

**SENATE BILL NO. 2389**

Introduced by

Senators St. Aubyn, Fischer, B. Stenehjem

Representatives Hawken, Keiser, Timm

1 A BILL for an Act to create and enact a new section to chapter 49-03 of the North Dakota  
2 Century Code, relating to the voluntary sale or trade of facilities and service areas; and to  
3 amend and reenact sections 49-03-01.1, 49-03-01.3, 49-03-01.4, and 49-03-05 of the North  
4 Dakota Century Code, relating to service by electric public utilities and rural electric  
5 cooperatives.

6 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

7 **SECTION 1. AMENDMENT.** Section 49-03-01.1 of the North Dakota Century Code is  
8 amended and reenacted as follows:

9 **49-03-01.1. Limitation on electric transmission and distribution lines, extensions**  
10 **and service by electric public utilities.** ~~No~~ An electric public utility ~~henceforth shall~~ may not  
11 begin ~~in~~ the construction or operation of a public utility plant or system or extension thereof  
12 without first obtaining from the commission a certificate that public convenience and necessity  
13 require or will require ~~such~~ the construction and operation, nor ~~shall such~~ may an electric public  
14 utility ~~henceforth~~ extend its electric transmission or distribution lines beyond or outside of the  
15 corporate limits of ~~any~~ a municipality, nor ~~shall~~ may it serve any customer where the place to  
16 be served is not located within the corporate limits of a municipality, unless and until, after  
17 application, ~~such~~ the electric public utility has obtained an order from the commission  
18 authorizing ~~such~~ the extension and service and a certificate that public convenience and  
19 necessity require that permission be given to extend ~~such~~ the lines and to serve ~~such~~ the  
20 customer.

21 **SECTION 2. AMENDMENT.** Section 49-03-01.3 of the 1997 Supplement to the North  
22 Dakota Century Code is amended and reenacted as follows:

23 **49-03-01.3. Exclusions from limitations on electric distribution lines, extension**  
24 **and service and on issuance of certificates of public convenience and necessity.**

- 1           1. Sections 49-03-01 through 49-03-01.5 ~~shall~~ may not be construed to require ~~any~~  
2           ~~such an~~ electric public utility to secure ~~such an~~ order or certificate for an extension  
3           of its electric distribution lines within the corporate limits of ~~any a~~ a municipality within  
4           which it has lawfully commenced operations; ~~provided, however, that such~~  
5           ~~extension or extensions shall not interfere with existing services provided by a rural~~  
6           ~~electric cooperative or another electric public utility within such municipality; and~~  
7           ~~provided duplication of services is not deemed unreasonable by the commission.~~  
8           After July 31, 1999, the following conditions apply to the provision of electric  
9           service within a municipality:
- 10           a. An electric public utility, if authorized by franchise, shall provide electric  
11           service to all customers within the corporate limits of a municipality, except  
12           that a rural electric cooperative may continue to provide electric service to  
13           existing customers it was serving within a municipality on July 31, 1999, if  
14           allowed by the municipality pursuant to a limited franchise. However, a rural  
15           electric cooperative is ineligible for a new or continued franchise that would  
16           allow the rural electric cooperative to provide electric service to any new  
17           customer within the corporate limits of the municipality after July 31, 1999.
- 18           b. If a municipality does not allow a rural electric cooperative to continue electric  
19           service to existing customers within a municipality pursuant to limited  
20           franchise, the rural electric cooperative may remove its lines, plant, or system  
21           or sell its lines, plant, or system to the franchised electric public utility at an  
22           agreed upon price.
- 23           2. Sections 49-03-01 through 49-03-01.5 ~~shall~~ may not be construed to require an  
24           electric public utility to discontinue service to customers thereof whose places  
25           receiving service are located outside the corporate limits of a municipality on  
26           July 1, 1965; provided, however, that within ninety days after July 1, 1965, ~~any an~~  
27           ~~an~~ electric public utility furnishing service to customers whose places receiving service  
28           are located outside the corporate limits of a municipality shall file with the  
29           commission a complete map or maps of its electric distribution system showing all  
30           places in ~~North Dakota which~~ this state that are located outside the corporate limits  
31           of a municipality and which are receiving its service as of July 1, 1965. After ninety

1           days from July 1, 1965, unless a customer whose place being served is located  
2           outside the corporate limits of a municipality is shown on ~~said~~ the map or maps, it  
3           ~~shall be~~ is conclusively presumed that ~~such~~ the customer was not being served on  
4           July 1, 1965, and cannot be served until after compliance with ~~the provisions of~~  
5           section 49-03-01.1.

6           **SECTION 3. AMENDMENT.** Section 49-03-01.4 of the North Dakota Century Code is  
7           amended and reenacted as follows:

8           **49-03-01.4. Enforcement of act.** If ~~any~~ an electric public utility or rural electric  
9           cooperative violates or threatens to violate ~~any of the provisions of sections 49-03-01 through~~  
10          ~~49-03-01.5 or interferes with or threatens to interfere with the service or system of any other~~  
11          ~~electric public utility or rural electric cooperative~~ this chapter, the commission, after complaint,  
12          notice, and hearing as provided in chapter 28-32, shall make its order restraining and enjoining  
13          ~~said~~ the electric public utility or rural electric cooperative from ~~constructing or extending its~~  
14          ~~interfering lines, plant or system~~ engaging in conduct in violation of this chapter. In addition to  
15          the restraint imposed, the commission shall prescribe ~~such~~ the terms and conditions as it ~~shall~~  
16          ~~deem~~ deems reasonable and proper.

17          Provided, further, that ~~nothing herein contained shall be construed to~~ this chapter does  
18          not prohibit or limit any person, who has been injured in ~~his~~ that person's business or property  
19          by reason of a violation of ~~sections 49-03-01 through 49-03-01.5~~ this chapter by ~~any~~ an electric  
20          public utility or rural electric cooperative ~~corporation~~, from bringing an action for damages in  
21          ~~any~~ a district court of this state to recover ~~such~~ damages.

22          **SECTION 4.** A new section to chapter 49-03 of the North Dakota Century Code is  
23          created and enacted as follows:

24          **Voluntary sale or trade of facilities and service areas.** An electric public utility may  
25          agree to voluntarily sell its lines, plant, and system outside the corporate limits of a municipality  
26          to the rural electric cooperative serving the particular area. A rural electric cooperative may  
27          agree to voluntarily sell its lines, plant, and system within the corporate limits of a municipality to  
28          the electric public utility serving within the same municipality pursuant to franchise. A voluntary  
29          sale may not require electric customer consent. An electric public utility and a rural electric  
30          cooperative may voluntarily agree to trade service areas or individual customers. All sales or  
31          trades pursuant to this section must be approved by the governing body of a city for sales or

1 trades within a municipality and by the commission for sales or trades outside the corporate  
2 limits of a municipality. This chapter does not prevent the sale, merger, or other type of  
3 corporate reorganization of a public utility and the transfer of the public utility's lines, plant, and  
4 system to another entity as part of that transaction.

5           **SECTION 5. AMENDMENT.** Section 49-03-05 of the North Dakota Century Code is  
6 amended and reenacted as follows:

7           **49-03-05. Complaint upon violation of chapter.** Whenever a an electric public utility  
8 engages or is about to engage in construction or operation as described in this chapter without  
9 having secured a certificate of public convenience and necessity as required by the provisions  
10 of this chapter, or whenever a an electric public utility or rural electric cooperative constructs or  
11 extends its line, plant, or system, or supplies, or offers to supply electric service in violation of  
12 this chapter, ~~any~~ an interested municipality, public authority, electric public utility, rural electric  
13 cooperative ~~corporation~~, or person, may file a complaint with the commission. The commission  
14 thereupon, or upon its own motion without complaint, with or without notice, may make its order  
15 requiring the electric public utility or rural electric cooperative complained of to cease and desist  
16 from ~~such~~ the construction or operation or other prohibited activity until the further order of the  
17 commission. Upon hearing had after due notice given, the commission shall make ~~such~~ the  
18 order with respect to ~~such~~ the electric public utility or rural electric cooperative and prescribe  
19 ~~such~~ terms and conditions as are just and reasonable.