



## 2020 South Dakota Legislature

# House Bill 1262

Introduced by: **Representative** Anderson

1 **An Act to revise provisions regarding electric service in annexed areas.**

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 **Section 1.** That a NEW SECTION be added:

4 **49-34A-49.1. Municipal electric utility--Annexation or extension--Meeting.**

5 Before a municipality that operates an electric utility may annex or extend its  
6 boundaries to include contiguous territory, representatives of the municipal utility shall  
7 request to meet in person with representatives of any affected electric utility to discuss  
8 the municipality's intentions for the provision of electric service to customers in areas that  
9 could be annexed into the city and to negotiate in good faith the terms of a potential  
10 agreement that sets forth which electric utility shall provide electric service in all or any  
11 portion of the area proposed to be annexed. The meeting must include one person from  
12 the municipality's governing board or commission in addition to representatives from the  
13 municipal electric utility and other affected electric utilities. Failure of an electric utility  
14 affected to meet within thirty days of a written request to meet is a waiver of the meeting  
15 requirement.

16 **Section 2.** That a NEW SECTION be added:

17 **49-34A-49.2. Petition to annex--First reading--Notice.**

18 Notwithstanding any other provision of law, written notice of first reading of the  
19 petition to annex property that is within the service territory of an electric utility that is  
20 not a municipal utility, shall be given to any affected electric utility twenty days prior to  
21 the first reading. Written notice of the election of the municipal utility to serve the annexe d  
22 property with electricity shall be given within one year following annexation.

23 **Section 3.** That a NEW SECTION be added:

**49-34A-49.3. Election to serve by resolution.**

Notwithstanding any other provision of law, if a municipality that owns and operates an electric utility elects to serve all or a portion of newly annexed property with electricity pursuant to § 49-34A-49 the election shall be by separate resolution of the municipality's governing body. Written notice of the meeting at which action will be taken on the election to serve shall be given to any affected utility no less than twenty days before the meeting.

**Section 4.** That a NEW SECTION be added:

**49-34A-49.4. Hearing on decision to serve—Time for demand.**

Within thirty days from the date the municipality's resolution to serve is final, the electric utility may demand a hearing in circuit court on the municipality's decision to serve. Failure to make such a demand within the thirty-day period, shall constitute a waiver of the right to such a hearing. The municipality's decision to serve, unless based upon fraud or an abuse of discretion, shall be binding on all persons.

**Section 5.** That a NEW SECTION be added:

**49-34A-49.5. Failure of electric utility to demand—Acceptance of formula.**

If the electric utility does not demand a hearing pursuant to § 49-34A-49.4, the electric utility shall receive compensation for the service territory previously assigned to the electric utility under the formula set forth in § 49-34A-50.

**Section 6.** That a NEW SECTION be added:

**49-34A-52.1. Petition court to determine compensation--Considerations for compensation.**

If a municipality has properly elected to serve electric territory previously assigned to an electric utility other than that of the municipality and the electric utility and the municipality are unable to agree on compensation to the electric utility for the value of the transfer of service territory and any acquired equipment or distribution property pursuant to § 49-34A-52, the electric utility or municipality may petition the circuit court for that affected county or, if more than one county is affected, the circuit court in which the city hall for the municipality is located to determine compensation to be paid for the loss of service territory as found in this section. The municipal utility may serve the annexed area starting upon the sixtieth day after the notice of election of the municipality

1 to serve the annexed area with electricity. An election by an electric utility to invoke the  
2 procedures found in this section does not toll the right of the municipal utility to serve  
3 under this section. The sole question for the court, sitting without a jury, shall be to  
4 determine the amount of compensation to be paid to the electric utility for the loss of the  
5 transferred service territory and any acquired equipment or distribution property. The  
6 court may consider the value of the electric distribution property and stranded investments  
7 of the electric utility, if any, but may not consider the value of investments or agreements  
8 that are not made before the date of the annexation resolution. The court may not consider  
9 any costs of generation for energy that is able to be sold to other electric utilities.

10 **Section 7.** That § 49-34A-51 be REPEALED.

11 **49-34A-51. Application for determination by commission of price for**  
12 **municipal purchase of electric facilities in annexed area.**

13 **Section 8.** That § 49-34A-52 be REPEALED.

14 **49-34A-52. Acknowledgment by utility of municipal offer to purchase**  
15 **facilities in annexed area--Obligations of parties.**

16 **Section 9.** That § 49-34A-53.1 be REPEALED.

17 **49-34A-53.1. Purchase of facilities in territory annexed after July 1, 1975--**  
18 **Time limit--Determination of gross revenue.**