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Yesterday, New York Governor Kathy Hochul announced a one-year moratorium on the construction of new “hyperscale” data centers. New York is the first state to impose such a ban, and it raises questions about whether other states will follow and what steps the federal government might take. In our view, state actions, like New York’s, are more likely than federal ones, even if Democrats sweep the midterm elections.

New York Governor Hochul announced the state will pause the approval of environmental review permits for the construction of new “hyperscale” data centers (consumption of at least 50 megawatts of power) for one year. This appears to be the first state-wide action of its kind. We discuss whether the federal government might take similar action, especially following the midterm elections, the political hurdles that might face a potential Democratic Congress, and whether other states might follow suit.

- **National traction?** – So far, nationally, voters seem to be blaming utility companies, rather than hyperscalers or data centers, for higher energy prices. There could be regions where voters see it differently (i.e. where there are large concentrations of data centers), but this does not appear to be one of voters’ primary national issues, yet.
- **There is bipartisan interest in energy costs** – Pressure to address energy costs related to data centers appears to be geographic, so it might make interest in the issue bipartisan – “where you stand depends on where you sit.” Despite this being a bipartisan issue, however, Democrats will probably lean into it more heavily than Republicans (but the GOP is engaged in this too). Some House Republicans have proposed legislation that would codify President Trump’s “Ratepayer Protection Pledge” (RPP). The bill is a work in progress, and it remains to be seen whether it would be voluntary (like Trump’s proposal) or more compulsory. Given the late date on the political calendar, passing legislation this year will be difficult. We think this is an issue that will probably be punted to 2027.
- **Post-midterm action is not a slam dunk** – If Democrats win either or both houses of Congress, they would be expected to consider data center-related legislation. However, Democrats lack a consensus on what they should do, and they will find it difficult to pass legislation even if they sweep Congress. It is likely that they will have narrow majorities in both chambers which will complicate passing legislation like this.
- **A problem for some Democratic voters** – Progressive Democrats have proposed national moratoriums. They have been joined by some moderate Democrats like Representative Frank Pallone (who will probably chair the House Energy and Commerce Committee if the House flips). However, other Democrats have adopted positions similar to Trump’s RPP, while still others have called for federal agencies (FERC) to study the issue and make recommendations to Congress. Despite Progressives’ proposals, other Democrats, who are close with organized labor (especially the trade and construction unions), will be reluctant to back that policy. Trade unions want the construction jobs that accompany building data centers and Democrats have been losing union voters to Republicans. We think some Democrats will be reluctant to break with labor on this issue.
- **State action seems more likely** – Now that New York has broken the ice, it will be easier for some states to follow suit. However, as we noted above, Democrats are not of the same mind on this issue. At least two Democratic governors have

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resisted calls for moratoriums. Virginia Governor Abigail Spanberger seems to be taking a position similar to Republicans – have the industry bear the cost of building and operating data centers, but don’t block the construction of new facilities. Maine Governor Janet Mills vetoed legislation that would have imposed a temporary moratorium (through 2027).

- **New York might not be done yet** – New York’s state legislature has passed legislation that would impose a moratorium on smaller data centers. The governor’s action was limited to data centers that consume at least 50 megawatts, but the legislature’s bill would apply to data centers that are expected to consume at least 20 megawatts of power. The bill has not yet been sent to the governor but, if it is, then her action (sign or veto it) would show how much saliency the issue has with at least some Democrats.

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