

2020 South Dakota Legislature

House Bill 1262**AMENDMENT 1262E FOR THE HOUSE BILL**

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 annexed
22 property with electricity shall be given within one year following annexation.

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

1 **49-34A-49.3. Election to serve by resolution.**

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

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

9 **49-34A-49.4. Hearing on decision to serve--Time for demand.**

10 Within thirty days from the date the municipality passes the resolution to serve,
11 the electric utility may demand a hearing in circuit court on the municipality's decision to
12 serve, and the court shall hear the matter on an expedited basis. The decision of the circuit
13 court is final and not subject to appeal. Failure to make such a demand within the thirty-
14 day period, shall constitute a waiver of the right to such a hearing. The municipality's
15 decision to serve, unless based upon fraud or an abuse of discretion, shall be binding on
16 all persons. An abuse of discretion review shall be based upon consideration of the factors
17 set forth in § 49-34A-55. Nothing in this section affects the rights and privileges under
18 § 49-34A-52.1.

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

20 **49-34A-52.1. Petition court to determine compensation--Considerations for**
21 **compensation.**

22 If a municipality has properly elected to serve electric territory previously assigned
23 to an electric utility other than that of the municipality and the electric utility has not
24 agreed to accept compensation pursuant to § 49-34A-50, the electric utility or municipality
25 may petition the circuit court for that affected county or, if more than one county is
26 affected, the circuit court in which the city hall for the municipality is located to determine
27 compensation to be paid for the loss of service territory as found in this section. The
28 municipal utility may serve the annexed area starting upon the sixtieth day after the notice
29 of election of the municipality to serve the annexed area with electricity. An election by
30 an electric utility to invoke the procedures found in this section does not toll the right of
31 the municipal utility to serve under this section. The sole question for the court, sitting
32 without a jury, shall be to determine the amount of compensation to be paid to the electric
33 utility for the loss of the transferred service territory and any acquired equipment or

1 distribution property. The court may consider the value of the electric distribution property
2 and stranded investments of the electric utility, if any, but may not consider the value of
3 investments or agreements that are not made before the date of the annexation
4 resolution. The court may not consider any costs of generation for energy that is able to
5 be sold to other electric utilities. Any decision of the circuit court is final and not subject
6 to appeal.

7 **Section 6.** That § 49-34A-51 be REPEALED.

8 **49-34A-51. Application for determination by commission of price for**
9 **municipal purchase of electric facilities in annexed area.**

10 **Section 7.** That § 49-34A-52 be REPEALED.

11 **49-34A-52. Acknowledgment by utility of municipal offer to purchase**
12 **facilities in annexed area--Obligations of parties.**

13 **Section 8.** That § 49-34A-53.1 be REPEALED.

14 **49-34A-53.1. Purchase of facilities in territory annexed after July 1, 1975--**
15 **Time limit--Determination of gross revenue.**

16 **Section 9.** That a NEW SECTION be added:

17 **49-34A-55.1. Minimum electric infrastructure standards--Newly annexed**
18 **areas.**

19 If a municipality that owns and operates its own electric utility annexes an area
20 that is or will be served by an electric utility other than the municipal-owned utility, the
21 governing body of the municipality may require minimum electric infrastructure standards
22 for the annexed area. The electric utility has twenty-four months from the time the
23 governing body determines the standards to come into compliance. The minimum electric
24 infrastructure standards may not be more stringent than the infrastructure standards of
25 the municipal-owned electric utility. Infrastructure standards include both design and
26 installation requirements, that must be approved by the municipal-owned electric utility
27 before construction. Infrastructure standards may include aesthetics, capacity, and
28 redundancy.