

Review of Studies for Data Center Ordinance

We first need to remember that a county government is statutorily created. A county only has the right to pass ordinances for the things granted to the county by the legislature. When it comes to zoning, those things are specifically laid out in SDCL 11-2-13, which states:

For the purpose of promoting health, safety, or the general welfare of the county the board may adopt a zoning ordinance to regulate and restrict the height, number of stories, and size of buildings and other structures, the percentage of lot that may be occupied, the size of the yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, flood plain, or other purposes.

Every single zoning regulation has to be something that a county is given the right to zone in the above statute. The greater majority of the studies asked to be completed are not applicable to the above statute and are not something the county has the right to do.

The current projections show that California will be losing 4 seats in the US House of Representatives, New York will be losing 2 seats, and Oregon, Minnesota, Wisconsin, Illinois, and Massachusetts will all be losing one seat. In general, all very liberal states. This is because people are moving out of these states. Why are people leaving these states? Two main reasons. Overregulation and high taxes. Overregulation makes it next to impossible for new businesses to start. Without new businesses aiding the tax base, peoples taxes continue to rise.

That is exactly what we are doing here. These studies are extreme left wing, liberal policy. There is nothing conservative about them. This is the epitome of big government overregulation and by far the most extreme liberal thing I have seen introduced in my time as states attorney. I very much fear for the longevity and sustainability of our county if this is the direction we want to head.

Below are my opinions on the studies.

1. Environmental Study:
 - a. Energy Usage
 - i. We have no control over energy usage or consumption.
 - ii. As stated in my previous comments on the ordinance:
 1. SDCL 49-34A-4 gives the PUC authority over electric utilities and states that the PUC shall make the rules for “procedures and requirements for handling customer disputes and complaints,” and “procedures and requirements regarding temporary service, change in location of service and service interruptions.” Further, SDCL 49-34A-2 states that “Every public utility shall furnish adequate, efficient, and reasonable service.”

2. For anything involving energy usage, the legislature has already specifically given this power to the PUC. In *Rantapaa v. Black Hills Chair lift*, the South Dakota Supreme Court has held that an ordinance is void if it duplicates state law. Which is ultimately what we are doing here. As Section 5.33.02 is currently written, if challenged in court, I believe it would be overturned.
 3. If the PUC approves of the project, we have no control over anything to do with energy usage.
 - iii. We do not have the authority to include an energy usage study in a county ordinance.
 - iv. The zoning/regulation of energy usage is not something the legislature granted to the county to be included in zoning regulations.
 - v. Moreover, study number 2 is also an “Energy Consumption Study.” We would be requiring the same thing twice. Which we don’t have the right to require once.
- b. Water Usage
- i. A county does not have any control over water usage.
 - ii. They would have the right to drill a well if they want to use well water and WEB has full control over giving them a hookup or not.
 - iii. Other than drainage, a county has no control over water usage.
 - iv. Again, Study number 3 is also a Water Usage Study. Would we be requiring two of the same studies?
 - v. The regulation of water, outside of what is specifically granted to a county for drainage, is not something the legislature granted to the county to be included in zoning regulations.
 - vi. We do not have the authority to require this study.
- c. Pollution
- i. We are not the EPA.
 - ii. It is a building with computers in it. If the power goes out, they would run one, maybe two, large generators. Just like every farm in the county.
 - iii. Light pollution?
 1. This isn’t a huge building that is going to be lighting up the night sky.
 2. Many farmers have feedlot lights that are much, much brighter than these would be.
 - iv. Waste management is already included in the ordinance.
 - v. It could be arguable that pollution would be applicable to the “health, safety, or the general welfare” of the county. However, a data center is a building with computers inside of it. We are not talking about a large industrial factory spitting out tons of exhaust every second of every day. If there is truly a pollution concern with a data center, then everything built in McPherson County is also pollution concern.
- d. Biodiversity and Wildlife Impact

- i. The county does not have the right to control, zone, or regulate “local wildlife or ecosystems.”
- ii. There is no relation here to SDCL 11-2-13.
- iii. The GF&P has full authority over wildlife.
- iv. We do not have the authority to require this study.

2. Energy Consumption Study

- a. As stated above, and in my comments provided earlier on the ordinance, a county has no legal authority to regulate energy usage.
- b. We do not have the authority to require this study.
- c. Outside of that, there is no mention of what kind of criteria would need to be met in order to get a permit. This is just making them do an “energy consumption study” to make them do a study. Even if they would do one, we would have no way “grade” it.
 - i. SDCL 11-2-17.3 states that county zoning ordinance for a conditional use shall specify “the criteria for evaluation each condition use, any procedures for certifying approval of certain conditional uses.”
 - ii. If a study is required as part of a zoning regulation, there must be criteria included in order to meet the requirements of that study. There has to be something in there for them to pass/fail.

3. Water Usage Study

- a. As stated above, outside of drainage, a county has no legal authority to zone/regulate water usage.
- b. Also, as stated above, there is no criteria in here on how to measure a pass/fail for this study. Which is required under SDCL 11-2-17.3.
- c. We do not have the authority to require this study.

4. Carbon Footprint Study

- a. “The main source of emissions comes from energy consumption.”
- b. “A carbon footprint study of a data center involves measuring its energy use, understanding its sources of energy, and calculating the associated GHG emission. With right metrics, improvements in energy efficiency, and transition to renewable energy, data centers can significantly reduce their carbon footprint and contribute to sustainability goals.”
- c. Everything in this study relates back to energy usage. Which a county does not have the right to zone/regulate. The PUC has full control over this.
- d. There is no criteria on how to measure a pass/fail for this study, as required under SDCL 11-2-17.3.
- e. We do not have the authority to require this study.

5. Heat & Air Quality Impact Study

- a. An argument here that this could fit under the “health, safety, or the general welfare” of the county.

- b. However, there is no criteria to base a pass/fail on. Which, as stated above, is required. As it is written, we are just making them do this study to make them do this study. Which we cannot do.
 - c. As written, it is my opinion that if this study is challenged in court, it would be overturned.
- 6. Noise impact study.
 - a. We already have several parts of the ordinance that regulate noise. If we are requiring specific decibel levels at specific distances, this study is completely pointless.
 - b. There is also nothing in there on how to evaluate the findings of the study. AS written, we are just making them do this study to make them do this study. Which we cant do.
 - c. As written, it is my opinion that if this study is challenged in court, it would be overturned.
- 7. Economic Impact Study
 - a. It would likely be fair to ask them the impact on taxes. But beyond that, I don't see where we would have the authority to regulate anything regarding job creation or any other kind of impact on the local economy.
 - b. We always have to go back to SDCL 11-2-13. I don't see in there where or how this would be something we have the ability to regulate through a zoning ordinance.
- 8. Health and Safety Impact Study
 - a. Main things this study would look at and my notes on each:
 - i. Air pollution
 - 1. This is already covered under study #5.
 - ii. Noise pollution
 - 1. Study #6 – and already a part of the ordinance.
 - iii. Water consumption
 - 1. Study #3
 - iv. Electrical hazards
 - 1. OSHA already has full jurisdiction over this.
 - v. EMF exposure
 - 1. This is study #9
 - vi. Hazardous materials
 - 1. OSHA
 - vii. Occupational Safety
 - 1. OSHA
 - viii. Emergency Response Plans
 - 1. Study #10
 - 2. This is already covered in our ordinance.
 - b. None of these studies include any kind of criteria to base a pass/fail on. They are all studies just to require studies. Which we cant do.
- 9. EMF Exposure Study

- a. There is a very weak argument that this is something the county would have the ability to regulate under “health, safety, or the general welfare.” However, there is very, very little evidence that EMF causes any kind of issues.
- b. As written, this is another study just to make them do a study. We would need to include some kind of criteria to base a pass/fail on. Which this does not include.
- c. If the county wants to regulate EMF exposure, then regulate it. Why make them do a study? Regulate it similar to noise (ex: EMF readings at X distance shall be at or below X levels.)
- d. As written, if this study was challenged in court, I believe it would be overturned.
- e. EMF is extremely technical and if the county wants to regulate it, I would very much suggest contacting an expert to get advice (a professor who has studied EMF; someone who deals with this in a professional capacity on a daily basis; definitely not some random person who posted something on the internet somewhere)
- f. The only kind of EMF regulations I was able to find are from the FCC for cell phone towers
 - i. <https://www.fcc.gov/consumers/guides/human-exposure-radio-frequency-fields-guidelines-cellular-and-pcs-sites>
 - ii. https://www.fcc.gov/sites/default/files/human_exposure_to_radio_frequency_fields_-_guidelines_for_cellular_antenna_sites.pdf
- g. If we want to regulate EMF, I would suggest that a significant amount of research is done by all members of the zoning board as well as the commission before attempting to draft regulations. Below are several articles/studies that would be a good start:
 - i. https://www.niehs.nih.gov/health/topics/agents/emf?utm_source=chatgpt.com
 - ii. https://www.who.int/news-room/questions-and-answers/item/radiation-electromagnetic-fields?utm_source=chatgpt.com
 - iii. <https://www.cancer.gov/about-cancer/causes-prevention/risk/radiation/electromagnetic-fields-fact-sheet>
 - iv. <https://www.healthline.com/health/emf>
 - v. https://ec.europa.eu/health/scientific_committees/emerging/docs/sceni_hro_041.pdf

10. Emergency Response Study

- a. We already have a specific section of the ordinance dealing with emergency response.
 - i. Under this section, cooperation between the data center and local first responders is already required. Why would we not let the local responders handle this as they best see fit.

11. Community Impact Study

- a. This study is to evaluate the potential:
 - i. Impacts on economic aspects of community
 - 1. An economic impact study has already been asked for under #7.
 - ii. Impacts on social aspects of the community

1. What social aspects? This is a absurdly large possible category with no definition. How does this relate to SDCL 11-2-13?
- iii. Impacts on environmental aspects of the community
 1. Multiple environmental studies have already been proposed above. Please see my notes on them. Why would we want to require the same study multiple times.
- iv. Impacts on cultural aspects of the community
 1. What cultural aspects? Again, this is an absurdly large possible category with no definition. And whose cultural aspects? There are many different cultures within McPherson County.
- v. Note: Whose community? What is the definition of community? Are we talking about a specific town? A specific rural area? The entire county?
- b. "This helps to ensure that any proposed Bitcoin data center development is balanced and aligns with the community's values, goals, and long-term sustainability."
 - i. Whose community? What community?
 - ii. Whose values and goals? What are the values and goals?
 - iii. How are we going to base something in the present on sustainability in the future?
 - iv. What are the requirements as required under SDCL 11-2-17.3?
- c. Quality of life:
 - i. Noise
 1. This is now the third study we are requiring on noise?
 - ii. Air quality
 1. This has already been discussed above. And if it something we want to try and regulate, we need to have specific standards that would need to be met.
 - iii. Disruptions to community aesthetics
 1. Aesthetics, in rural McPherson County? Pretty big can of worms were opening here.
 2. If we want to regulate aesthetics, then we need to have criteria for it.
- d. Community engagement
 - i. How is this measured?
- e. Social cohesion
 - i. "Investigates whether the data center will promote economic growth and community development or lead to potential social divisions, particularly in rural areas."
 1. What are the measurable criteria?
 2. How does this relate to SDCL 11-2-13?
 3. Wouldn't a new data center in and of itself be community development?
 4. Everything leads to social divisions in rural McPherson County.

12. Tax Revenue Impact Study

- a. This is already part of #7.