

# State of South Dakota

## NINETY-FOURTH SESSION LEGISLATIVE ASSEMBLY, 2019

637B0428

### SENATE BILL NO. 66

Introduced by: Senators Greenfield (Brock), Cammack, Cronin, DiSanto, Ewing, Foster, Heinert, Jensen (Phil), Langer, Maher, Monroe, Russell, Steinhauer, and Wismer and Representatives Brunner, Beal, Bordeaux, Chaffee, Dennert, Duba, Frye-Mueller, Goodwin, Gosch, Greenfield (Lana), Hammock, Healy, Johnson (David), Lake, Lesmeister, Livermont, Marty, McCleerey, Peterson (Sue), Pischke, Qualm, Reimer, Weis, Willadsen, and Zikmund

1 FOR AN ACT ENTITLED, An Act to remove the right of an annexing municipality to acquire  
2 service territory of an electric utility.

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

4 Section 1. That § 49-34A-48 be amended to read:

5 49-34A-48. The inclusion by incorporation, consolidation, or annexation of any part of the  
6 assigned service area of an electric utility within the boundaries of any municipality shall not  
7 in any respect impair or affect the rights of the electric utility to continue and extend electric  
8 service at retail throughout any part of its assigned service area ~~unless a municipality which~~  
9 ~~owns and operates an electric utility elects to purchase the facilities and property of the electric~~  
10 ~~utility as provided in §§ 49-34A-49 to 49-34A-55, inclusive.~~

11 Section 2. That § 49-34A-49 be repealed.

12 ~~49-34A-49. Notwithstanding the provisions of § 49-34A-42, whenever a municipality which~~  
13 ~~owns and operates an electric utility extends its corporate boundaries through annexation or~~



1 ~~consolidation, such municipality shall either offer to purchase any electric utility properties and~~  
2 ~~service rights within the annexed areas owned by any electric utility, or permit such utility to~~  
3 ~~serve and expand in the annexed area, as provided in this chapter. The municipality shall notify~~  
4 ~~the affected electric utility in writing of the boundaries of the annexed area and shall indicate~~  
5 ~~such area on appropriate maps.~~

6 Section 3. That § 49-34A-50 be amended to read:

7 49-34A-50. If a Any municipality described by § 49-34A-49 elects that annexed territory  
8 before July 1, 2019, and that elected to purchase, ~~the municipality shall, within one year~~  
9 ~~following annexation, offer to~~ the facilities and property of an electric utility shall continue to  
10 compensate the utility located within the annexed area in accordance with this section. The  
11 municipality shall purchase the electric distribution properties of the utility located within the  
12 annexed area, together with all of the utility's rights to serve within ~~such~~ the area, for a cash  
13 consideration ~~which that~~ shall consist of the present-day reproduction cost, new, of the facilities  
14 being acquired, less depreciation computed on a straight-line basis; plus an amount equal to the  
15 cost on a nonbetterment basis of constructing any necessary facilities to reintegrate the system  
16 of the utility outside the annexed area after detaching the portion to be sold; plus as  
17 compensation for service rights, an annual amount equal to the sum of twenty-five percent of  
18 the gross revenues received from power sales to consumers of electric power within the annexed  
19 area. The obligation of the annexing municipality to compensate the utility for service rights  
20 ~~shall continue~~ continues for eleven years from the date of the offer to purchase by the annexing  
21 municipality. During the eleven-year period, compensation for service rights to any one  
22 customer location within the annexed area shall be paid by the annexing municipality for a  
23 period of seven years or until the expiration of the eleven-year period, whichever is less. Gross  
24 revenues received shall be determined by applying the rate in effect by the municipality at the

1 time of purchase.

2 Section 4. That § 49-34A-51 be amended to read:

3 49-34A-51. ~~In the event~~ For annexations and purchases that occurred before July 1, 2019,  
4 if the municipality and the electric utility involved are unable to agree as to the amount of the  
5 payment specified in § 49-34A-50, the municipality or the electric utility may file an application  
6 with the Public Utilities Commission requesting that the commission, after notice and hearing,  
7 determine the amount of the payment in accordance with the provisions of § 49-34A-50.

8 Section 5. That § 49-34A-52 be repealed.

9 ~~—49-34A-52. The electric utility, within ninety days after receipt of an offer by the annexing~~  
10 ~~municipality to purchase the utility's electric distribution properties and service rights within the~~  
11 ~~annexed area, shall signify in writing its acknowledgment of the offer, and the parties shall~~  
12 ~~proceed to act. The annexing municipality shall then be obligated to buy and pay for, and the~~  
13 ~~utility shall be obligated to sell to the municipality such properties and rights free and clear of~~  
14 ~~all mortgage liens and encumbrances for the aforesaid cash consideration computed and payable~~  
15 ~~as provided in § 49-34A-50.~~

16 Section 6. That § 49-34A-53.1 be repealed.

17 ~~—49-34A-53.1. Any municipality that has annexed territory subsequent to July 1, 1975, and~~  
18 ~~that did not elect to purchase the facilities in such territory pursuant to the provisions of §§ 49-~~  
19 ~~34A-49 to 49-34A-52, inclusive, may, within two years from July 1, 1992, elect to purchase the~~  
20 ~~facilities in such annexed territory subject to the provisions of §§ 49-34A-49 and 49-34A-50;~~  
21 ~~except that gross revenues received shall be determined by applying the rate in effect by the~~  
22 ~~purchasing municipality at the time of purchase. Any municipality which chooses not to~~  
23 ~~purchase such facilities within the two-year period is precluded from thereafter purchasing such~~  
24 ~~facilities, except pursuant to the provisions of § 49-34A-55.~~

Section 7. That § 49-34A-54 be amended to read:

49-34A-54. If any annexing municipality ~~shall contract~~ contracts its boundaries ~~so as to~~ exclude from its corporate limits any territory, the utility may elect within sixty days ~~thereafter~~ to purchase from ~~such~~ the municipality and ~~such~~ the municipality shall, notwithstanding any other laws, ~~thereupon~~ sell and convey to the utility the electric distribution properties and service rights of the municipality in any part of the excluded area ~~which~~ that the ~~said~~ electric utility had previously served; upon the same procedures set forth in §§ 49-34A-50 to 49-34A-52, ~~inclusive~~ and 49-34A-51.

Section 8. That § 49-34A-55 be amended to read:

49-34A-55. Nothing contained in §§ 49-34A-42 to 49-34A-44, inclusive, ~~and~~ § 49-34A-48, § 49-34A-50, § 49-34A-51, and §§ 49-34A-54 to 49-34A-57, inclusive, prohibits electric utilities from buying, selling, or exchanging electric distribution properties, service rights and other rights, property, and assets by mutual agreement, subject to approval of the commission. Any agreement, pursuant to this section, ~~which~~ that changes assigned service areas shall be filed and approved by the commission before it ~~may become~~ is effective. The commission's approval of such agreements shall be based on the public interest. The factors to consider shall include the elimination or avoidance of unnecessary duplication of facilities, providing adequate electric service to all areas and customers affected, and the promotion of the efficient and economical use and development of the electric systems of the contracting electric utilities.