

Governor Shapiro's Data Center Executive Order



Brigitte Meyer

PennFuture Staff Attorney



PennFuture is a member-supported, nonprofit, environmental organization that strives to protect Pennsylvania's air, water, and land, and to empower citizens to build sustainable communities for future generations.

Brigitte is a Staff Attorney in PennFuture's Poconos office, where her work focuses on land use, water quality, and the intersection of environmental protection and local governance.

Governor Shapiro's Data Center Executive Order

On August 18, Pennsylvania Governor Shapiro signed an Executive Order (EO) that the Governor's office says “lays out strict requirements that data center developers must meet regarding energy affordability, community engagement, workforce and economic development, transparency, and environmental protection – and gives local municipalities a greater say over development in their communities.”

But does it, though?

The governor can . . .

- Direct policies for agencies he oversees, like DEP
- Direct agencies under his control to advocate for rules or policies at other agencies



The governor cannot . . .

- Unilaterally create new laws or regulations or eliminate existing ones
- Change the structure of government, e.g. take land use decision making authority away from local governments
- Direct independent agencies like the Public Utility Commission (PUC)
- Direct agencies to adopt unconstitutional policies like denying permits based on negative public opinion

What the EO Doesn't Do

- Stop, ban, or pause data center development
- Allow the state or local government to say “no” to a data center that meets all the legal requirements just because a community opposes it
- Change how local zoning and land development approvals for data centers work
- Create new rules or obligations for data centers – everything in the EO is voluntary/incentive-based

What the EO Does Do

Department of Environmental Protection (DEP) Permitting



The EO makes all data centers ineligible for the PA Permit Fast Track Program and creates different, data-center-specific “tracks” for DEP permits. Data centers that sign a contract agreeing to follow the Governor’s Responsible Infrastructure Development (GRID) standards get put on a faster track. Those who don’t get put on a slower track.

Department of Environmental Protection (DEP) Permitting



- Data center must have all local approvals before applying for any DEP permits
- Data center must submit applications for ALL DEP permits before DEP will begin reviewing any of them
- Applicant not entitled to have permit fees refunded if DEP does not make a decision within certain timeframe



- Data center does not have to demonstrate local approvals before submitting DEP permit applications (but must have approvals before DEP will issue permit)
- DEP will review each type of permit as it comes in
- Applicant entitled to have permit fees refunded if DEP does not make a decision within certain timeframe

GRID Standards

Four Key Areas

- Energy affordability 
- Community engagement 
- Workforce and economic development 
- Environmental protection 

Energy Affordability

- Data center will be responsible to pay all costs associated with their electric transmission, distribution, network updates, or facilities
- Data center must build, bring, or buy enough energy to meet its power demand.

Energy Affordability

- Data center must agree to terms at least as stringent as PUC's final model Large Load Tariff. This includes:
 - financial security for network upgrades
 - customer pays for any network improvements they trigger
 - must “ramp up” to total electricity usage within 3-5 years
 - lower rates for customers willing to have power interrupted during certain times

Community Engagement



- Data center must hold planned, accessible, in-person public information meetings in addition to any public meeting required by law
- Must consult with municipal leaders in the host jurisdiction and potentially-affected adjoining jurisdictions
- Must seek public comments on design decisions including viewshed impact mitigation, noise impact mitigation and building facade design.

Community Engagement



- Must offer a community benefit agreement to the municipal and county government that addresses noise, lighting, traffic, air quality, aesthetics, emergency management, reporting, and financial contributions

Workforce and Economic Development



- Must develop a plan to:
 - Create at least 200 prevailing-wage construction jobs
 - Create at least 50 new permanent jobs
 - Pay at least \$1.5 million in compensation to full-time employees starting four years after opening
 - Spend at least \$250 million in construction, build-out, expansion, and computer equipment

Environmental Protection



- Data center must get some of its energy from ‘clean firm energy resources’ (e.g. nuclear, solar, wind, hydro, geothermal, or fossil fuel with carbon capture). They can either build this energy directly into their systems or buy it from others. It must count for at least 10% of their energy starting now, and up to 32% by 2035.
- Must use back-up energy generators that are Tier 4 or the same level of air emissions, and follow Federal and State air quality regulations.

Environmental Protection



- Data center must put at least 3 air quality monitors at or near the Site that give continuous record of the air quality. Data must be accessible to the public and Municipal and County government.
- Must use closed-loop cooling and water-recycling “where feasible”
- Must provide defined measures to offset any increased environmental exposures or effects on Environmental Justice Areas.

Transparency

- Prohibits agencies under the Governor's jurisdiction from using NDAs in connection with data center projects
- Requires DEP to create a publicly-accessible map with current permitting information about all proposed data centers known to DEP
- Data centers must report energy and water consumption annually

Future Action

Governor's office will engage with PUC to advocate for “rapid development” of rules that would ensure that data centers' energy costs do not get passed on to other customers and that data centers' power gets limited or cut before other customers' if there is an energy emergency.

Future Action



Requires DEP to consider whether new or different regulations are required to protect the environment, including air and water, from detrimental impacts caused uniquely by data centers. DEP is specifically directed to consider the cumulative impacts of multiple backup generators at the same location.

Thank you!