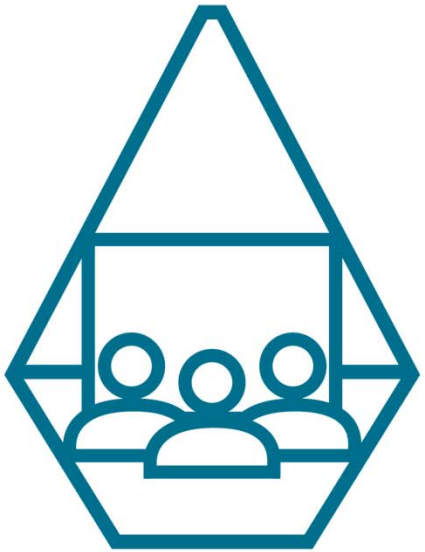

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Data Center 101

Wilson Montjoy and Dillon Pitts
Butler Snow LLP
October 2026

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The Basics

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What is a data center?

A secure facility that houses:

- servers,
- data storage systems,
- and networking components

to store, process, and analyze

- text,
- images,
- code,
- and other sources.

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What are the types of data centers?

Enterprise	Colocation (Colo) or Managed Data Center	Cloud / Infrastructure as a Service
• DC owned and operated by a single organization primarily for internal use.	• Customers place their own servers and equipment in a third-party facility that supplies space, power, cooling, connectivity, and physical security.	• Provider supplies computing, storage, and networking capacity that customers access remotely. Customers purchase computing services rather than simply leasing space for their own equipment.

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Key definitions

Hyperscalers	Artificial Intelligence (AI)	Machine Learning	Large Language Model	Generative AI

• Largest DCs, including:
  • Amazon
  • Microsoft
  • Google
  • Meta
  • Oracle
  • Apple
  • IBM
  • Alibaba (China)
	• A field of computer science focused on creating smart machines that can perform tasks that typically require human intelligence, such as learning, reasoning and problem solving.	• A set of techniques where models learn patterns from data to make predictions or decisions, improving with training data and feedback.	• Advanced AI systems that understand and generate natural language using data they've been trained on through machine learning.	• AI systems designed to generate <u>new</u> content (text, images, code, audio) based on patterns learned from training data.
				• Different from traditional AI that analyzes data, generative AI produces original material

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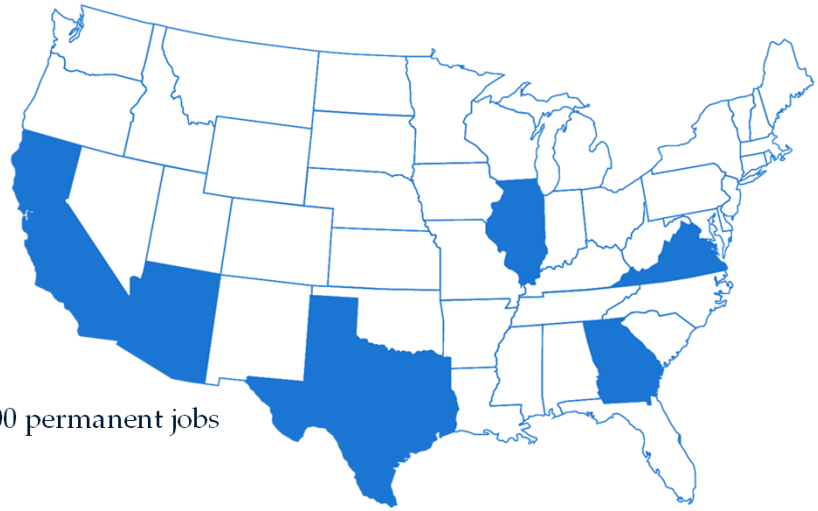
Where are Data Centers Located?

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Where are data centers located?

A. Data centers are concentrated in areas with reliable power, robust fiber connectivity, water and favorable tax incentives. The U.S. is the largest single country data center market with an estimated 45% of global data center electricity consumption in 2024.

B. Northern Virginia is widely cited as the world's largest data center market. Other major U.S. clusters include:
   - Dallas/Ft. Worth
   - Phoenix
   - Chicago
   - Silicon Valley
   - Atlanta



C. Texas – According to Forbes, Texas has 300 operating data centers, second only to Virginia, and 142 under construction as of April, more than any other state.

D. Louisiana
   - Meta's Hyperion project – $50 Billion – 10 million sq/ft – 5GW – at least 2,000 permanent jobs
   - AWS/Stack – $18 Billion – 3 campuses – at least 750 permanent jobs
   - Applied Digital – $3.6 Billion – 300MW – at least 200 permanent jobs
   - Hut 8 – $10 Billion – 330MW – at least 75 permanent jobs

E. Mississippi – an emerging market with multiple announced projects:
   - xAI / SpaceX – $20+ Billion for power generation and DCs – 2GW - developed in connection with a Memphis campus involving 3 DCs and an additional $12 Billion investments
   - AWS (Amazon Web Services) – $25 Billion – 2,000 jobs – over 1 GW – 4 locations
   - Compass – $10 Billion – 8 buildings up to 500 MW each
   - Eagle Rock – $6 Billion – 200 jobs – 2 million sq/ft
   - AVAIO – $6 Billion – at least 60 jobs

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Data Center Opposition and Responses

- Data center opposition in some areas has become a bipartisan issue.
- According to the National Conference of State Legislatures, 16 states are considering moratorium legislation, but none have adopted a moratorium.
- Concerns driving the opposition include:
  - Ratepayer subsidization of electric utility investments
  - Grid reliability impacts
  - Water usage, especially potable water
  - Noise and air quality impacts
  - Land use compatibility
  - Low job creation
  - Environmental Justice issues

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Data Center Opposition and Responses

- Federal Response
  - White House – Ratepayer Protection Pledge
    - Participating companies commit to securing additional power for their new loads, paying associated generation and delivery costs, and supporting grid reliability and local communities. The pledge is voluntary; enforceable obligations must be reflected in applicable tariffs, regulatory orders, or contracts.
  - Executive Order 14318 – Federal permitting
    - Directs agencies to expedite federal review and permitting for qualifying data centers and supporting infrastructure, including through coordinated permitting, environmental-review procedures, and potential use of federal land. It does not eliminate applicable statutory requirements or state and local approvals.
  - Congress – Ratepayer Protection Act – H.R. 9340
    - Would require consideration of a PURPA standard addressing full incremental utility-upgrade costs and financial assurances for covered large-load customers. Passed the House September 16, 2026; Senate cloture on the motion to proceed failed September 30. Not enacted.

Data Center Opposition and Responses

TX, LA and MS Response

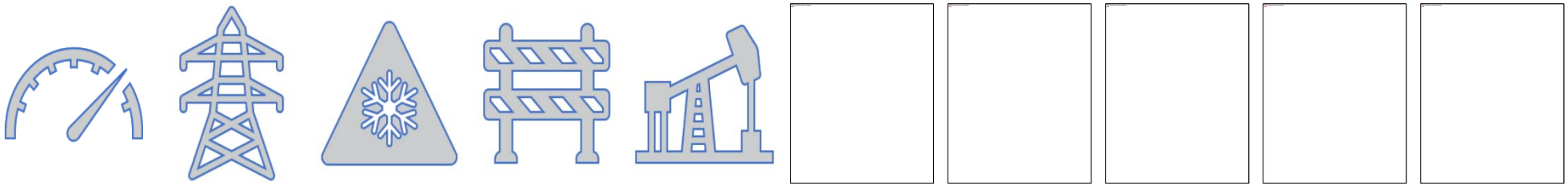
- Texas
  - June – Hill County rescinds DC moratorium to settle lawsuit by DC challenging county authority
  - August 3 – Gov. Abbott directed the Texas PUCT and ERCOT to complete a comprehensive review of Large-load DCs before allowing grid interconnection.
  - September 14 – Gov. Abbott directed TWDB to compel water use reporting.
  - September 21 – Gov. Abbott directed TCEQ to halt all DC permits pending the ERCOT review.

- Louisiana
  - No statewide moratorium
  - June 25 – Gov. Landry issued Executive Order 26-058 directing LED to develop criteria for DCs to receive tax incentives.
  - January 28 – The City of New Orleans approved a one year pause in DC permits while considering zoning and development standards.

- Mississippi
  - No statewide moratorium
  - July 14 – City of Jackson adopted a 6 month moratorium, during which the city will develop DC-specific zoning ordinance.

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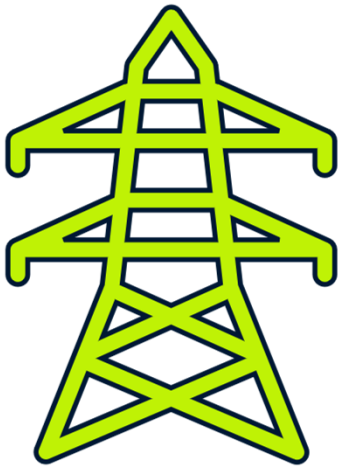
Important factors in data center site selection



Speed To Market	Electric Power •Quantity •Reliability •Clean	Cooling Water Availability	Zoning And Land Use Require-ments	Natural Gas Availability	Fiber Connectivity	Permitting	Land	Incentives	Political And Public Support (or Opposition)

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Electric power – quantity, reliability and preferably clean



Electric Power

Quantity - DCs are huge consumers of power

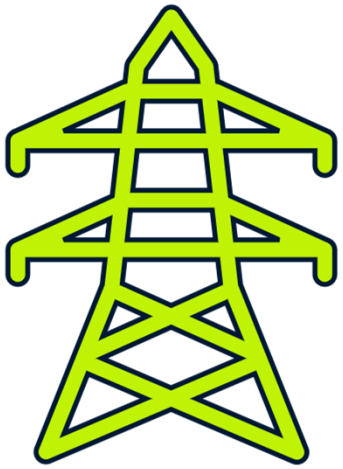
- An AI query uses 10x the electric power of a Google search.
- DCs were ~4.4% of total U.S. electricity consumption in 2023 - estimated to be up to 12% by 2028.
- Large-load contracts can drive major new generation and transmission additions (and regulatory scrutiny over who pays for upgrades). Example – Entergy MS plans to construct 3 power plants / over 1 GW of new generation to serve Amazon. That's equivalent to 800,000 households. Entergy currently serves just less than 460,000 customers.

Reliability - DCs typically seek 99.99% reliability. Most have back-up generation in case of outages.

Clean - DC developers generally want renewable/clean energy (wind, solar or carbon capture), but those objectives are weighed against speed, cost and reliability (e.g. wind and solar are intermittent).

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Electric power concerns



Electric Power

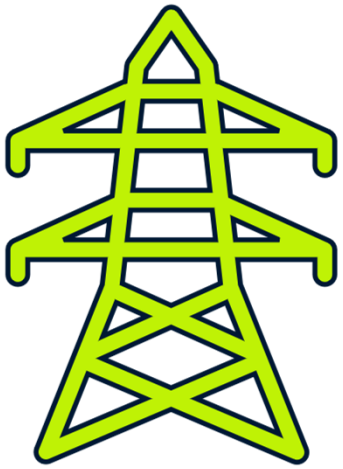
DCs prefer a grid connection for reliability as opposed to islanded electric supply.

Local utilities are often 5-6 years away from having the available generating capacity.

Concerns have been raised that supplying this power will adversely impact ratepayers.

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A proposed solution is for DCs to supply their own power and pay their own way



Electric Power

The Ratepayer Protection Pledge recently announced by the White House that includes the following: “Companies will build, bring or buy the new generation resources and electricity needed to satisfy their new energy demands, paying the full cost of those resources...”

The White House reports over 300 participating organizations.

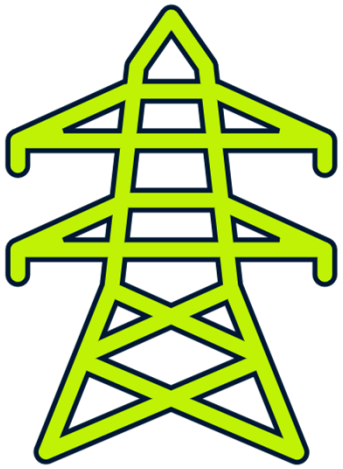
The pledge is voluntary, while requirements in other states are conditions.

TX – condition to receiving permits and approvals (and to getting power in a reasonable time frame).

LA – condition to tax incentives.

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For a DC prepared to pay its own way for generation, what are the options?



Electric Power

Islanded: Behind the meter generation sized to meet the full DC load and no grid connection.

Issue: Most DCs want grid connection for reliability.

Behind the meter plus grid connection:

- On site generation provides power until DC can interconnect.

- Once grid connected, DC can obtain back-up power and has the ability to sell excess power.

Utility supplies full DC demand with only limited back-up generation on-site.

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State law issues for behind the meter supply

In Texas, Louisiana and Mississippi, utilities have some form of monopoly franchise. In each state, merely locating on-site generation "behind the meter" does not insulate the generator from serving as a "public utility" in violation of the incumbent utility's franchise. Exceptions to the rules are based on legal structure, not physical location.

Texas	Louisiana	Mississippi

• In competitive areas of ERCOT, electricity can be obtained from any competitive generator but must be delivered by a Retail Electric Provider through the local distribution utility.
 	
• In non-competitive areas in ERCOT and in Texas outside ERCOT, customers must purchase and receive delivery from the monopoly providers (e.g., MOUs and co-ops) if service will be grid connected, unless the distribution utility agrees to some other arrangement.
	• There have been a number of LPSC decisions over the years approving various forms of on-site self-generation structures.
	• Under each structure, the industry was deemed to own the power output and thus it was a non-jurisdictional self-use.
	• Examples:
	  • Industry leases the on-site generating facility.
	  • Industry has an undivided ownership interest and receives equivalent power.
		• Two exceptions to utility monopoly:
		  • Self-supply – DC owns and operates the on-site generation and supplies to itself – generally acknowledged and acceptable.
		  • Leasehold exception – DC developer owns on-site generation and provides power to tenants as part of the lease – generally opposed by incumbent utilities.

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Water Supply

- A large hyperscaler can use up to 3-5 million gallons/day at peak times (operating at full capacity on hot summer days) – equivalent to a town of 50,000.
- Nationwide, DCs used 238 billion gallons in 2023 – 17 to cool servers and 221 to power generation according to Lawrence Oakley National Laboratory, which is expected to double or triple by 2028.
- Of note, lawn irrigation, showers, and agriculture use significantly more water.
- There are several options for managing the heat generated within a DC:
  - Evaporative cooling
    - Potable water from the local water utility.
      - Issue: DC demand competes with local drinking water needs.
  - Alternative water supply with on-site treatment to meet industrial process water standards. Examples:
    - Graywater – sewer treatment plant discharge.
    - Surface water from nearby river or lake.
    - Groundwater
      - Issue: All these avoid using potable water, but on-site treatment is usually required.
  - Closed loop/ recirculating – treats and reuses process water on-site, substantially reducing water needs.
  - Other cooling methods are typically more expensive and use more electricity.
    - Air/dry/free cooling
    - Liquid/immersion cooling



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Zoning and Land Use Requirements

- In many rural areas, there are no zoning and no conditional use permits required.
- In Texas, counties generally lack broad zoning authority.
- Where there is zoning, the ordinances often do not specifically contemplate DCs.
- Rezoning or a CUP process typically involves public notice and provides a vehicle for organized local opposition to express concerns.
- DC ordinances may seek to address the following:
  - Setbacks and visual buffers
  - Site plan review
  - Building height
  - Noise limitations (an issue when backup or other on-site generation is running)
  - Construction traffic
  - Impact to local water utility and city services
  - Adequate electric supply/limitations on use of temporary generation
  - Compliance with all environmental regulations
  - Decommissioning requirements
  - Workforce housing camps
  - Permit fee reduction when the fee schedule is not appropriately scaled for multibillion-dollar capital projects

Land

- Siting considerations
  - Grid access
  - Natural gas supply (if on-site generation)
  - Fiber optic
  - Cooling water availability
  - Proximity to populated areas
  - Zoning considerations
  - Public opinion and political support

- Severed mineral issues
  - Texas – Accommodation doctrine
  - Louisiana – 10 year rule – mineral servitude reverts to surface
  - Mississippi – Mineral owner has greater discretion than TX
  - Surface use waivers
  - Title insurance against interference

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Typical Permits Required



Permitting

Building Permits
Counties without county-wide zoning often do no require building permits.

Wetland Permits
issued by the US Army Corps of Engineers and water quality certification issued by the State DEQ.

Construction Stormwater Permit
requires development of a Stormwater Pollution Prevention Plan.

Permits for On-site Natural Gas Generation
required for air emissions and water use.

Wastewater Permit
for discharge of cooling water.

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Incentives available for DCs

- Texas
  - Texas Tax Code Ch. 151.3595 and Ch. 151.317 provide state sales and use tax exemptions for DC essential equipment, including electricity. Exemption period varies based on size of DC, investment amount and number of jobs created.
  - Texas Tax Code Ch. 312 also allows property tax abatements by local taxing authorities.
  - These may be targeted in the upcoming session of the Texas Legislature beginning in January 2027.

- Louisiana
  - La. R.S. 47:305.73 provides state and local sales tax exemptions for DCs certified by LED.
  - Economic development entities, such as local industrial development boards and public trusts, may enter into payment in lieu of tax (PILOT) agreements with DCs to provide ad valorem property tax incentives often tied to CapEx and permanent job requirements.

- Mississippi
  - Property tax fee-in-lieu – granted by county and city under Miss. Code § 27-31-104 – abates 2/3 of otherwise applicable tax.
  - State statutory incentives – certified by MS Development Authority under Miss. Code § 57-113-21 *et seq*. – exempts sales and use tax, income tax and franchise tax for 10 years.

AI Best Practices

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Since the subject of this talk is DCs to support AI, it is appropriate to offer some cautionary AI comments.

AI is a marvelous tool, but it is not perfect.

AI can miss or misconstrue key points or legal authorities.

AI can "hallucinate" – make up citations to support the desired point.

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AI Best Practices

- Verify all citations and quotes
- Use vetted legal research tools (e.g. Westlaw CoCounsel) and test outputs before relying
- Review the following:
  - "AI Tools for Lawyers – A Practical Guide", The MS Bar 7/1/2025
  - MS Bar Ethics Opinion No. 267 states the following duties:
    - A lawyer has an ethical duty to disclose to the client that AI is being used with respect to legal matters entrusted to the attorney in certain circumstances.
    - A lawyer has an affirmative duty to review costs and fees to ensure that any billing practices do not duplicate charges or inflate billable hours.
    - A lawyer has an affirmative duty to verify the accuracy and sufficiency of work performed by generative AI.
    - A lawyer has an affirmative duty to take reasonable measures and protect the confidentiality of client information when using generative AI.
  - ABA Formal Opinion 512

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Disclosure

- This presentation was created with the assistance of AI tools for drafting and organization.
- All content has been reviewed by counsel. These materials are for informational purposes and are not legal advice.

THANK YOU

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