

## 2026 South Dakota Legislature

**Senate Bill 128****AMENDMENT 128B  
FOR THE INTRODUCED BILL**

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 § 49-34A-1~~, which is  
5 operating as a data center, shall provide notice to and cooperate with each local water  
6 provider to ensure that projected water consumption is compatible with the water supply  
7 in the area in which 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~~ an electric utility, which are  
 14 directly attributable to a large-use customer and incurred in addition to the normal  
 15 costs 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 has an anticipated peak electrical demand of ten megawatts or greater;
- 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 that provides electric service shall establish a classification of  
 26           service, with its own tariff and schedules, for large-use customers, which must be separate  
 27           and distinct from 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 a  
19            large-use customer, or any other new customer requiring electric service with a contracted  
20            minimum demand of two megawatts or more at a new location outside the existing  
21            ~~boundary of a municipality, is not~~ obligated to take electric service from the electric utility  
22            having the assigned service area where the customer is located if, ~~after notice and hearing,~~  
23            ~~the Public Utilities Commission the commission~~ so determines, after notice, hearing, and  
24            consideration of the following factors:

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

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

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

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

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

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

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

12 (5) Requires the large-use customer to report to the ~~electric utility and to either the~~  
13 commission ~~and, if the electric utility is a public utility, or the approval authority,~~  
14 if the electric utility is not a public utility, at least annually, the following  
15 information:

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

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

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

24 A contracted rate ~~established negotiated between a large-use customer and a~~  
25 public utility pursuant to this section does not violate § 49-34A-3 if, after consideration of  
26 the factors in § 49-34A-56, the commission approves the contract and determines the  
27 contract is in the public interest.

28 If the electric utility serving the large-use customer is a public utility, the  
29 commission may require the large-use customer to reimburse the commission for the  
30 retention of experts and any other costs incurred by the commission to process and review  
31 contracts, rates, and reports pursuant to this section.

32 If the electric utility serving the large-use customer is not a public utility, the  
33 applicable approval authority may require the large-use customer to pay for costs  
34 associated with reviewing contracts, rates, and reports pursuant to this section.

1           For purposes of this section, "approval authority" means the board of directors of  
2           a state or rural electric cooperative or the governing body, if the electric utility is owned  
3           by a municipality, political subdivision, or agency of this state.

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

5           Notwithstanding any other provision of law, an electric utility may not:

- 6           (1) Increase any fee, rate, or surcharge imposed on any customer that is not a large-  
7           use customer, for the purpose of financing, offsetting, or subsidizing the  
8           infrastructure costs, service demands, or utility consumption of a large-use  
9           customer; or  
10          (2) Allocate to any customer that is not a large-use customer incremental costs or any  
11          other cost associated with the distribution, generation, or transmission  
12          infrastructure of a large-use customer.

13          **Section 8. That a NEW SECTION be added to chapter 49-34A:**

14          If ~~an electric utility~~ a transmission operator declares an energy shortage or  
15          forecasts that peak demand is projected to exceed supply, each large-use customer ~~of the~~  
16          utility in the affected service area must curtail ~~electric~~ electricity usage until the ~~electric~~  
17          utility transmission operator determines the total ~~electricity~~ demand for residential  
18          customers and essential public services is met.