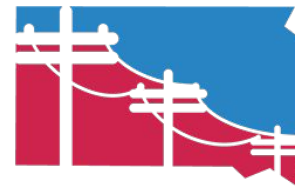




**COALITION TO PRESERVE
CONSUMER CHOICE**

First Interim Meeting - July 25, 2019

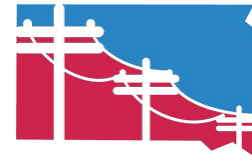
Coalition Members



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Coalition Members: Service Areas



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CONSUMER CHOICE

Arlington — Aurora — Beresford — Big Stone City — Brookings — Bryant — Burke — Colman — Estelline — Faith —

Flandreau — Fort Pierre — Groton — Hecla — Howard — Langford — McLaughlin — Madison — Miller — Parker —

Pickstown — Pierre — Plankinton — Sioux Falls — State of South Dakota — Tyndall — Vermillion — Volga — Watertown

— Wessington Springs — White — Winner



Central Question...



Chris Studer - 07/25: “You know, the central question here really is, you know, should a municipal government just get to take away service territory from a private consumer-owned business? That’s the central question.”

<https://wnax.com/news/180081-sd-legislative-committee-to-deal-with-electric-service-areas/>



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Coalition: “The central question really is: has the SDREA (an association for quasi governmental monopolies created by FDR in the 1930s to serve rural areas) made the case that the Legislature should lock property owners out of cities?

That’s the central question.”

Rural Electric Cooperatives provide
a necessary service in electrifying
rural South Dakota

AND

Cities should be permitted to
continue to grow under a system
that has provided remarkable
stability for the past 40+ years.

End game:

"Genius of the AND"



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Terminology and History



Who: Government created non-public power, Rural electric, REC, REA, Cooperative, Electric utility

Started: 1936 Federal Legislation - need to electrify rural areas; 1947 SD enacted statute

Bottom line: serving rural areas



Who: Municipal, Municipality, Public power, Municipal electric, City or Town, Community

Started: in SD statute since 1915; City power dating back to late 1800s

Bottom line: the cities



2019 REA Territory Freeze:

Would eliminate what little consumer power choice exists in SD law today.



Effect of REA Territory Freeze?

1. **Frozen territory** = unless accommodated within current boundaries, every new customer is automatically an REA customer.
2. **No more negotiated deals** = freeze means automatic REA wins.
3. **Higher rates** = Consumers forever locked into higher than average REA rates
4. **Voluntary annexation will stop** = Property owners frozen out of the limited choice they have today.

No surprise...

Sen. Brock Greenfield called [SB 66] "one of the most controversial bills of session."



Size Comparison



Square miles: 77,000

Cities served: fully serve 189; partially serve an additional 73.

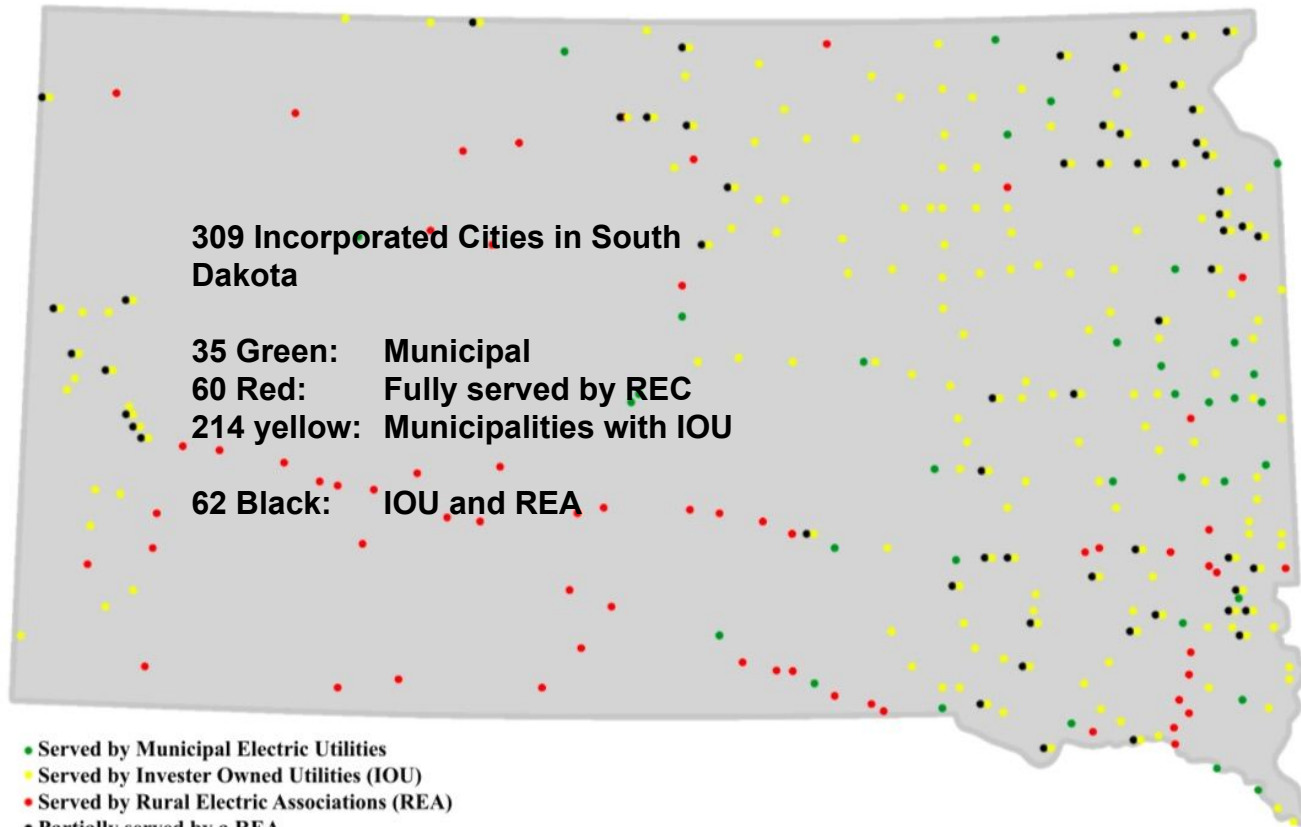
Cooperatives have customers in ALL of SD's 66 counties.



Square miles: under 100

Cities served: 35 of the 309 incorporated

RECs serve more SD cities...

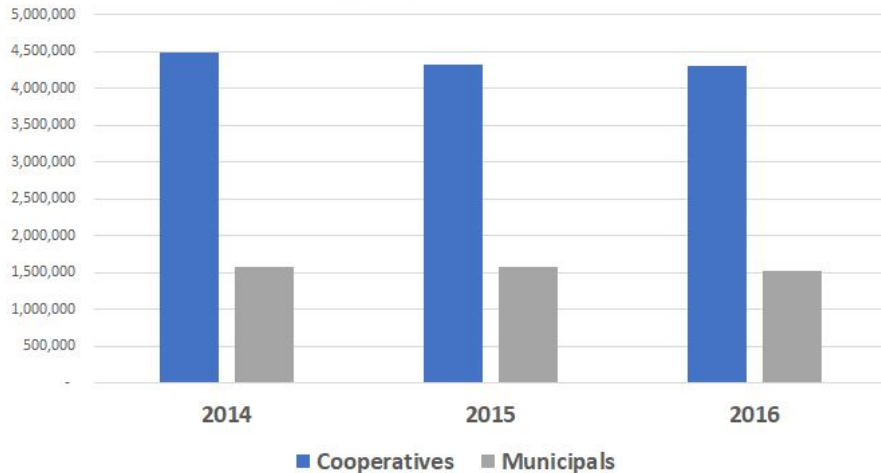


Source: South Dakota Municipal Electric Association

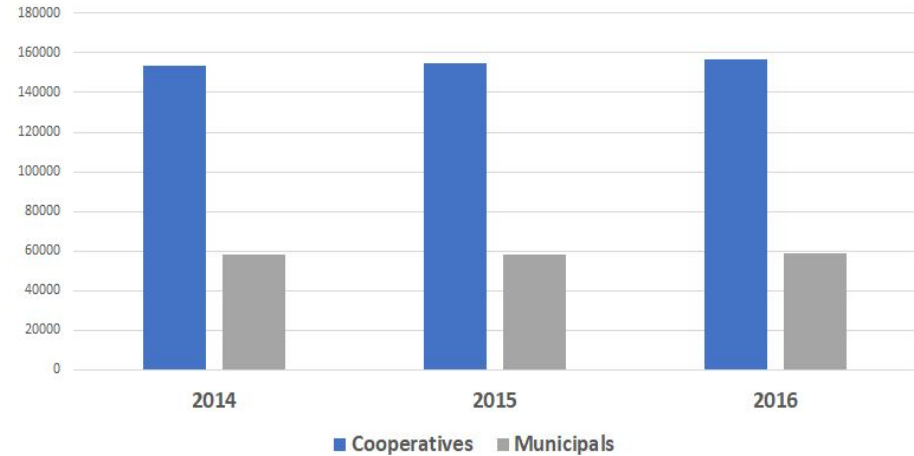
REA power: nearly 3x larger



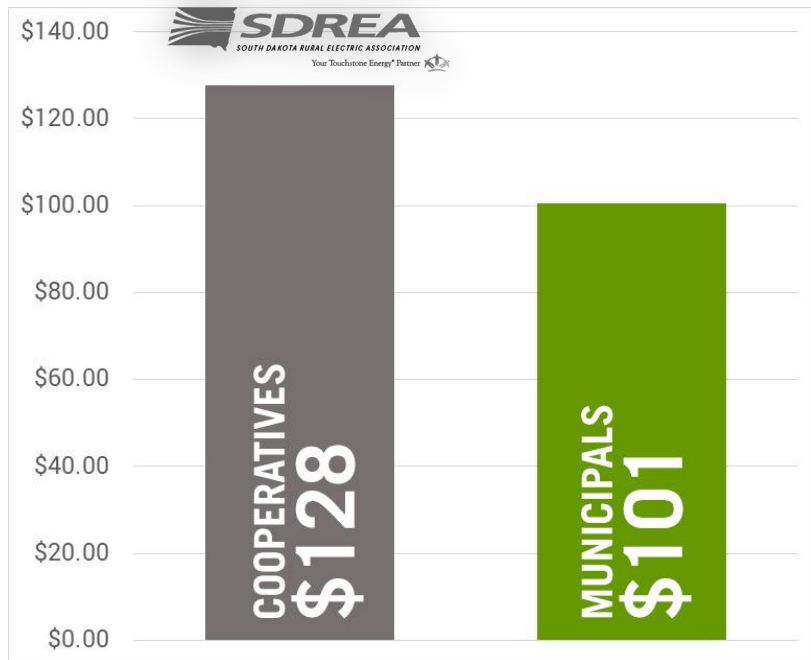
Megawatt hours sold



Customers



Residential rates: Rural Electric is higher



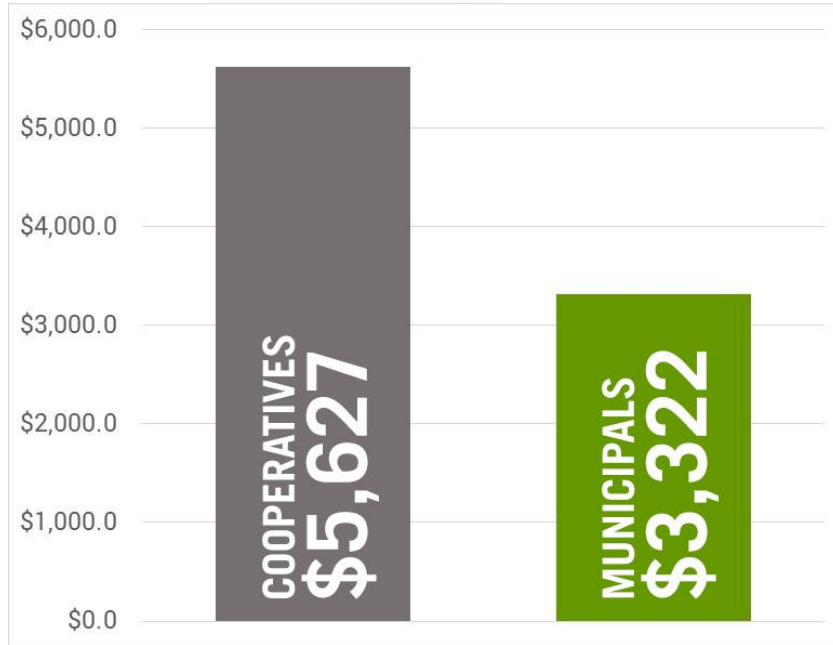
On average, REA residential customers in three key cities pay

26% more
for power.

Average monthly rates based on rates of 3 largest municipal electric utilities in South Dakota and 3 surrounding cooperatives (Watertown, Brookings & Vermillion).

Monthly bills based on 1,000 kwh usage for residential and 72,000 kwh along with 100 kw demand for commercial.

Commercial rates: Rural Electric is even higher



On average, REA
commercial customers in
three key cities pay
69% more
for power.

Average monthly rates based on rates of 3 largest municipal electric utilities in South Dakota and 3 surrounding cooperatives (Watertown, Brookings & Vermillion).

Monthly bills based on 1,000 kwh usage for residential and 72,000 kwh along with 100 kw demand for commercial.

Size difference summary:

The Rural Electric Association has grown into a Goliath sized powerhouse: bigger customer base, more load delivery and higher average rate charges*



1. SD Rural Electrics have MORE customers
2. SD Rural Electrics have LARGER service area
3. SD Rural Electrics serve MORE cities
4. SD Rural Electric residential customers pay MORE*
5. SD Rural Electric commercial customers pay A LOT MORE*

*Based on average monthly rates of Watertown, Brookings & Vermillion

Transparency Index: Statutory Safeguards



Open Meetings?



Open Records?



Public Comment?



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(Cities)

Open Meetings?



Open Records?



Public Comment?



Note: 20 year comprehensive plans are adopted by all cities and counties to identify growth areas.

Five perspectives to this fight...

1



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CONSUMER CHOICE

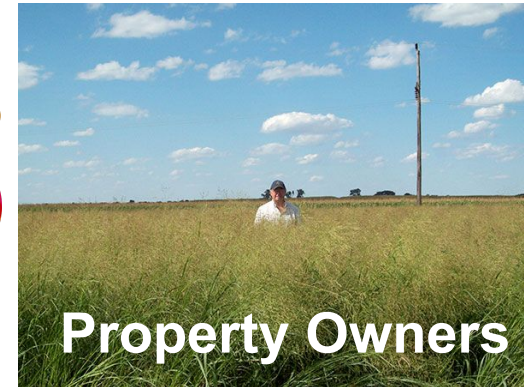
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3

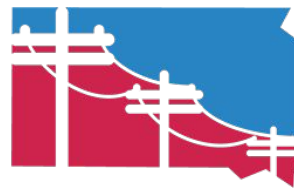
Principle:
opportunity, not
protectionism

4

State's interest:
business friendly
environment



Property Owners



COALITION TO PRESERVE
CONSUMER CHOICE

Looking back to 2019

SB 66 from 2019

Argus Leader - July 2019: A bill that would have prevented municipalities from annexing customers from rural electric coops became what sponsor Sen. Brock Greenfield called "one of the most controversial bills of session."

Bottom line:

SB 66 would have stopped some cities from growing.

The REA request for a one-size-fits-all City boundary freeze will always be controversial and there is no easy solution.

Top 7 Myths behind SB66

Myth:

1. Cities are stealing customers and lots of involuntary annexations
2. Taking prime territory
3. Stranded REC investment
4. SD is only state without a freeze
5. REC can serve as reliably as city power
6. RECs are private businesses
7. Cities are taking REC rights

Fact:

1. Not true: see survey data
2. Not true: mostly bare ground
3. Not true: statutory payment
4. Not true: handout/LRC info
5. Not true: see slide
6. Not true
7. Not true

MYTHS



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1. Annexation 101

What is it: Act of bringing new territory into City

It is not: the government taking of private property.

Why: Development outside city limits wouldn't happen without city planning, resources and foresight. When a city grows, a city should be able to provide all city services to the growing area, including electricity.

Three types: bare ground annexation, voluntary annexation, involuntary annexation

Typical: City annexes when asked by the landowner, so they can take advantage of all city services including water, sewer, roads, and electric service.



1. Annexation: why it's better to be in than out

City Power Benefits:

1. More reliable
2. Rates (generally) cheaper
3. More resistant to outages
4. Outages that do occur:
 - a. Less frequent
 - b. Shorter duration

Other City Benefits:

1. Water
2. Sewer
3. Fire and police
4. Emergency services and health care
5. Transportation infrastructure (lit/paved streets)
6. Drainage
7. Parks/recreation/quality of life/bike trail
8. Pest control
9. Proximity to employees/eating establishments
10. Businesses stay open later

Fact Check 1: Involuntary Annexation is rare

1. 17 cities in 1st Class (pop over 5k) = over 50% of SD population
2. 16 cities responded: Have you done an involuntary annexation in the last 10 years?

11 said “no”

5 cities said “yes” (10 involuntary annexations)

3 were voluntary, but needed the involuntary procedures for some reason

3. Of the 7 truly involuntary: 5 not challenged & successful; 2 referred to election and failed.
4. Note: only 1 of the involuntary annexations in a municipal electric city

Summary: In 10 years, cities representing just over half of the SD population have used involuntary annexation procedures 7 times, with 5 of those successful and not referred to election.



Fact Check 2/3: Typical Voluntary Annexation: Bare Ground - Madison Hospital



Bareground annexation from Sioux Valley

Energy - no infrastructure in place

1. Madison Regional Health built a new hospital and clinic in 2015
2. Community based hospital with \$25 million annual impact on local economy
3. The developer ASKED to be annexed into Madison city limits to take advantage of all city services
4. Madison Regional Health will pay nearly **\$500,000** to Sioux Valley for its choice to take electric service from the city of Madison.

Fact Check 2/3: Madison Hospital

At current rate: Sioux Valley Energy would need 52 years to recover \$500,000 in net revenue, without infrastructure.



Fact Check 3: Statutory formula favors REC

1. In place since 1975, with subsequent revisions
2. Payouts paid by City (taxpayers) or customer
3. Coalition research: ability of the City to expand its electric service area in SD has never been limited - except for the payment of amounts due under the formula.
4. See Madison Letter
5. PUC: no contested cases under formula

A collage of mathematical symbols and formulas, including:

- $2 > -3$
- $0.999... = 1$
- $\pi \approx 3.14$
- $\sqrt{2}$
- $1 + 2 \cdot 3$
- $(1 - 2) + 3$
- $5(2 + 2)$
- $101_2 = 5_{10}$
- ∞
- $+$, $-$, \times , \div
- 5^2

Fact Check 4: SD is not only state without a freeze

Complex state by state analysis.

Coalition research confirms frozen in six of 46 states:

1. Mississippi
2. Iowa
3. Alabama
4. Georgia*
5. Indiana (in 2015)
6. Virginia



Policy tip: Six states also have something else in common:

1. Mississippi : 5%
2. Iowa: 8.53%
3. Alabama 5%
4. Georgia: 5.75%
5. Indiana: 3.23%
6. Virginia: 5.75%

*Although has a 900 kW exception, similar to SD's 2 MW exception

Fact Check 5: REC power supply is not as reliable

Case Study: Brookings vs. Sioux Valley (3 years)

IEEE Outage Index Definitions

SAIFI = System Average Interruption Frequency Index (How often the average customer experiences an outage)

SAIDI = System Average Interruption Duration Index (The total outage duration (in minutes) for the average customer)

3-Year Average IEEE Reliability Data		
	SAIFI (frequency)	SAIDI (minutes)
Brookings Municipal Utilities	0.178	10.28567
Sioux Valley Energy*	1.775	121.2046
Comparison (x)	10.0	11.8

*Annual Reliability data was taken from Form EIA-861,
which is filed annually with US Energy Information Administration

For the average Sioux Valley customer,
this means: 1.8 outages per year with an
average of 121 outage minutes per year.

As compared to Brookings Municipal Utilities, the average Sioux Valley member experiences
10 times more outages, and those **outages last 12 times longer** in duration.

Fact Check 6: *REC is not a “private business”*



REC is unlike a private business:

1. Not for profit
2. Concept of creation comes from the Federal Government
3. Territories authorized by SD statute
4. USDA subsidies
5. USDA revolving loans
6. Not regulated by PUC (like IOUs)

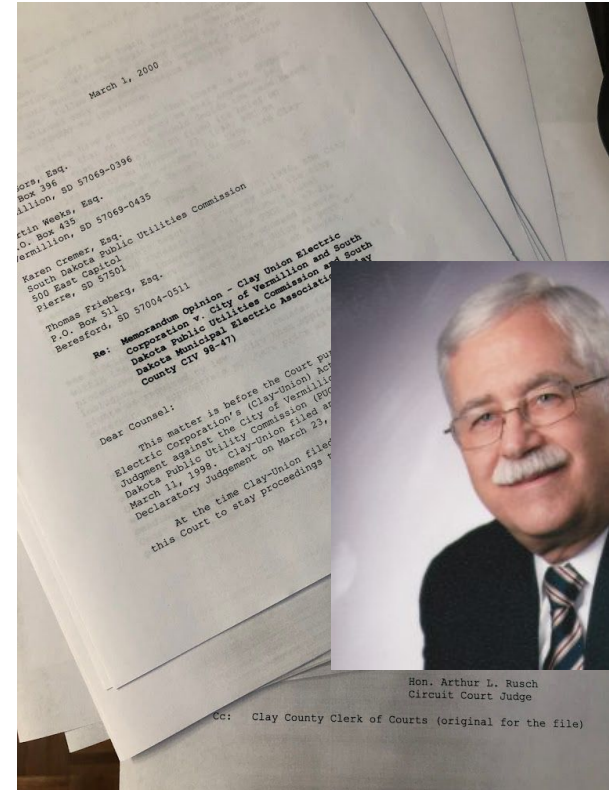
REC is unlike a city government:

1. No open records
2. No open meetings
3. Different election system – only some people get to vote for REC directors
4. Not statutory public comment at meetings
5. Exists for benefit of members, not the general public

Fact Check 7: *REC has no right to a service area*

"Although the legislature has delegated monopolistic powers to Clay-Union, to provide electricity within its service territories, that power was granted for the public benefit and not for the benefit of Clay-Union. The legislature is free to change the service territories at any time and Clay-Union **never gained any property right to them.** [emphasis added]

Despite 32 pages of briefs in this case, Clay Union has failed to provide a single case to support their claim that they acquired any "property interest" in these service territories."





COALITION TO PRESERVE
CONSUMER CHOICE

REA Freeze: Top 8 Policy Problems

1. **Second class.** Creates a second (lower) class of property owners within a city
2. Violates principle of **local control**
3. **One size does not fit all:** 35 cities
4. Picks **winners and losers**
5. **Rule of 17:** Creates new Legislative mess: freeze would mean Legislative petitions for boundary adjustments, new businesses & property owner relief
6. **Two part freeze:** City growth & Economic development
7. **Statutory losers:**
 - a. Property owners on on boundaries of city power lose **rights**
 - b. Property owners on boundaries of city power lose **value**
 - c. All citizens lose with **loss of better and higher paying jobs**
8. **No solution.** REC proposal is a certain future problem looking for a current one

REA hurdles to passing a bill...



What's the problem

Proposed
Solution

SD
Constitution

Policy Analysis

Practical
Impact



COALITION TO PRESERVE
CONSUMER CHOICE

REA hurdles to passing a bill...

What's the problem

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Burden is on the REA to make their case and define the problem

Up to this point, there is no record showing a problem.

Fact: present statutory system has provided stability and predictability.



REA hurdles to passing a bill...



COALITION TO PRESERVE
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What's the problem

Proposed
Solution

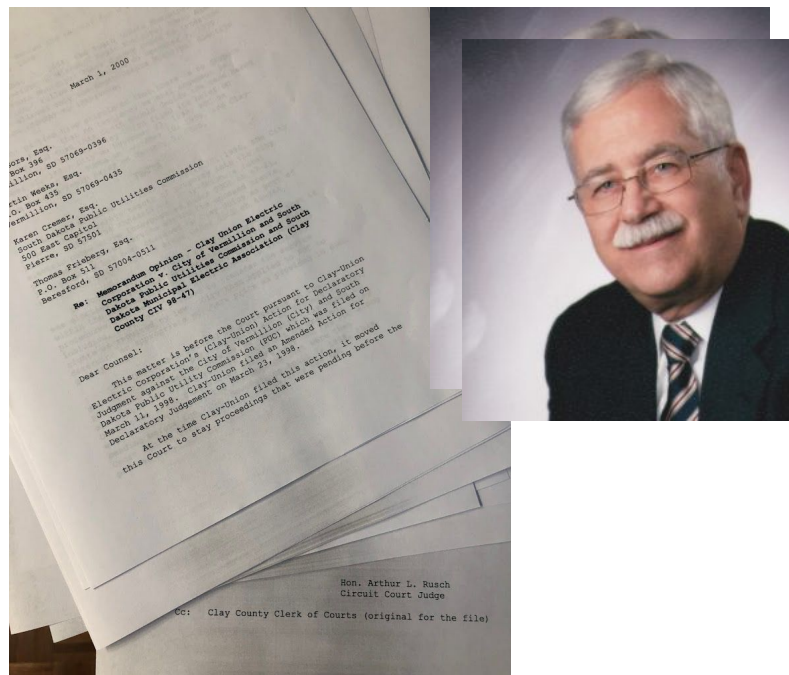
SD
Constitution

Policy Analysis

Practical
Impact

Must be a workable, solution in the best interest of South Dakota - that includes REC, cities, rate payers and property owners.

Note: In 2000, Judge Rusch noted "hot button" words and emotion by the REA, but few substantive legal arguments



REA hurdles to passing a bill...



COALITION TO PRESERVE
CONSUMER CHOICE

What's the problem

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§ 12. Ex post facto laws--Impairment of contract obligations--Privilege or immunity. No ex post facto law, or law impairing the obligation of contracts or making any irrevocable grant of privilege, franchise or immunity, shall be passed.





COALITION TO PRESERVE
CONSUMER CHOICE

REA hurdles to passing a bill...

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1. Best interest of SD
2. Transparency
3. Size and scope of government
4. Legal framework
5. History and investments made on statutory foundation

REA hurdles to passing a bill...



COALITION TO PRESERVE
CONSUMER CHOICE

What's the problem

Proposed
Solution

SD
Constitution

Policy Analysis

Practical
Impact



1. Is the proposed solution actually going to work?
2. Impact on rate payers?
3. Impact on 35 different cities.
4. Unintended consequences?
5. Businesses that don't start here; development that doesn't happen.
6. Neighborhoods and affordable housing that are never built



COALITION TO PRESERVE
CONSUMER CHOICE

What's the problem

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Up to this point, there is no record showing a problem.

Fact: present statutory system has provided stability and predictability.

Proposed Solution

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SD Constitution

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Policy Analysis

1. Best interest of SD
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Practical Impact

1. Is the proposed solution actually going to work?
2. Impact on rate payers?
3. Impact on 35 different cities.
4. Unintended consequences?
5. Businesses that don't start here; development that doesn't happen.
6. Neighborhoods and affordable housing that are never built

The Next Generation...

We don't secure opportunity for the Next Generation by freezing them out of economic development and locking up territory to benefit of quasi governmental entities originating with an Act of Congress in 1936.



Rural Electric Cooperatives provide
a necessary service in electrifying
rural South Dakota

AND

Cities should be permitted to
continue to grow under a system
that has provided remarkable
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End game:

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