely access to the non-privileged impact assessment, proposed aggregate electrical demand, reasonably foreseeable major supporting infrastructure, and the material terms of compensation or mitigation offered as part of the consent process.

Legitimate security-sensitive information and genuine trade secrets may receive narrowly tailored protection, but confidentiality shall not be used to conceal material project impacts or the commitments on which affected-property-owner consent is requested.

SECTION 13. PROPERTY RIGHTS AND NO SPECIAL IMMUNITY.

Nothing in this Act shall grant a data-center developer special immunity from generally applicable property, nuisance, trespass, contamination, contract, fraud, or other lawful claims.

Compliance with the study and consent process shall not by itself establish that every future impact of the project is lawful or reasonable.

SECTION 14. FEDERALISM AND CONSTITUTIONAL IMPLEMENTATION.

Congress shall implement this Act only within its constitutional authority. Nothing in this Act shall be construed to commandeer a State or local government to administer a federal regulatory program.

Before introduction, legislative counsel shall identify the appropriate constitutional and statutory basis for the federal requirements, including their relationship to interstate commerce, federal permits or benefits, interstate energy infrastructure, and existing State and local authority.

SECTION 15. RULEMAKING AND COMPREHENSIVE LEGISLATIVE PLAN.

The proposer intends this short draft to establish the understandable core of the Data Center Community Consent Act. A separate comprehensive legislative plan shall develop the technical and legal machinery necessary to implement these principles, including precise definitions, ownership and voting rules, small-number safeguards, enforcement, appeals, infrastructure cost allocation, transmission issues, existing facilities, and constitutional jurisdiction.

Technical implementation shall not alter the central principle of this Act: study first, negotiate with affected property owners, obtain lawful local authorization, obtain two-thirds affected-property-owner consent, and repeat the process when a project materially expands or changes.

SECTION 16. SEVERABILITY.

If any provision of this Act or its application is held invalid, the remainder of the Act and its application to other persons or circumstances shall not be affected.