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Data Center Construction Trends, Challenges In Ill. And Texas

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Across the country, many regions are rapidly emerging as national hubs for data center development.

Two states in particular, Illinois and Texas, have attracted billions in investment from major technology companies and are seeing a surge in activity.

Placed side by side, these two quite different markets provide an interesting case study in how tax incentives and geographic advantages, alongside zoning disputes, environmental scrutiny and community opposition, are increasingly shaping the regulatory and litigation landscape in both states.

This article examines the key trends driving data center construction in Illinois and Texas, the legal challenges that developers must manage, and the legislative and case law developments shaping the future of digital infrastructure.

It concludes with practical guidance for legal and development teams seeking to mitigate risk, engage stakeholders and position their projects for long-term success, wherever they are located.

Trends Driving Data Center Growth

Illinois and Texas have emerged as leading destinations for data center development, each offering distinct advantages that appeal to developers.

Tax Incentives and Legislative Support

Both Illinois and Texas offer competitive tax and economic incentives to attract data center investment. Illinois' Data Center Investment Program, launched in 2019, offers state and local tax exemptions for qualifying projects that invest at least $250 million and create 20 or more high-wage jobs.[1] These incentives have translated into tangible results, spurring more than $8 billion in development commitments.[2]

While Texas lacks a centralized data center incentive program, it does offer a highly favorable tax and regulatory environment that continues to attract large-scale investment. The state imposes no corporate income tax, and qualifying data centers may receive sales and use tax exemptions on tangible

personal property used in operations, provided they meet investment and job creation thresholds.[3]

Strategic Location and Infrastructure

The geographic and infrastructure advantages of Illinois and Texas also shape their emergence as premier data center markets. Illinois benefits from its central location, robust fiber connectivity and access to reliable utility-scale power, particularly in the Chicagoland area.

Planned grid expansions and relatively affordable industrial power rates make it a compelling alternative to saturated markets like northern Virginia.[4]

Texas, meanwhile, offers vast land availability, proximity to major tech hubs like Austin and Dallas-Fort Worth, and access to a deregulated energy market through the Electric Reliability Council of Texas. While grid reliability remains a concern, the state's growing renewable energy portfolio and transmission infrastructure continue to attract data center operators seeking scale and flexibility.[5]

Zoning and Permitting Challenges

Despite strong state-level support, local zoning and permitting remain significant hurdles for data center developers in both Illinois and Texas.

Local Zoning Disputes

In Illinois, many municipalities operate under outdated zoning codes that do not explicitly address data centers, leading to ambiguity in land use classifications. While some jurisdictions, like Elk Grove Village, have embraced data center development, others have faced community resistance. Concerns over noise, aesthetics and environmental impact have prompted pushback in some areas.[6]

Texas offers greater flexibility due to its unique land use system and fewer zoning restrictions. Unlike municipalities, most Texas counties lack general zoning authority.[7] This regulatory gap allows data center developers to pursue large-scale projects with fewer procedural hurdles in unincorporated areas. However, local opposition is growing in some communities, where residents have raised concerns about visual impact, noise and infrastructure strain.[8]

Permitting and Site Selection Hurdles

Permitting processes vary widely across jurisdictions and can be especially challenging in areas with limited experience overseeing large-scale infrastructure. In Illinois, developers may be required to submit environmental impact assessments, drainage plans and utility usage disclosures, with some projects triggering formal review by the Illinois Environmental Protection Agency. [9]

Texas permitting is generally less centralized, with regulatory authority often delegated to counties and municipalities.[10] This localized control offers developers a degree of flexibility in navigating permitting, but it also means contending with a patchwork of rules that differ from one jurisdiction to another.

Environmental and Regulatory Scrutiny

As data centers proliferate across Illinois and Texas, their environmental footprint — particularly in terms of energy and water use — is also drawing scrutiny.

Water and Energy Usage Concerns

Data centers are resource-intensive, consuming vast amounts of electricity and, in many cases, water for cooling. In Illinois, S.B. 2181, introduced in February, would require all data centers operating in the state to report annual energy and water usage to the Illinois Power Agency, with penalties for noncompliance.[11]

Though Texas lacks centralized reporting mandates, it enacted S.B. 6 in June, which imposes new requirements on large-load customers — including data centers using over 75 megawatts — to disclose energy demand, contribute to grid interconnection costs and implement emergency load-shedding protocols.[12]

However, no equivalent legislation currently regulates water usage, despite growing concerns from some communities.

Climate and ESG Pressures

Illinois' commitment to clean energy under the Climate and Equitable Jobs Act — which mandates a transition to 100% renewable energy by 2050 — places additional pressure on data centers to align with sustainability goals.[13] This can affect permitting outcomes and trigger community opposition.

Texas is not subject to a statewide renewable mandate. Nevertheless, Texas-based data centers face increasing environmental, social and governance pressures from some stakeholders.[14] In response, researchers and policymakers are actively exploring strategies to align data center growth with energy sustainability, including the integration of renewables into site planning.[15]

Litigation Flash Points

As data center development accelerates across Illinois and Texas, so too does the potential for litigation. Legal disputes are emerging at every stage of the project life cycle — from permitting to construction delays and operational disruptions.

Siting and NIMBY Litigation

Community opposition remains a potent source of legal risk in both states. In Illinois, residents have challenged data center siting decisions over concerns about noise and aesthetics.[16]

In Texas, similar opposition has emerged in fast-growing regions like Hays County, where residents have protested large-scale, AI-focused facilities over water and energy demands.[17] Future disputes may take the form of NIMBY lawsuits, challenging zoning approvals or permitting decisions.[18]

Construction and Operational Disputes

The complexity and scale of data center construction also make it fertile ground for contractual disputes, including allegations of cost overruns, defective work or force majeure events.[19] These disputes often center on contract interpretation, particularly around performance milestones, liquidated damages and indemnity provisions.[20]

Texas' deregulated energy market adds another layer of complexity. Legal teams must ensure contracts are tightly drafted to allocate risk and avoid ambiguity.

Once operational, data centers face a different set of legal risks, including noise and emissions complaints from nearby residents, allegations of noncompliance with environmental or building codes, and cybersecurity and data privacy breaches.

Legislative and Case Law Developments

The legal frameworks for data center construction in Illinois and Texas are evolving rapidly, shaped by new legislation and emerging case law. Legal teams should monitor these developments to anticipate regulatory shifts and litigation exposure.

Recent Legislative Activity

As previously noted, in early 2025, Illinois lawmakers introduced S.B. 2181, which would impose new reporting obligations on data center operators statewide. Separately, S.B. 2290 — also introduced in February — proposes to expand the definition of data centers under Illinois law to include quantum research facilities, signaling the Illinois General Assembly's intent to accommodate emerging technologies within the state's regulatory framework.[21]

Likewise, the passage of S.B. 6 in Texas marks a significant regulatory shift. Separately, S.B. 2222 — introduced in March — proposes to exempt from ad valorem taxation the total appraised value of real property used as a data center, along with associated tangible personal property used to meet the facility's energy needs.[22] This reflects a broader strategy to attract data center investment while balancing infrastructure demands.

Emerging Case Law

While neither state has issued landmark rulings specific to data centers, sister jurisdictions have begun to define the legal contours of this emerging sector.[23]

Meanwhile, in Texas and elsewhere, recently filed cases signal the direction litigation may take, including land use appeals challenging zoning decisions for data centers, litigation involving construction delays and cost overruns, and environmental enforcement actions.[24]

As data center development continues to scale, courts in both states may soon confront novel legal questions around digital infrastructure classification, utility cost allocation and ESG compliance.

Practical Guidance for Legal and Development Teams

Given the evolving legal landscape surrounding data center development in Illinois and Texas, a proactive and jurisdiction-sensitive strategy is essential. Developers, contractors and in-house counsel must work collaboratively to identify risks early, structure agreements carefully, and engage with regulators and communities.

Risk Assessment and Due Diligence

Before site acquisition or permitting begins, developers should conduct a comprehensive due diligence

review that includes zoning and land use compatibility under local ordinances; environmental constraints, including wetlands, floodplains and protected habitats; utility access and infrastructure capacity, particularly for power and water; and community sentiment and political landscape.

In Texas specifically, additional attention should be paid to grid interconnection requirements and water availability, particularly in drought-prone regions. In Illinois, developers should assess compliance risks under emerging environmental reporting mandates. In either state, robust due diligence is essential.

Contractual Protections

Data center projects involve a web of contracts, each of which must be carefully negotiated to allocate risk and ensure performance.

Key legal considerations include force majeure clauses that account for supply chain disruptions, labor shortages and regulatory delays; indemnity and limitation of liability provisions tailored to high-value infrastructure; performance guarantees and liquidated damages tied to construction milestones; and environmental compliance covenants, particularly considering emerging reporting obligations under Illinois law.

Community and Regulatory Engagement

Finally, legal teams play a critical role in shaping the public and regulatory narrative around data center projects. Best practice includes early outreach to local officials and community stakeholders to build trust and address concerns; clear communication of project benefits, including job creation, tax revenue and infrastructure investment; negotiation of community benefit agreements that formalize commitments and reduce opposition; and monitoring of legislative and regulatory developments, particularly around energy, water and emissions.

By integrating legal strategy into the development process from the outset, stakeholders can reduce delays, avoid litigation and enhance project viability.

Conclusion

Illinois and Texas are at the forefront of a national surge in digital infrastructure, with data centers reshaping the industrial landscape. But this growth brings legal complexity. For developers, contractors and corporate legal departments, success requires more than capital — it demands a deep understanding of each state's legal terrain and a proactive approach to risk management.

By integrating legal strategy into every phase of development — from site selection and permitting, to operations and compliance — stakeholders can mitigate risk, foster community trust and position their projects for long-term viability.

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[1] Illinois Department of Commerce & Economic Opportunity, Data Center Investment Tax Exemptions and Credits, https://dceo.illinois.gov/expandrelocate/incentives/datacenters.html (last visited Aug. 11, 2025).

[2] See Illinois Department of Commerce & Economic Opportunity, Data Center Investment Program 2024 Annual Report, at 17, available at https://dceo.illinois.gov/content/dam/soi/en/web/dceo/aboutdceo/reportsrequiredbystatute/2024-data-centers-annual-report-submission.pdf (last visited Aug. 11, 2025).

[3] See Tex. Comptroller of Pub. Accounts, State Sales Tax Exemption for Qualified Data Centers, https://comptroller.texas.gov/taxes/data-centers/ (last visited Aug. 8, 2025).

[4] SeeGil Quiniones (CEO of ComEd), Here's Why Northern Illinois Is Leading the Way on Data Center Growth, Be in Illinois (Aug. 25, 2022), https://beinillinois.org/blog/heres-why-northern-illinois-is-leading-the-way-on-data-center-growth/ (lastvisited Aug. 11, 2025); see also Issac Lane, ComEd's $1 Billion Substation Expansion: A Catalyst for Northern Illinois' Digital Economy and Grid Resilience, AInvest, (June 29, 2025), https://www.ainvest.com/news/comed-1-billion-substation-expansion-catalyst-northern-illinois-digital-economy-grid-resilience-2506/ (last visited Aug. 11, 2025).

[5] Tian Su, AI, Land, and Power: Inside Texas' Data Center Explosion, Texas A&M University, Texas Real Estate Research Center (May 22, 2025), https://trerc.tamu.edu/blog/ai-land-and-power-inside-texas-data-center-explosion/ (last visited Aug. 11, 2025).

[6] See Dan Swinhoe, Stream DC Gains Approval for Data Center Zoning Request in Elk Grove, Illinois, Data Centre Dynamics Ltd (Aug. 30, 2023), https://www.datacenterdynamics.com/en/news/stream-dc-gains-approval-for-data-center-zoning-request-in-elk-grove-illinois/ (last visited Aug. 11, 2025); cf. Tara Molina, South Loop Residents Fight Against Plans for New Data Center in Prairie District, CBS News Chicago (Sept. 6, 2023), https://www.cbsnews.com/chicago/news/south-loop-residents-fight-new-data-center/ (last visited Aug. 11, 2025); see generally Susan Cosier, As Data Centers Proliferate Across Illinois, Communities Grapple with How to Supply the Necessary Water, Inside Climate News (June 16, 2025), https://ilenviro.org/as-data-centers-proliferate-across-illinois-communities-grapple-with-how-to-supply-the-necessary-water/ (last visited Aug. 11, 2025).

[7] See generally Ben L. Stool, Authority of Texas Counties Over Land Use, The University of Texas School of Law Continuing Legal Education, available at https://utcle.org/ecourses/OC7671/get-asset-file/asset_id/46341 (last visited Aug. 11, 2025).

[8] See, e.g., Maya Fawaz, Hays County Residents Aren't Happy About a New Neighbor Moving In: A Data Center, Kut News, https://www.kut.org/energy-environment/2025-06-04/hays-county-texas-data-center-ai (last visited Aug. 11, 2025).

[9] See,e.g., Illinois EPA, Environmental Justice/Title VI Review Prime Data Centers, available at https://epa.illinois.gov/content/dam/soi/en/web/epa/topics/environmental-justice/documents/ira/prime-data-ejtitlevi.pdf (last visited Aug. 11, 2025); Illinois EPA, Environmental Justice/Title VI Review Hoffman Estates Data Center, available at https://epa.illinois.gov/content/dam/soi/en/web/epa/topics/environmental-justice/documents/ira/ira-analyses/23110003-ejttitlevi-review.pdf (last visited Aug. 11, 2025).

[10] See Tex. Loc. Gov't Code Ann. § 245.001 et seq. (West 2025).

[11]See S.B. 2181, 104th Gen. Assemb., Reg. Sess. (Ill. 2025), available at https://legiscan.com/IL/text/SB2181/id/3108709 (last visited Aug. 11, 2025).

[12] See David Chernicoff, Texas Senate Bill 6: A Bellwether on How States May Approach Data Center Energy Use, Data Center Frontier (July 2, 2025), https://www.datacenterfrontier.com/energy/article/55298872/texas-senate-bill-6-a-bellwether-on-how-states-may-approach-data-center-energy-use (last visited Aug. 11, 2025).

[13] See Climate & Equitable Jobs Act, Pub. Act 102-0662 (eff. Sept. 15, 2021), available at https://dceo.illinois.gov/ceja.html (last visited Aug. 11, 2025).

[14] See Dr. Ning Lin et al., Data Center Growth in Texas: Energy, Infrastructure, and Policy Pathways, at 22–27, Bureau of Economic Geology at the University of Texas at Austin (2025), available at https://www.beg.utexas.edu/files/cee/Data_Center_White_Paper_BEG.pdf (last visited Aug. 11, 2025).

[15] See id.

[16] See supra Note 6.

[17] See supra Note 8.

[18] See Rachyl Jones, NIMBYism Hits Us AI Infrastructure Buildout, Semafor (May 7, 2025), https://www.semafor.com/article/05/07/2025/us-ai-infrastructure-buildout-neighbors-complain-noise-virginia (last visited Aug. 11, 2025).

[19] See John Coker, et al., Navigating the Surge: Data Centre Construction Disputes in the Americas, Global Arb. Rev. (July 18, 2025), https://globalarbitrationreview.com/review/the-arbitration-review-of-the-americas/2026/article/navigating-the-surge-data-centre-construction-disputes-in-the-americas (last visited Aug. 11, 2025).

[20] Id.

[21] SeeS.B. 2290, 104th Gen. Assemb., Reg. Sess. (Ill. 2025), available at https://www.ilga.gov/legislation/104/SB/PDF/10400SB2290lv.pdf (last visited Aug. 11, 2025).

[22] Tex. S.B. 2222, 89th Leg., R.S. (2025), available at https://www.legis.texas.gov/BillLookup/History.aspx?LegSess=89R&Bill=SB02222 (last visited Aug. 11, 2025).

[23] See, e.g., Oak Valley Homeowners Ass'n, Inc. v. Prince William Cnty. Bd. of Supervisors, No. 1144-24-4, 2025 WL 2043957 (Va. Ct. App. July 22, 2025); see generally Citizens for Fauquier Cnty. v. Town of Warrenton, 81 Va. App. 363, 904 S.E.2d 213 (2024).

[24] See, e.g., GMO Gamecenter USA., Inc. v. Whinstone US, Corp., No. 22-CV-5974 (JPC) (KHP), Docket No. 1 (Complaint) (S.D.N.Y. 2022); Citizens Concerned About Wolf Hollow v. Marathon Digital Holdings, Inc., No. 4:24-CV-00983-O, Docket No. 1 (Complaint) (N.D. Tex. 2024).