



2026 South Dakota Legislature

Senate Bill 128

Introduced by: **Senator Howard**

1 **An Act to update provisions related to certain large-use customers of utilities.**

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

3 **Section 1. That a NEW SECTION be added to chapter 46-1:**

4 A large-use customer, as defined in section 2 of this Act, which is operating as a
 5 data center, shall provide notice to and cooperate with each local water provider to ensure
 6 that projected water consumption is compatible with the water supply in the area in which
 7 the customer is located. In addition, the customer:

8 (1) Must implement closed-loop cooling technology that limits net water withdrawal to
 9 a daily amount, established by the Water Management Board for each source of
 10 water currently used in the state, by rule promulgated pursuant to chapter 1-26;

11 (2) May not consume an amount of the available water supply in the local service area
 12 exceeding limits established in rule by the board, after allocation to residential and
 13 essential public services; and

14 (3) In a water shortage, as declared by the Governor or determined by the board,
 15 must reduce water use until all residential and essential public service allocations
 16 are met.

17 In establishing limits under this section, the board shall seek to ensure water
 18 availability and prevent disproportionate use of water by the customer.

19 The customer shall submit to the board a quarterly report, in the form and manner
 20 prescribed by the board, of the customer's water use. The report must contain average
 21 usage data and certification of compliance with this section. The board shall make the
 22 usage data contained in the report available to the public.

23 For purposes of this section, "closed-loop cooling technology" means a sealed
 24 system that continuously cycles a set volume of liquid through a closed circuit in which
 25 the liquid, after absorbing heat, is chilled and recirculated.

1 For purposes of this section, "data center" means a centralized repository for the
 2 dissemination, management, processing, and storage of electronic data and information.

3 **Section 2. That § 49-1A-3 be AMENDED:**

4 **49-1A-3.** There is hereby levied on each public utility, as defined in ~~subdivision~~
 5 ~~49-34A-1(12)~~ § 49-34A-1, which is subject to the rate regulation of the commission, and
 6 ~~all each~~ telecommunications companies company, as defined in ~~subdivision 49-31-1(26)~~
 7 § 49-31-1, a tax of not more than .0015 or two hundred fifty dollars, whichever is greater,
 8 upon the annual intrastate gross receipts derived by the public utility or
 9 telecommunications company from its customers within ~~the State of South Dakota~~ this
 10 state during the preceding calendar year. The two hundred fifty dollar minimum gross
 11 receipt tax does not apply to telecommunications companies providing local exchange
 12 service, as defined in ~~subdivision 49-31-1(13)~~ § 49-31-1, or to radio common carriers.

13 **Section 3. That § 49-34A-1 be AMENDED:**

14 **49-34A-1.** Terms used in this chapter mean:

- 15 (1) "Assigned service area," the geographical area in which the boundaries are
 16 established as provided in §§ 49-34A-42 to 49-34A-44, inclusive, and 49-34A-48
 17 to 49-34A-59, inclusive;
- 18 (2) "Commission," ~~the South Dakota~~ Public Utilities Commission of the State of South
 19 Dakota;
- 20 (3) "Customer," any person contracting for or purchasing gas or electric service from
 21 a utility;
- 22 (4) "Depreciated original cost," the cost of property to the person first devoting it to
 23 public service, less the depreciation reserve, which includes accumulated
 24 depreciation charges calculated on a straight-line method and based upon the
 25 estimated service life of the property, together with other items normally
 26 accounted for in the depreciation reserve, ~~and but~~ does not include any good will
 27 ~~or~~ going concern value, nor does it include or certificate value in excess of
 28 payments made or costs incurred in the initial acquisition thereof;
- 29 (5) "Electric line," any line for conducting electric energy at a design voltage of twenty-
 30 five thousand volts phase to phase or less and used for distributing electric energy
 31 directly to customers;

- 1 (6) "Electric service," electric service furnished to a customer for ultimate
 2 consumption, but not including wholesale electric service furnished by an electric
 3 utility to another electric utility for resale;
- 4 (7) "Electric utility," any person ~~operating, maintaining, or~~ controlling, maintaining, or
 5 operating, in this state, equipment or facilities for providing electric service to or
 6 for the public, including facilities owned by a municipality;
- 7 (8) "Gas service," retail sale of natural gas or manufactured gas distributed through a
 8 pipeline to fifty or more customers or the sale of transportation services by an
 9 intrastate natural gas pipeline;
- 10 (9) "Gas utility," any person ~~operating, maintaining, or~~ controlling, maintaining, or
 11 operating, in this state, equipment or facilities for providing gas service to or for
 12 the public;
- 13 ~~(9A)~~(10) "Incremental costs," all costs incurred by a public utility, which are directly
 14 attributable to a large-use customer and incurred in addition to the normal costs
 15 of providing service to other existing customers;
- 16 (11) "Intrastate natural gas pipeline," any natural gas pipeline located entirely within
 17 the state ~~that,~~ which transports gas from a receipt point to one or more locations
 18 for customers other than the pipeline operator. ~~However, provided that~~ the term
 19 does not apply if:
 20 (a) If there is only one customer and the customer is a wholly-owned wholly
 21 owned subsidiary of the pipeline operator;
 22 (b) If the customer is the parent company of the pipeline operator; ~~or;~~
 23 (c) If the customer and the pipeline operator are wholly-owned wholly owned
 24 subsidiaries of the same parent company. ~~Further, the term does not apply~~
 25 ~~to;~~ or
 26 (d) To natural gas lines and appurtenant facilities used to gather gas from
 27 natural gas production facilities or sites and move the gas to an
 28 interconnecting transportation pipeline system;
- 29 ~~(10)~~(12) "Large-use customer," a customer, established after July 1, 2026, which
 30 requires electric service with a contracted demand of two thousand kilowatts or
 31 more;
- 32 (13) "Municipality," any incorporated town or city in ~~South Dakota~~ this state;
- 33 ~~(11)~~(14) "Person," ~~a natural person, a partnership, a private corporation, a public~~
 34 ~~corporation, a limited liability company, a municipality, an association, a~~
 35 ~~cooperative whether incorporated or not, a joint stock association, a business trust,~~

- 1 ~~any of the federal, state and local governments, including any of their political~~
 2 ~~subdivisions, agencies and instrumentalities, an association; business trust;~~
 3 ~~cooperative, whether or not incorporated; federal, state, or local government or~~
 4 ~~any agency, instrumentality, or political subdivision thereof; joint stock~~
 5 ~~association; limited liability company; natural person; partnership; private or~~
 6 ~~public corporation; or two or more persons having joint or common interest;~~
 7 ~~(12)(15)~~ "Public utility," any person ~~operating, maintaining, or controlling, maintaining,~~
 8 ~~or operating,~~ in this state, equipment or facilities for the purpose of providing gas
 9 or electric service to or for the public, in whole or in part, in this state. ~~However,~~
 10 ~~provided that~~ the term does not apply to ~~an~~;
 11 (a) An electric or gas utility owned by a municipality, political subdivision, or
 12 agency of the State of South Dakota this or any other state or a;
 13 (b) A rural electric cooperative as defined in § 47-21-1 for the purposes of
 14 §§ 49-34A-2 to 49-34A-4, inclusive, §§ 49-34A-6 to 49-34A-41, inclusive,
 15 and § 49-34A-62. The term, public utility, does apply to a; or
 16 (c) A rural electric cooperative which that provides gas service;
 17 ~~(13)(16)~~ "Rate," any ~~charge, classification, or compensation, charge and classification,~~
 18 ~~or any of them demanded, observed, charged, or collected, demanded, imposed,~~
 19 ~~or observed~~ by any public utility for any service and any ~~rules, regulations,~~
 20 ~~practices, or contracts~~ contract, practice, regulation, or rule affecting any such
 21 ~~compensation, the charge or, classification, or compensation; and~~
 22 ~~(14)(17)~~ "Securities," stock and stock certificates or other evidence of interest or
 23 ownership, and bonds, notes, or other evidence of indebtedness.

24 **Section 4. That a NEW SECTION be added to chapter 49-34A:**

25 Each public utility shall establish a classification of service, with its own tariff and
 26 schedules, for large-use customers, which must be separate and distinct from
 27 classifications of service for other customers.

28 A tariff established pursuant to this section:

29 (1) Must allocate incremental costs in a manner that:

30 (a) Is proportional to each large-use customer's share of the aggregated
 31 incremental costs of all large-use customers served by the utility; and

32 (b) Does not include the incremental costs of a large-use customer with a
 33 contracted rate established pursuant to section 6 of this Act;

- 1 (2) May not impose on other customers any rate increase or surcharge that is directly
 2 attributable to the utility usage of a large-use customer; and
 3 (3) Together with related schedules, is subject to commission approval and public
 4 inspection pursuant to § 49-34A-10.

5 Pursuant to chapter 1-26, the commission shall promulgate rules for determining
 6 incremental costs on a cost-causation basis and may require a large-use customer to
 7 submit periodic reports of the large-use customer's actual and projected utility
 8 consumption, which may be used by the commission to verify the large-use customer's
 9 share of the total incremental costs. The commission may require the large-use customer
 10 to reimburse the commission for the retention of experts and any other costs incurred by
 11 the commission to determine cost impacts and review proposed tariffs pursuant to this
 12 section.

13 **Section 5. That § 49-34A-56 be AMENDED:**

14 **49-34A-56.** Notwithstanding the establishment of assigned service areas for
 15 electric utilities provided for in §§ 49-34A-43 and 49-34A-44, ~~new customers at new~~
 16 ~~locations which develop after March 21, 1975, located outside municipalities as the~~
 17 ~~boundaries thereof existed on March 21, 1975, and who require electric service with a~~
 18 ~~contracted minimum demand of two thousand kilowatts or more shall not be a new large-~~
 19 use customer at a new location outside the existing boundary of a municipality is not
 20 obligated to take electric service from the electric utility having the assigned service area
 21 where the customer is located if, ~~after notice and hearing, the Public Utilities Commission~~
 22 the commission so determines, after notice, hearing, and consideration of the following
 23 factors:

- 24 (1) The electric service requirements of the load to be served;
 25 (2) The availability of an adequate power supply;
 26 (3) The development or improvement of the electric system of the utility seeking to
 27 provide the electric service, including the economic factors relating thereto;
 28 (4) The proximity of adequate facilities from which electric service of the type required
 29 may be delivered;
 30 (5) The preference of the large-use customer; and
 31 (6) ~~Any and all~~ pertinent factors affecting the ability of the utility to furnish adequate
 32 electric service to ~~fulfill customers'~~ the requirements of all customers.

33 **Section 6. That a NEW SECTION be added to chapter 49-34A:**

1 Notwithstanding the requirements of section 4 of this Act, any large-use customer
2 may negotiate with an electric utility provider a rate for electric service and enter into a
3 written contract that:

4 (1) Specifies the duration of the contract and the estimated start date of the electric
5 service;

6 (2) Obligates the large-use customer to pay a minimum amount or a percentage based
7 on the large-use customer's projected usage of the electric service that the electric
8 utility is contracted to provide for the duration of the contract;

9 (3) Does not shift incremental costs to other customers;

10 (4) Does not result in any subsidization by other customers; and

11 (5) Requires the large-use customer to report to the commission and the electric
12 utility, at least annually, the following information:

13 (a) The large-use customer's total electric usage during the reporting period;
14 and

15 (b) The large-use customer's projected electric usage for twelve consecutive
16 months following the reporting period.

17 Any report submitted pursuant to this section is available for public inspection,
18 except that the large-use customer's proprietary information and trade secrets, as defined
19 in § 1-27-28, and other sensitive information or data, as described in § 1-27-1.6, are
20 confidential.

21 A contracted rate established pursuant to this section does not violate § 49-34A-3
22 if, after consideration of the factors in § 49-34A-56, the commission approves the contract
23 and determines the contract is in the public interest.

24 **Section 7. That a NEW SECTION be added to chapter 49-34A:**

25 If an electric utility declares an energy shortage or forecasts that peak demand is
26 projected to exceed supply, each large-use customer of the utility must curtail electric
27 usage until the electric utility determines the total demand for residential customers and
28 essential public services is met.