

# State of South Dakota

SEVENTY-NINTH SESSION  
LEGISLATIVE ASSEMBLY, 2004

448J0649

## SENATE BILL NO. 103

Introduced by: Senators Knudson, Koskan, and McCracken and Representatives Frost, Burg, Fryslie, Hargens, McCaulley, and Wick

1 FOR AN ACT ENTITLED, An Act to establish a procedure for the acquisition of electric  
2 distribution properties of a public utility in a municipality electing to establish a municipal  
3 electric system.

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

5 Section 1. That chapter 49-34A be amended by adding thereto a NEW SECTION to read  
6 as follows:

7 If a municipality elects to establish a municipal electric system and acquire by the exercise  
8 of eminent domain the electric distribution properties of the public utility currently serving all  
9 or a part of the municipality, whether or not located within the municipal boundary, and the  
10 public utility's rights to serve within the municipality, the municipality shall pay as just  
11 compensation to the public utility not less than a cash consideration consisting of the present-  
12 day reproduction cost, new, of the facilities being acquired, less depreciation computed on a  
13 straight-line basis; plus an amount equal to the cost on a nonbetterment basis of constructing any  
14 necessary facilities to reintegrate the system of the public utility outside the municipality after  
15 detaching the portion to be sold; plus as compensation for service rights, an annual amount,



1 payable each year for a period of seven years, equal to the sum of twenty-five percent of the  
2 gross revenues received from power sales to consumers of electric power within the acquired  
3 service area, during said seven-year period. Gross revenues received shall be determined by  
4 applying the rate in effect by the public utility whose territory is being purchased at the time of  
5 acquisition.

6 Section 2. That chapter 49-34A be amended by adding thereto a NEW SECTION to read  
7 as follows:

8 Any municipality electing to acquire the electric distribution properties of a public utility  
9 as provided in this Act shall also acquire and pay just compensation for all other properties  
10 necessarily associated with the business of the public utility in the municipality which would  
11 otherwise become stranded investments, whether or not within the municipality, at the time of  
12 acquisition based on not less than the present-day reproduction cost, new, of the facilities being  
13 acquired, less depreciation computed on a straight-line basis.

14 Section 3. That chapter 49-34A be amended by adding thereto a NEW SECTION to read  
15 as follows:

16 If a municipality has elected to acquire by the exercise of eminent domain the electric  
17 distribution properties of a public utility, either party may petition the commission to determine  
18 just compensation or any other term or condition necessary to complete the acquisition under  
19 the standards established by section 1 of this Act, provided the petition is filed with the  
20 commission within thirty days of the final effective date of the municipality's resolution of  
21 taking related to the public utility's distribution properties and associated properties. Within  
22 sixty days from the date of the petition, the public utility may demand a hearing before the  
23 commission on the municipality's right-to-take, and a written waiver or a failure to make  
24 demand constitutes a waiver of the right to question the necessity of the taking. Following the

1 right-to-take hearing, or its waiver, the commission shall act only after such discovery by the  
2 parties as may be necessary and hearing upon reasonable notice. The commission shall enter an  
3 order as its final decision, which is subject to contested case review.

4 Section 4. That chapter 49-34A be amended by adding thereto a NEW SECTION to read  
5 as follows:

6 Nothing in this Act prevents a public utility from exercising its right to a jury trial on the  
7 question of just compensation as provided in S.D. Const., Art. VI, § 13 and Art. XVII, § 12. The  
8 question of just compensation shall be decided as provided in chapter 21-35 if the public utility  
9 files an election to so proceed with the clerk of courts of the county in which any part of the  
10 municipality is located within sixty days of the final effective date of the municipality's  
11 resolution of taking related to the public utility's electric distribution properties and associated  
12 properties. In all actions governed by this section, the public utility's compensation shall not be  
13 less than that provided by the formula for just compensation established in section 1 of this Act.