No Cooling Off: Practical Guidance on Regulating Data Centers

SCAPA Fall Conference
October 9, 2026

Tell us your thoughts on data centers before we get started!

Session Overview

01	Data Centers Overview
02	Legal Considerations
03	Zoning Approaches
04	Key Takeaways
05	Questions & Discussion

Introductions



Jonathan Buono AICP
Planning & Development Services Director
York County, SC

Jonathan.Buono@yorkcountysc.gov
(803) 909-7173



Jeremy Ward CNU-A
Planning & Development Director
Chester County, SC

jward@ChesterCountySC.gov
(803) 377-8683



Kelly Cousino AICP
Partner & Director of Planning
White Smith Cousino

kcousino@planningandlaw.com
(843) 882-5821



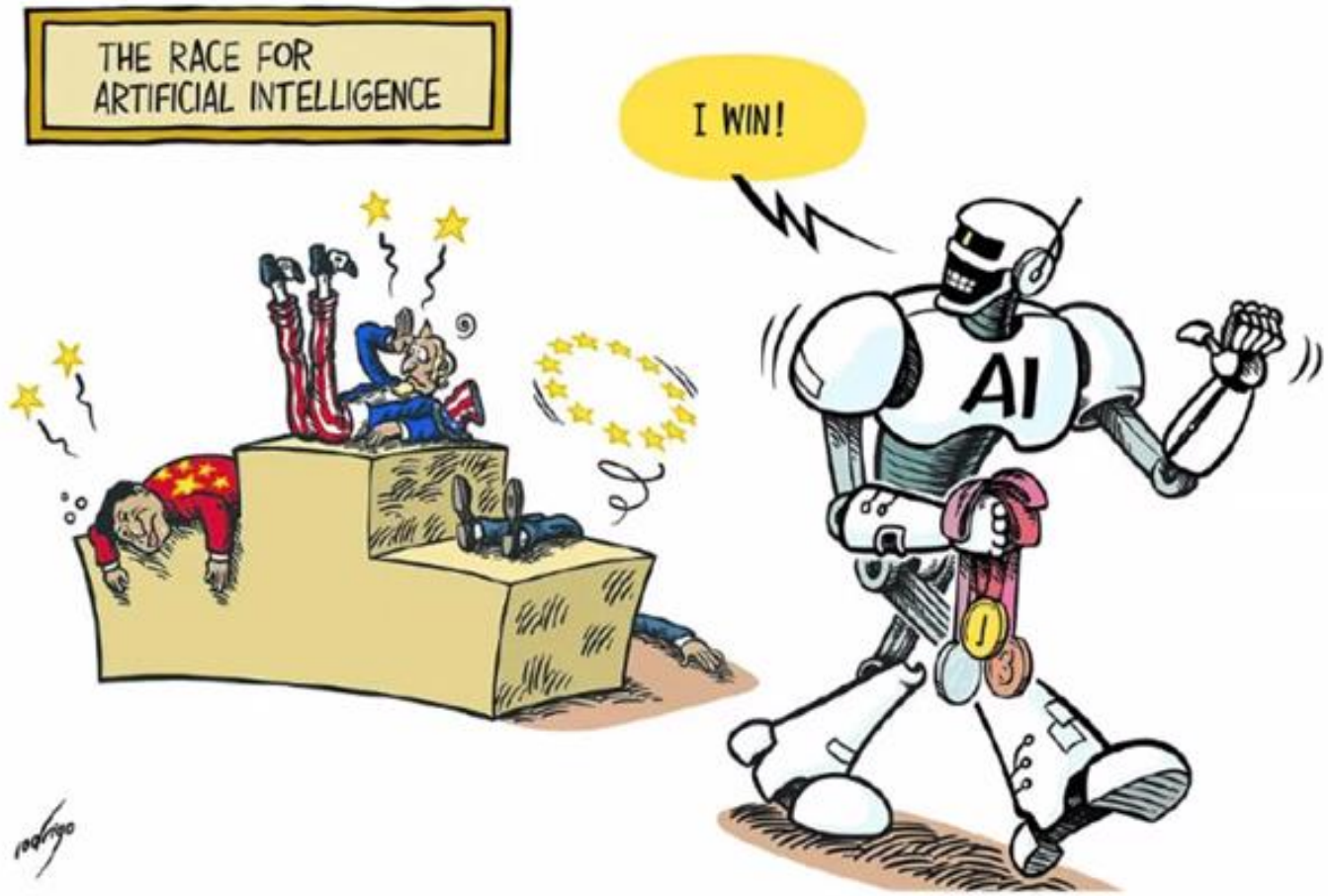
Sean Scoopmire Esq., AICP
Senior Planning Associate
White Smith Cousino

sscoopmire@planningandlaw.com
(864) 525-4895

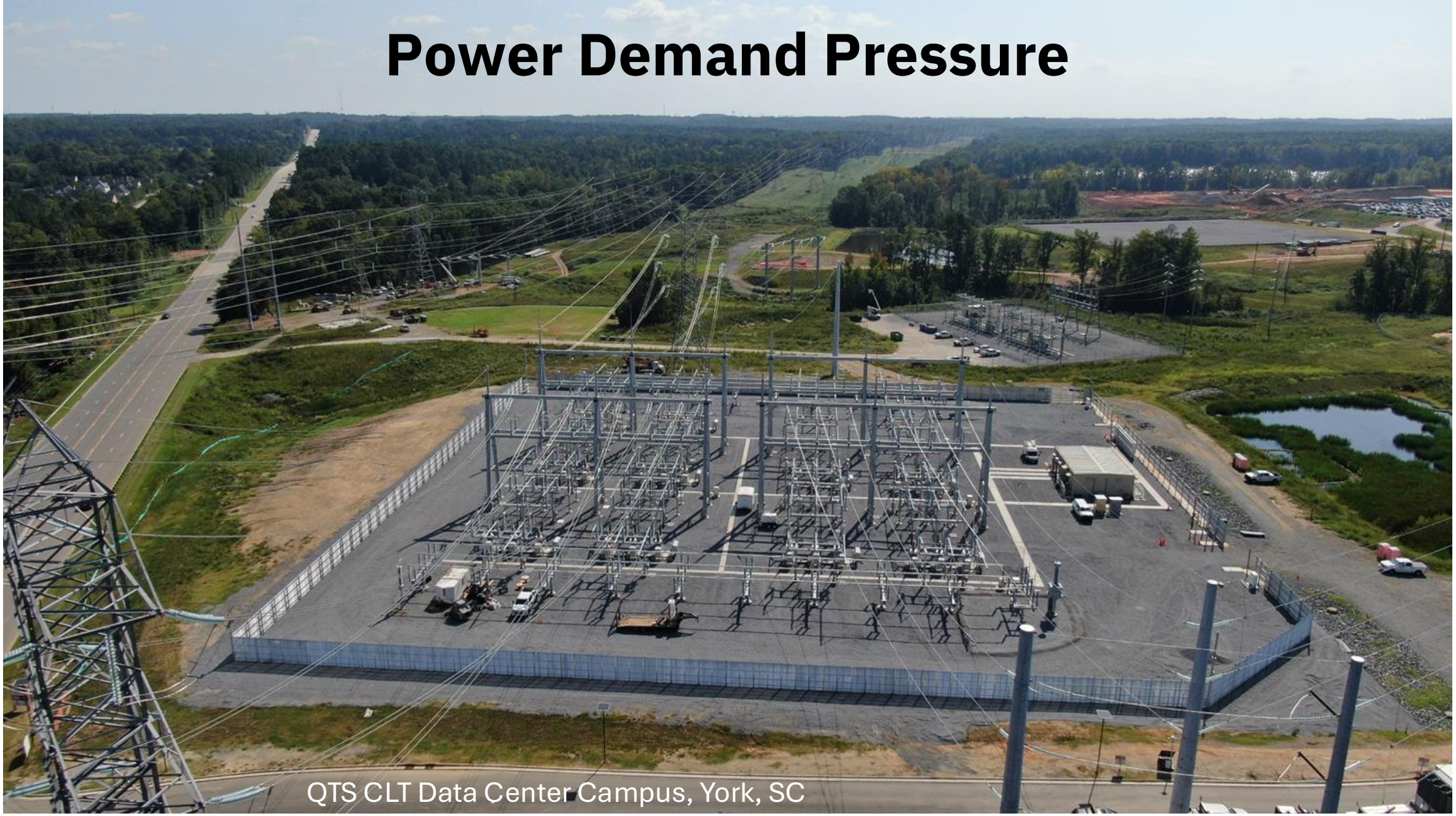
Data Centers Overview

Data Center Market Demand



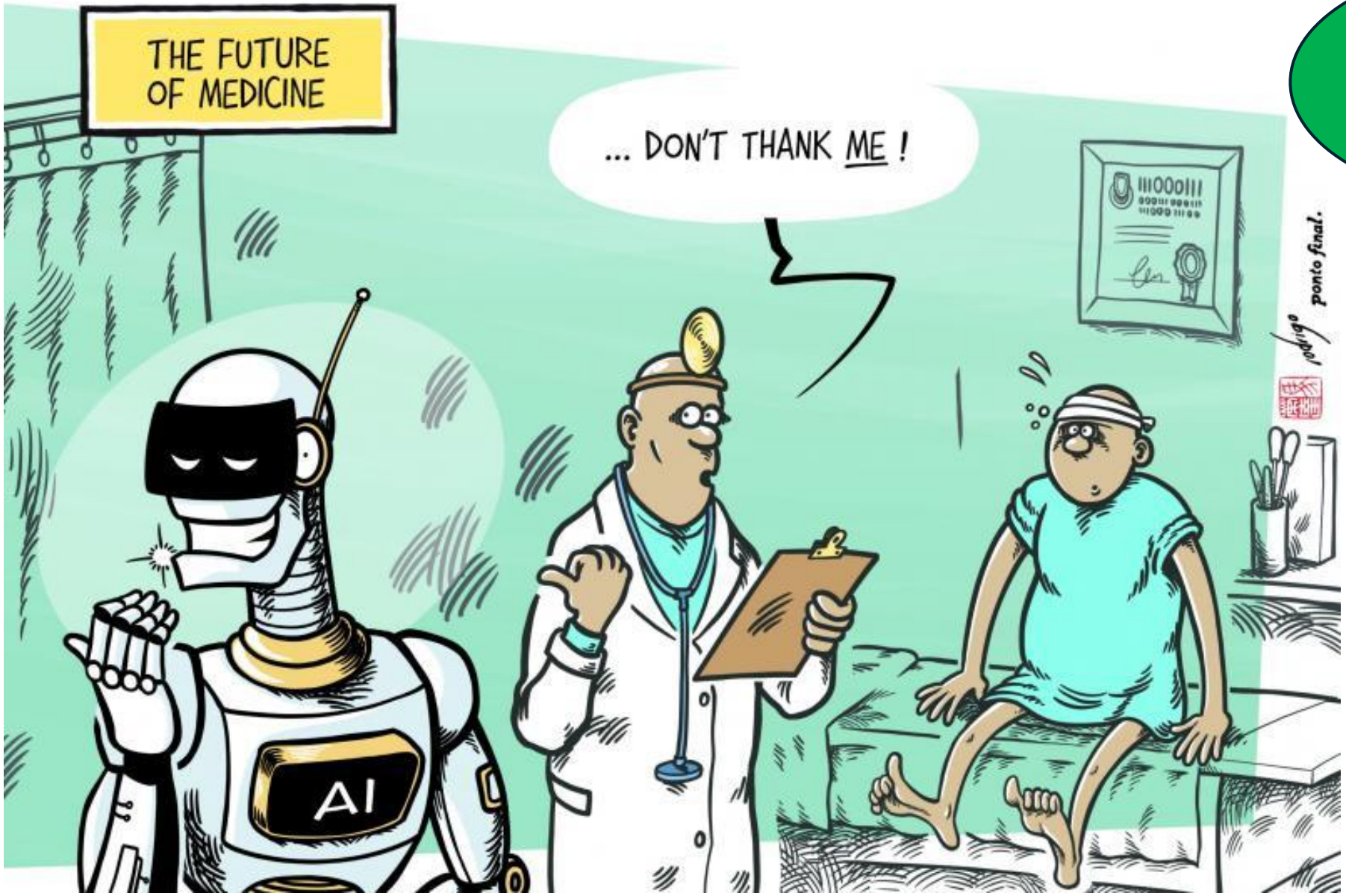


Power Demand Pressure



QTS CLT Data Center Campus, York, SC

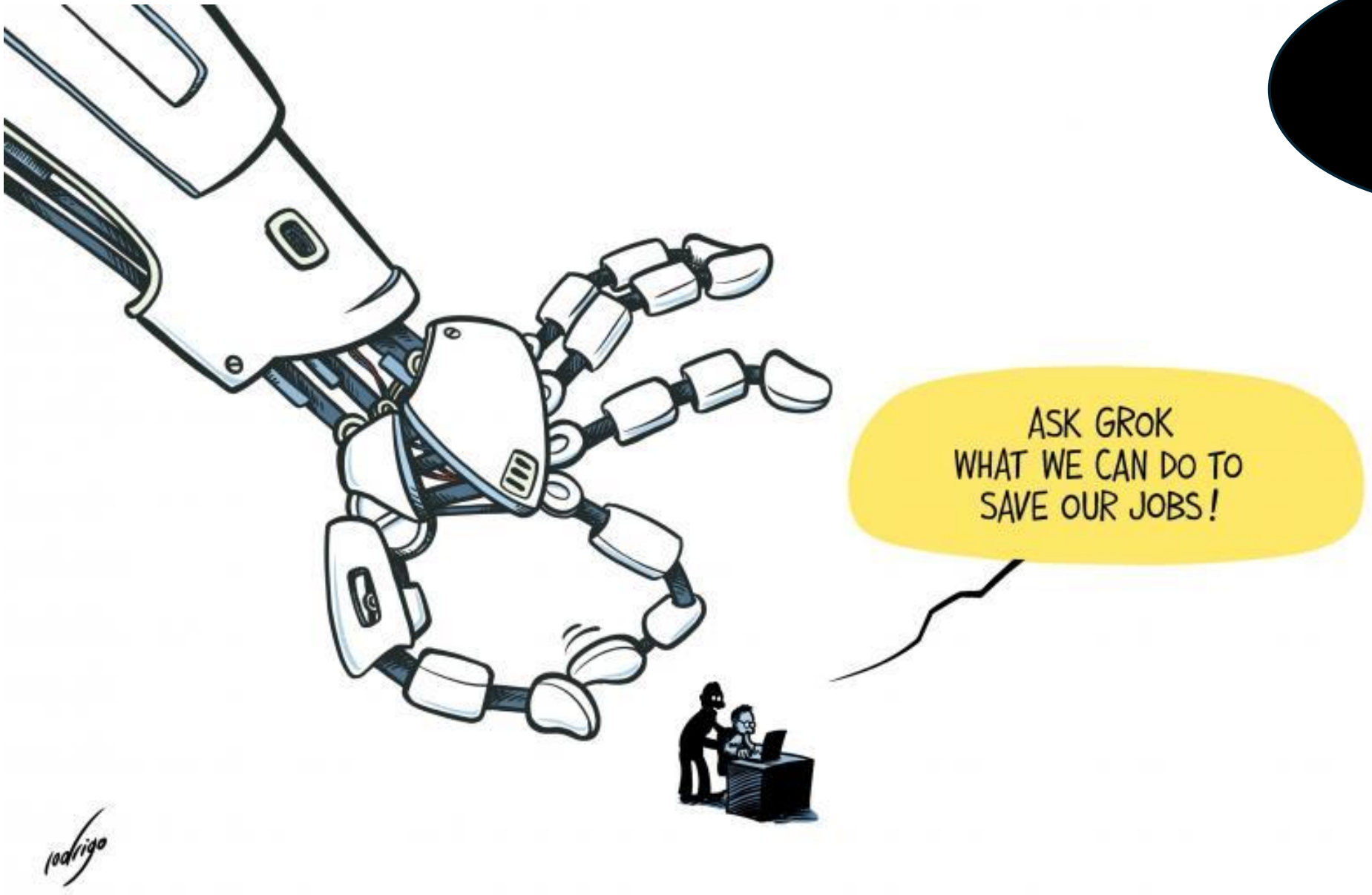
Potential

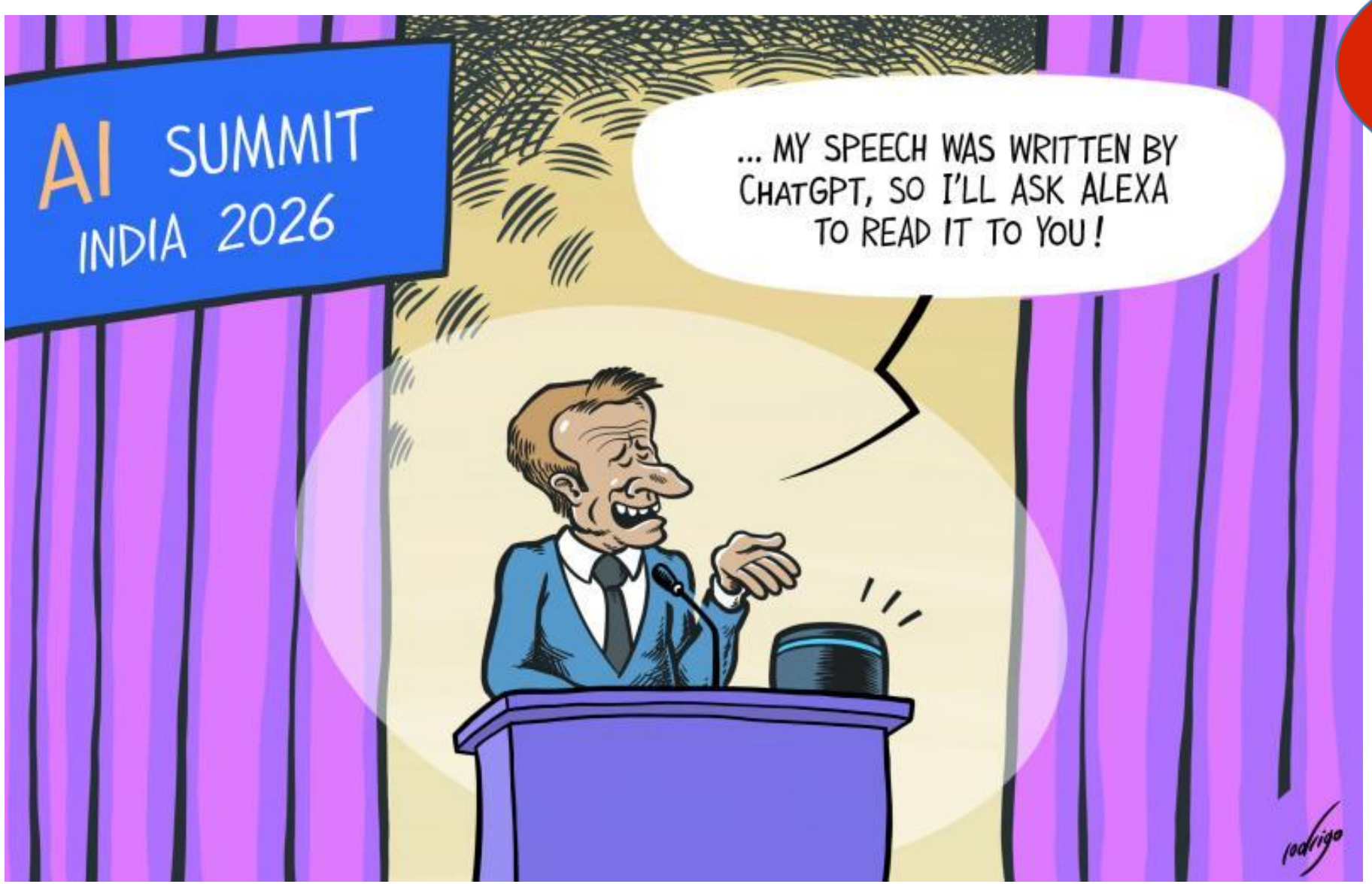


Cartoonist credits:

Rodrigo de Matos,
Cartoon Movement

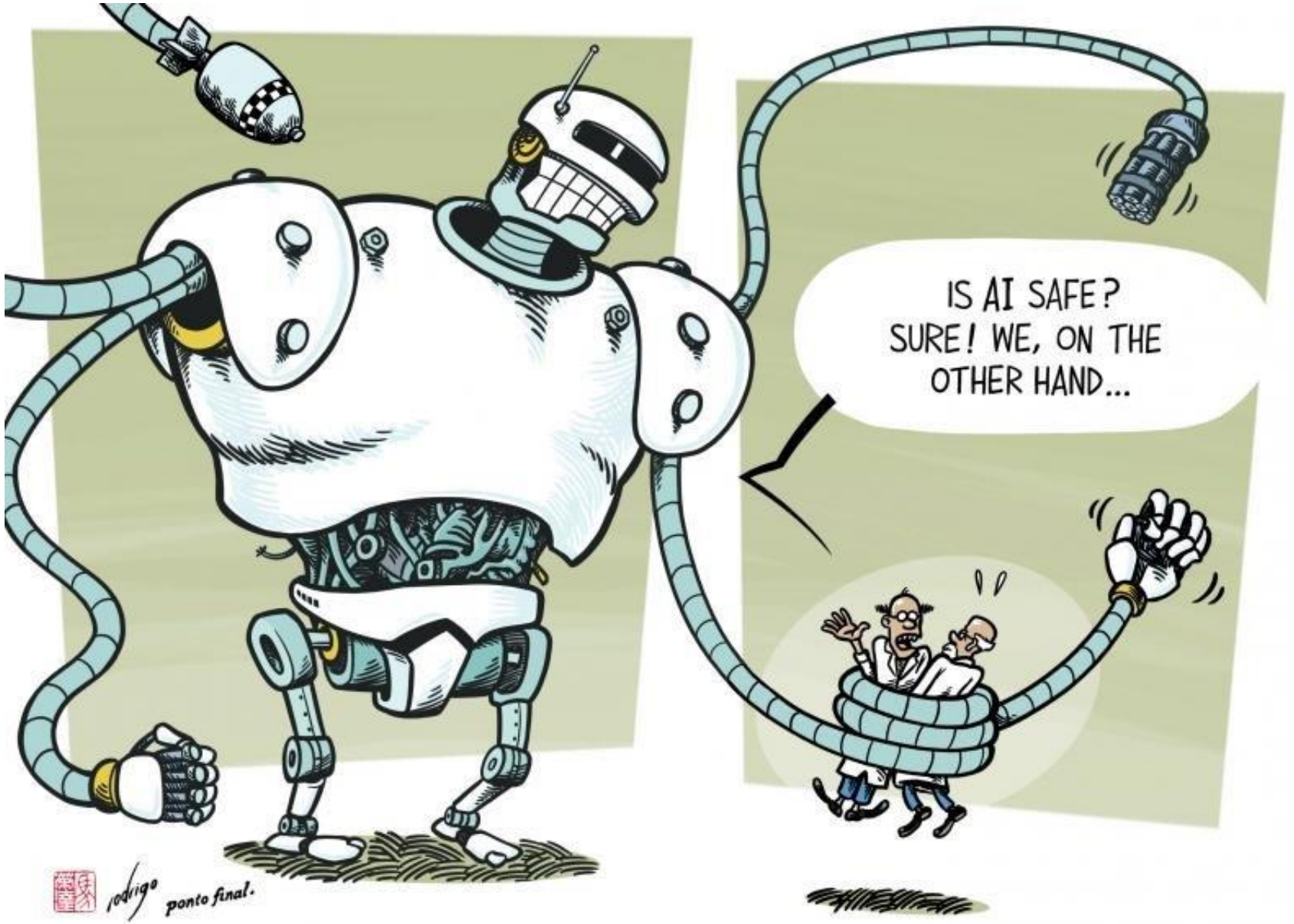
Ethical




AI SUMMIT
INDIA 2026
... MY SPEECH WAS WRITTEN BY CHATGPT, SO I'LL ASK ALEXA TO READ IT TO YOU!
rodrigo

Political

Existential




Practical

QTS Revenue Breakdown

$8

PROJECT INVESTMENT ~~$1.0~~ BILLION

$3.47 BILLION

TOTAL LOCAL REVENUE ~~$433.7 MILLION~~

Years	Incentive Credit	Schools	County Government	Fire	Recreation
1–5	35%	About 71¢	About 25¢	About 1¢	About 3¢
6–10	30%	About 71¢	About 25¢	About 1¢	About 3¢
11–20	25%	About 71¢	About 25¢	About 1¢	About 3¢
21–40	20%	About 71¢	About 25¢	About 1¢	About 3¢
41–44	FILOT winds down	About 71¢	About 25¢	About 1¢	About 3¢

FOR EVERY $100 OF LOCAL REVENUE

About $71 goes to schools • $25 to York County government • $2.50 to recreation • $1.31 to fire protection

$2.46 BILLION **$867.5 MILLION** **$86.8 MILLION** **$45.5 MILLION**

Community Benefit Agreements







The offer:

- $30 million to renovate Carroll Manor Elementary School
- $40 million for a community center and recreation space
- $14.5 million for a workforce development training center
- $10.5 million for agricultural land preservation
- $10 million for berms, plantings and trails
- $5 million for a community solar project
- $1 million for a new fire truck for the Carroll Manor company

Indirect economic considerations


Image source: Pacolet Milliken, Piedmont Green Power

~40 direct employees

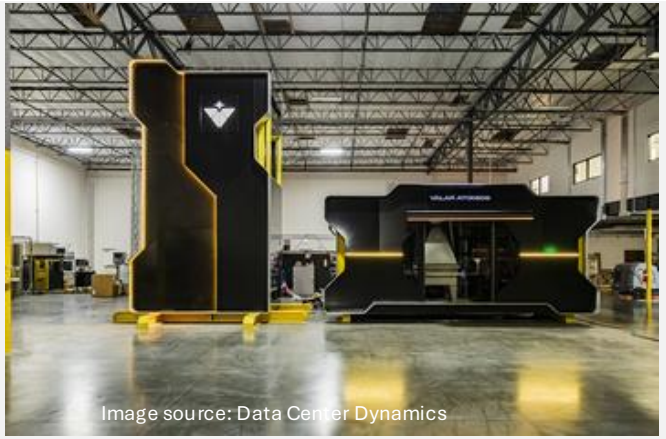

Image source: Data Center Dynamics

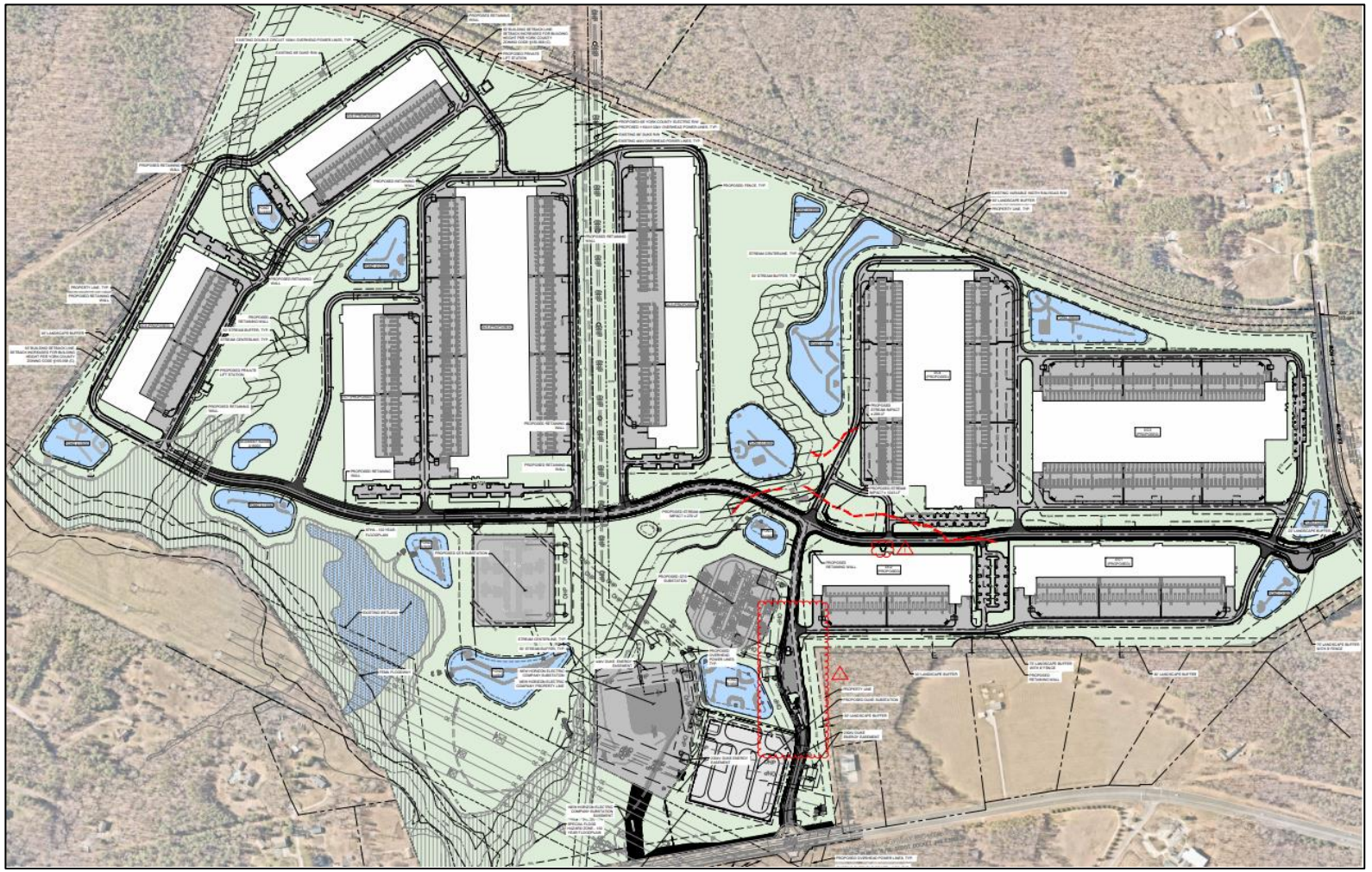

Image source: World Nuclear News, 9.30.26

~205 direct employees

SC Data Center Sagas: York County

<u>QTS</u> – $1b investment; 9-building campus over ~400 acres

- **Purchased greenfield zoned for Industrial (July 2023)**
- **Granted a FILOT (Dec 2023)**
- **Text amendment to allow building height up to 80 ft just for data centers (June 2025)**
- **QTS purchases additional 400 adjacent acres (Jan 2026)**
- **County applies pending ordinance to first reading of new data center development standards (Feb 2026)**
- **County adopts 9-month moratorium (July 2026)**




QTS CLT Data Center Campus, York, SC

SC Data Center Sagas: Spartanburg County

Northmark-Valara – $2.8b investment; redevelopment of Kohler manufacturing site over 270 acres; existing building retrofits and new 450 MW onsite natural gas power plant

- **Granted a FILOT (Apr 2025)**
- **Suit filed against the County alleging project was improperly approved (July 2026)**
- **SC Public Service Commission ruled onsite power generation is not a public utility, and therefore not subject to the state Utility Facility Siting and Environmental Protection Act (Aug 2026)**

TigerDC - $3b investment

- **Currently operating bitcoin mining facility in Spartanburg County, since 2022**
- **Developer canceled project after third reading denial of FILOT (Feb 2026)**

LightHouse – 200,000 sf data center campus

- **County denied application, could not accept new application due to new data center moratorium under pending ordinance (June 2026)**
- **LightHouse appealed the denialn, but BZA upheld staff decision (Aug 2026)**

Northmark Data Center, Spartanburg County

SC Data Center Sagas: Colleton County

- County adds data center use to its Zoning Ordinance (Sept 2025)
- Eagle Rock Partners applies for first data center Special Exception (Nov 2025)
  - $8b investment
  - 9 buildings over 859 acres
  - Located in ACE basin watershed
- Public hearing for Special Exception draws 400+ attendees, no decision made (Dec 2025)
- Lawsuit filed challenging validity of Zoning Ordinance amendment (Jan 2026)
- Council adopts data center moratorium (July 2026)
- Council adopts new "Digital Infrastructure Overlay", replacing earlier data center use ordinance (Sept 2026)

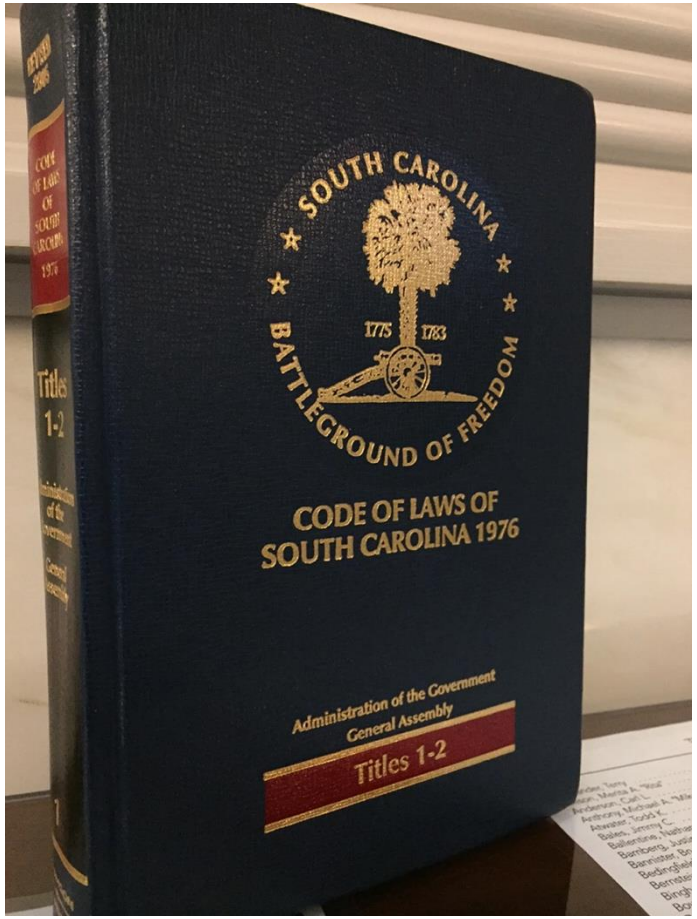


^ Image source: The Post and Courier, "Residents sue Colleton County over controversial data center ordinance"

Legal Considerations

Authority to Regulate

- S.C. Local Government Comprehensive Planning Enabling Act of 1994
- Governments may use a zoning ordinances to:
  - Regulate the uses of buildings, structures and land for trade and industry
  - Facilitate provision of services
  - "[F]urther the public welfare in any other regard specified by a local governing body"



Limitations on Authority

- Courts generally use a deferential standard of review for zoning ordinances.
- Zoning decisions receive a strong presumption of validity.
- Courts generally will not substitute their judgment for that of the legislative body.
- Upheld if “fairly debatable”: arbitrary, unreasonable, an abuse of discretion, or beyond the government's statutory authority.



As Applied to Data Centers

- Consider the reasonableness of use standards and districts vs. total prohibition.
- What is the basis for the regulation?
- What are the externalities?
- How do data centers differ from other industrial uses?
- Should have factual findings related to data center use.



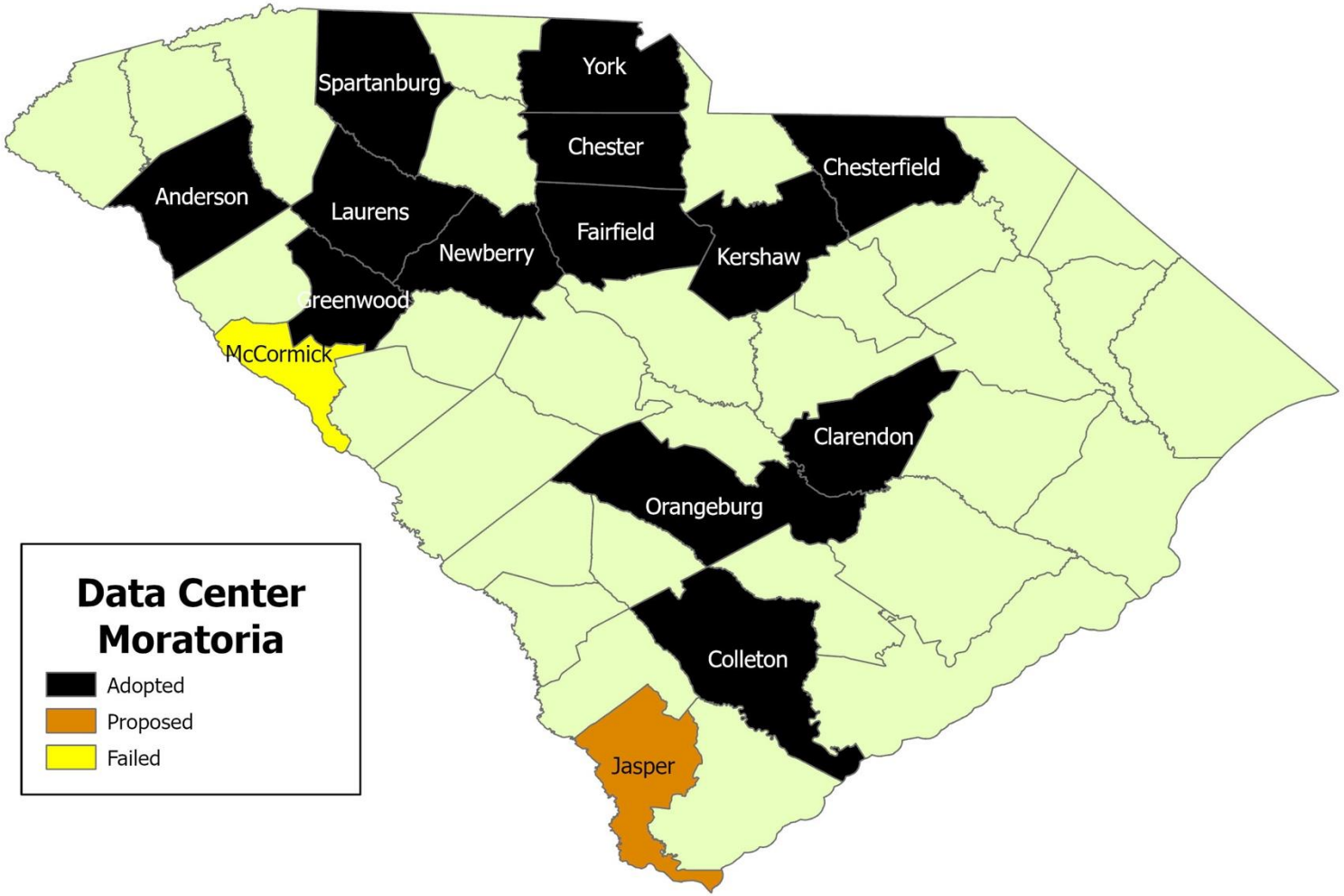
Comprehensive Planning

- The zoning ordinance should be "in accordance with the plan." S.C. Code Ann. 6-29-720(B).
- Consider a comprehensive plan amendment with findings on economic development, quality of life, use of resources, etc., relating to data centers when adopting an amendment.
- Lack of compatibility with the Comprehensive Plan was a key allegation in the Colleton County Lawsuit: industrial use allowed in rural character areas

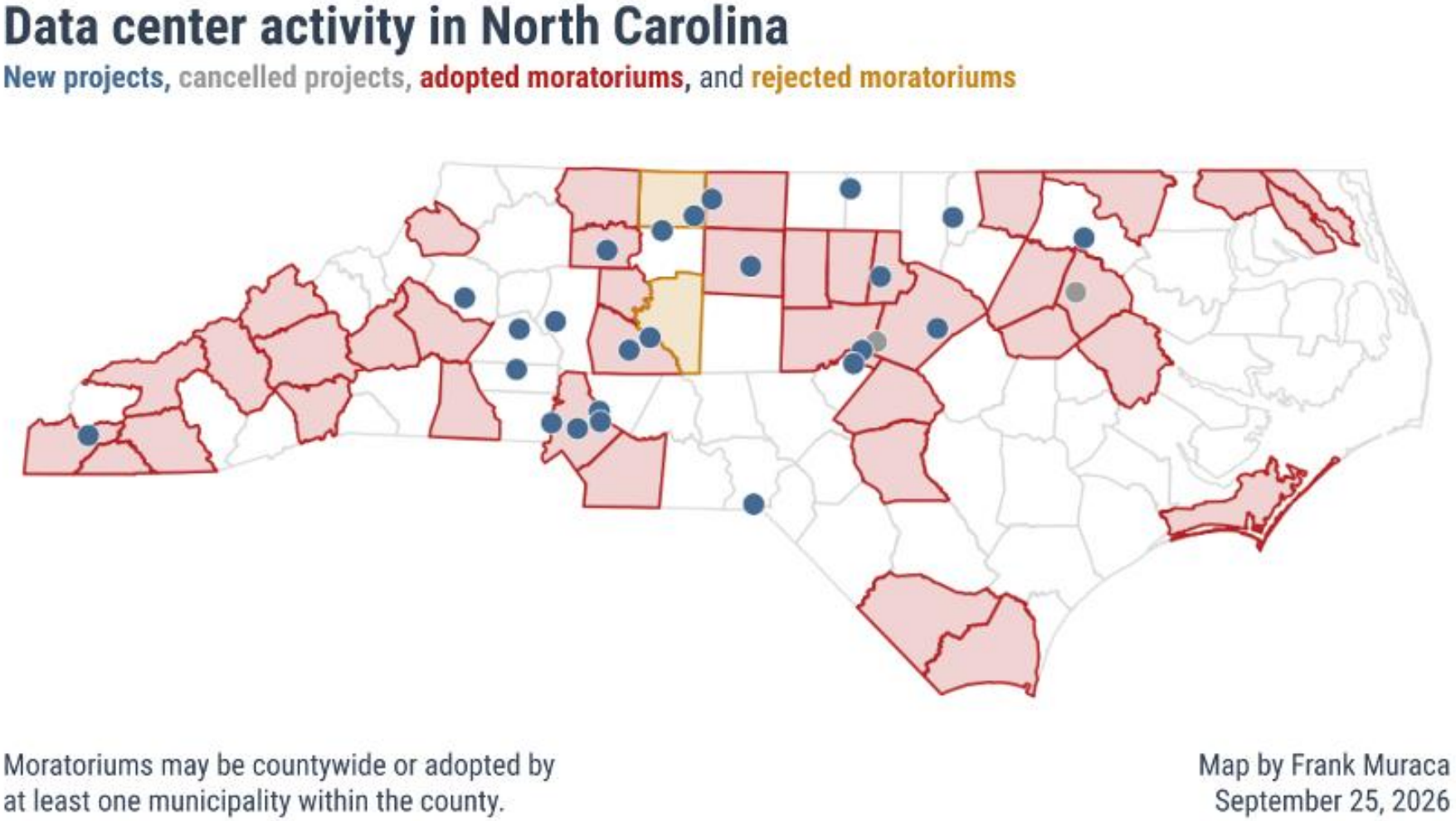
Federal Limitations

- If we prohibit data centers, aren’t we violating someone's constitutional rights?
- Substantive Due Process: Zoning is evaluated under rational basis review.
- Takings:
  - Regulatory takings can occur when there no economically beneficial or productive use.
  - Also, when the deprivation is not total, the court evaluates: (1) the economic impact on the claimant, (2) the extent to which the regulation interfered with investment-backed expectations, and (3) the character or extent of the government action.
- Compare this to land uses protected by the First Amendment (adult uses) or federal statutes (religious uses).

Moratoria – South Carolina



Moratoria – North Carolina



Moratoria

- This is a temporary pause on particular types of development.
- One year seems common, but six months would be better.
- Intended to allow evaluation and planning relating to the Issue.
- Requires an ordinance under the “equal dignity” rule.
- Could a moratorium be a taking?
  - For all development
  - For one use

Pending Ordinance Doctrine

- Gives local governments the authority to refuse a permit for a land use when a pending ordinance prohibits the use or structure.
- The zoning administrator can refuse a permit for a use prohibited by an ordinance or amendment pending at the time of the application.
- An ordinance is considered pending when the local government has:
  - Resolved to consider a particular ordinance or amendment, including a rezoning, and
  - Advertised the public hearing on the matter.
- Doesn’t have to be in the text of the ordinance.
- Can’t just be a resolution.

Equitable Estoppel

- South Carolina recognizes equitable estoppel against municipalities in limited circumstances.
  - The party claiming estoppel lacked knowledge, and the means of obtaining knowledge, of the true facts;
  - Requires reliance upon the conduct of the party to be estopped; and
  - A prejudicial change of position resulting from that reliance.
- Could apply to authorized acts on which a landowner relies in planning a project.
- So be careful what you say!

Zoning Approaches

Prohibited Use



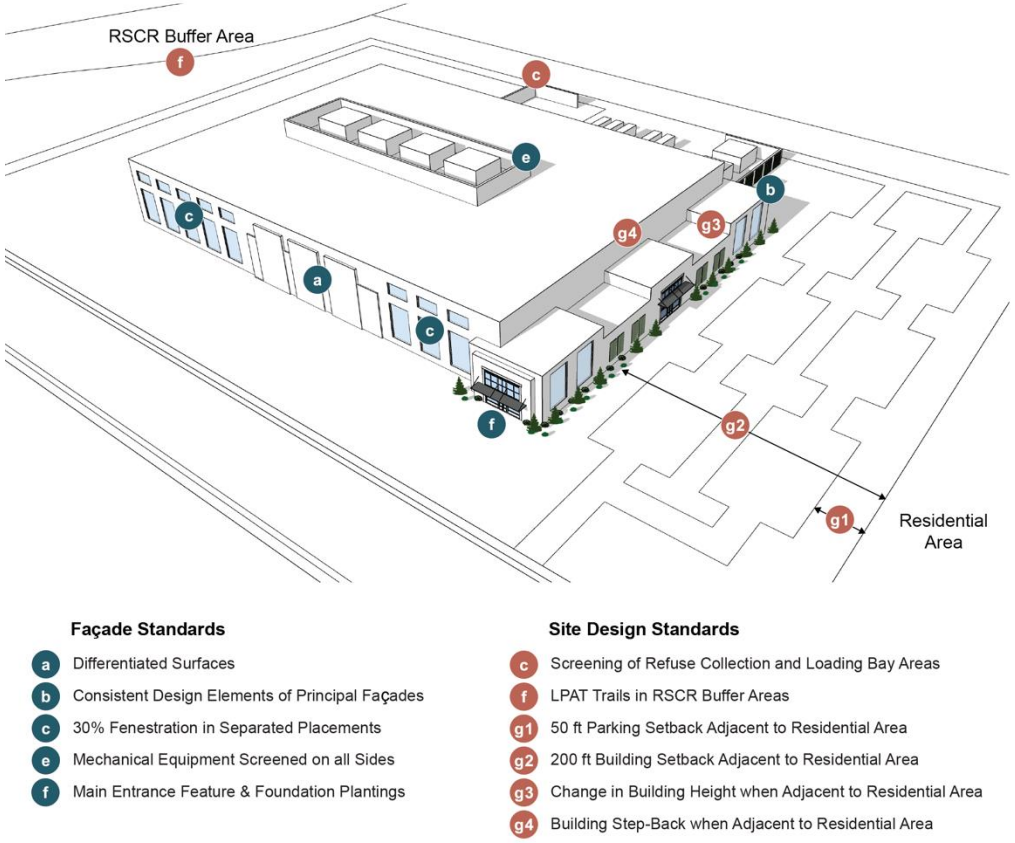
Permitted Use

Potential Negative Impacts

- Impact on nearby uses
- Noise & vibration
- Lighting
- Fire risk
- Heat exhaust
- Energy consumption
- Water consumption
- Air & water pollution
- Wastewater
- E-waste
- End of life cycle

Impact on nearby uses

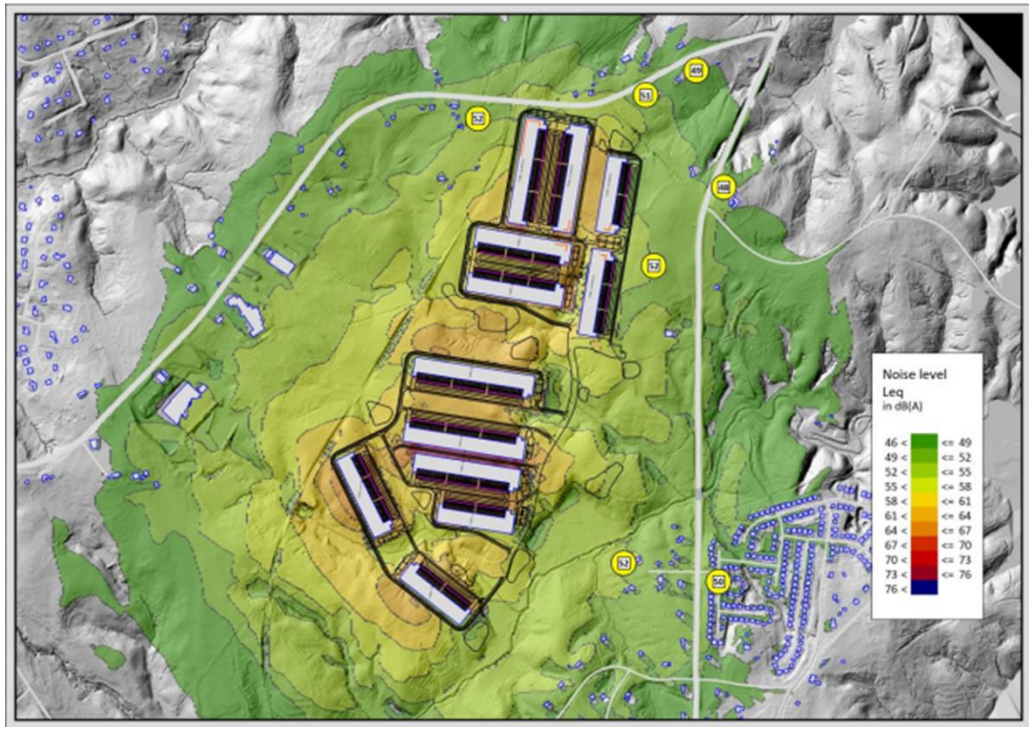
- Increased setbacks from “sensitive receptors”
- Buffers and screening
  - Perimeter buffers
  - Screening of outdoor equipment
- Building height and GFA
- Impervious surface limit
- Building design
- Outdoor lighting (BUG rating)



^ Image source: WSC (Loudoun County, VA)

Noise & vibration

- Noise & vibration study
  - Pre-development
  - Post-development
  - Demonstrate compliance with noise ordinance, performance standards, etc.
- Limitation on dB at the lot line (above baseline)
- Acoustical barriers



^ Image source: ARUP Noise Study , QTS CLT Data Center Campus, York SC

Heat exhaust

- Vegetated buffers
- Green roofs
- Impervious surface limit
- Landscaping
- Tree preservation
- Limit on air temperature increase at the lot line
- Heat mitigation plan identifying strategies for waste heat reuse or dissipation



ASU News

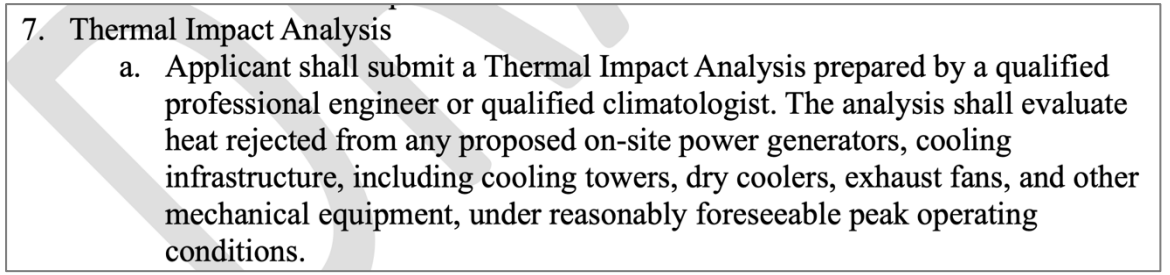
Arizona State University

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Environment and sustainability

Turning down the heat from data centers

ASU researchers say the goal is to collaborate with data center providers, policymakers to reduce impacts of waste heat in neighborhoods



7. Thermal Impact Analysis
   a. Applicant shall submit a Thermal Impact Analysis prepared by a qualified professional engineer or qualified climatologist. The analysis shall evaluate heat rejected from any proposed on-site power generators, cooling infrastructure, including cooling towers, dry coolers, exhaust fans, and other mechanical equipment, under reasonably foreseeable peak operating conditions.

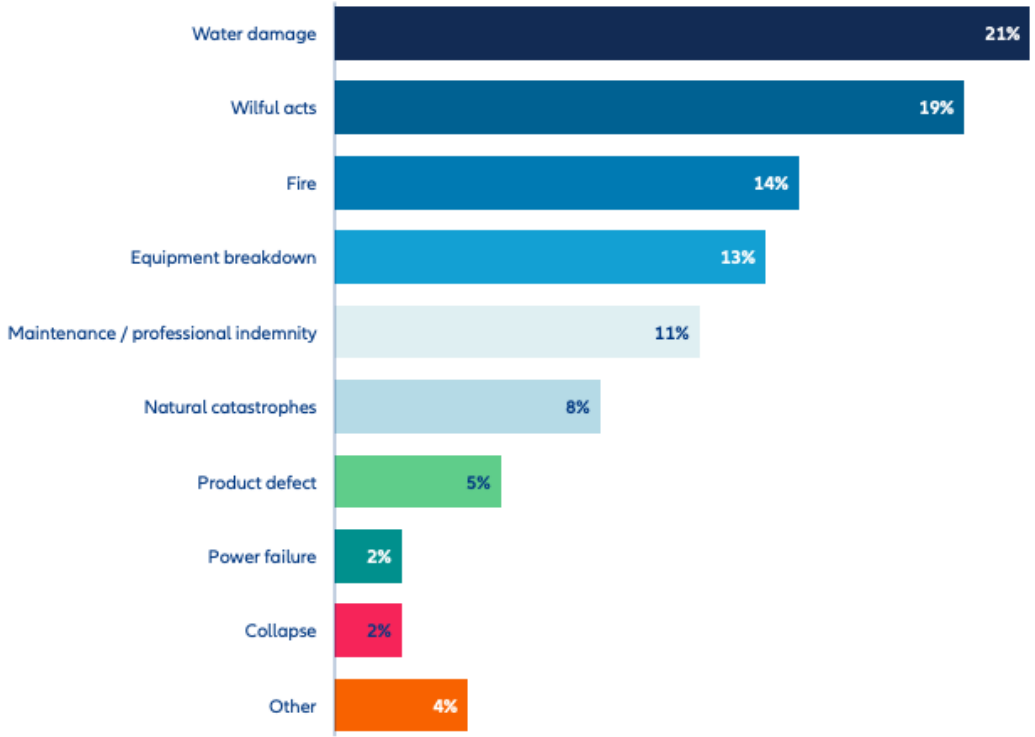
^ Excerpt from Franklin County, Indiana, draft ordinance

Fire risk

Allianz

Top causes of loss by number of claims (% share)

Based on analysis of 221 claims with a total value of approximately €677mn (based on the 100% loss event total, including the shares of other insurers in addition to Allianz Commercial).



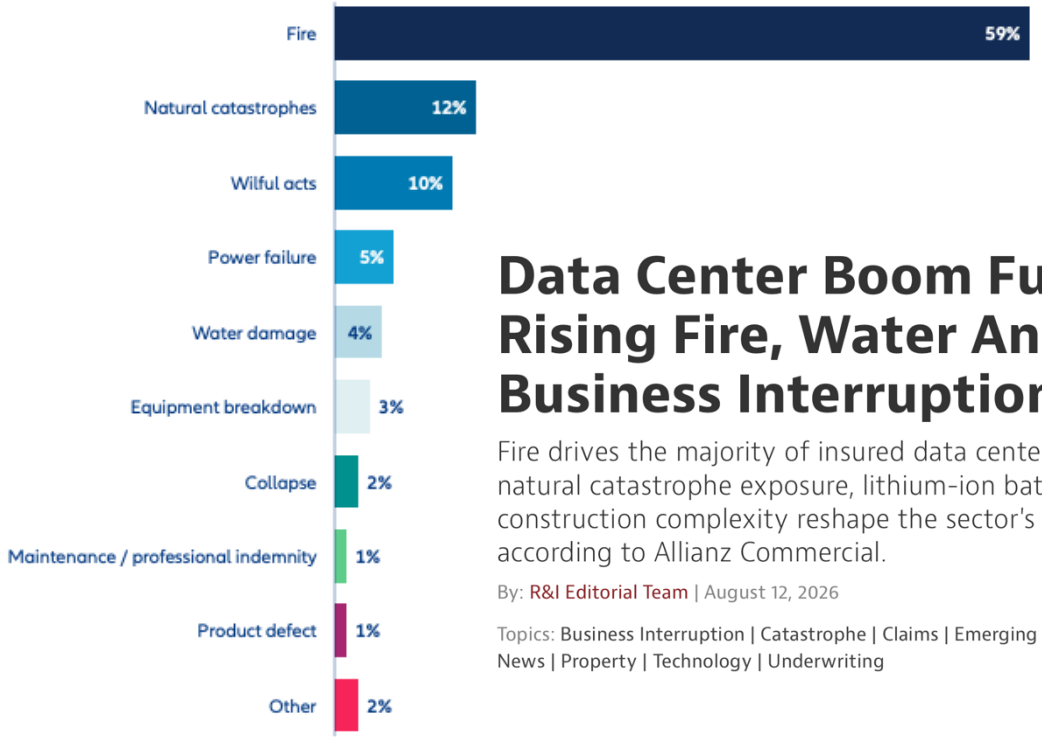
Allianz Commercial News and Insights

Source: Allianz Commercial

Allianz

Top causes of loss by claims value (% share)

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Allianz Commercial News and Insights

Source: Allianz Commercial

Data Center Boom Fuels Rising Fire, Water And Business Interruption Losses

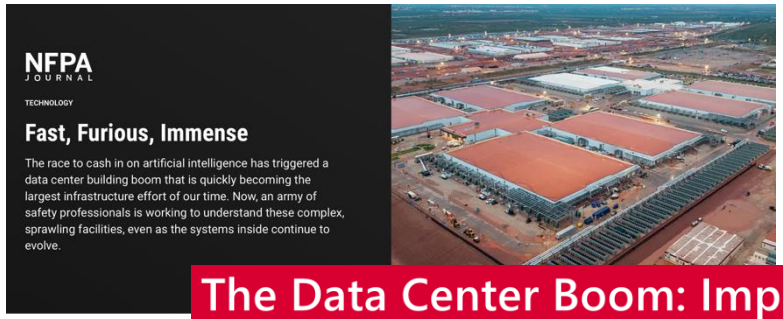
Fire drives the majority of insured data center losses even as natural catastrophe exposure, lithium-ion battery risk and construction complexity reshape the sector's risk profile, according to Allianz Commercial.

By: R&I Editorial Team | August 12, 2026

Topics: Business Interruption | Catastrophe | Claims | Emerging Risks | Global Risk | News | Property | Technology | Underwriting

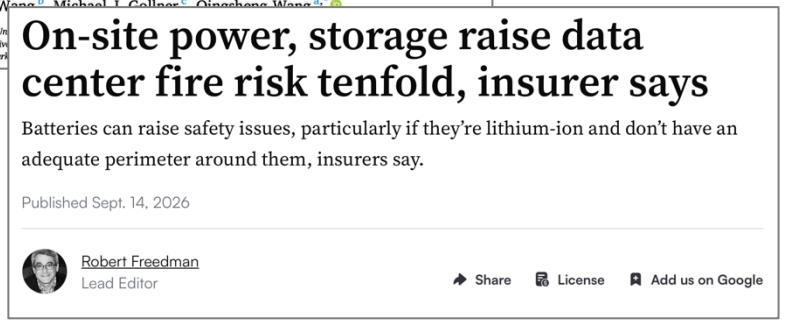
Fire risk

- Setbacks
- Internal separation distances
- Battery energy storage systems (BESS)
- Emergency response plan









Energy consumption

- Energy demand and supply analysis
- “Willingness and capability to serve” letter from utility provider
- On-site generation
  - Requirement vs. prohibition
  - H4583 (SC) required 100% on-site generation
  - York County (SC) draft prohibits
- Renewable energy requirement
- Back-up generators

> 2. Before an occupancy permit is issued, the facility shall demonstrate its ability to begin operation with a minimum of 25 percent of its annual electricity consumption from renewable energy through any combination of Bundled and Unbundled RECs retired on behalf of the facility, and/or on-site renewable energy generation and storage. Bundled RECs shall be obtained through

^ Excerpt from St. Louis, Missouri, ordinance

Water consumption

- Water demand and supply analysis
- “Willingness and capability to serve” letter from water provider
- Prohibit use of groundwater, well water, surface water
- Prohibit use of public water
  - SCDES permits

5.52.6 WATER USAGE STANDARDS

5.52.6.1 Data centers shall not utilize groundwater, well water, or surface water (e.g.: lakes, rivers, ponds, etc.), as a water source, but instead must utilize and connect directly to municipal water sources.

5.52.6.2 It shall be the responsibility of the subject property owner and/or applicant to provide written confirmation from the local water utility provider that adequate water capacity is available to serve the proposed data center development. Written confirmation should also include a statement verifying that the proposed data center’s water consumption shall not adversely impact existing water capacity. This documentation shall be included with the TRC application.

^ *Excerpt from Sanford, North Carolina, data center regulations*

** Consider peak daily use of public water vs. annual totals*

** Closed loop systems may conserve water, but typically use more energy*

Air & water pollution, wastewater

- Addressed through State permits
- Environmental impact analysis
- Generators
  - Location on site
  - Screening/vegetated buffers
  - Timing of testing (e.g., weekdays between 10am and 5pm)
  - Limit to emergency use only



E-waste, end-of-life cycle

- E-waste management plan
- Requirement to use certified recyclers
- Ongoing reporting
- Decommissioning plan
  - Engineer’s cost estimate
  - Financial assurance (100% to 150% of removal cost) with periodic review and update of bond amount



^ AI-generated image of data center e-waste

Other jurisdictions to consider

Fauquier County, VA

Fairfax County, VA

York County, VA

Chester County Approach

Focus:

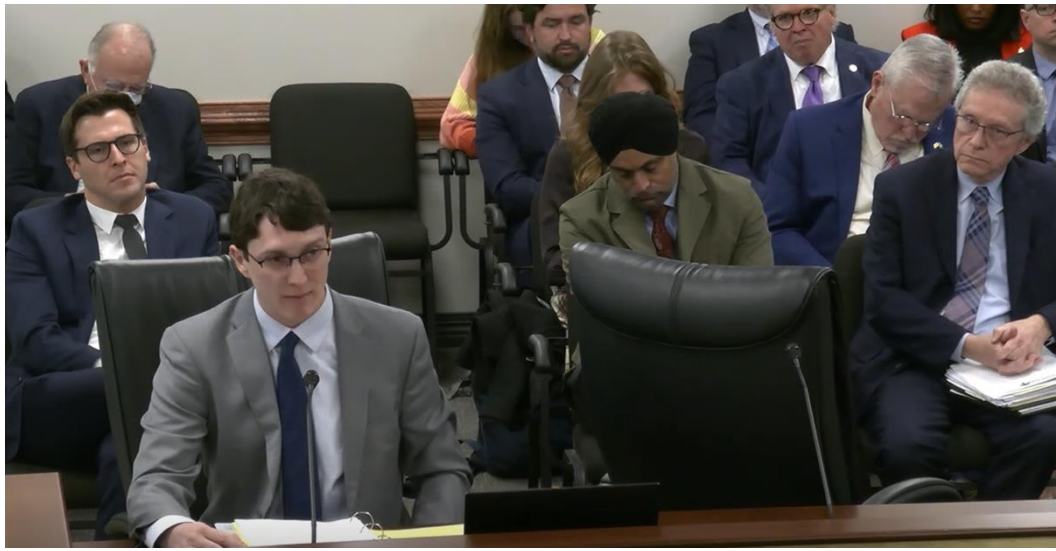
1. Siting compatibility with Comprehensive Plan.
2. Minimizing or eliminating nuisances, esp. noise
3. Natural resource protection



Pending Legislation

- H.B. 5286 – Statewide Moratorium
- H.B. 5526 – Statewide Moratorium
- S.B. 867 – Partial Preemption with Review by DES
  - Electricity Consumption
  - Operational Efficiency Standards
  - State-Level Infrastructure Adequacy Determinations





Key Takeaways

- Be thinking about how you would treat a data center application if it came in tomorrow
- Process, process, process
- Local governments have the authority to regulate data centers, but should use this authority reasonably based on the concerns
- Tailor regulations to your community's enforcement ability. Put the onus on the data center owner where possible (e.g., through annual reporting)
- Actively monitor State legislation
- Consult with your municipal/county attorney!

Jonathan Buono, AICP
Jonathan.Buono@yorkcountysc.gov

Jeremy Ward
jward@ChesterCountySC.gov

Kelly Cousino, AICP
kcousino@planningandlaw.com

Sean Scoopmire, Esq., AICP
sscoopmire@planningandlaw.com

