

2020 South Dakota Legislature

Senate Bill Draft 227

Requested by: **Senator Solano**

1 **An Act to require negotiation and allow petition to the Public Utilities Commission**
2 **prior to an election to provide electric service in an annexed area.**

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

4 **Section 1.** That a NEW SECTION be added:

5 **49-34A-49.1. Good faith negotiation before election.**

6 Before exercising an election to provide electric service in a newly annexed area,
7 the municipally-owned electric utility shall provide notice to any affected electric utility
8 and each party shall meet and negotiate in good faith the terms of an agreement and any
9 transfers or acquisitions of existing service territories that may result from the annexation.
10 Factors to be included in good faith negotiations include the elimination or avoidance of
11 unnecessary duplication of facilities, providing adequate electric service to all areas and
12 customers affected, the promotion of the efficient and economical use and development
13 of the electric systems of the affected utilities, the impact on consumers of the respective
14 utilities, and the public interest. The obligation to meet and negotiate in good faith does
15 not compel any party to agree to a proposal or require the making of a concession, but
16 each utility shall provide a statement of rationale for any position taken by the parties to
17 the negotiation addressing the factors set forth in this section. Any agreement reached
18 under this section that changes assigned service territories is subject to § 49-34A-50 and
19 shall be filed and approved by the commission before becoming effective.

20 **Section 2.** That a NEW SECTION be added:

21 **49-34A-49.2. Petition if unable to reach agreement—Commission hearing**
22 **and decision.**

23 If after good faith negotiations under § 49-34A-49.1 a municipal electric utility and
24 the incumbent utility are unable to reach an agreement, either party within twenty-one
25 days of impasse may petition for a hearing with the commission. If no party petitions for
26 hearing within the required time, the election to provide electric service in a newly
27 annexed area may proceed under the provisions of this chapter. If a petition is filed, the
28 commission, after notice and opportunity for hearing, shall issue a binding decision within

- 1 sixty days of the filing of the petition. The commission may assess its costs associated
- 2 with a petition to either or both parties, and may modify the purchase price for electric
- 3 facilities up to ten percent of the purchase price established in § 49-34A-50.