

GENERAL ASSEMBLY OF NORTH CAROLINA
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HOUSE BILL DRH40665-NPa-24

Short Title: Ratepayer and Resource Protection Act.

(Public)

Sponsors: Representative Prather.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO REGULATE LARGE-SCALE DATA CENTERS IN ORDER TO PROTECT
3 RATEPAYERS, WATER RESOURCES, AND GRID RELIABILITY; TO REQUIRE
4 ON-SITE CLEAN GENERATION, COST-BASED RATES, INFRASTRUCTURE COST
5 RESPONSIBILITY, DISCLOSURES, AND REPORTING FOR CERTAIN DATA
6 CENTERS; TO LIMIT STATE AND LOCAL INCENTIVES FOR DATA CENTERS; AND
7 TO MAKE RELATED CHANGES TO PUBLIC UTILITIES LAW.

8 Whereas, North Carolina's electric and water utility systems are essential public
9 services relied upon daily by households, small businesses, and local governments across the
10 State; and

11 Whereas, the rapid growth of large-scale data centers imposes unusually large and
12 concentrated demands on electric generation, transmission, distribution, and water infrastructure;
13 and

14 Whereas, when the extraordinary infrastructure and resource demands created by such
15 facilities are not fully borne by the facilities themselves, those costs are shifted onto residential
16 customers, small businesses, and local governments through higher utility rates and increased
17 public expenditures, exacerbating cost-of-living pressures statewide; and

18 Whereas, existing economic development incentive programs were not designed to
19 subsidize facilities whose operations require outsized public investments in energy and water
20 infrastructure without proportionate public benefit; and

21 Whereas, the General Assembly is responsible for protecting North Carolinians from
22 rising utility bills and ensuring affordability by preventing cost-shifting, protecting ratepayers,
23 and ensuring that data centers bear the full cost of the energy, water, and infrastructure required
24 to support their operations; Now, therefore,
25 The General Assembly of North Carolina enacts:

26
27 **REGULATION OF DATA CENTERS**

28 **SECTION 1.(a)** Chapter 62 of the General Statutes is amended by adding a new
29 Article to read:

30 "Article 6C.

31 "Data Centers.

32 **"§ 62-129. Definitions and application of terms.**

33 For purposes of this Article, the following definitions apply:

- 34 (1) Data center. – A facility or group of co-located facilities under common
35 ownership or control used to house computer systems, servers, network
36 equipment, and associated infrastructure for the storage, processing, or



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1 transmission of data. Facilities under common ownership or control, or that
2 are operationally or contractually integrated, whether located on one or
3 multiple parcels, shall constitute one "data center" for purposes of determining
4 the applicability of any threshold, requirement, limitation, or fee pursuant to
5 this Article.

6 (2) Large data center. – A data center that (i) has a projected peak electricity
7 demand of 40 megawatts or greater or (ii) has a projected annual water
8 consumption in excess of one billion liters.

9 (3) On-site clean generation. – Electric generation that is both (i) directly
10 interconnected with a data center and (ii) produced by a clean energy facility
11 or clean energy resource as those terms are defined in G.S. 62-133.8.

12 **"§ 62-129.1. Preconstruction disclosure; certificate to operate a large data center.**

13 (a) Preconstruction Disclosure Statement. – Prior to beginning construction on any new
14 data center, the owner or operator of a proposed data center shall submit a preconstruction
15 disclosure statement, in a form prescribed by the Commission, to the Commission, the
16 Department of Environmental Quality, and each local government in whose jurisdiction the data
17 center would be sited. The preconstruction disclosure statement shall include all of the following
18 information, supported by clear and credible evidence:

19 (1) The projected peak electricity demand.

20 (2) The projected annual electricity consumption.

21 (3) The projected annual water consumption.

22 (4) A detailed description of any cooling technologies to be used in the operation
23 of the data center.

24 (5) A detailed description of any on-site clean generation to be used in the
25 operation of the data center.

26 (b) Certificate of Operation for Large Data Centers. – No person shall begin the
27 construction or operation of a large data center without having applied for and obtained a
28 certificate of operation from the Commission. The application for a certificate to operate a large
29 data center shall be made in a form prescribed by the Commission and accompanied by the fee
30 required pursuant to G.S. 62-300(a)(18). The Commission may, after notice and an opportunity
31 for interested parties to be heard, issue a certificate to operate a large data center upon finding
32 that the applicant is fit, capable, and financially able to operate the large data center in accordance
33 with this Article. As a condition for the issuance and continuation of a certificate to operate a
34 large data center, the applicant shall demonstrate to the satisfaction of the Commission all of the
35 following:

36 (1) The large data center will operate in compliance with the on-site clean
37 generation requirement set forth in G.S. 62-129.2.

38 (2) The large data center will operate in compliance with the water use standards
39 for data centers adopted by the Department of Environmental Quality under
40 G.S. 143-355.5A.

41 (3) The large data center will purchase electric service from an electric public
42 utility in accordance with G.S. 62-129.3 or G.S. 62-129.4, as applicable, at
43 rates that are commensurate to the electric public utility's full marginal cost of
44 providing service to that large data center, including any incremental costs
45 incurred by the electric public utility to construct or expand generation
46 facilities, transmission and distribution lines, substations, and any other
47 infrastructure investments necessary to serve that large data center's projected
48 load.

49 (4) The large data center will purchase water and sewer services at rates that are
50 commensurate to the full marginal cost of providing service to that large data
51 center by a unit of local government, as defined in G.S. 162A-201, or a water

1 or sewer utility, including any incremental costs incurred to construct or
2 expand water and wastewater systems.

3 (5) That other members of the using and consuming public will be held harmless
4 and protected from bearing any increased costs as a result of providing
5 electric, water, or sewer services to the large data center.

6 (6) That the applicant will operate the large data center in accordance with any
7 other requirement determined by the Commission to be necessary to protect
8 the public interest.

9 (c) Effective Date. – A certificate of operation shall be effective from the date issued by
10 the Commission unless otherwise specified and shall remain in effect until terminated either
11 under its own terms or until suspended or revoked by the Commission as provided in subsection
12 (d) of this section.

13 (d) Certificate Review; Suspension and Revocation. – Upon the request of an electric
14 public utility, the Public Staff, or a person having an interest in the large data center's operation,
15 the Commission may review the certificate to determine whether the owner or operator of the
16 large data center is conducting operations in compliance with this Article. After notice to the
17 large data center's owner or operator, the Commission may suspend the certificate and enter upon
18 a hearing to determine whether the certificate should be revoked. After the hearing, and for good
19 cause shown, the Commission may, in its discretion, reinstate a suspended certificate, continue a
20 suspension of a certificate, or revoke a certificate.

21 **"§ 62-129.2. On-site clean generation requirement.**

22 (a) No person shall begin operation of a large data center without installing sufficient
23 on-site clean generation capacity to offset at least twenty-five percent (25%) of the data center's
24 projected peak electricity demand. Such generation capacity shall be operational upon the date
25 that the large data center commences commercial operations. No off-site renewable energy
26 credits, virtual power purchase agreements, or similar instruments may be credited toward
27 satisfying the on-site clean generation requirement under this section.

28 (b) The Commission may increase the minimum percentage of on-site clean generation
29 capacity that a large data center must maintain relative to its projected peak demand upon finding
30 that additional on-site clean generation is necessary to maintain the reliability of the electric grid
31 and protect other customers from rate increases and is otherwise consistent with the public
32 interest.

33 (c) The Commission may grant a variance to a large data center from the on-site clean
34 generation requirement upon finding that (i) strict compliance with the on-site clean generation
35 requirement would be technologically infeasible for the proposed large data center and (ii) the
36 applicant will implement equivalent grid mitigation measures at the applicant's expense.

37 **"§ 62-129.3. Electric rates for large data centers.**

38 (a) Each electric public utility shall file for Commission approval rates for the provision
39 of electric service to large data centers. The Commission may approve a tiered rate schedule that
40 includes different prices, terms, or conditions for different classes of large data centers based on
41 load requirements or other factors related to the costs of serving large data center customers.

42 (b) The Commission shall not approve a rate schedule filed under this section unless the
43 Commission finds that the rates are sufficiently designed to ensure all of the following:

44 (1) That large data center customers are responsible for the entire cost of any
45 capital investments or incremental operational expenses necessary for the
46 electric public utility to serve large data center customers.

47 (2) That other retail customers will be protected from (i) incurring any rate
48 increases as a result of serving large data center customers or (ii) assuming
49 additional risk associated with having to bear any stranded costs as a result of
50 large data center customers ceasing operations or else consuming less
51 electricity than initially requested.

"§ 62-129.4. Special high-capacity rates for large data centers.

(a) The Commission shall require a large data center to receive electric service under a special high-capacity rate upon determining that rates approved under G.S. 62-129.3 would not be commensurate with the electric public utility's full marginal cost of providing service to that large data center, including any incremental costs that would be incurred by the electric public utility to construct or expand generation facilities, transmission and distribution lines, substations, and any other infrastructure investments necessary to serve that large data center's projected load.

(b) The Commission may establish by rule certain categories of large data centers that would be required to receive electric service under a special high-capacity rate.

(c) Upon determination by the Commission that a special high-capacity rate is required, an electric public utility shall negotiate in good faith with the owner or operator of a large data center an agreement to provide electric service at such prices, terms, and conditions necessary to compensate the electric public utility's full marginal cost of providing service to the large data center over the term of the agreement, subject to approval by the Commission.

(d) The Commission shall approve the special high-capacity rate fixed by contract between an electric public utility and a large data center upon finding that the rate satisfies the conditions set forth under G.S. 62-129.1(b) and is otherwise consistent with the public interest.

"§ 62-129.5. Exclusion from economic development incentive programs.

(a) Notwithstanding any other provision of law, data centers shall be ineligible to receive any infrastructure grants or other incentives funded directly or indirectly by utility ratepayers.

(b) Notwithstanding any other provision of law, a local government shall not grant or provide to a data center any local tax incentive, subsidy, or financial assistance, including property tax abatements, deferrals, rebates, grants, or payments in lieu of taxes. Nothing in this subsection prohibits local governments from providing generally available services or infrastructure on the same terms offered to similarly situated commercial or industrial users.

(c) Nothing in this section shall be construed to prohibit local governments from exercising zoning or land use authority.

"§ 62-129.6. Annual report.

(a) Each person who owns or operates a large data center shall file an annual report to the Commission and the Department of Environmental Quality that provides the following information regarding the large data center's operations during the prior year:

(1) The actual amount of electricity consumed.

(2) The actual amount of water used.

(3) The actual amount of electricity generated on-site.

(4) Data indicating the efficiency of the cooling system, as quantified using metrics approved by the Department of Environmental Quality.

(5) Any additional information requested by the Commission for purposes of ensuring compliance with this Article.

(b) Annual reports filed by large data centers are public records, as defined in G.S. 132-1, and shall be made readily available by the Commission on its website.

"§ 62-129.7. Rules.

Pursuant to G.S. 62-31, the Commission may adopt rules to implement the provisions of this Article. In addition, the Commission shall adopt rules for verifying the amount of generation capacity maintained by a large data center in accordance with the on-site clean generation requirement in G.S. 62-129.2."

SECTION 1.(b) G.S. 62-300(a) is amended by adding a new subdivision to read:

"(18) Two hundred fifty dollars (\$250.00) with each application for a certificate to operate a large data center filed pursuant to G.S. 62-129.1(b)."

SECTION 1.(c) The rate schedule required to be submitted for approval by the Utilities Commission pursuant to G.S. 62-129.3, as enacted by subsection (a) of this section, shall

1 be submitted by the electric public utility no later than July 1, 2028. Effective January 1, 2029,
2 an electric public utility shall not provide electric service to a large data center except under the
3 terms of a rate schedule or special high-capacity rate approved by the Utilities Commission in
4 accordance with G.S. 62-129.3 or G.S. 62-129.4, as applicable.

6 WATER USE STANDARDS FOR DATA CENTERS

7 SECTION 2.(a) Article 38 of Chapter 143 of the General Statutes is amended by
8 adding a new section to read:

9 "§ 143-355.5A. Water use standards for data centers.

10 (a) The Department shall adopt rules establishing water use standards for data centers
11 regulated under Article 6C of Chapter 62 of the General Statutes to ensure the protection of
12 surface water and groundwater resources. The water use standards adopted by the Department
13 shall require data centers to employ closed-loop or reclaimed water systems to the maximum
14 extent practicable.

15 (b) The water use standards adopted by the Department shall not permit a data center to
16 use an evaporative cooling system. For purposes of this subsection, an "evaporative cooling
17 system" means any cooling system that consumes water through evaporation as a primary method
18 of heat rejection."

19 SECTION 2.(b) The Department of Environmental Quality shall adopt temporary
20 rules to implement the water use standards for data centers and shall adopt permanent rules to
21 replace the temporary rules. Temporary rules adopted in accordance with this section shall remain
22 in effect until permanent rules that replace the temporary rules become effective.

24 REPEAL SALES TAX EXEMPTION FOR DATA CENTERS

25 SECTION 3.(a) G.S. 105-164.3(47), 105-164.3(79), 105-164.3(201),
26 105-164.13(43a)b., 105-164.13(55), and 105-164.13(55a) are repealed.

27 SECTION 3.(b) This section becomes effective January 1, 2027, and applies to sales
28 made on or after that date.

30 EXCLUDE DATA CENTERS FROM STATE ECONOMIC DEVELOPMENT 31 INCENTIVES

32 SECTION 4.(a) Article 10 of Chapter 143B of the General Statutes is amended by
33 adding a new section to read:

34 "§ 143B-435.2. Ineligible projects.

35 Notwithstanding any other provision of law, data centers, as defined in G.S. 62-129, shall be
36 ineligible to receive any grant, loan, or other incentive provided under this Article."

37 SECTION 4.(b) G.S. 143B-437.01 reads as rewritten:

38 "§ 143B-437.01. Industrial Development Fund Utility Account.

39 ...
40 (a1) Definitions. – The following definitions apply in this section:

- 41 ...
- 42 (5) Eligible industry. – A company headquarters or a person engaged in the
43 business of air courier services, information technology and services,
44 manufacturing, or warehousing and wholesale trade.
- 45 (6) Information technology and services. – An industry in one of the following,
46 as defined by NAICS:
- 47 a. Data processing industry group 518.
48 b. Software publishers industry group 5112.
49 c. Computer systems design and related services industry group 5415.
50 d. An internet activity included in industry group 519130.

1 Information and technology services does not include the operation of data
2 centers, as defined in G.S. 62-129.

3"
4

5 FUEL COST RECOVERY MODIFICATIONS

6 SECTION 5. G.S. 62-133.2(d) reads as rewritten:

7 "(d) The Commission shall provide for notice of a public hearing with reasonable and
8 adequate time for investigation and for all intervenors to prepare for hearing. At the hearing the
9 Commission shall receive evidence from the utility, the Public Staff, and any intervenor desiring
10 to submit evidence, and from the public generally. In reaching its decision, the Commission shall
11 consider all evidence required under subsection (c) of this section as well as any and all other
12 competent evidence that may assist the Commission in reaching its decision including changes
13 in the cost of fuel consumed and fuel-related costs that occur within a reasonable time, as
14 determined by the Commission, after the test period is closed. The Commission shall incorporate
15 in its cost of fuel and fuel-related costs determination under this subsection the experienced
16 over-recovery or under-recovery of reasonable costs of fuel and fuel-related costs prudently
17 incurred ~~by the electric public utility, during the test period,~~ based upon the prudent standards set
18 pursuant to subsection (d1) of this section, in fixing an increment or decrement rider. Upon
19 request of the electric public utility, the Commission shall also incorporate in this determination
20 the experienced over-recovery or under-recovery of costs of fuel and fuel-related costs through
21 the date that is 30 calendar days prior to the date of the hearing, provided that the reasonableness
22 and prudence of these costs shall be subject to review in the utility's next annual hearing pursuant
23 to this section. The Commission shall use deferral accounting, and consecutive test periods, in
24 complying with this subsection, and the over-recovery or under-recovery portion of the increment
25 or decrement shall be reflected in rates for 12 months, notwithstanding any changes in the base
26 fuel cost in a general rate case. ~~Any experienced over-recovery or under-recovery of reasonable
27 fuel and fuel-related costs prudently incurred shall accrue interest at the commercial paper rate
28 as identified by the Federal Reserve for A2/P2 nonfinancial issuers, or reasonable successor
29 thereto, on a weighted average basis over the applicable time period.~~ The burden of proof as to
30 the correctness and reasonableness of the charge and as to whether the cost of fuel and
31 fuel-related costs were reasonably and prudently incurred shall be on the utility. The Commission
32 shall allow only that portion, if any, of a requested cost of fuel and fuel-related costs adjustment
33 that is based on adjusted and reasonable cost of fuel and fuel-related costs prudently incurred
34 under efficient management and economic operations. In evaluating whether cost of fuel and
35 fuel-related costs were reasonable and prudently incurred, the Commission shall apply the rule
36 adopted pursuant to subsection (d1) of this section. To the extent that the Commission determines
37 that an increment or decrement to the rates of the utility due to changes in the cost of fuel and
38 fuel-related costs over or under base fuel costs established in the preceding general rate case is
39 just and reasonable, the Commission shall order that the increment or decrement become
40 effective for all sales of electricity and remain in effect until changed in a subsequent general rate
41 case or annual proceeding under this section."
42

43 PERFORMANCE-BASED REGULATION CHANGES

44 SECTION 6.(a) G.S. 62-133.16 reads as rewritten:

45 "§ 62-133.16. Performance-based regulation authorized.

46 (a) Definitions. – For purposes of this section, the following definitions apply:

47 (1) "Affordability performance incentive mechanism" or "affordability PIM"
48 means a performance incentive mechanism that links electric public utility
49 revenue or earnings to measurable reductions in customer energy burdens,
50 arrears, disconnections, or other affordability outcomes, with a particular
51 focus on low-income customers, approved by the Commission.

- 1 (1)(1a) "Cost causation principle" means establishment of a causal link between a
- 2 specific customer class, how that class uses the electric system, and costs
- 3 incurred by the electric public utility for the provision of electric service.
- 4 (2) "Decoupling rate-making mechanism" means a rate-making mechanism
- 5 intended to break the link between an electric public utility's revenue and the
- 6 level of consumption of electricity on a per customer basis by its residential
- 7 customers.
- 8 (3) "Distributed energy resource" or "DER" means a device or measure that
- 9 produces electricity or reduces electricity consumption and is connected to the
- 10 electric distribution system, either on the customer's premises or on the
- 11 electric public utility's primary distribution system. A DER may include any
- 12 of the following: energy efficiency, distributed generation, demand response,
- 13 microgrids, energy storage, energy management systems, and electric
- 14 vehicles.
- 15 (4) "Earnings sharing mechanism" means an annual rate-making mechanism that
- 16 shares surplus earnings between the electric public utility and customers over
- 17 the period of time covered by a MYRP.
- 18 (4a) "Efficiency performance incentive mechanism" or "efficiency PIM" means a
- 19 performance incentive mechanism that links electric public utility revenue or
- 20 earnings to measurable improvements in system efficiency or cost
- 21 containment, including peak load reduction or efficient use of the system,
- 22 reductions in system loss, verified deferral or avoidance of capital
- 23 expenditures through non-wires alternatives, or other energy efficiency
- 24 outcomes approved by the Commission that exceed those already required by
- 25 State or federal law.

26 ...

27 (c) Application. – An electric public utility shall be permitted to submit a PBR

28 application in a general rate case proceeding initiated pursuant to G.S. 62-133. A PBR application

29 shall include a decoupling rate-making mechanism, ~~one~~ two or more PIMs, and a MYRP,

30 including both an earnings sharing mechanism and proposed revenue requirements and base rates

31 for each of the years that a MYRP is in effect or a method for calculating the same. A PBR

32 application shall include, at a minimum, one affordability PIM and one efficiency PIM. The PBR

33 application may also include proposed tracking metrics with or without targets or benchmarks to

34 measure electric public utility achievement. The following additional requirements apply to a

35 PBR application:

36 ...

37 (d) Commission Action on Application. –

- 38 (1) The Commission shall approve a PBR application by an electric public utility
- 39 only upon a finding that a proposed PBR would result in just and reasonable
- 40 rates, is in the public interest, and is consistent with the criteria established in
- 41 this section and rules adopted thereunder. In reviewing any such PBR
- 42 application under this section, the Commission shall consider whether the
- 43 PBR application:
- 44 a. Assures that no customer or class of customers is unreasonably harmed
- 45 and that the rates are fair both to the electric public utility and to the
- 46 customer.
- 47 b. Reasonably assures the continuation of safe and reliable electric
- 48 service.
- 49 c. Will not unreasonably prejudice any class of electric customers and
- 50 result in sudden substantial rate increases or "rate shock" to customers.

1 d. Incorporates, at a minimum, all of the following: (i) an affordability
 2 PIM designed to reduce low-income energy burdens or other
 3 affordability outcomes, (ii) an efficiency PIM designed to encourage
 4 peak load reduction or efficient use of the system, encourage energy
 5 efficiency, or otherwise reduce system costs in a manner that is
 6 measurable, verifiable, and exceeds any comparable standard
 7 otherwise required by State or federal law, and (iii) any performance
 8 metrics, targets, and independent verification protocols sufficient to
 9 ensure that any awards or penalties reflect measurable performance
 10 and to minimize gaming or cost-shifting.

11 (2) In reviewing any such PBR application under this section, the Commission
 12 may consider whether the PBR application:

- 13 a. Encourages peak load reduction or efficient use of the system.
- 14 b. Encourages utility-scale clean energy and storage.
- 15 c. Encourages DERs.
- 16 d. Reduces low-income energy burdens.
- 17 e. Encourages energy efficiency.
- 18 f. Encourages carbon reductions.
- 19 g. Encourages beneficial electrification, including electric vehicles.
- 20 h. Supports equity in contracting.
- 21 i. Promotes resilience and security of the electric grid.
- 22 j. Maintains adequate levels of reliability, power quality, and customer
 23 service.
- 24 k. Promotes rate designs that yield peak load reduction or beneficial
 25 load-shaping.

26"

27 **SECTION 6.(b)** This section is effective when it becomes law and applies to any
 28 rate-making mechanisms filed by an electric public utility on or after that date.

29
 30 **APPROPRIATIONS**

31 **SECTION 7.(a)** There is appropriated from the General Fund to the Department of
 32 Environmental Quality the sum of two hundred forty thousand dollars (\$240,000) in recurring
 33 funds beginning in the 2026-2027 fiscal year to be used for the adoption and implementation of
 34 water use standards for data centers.

35 **SECTION 7.(b)** There is appropriated from the General Fund to the Utilities
 36 Commission the sum of five hundred thousand dollars (\$500,000) in recurring funds beginning
 37 in the 2026-2027 fiscal year to be used for purposes consistent with this act.

38
 39 **EFFECTIVE DATE**

40 **SECTION 8.** Except as otherwise provided, this act becomes effective July 1, 2026.