

LEGISLATIVE BILL 969

Approved by the Governor March 31, 2004

Introduced by Natural Resources Committee: Schrock, 38, Chairperson;
Friend, 10; Hudkins, 21; Jones, 43; Kremer, 34; Louden, 49;
Preister, 5; Stuhr, 24

AN ACT relating to public power; to amend sections 18-412.06 to 18-412.10, 18-2451, 70-601, and 70-623, Reissue Revised Statutes of Nebraska; to authorize public entities to enter into electrical service purchase agreements and ownership agreements for electric facilities; to define and redefine terms; to provide for decommissioning of jointly held electric generation or transmission facilities; to change powers and duties; to change provisions relating to filing audits by certain districts and agencies; to harmonize provisions; to provide severability; to repeal the original sections; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. For purposes of sections 1 to 5 of this act:

(1) Power has the same meaning as in section 70-601; and

(2) Public entity means a municipality, a registered group of municipalities, a public power district, a public power and irrigation district, an electric cooperative, an electric membership association, a joint entity formed under the Interlocal Cooperation Act, a joint public agency formed under the Joint Public Agency Act, an agency formed under the Municipal Cooperative Financing Act, or any other governmental body or subdivision of government.

Sec. 2. Notwithstanding any other provision of Nebraska law, any public entity may enter into an agreement for the purchase of power to be generated by a project consisting of one or more electric generating facilities. A purchase agreement may contain such terms and conditions as the public entity may determine, including provisions whereby the public entity agrees to accept and pay for additional power generated by a project if another public entity that is a purchaser of power from the same project defaults or otherwise is unable to take or pay for such power. A purchase agreement may further provide that the public entity is obligated to make payments regardless of whether power is provided, produced, or delivered to the public entity or whether the project contemplated by a purchase agreement is completed, operable, or operating, and notwithstanding suspension, interruption, interference, reduction, or curtailment of the output of power from such project.

Sec. 3. Any municipality that enters into an agreement for the purchase of power containing any of the provisions described in section 2 of this act shall be deemed to have entered into such agreement under the provisions of sections 3 and 5 of this act and section 18-412.06. No agreement shall be deemed an agreement entered into pursuant to section 18-412.09 and section 4 of this act unless such agreement specifically states that it is entered into pursuant to such sections.

Sec. 4. If a public entity enters into an ownership agreement of any electric facility pursuant to section 18-412.09, the agreement may contain such terms and conditions as the public entity may determine.

Sec. 5. Sections 1 to 5 of this act shall be liberally construed to effectuate their purposes. The provisions of sections 1 to 5 of this act shall be independent of and supplemental to any other applicable provisions of law, petition for creation, or charter.

Sec. 6. Section 18-412.06, Reissue Revised Statutes of Nebraska, is amended to read:

18-412.06. (1) Any city or village owning or operating electric generation or transmission facilities may enter into contracts for the purchase of electric energy, power and energy, or capacity, or any combination thereof, upon such terms and conditions and for such periods as the governing body of such city or village may by ordinance authorize. Such terms and conditions may obligate the city or village to make payment under the contracts during such time or times as the facility, if any, to which the contract pertains may be incapable of being operated or may not be in operation for any reason. Any contract authorized by this section may be entered into by the city or village with nonprofit corporations of this or any other state among whose purposes is the financing of electric properties, projects or undertakings for such city or village, other municipalities of

this or any other state, public power districts and public power and irrigation districts of this or any other state, other governmental entities or agencies of this or any other state or the federal government, electric cooperatives or electric membership cooperatives of this or any other state, or investor-owned electric utilities organized under the laws of any other state. The obligation and liability of such city or village under the contract shall be limited to the electric revenue of such city or village, unless prior to the execution of the contract by the city or village the contract shall have been approved by a majority of the qualified voters of the city or village voting upon the question.

(2) Any city or village may enter into contracts for the purchase of electric power to be generated by a project as provided in sections 1 to 5 of this act.

Sec. 7. Section 18-412.07, Reissue Revised Statutes of Nebraska, is amended to read:

18-412.07. It is hereby declared to be in the public interest of the State of Nebraska that cities and villages of this state be empowered to participate jointly or in cooperation with public power districts and public power and irrigation districts and other public agencies in the establishment and operation of facilities for the generation or transmission of electric power and energy located within or outside this state in order to achieve economies and efficiencies in meeting the future electric energy needs of the people of the State of Nebraska. In furtherance of such need and in addition to but not in substitution for any other powers granted cities and villages of this state, each city and village which owns or operates electrical facilities shall have and may exercise its power and authority to plan, finance, acquire, construct, own, operate, maintain, ~~and~~ improve, and decommission electric generation or transmission facilities located within or outside this state jointly and in cooperation with one or more such districts, other cities or villages of this state which own or operate electrical facilities, municipal corporations, or other governmental entities of other states which operate electrical facilities. The powers granted under this section may be exercised with respect to any electric generation or transmission facility jointly with the powers granted under any other provision of sections 18-412.07 to 18-412.09 and 70-628.02 to 70-628.04.

Sec. 8. Section 18-412.08, Reissue Revised Statutes of Nebraska, is amended to read:

18-412.08. It is hereby declared to be in the public interest of the State of Nebraska that cities and villages of this state be empowered to participate jointly and in cooperation with one or more electric cooperatives or electric membership corporations organized under the laws of this state or any other state in the establishment and operation of facilities for the generation or transmission of electric power and energy in order to achieve economies and efficiencies in meeting the future electric energy needs of the people of the State of Nebraska. In furtherance of such end and in addition to, but not in substitution for, any other powers granted such cities and villages of this state, each city or village which owns or operates electrical facilities shall have and may exercise power and authority to plan, finance, acquire, construct, own, operate, maintain, ~~and~~ improve, and decommission electric generation or transmission facilities located in this state jointly and in cooperation with one or more electric cooperatives or electric membership corporations organized under the laws of this state or any other state, and each city or village shall have and may exercise such power and authority with respect to electric generation or transmission facilities located outside this state jointly or in cooperation with one or more electric cooperatives or electric membership corporations organized under the laws of this state or any other state. The powers granted under this section may be exercised with respect to any electric generation or transmission facility jointly with the powers granted under any other provisions of sections 18-412.07 to 18-412.09 and 70-628.02 to 70-628.04.

Sec. 9. Section 18-412.09, Reissue Revised Statutes of Nebraska, is amended to read:

18-412.09. Any city or village participating jointly and in cooperation with others in an electric generation or transmission facility ~~shall~~ may own an undivided interest in such facility and be entitled to the share of the output or capacity therefrom attributable to such undivided interest. Such city or village may enter into an agreement or agreements with respect to each such electric generation or transmission facility with the other participants therein, and any such agreement shall contain such terms, conditions, and provisions consistent with the provisions of sections 18-412.07 to 18-412.10 as the governing body of such city or village shall deem to be in the interests of such city or village. The agreement may

include, but not be limited to, provision for the construction, operation, ~~and~~ maintenance, and decommissioning of such electric generation or transmission facility by any one of the participants, which shall be designated in or pursuant to such agreement as agent, on behalf of itself and the other participants or by such other means as may be determined by the participants and provision for a uniform method of determining and allocating among participants costs of construction, operation, maintenance, renewals, replacements, decommissioning, and improvements with respect to such facility. In carrying out its functions and activities as such agent with respect to construction, operation, ~~and~~ maintenance, and decommissioning of such a facility, including without limitation the letting of contracts therefor, such agent shall be governed by the laws and regulations applicable to such agent as a separate legal entity and not by any laws or regulations which may be applicable to any of the other participants. Notwithstanding the provisions of any other law to the contrary, pursuant to the terms of any such agreement in which or pursuant to which a public power district or a public power and irrigation district or a city or village of this state shall be designated as the agent thereunder for the construction, operation, ~~and~~ maintenance, and decommissioning of such a facility, each of the participants may delegate its powers and duties with respect to the construction, operation, ~~and~~ maintenance, and decommissioning of such facility to such agent, and all actions taken by such agent in accordance with the provisions of such agreement shall be binding upon each of such participants without further action or approval by their respective boards of directors or governing bodies. Such agent shall be required to exercise all such powers and perform its duties and functions under such agreement in a manner consistent with prudent utility practice. As used in this section, prudent utility practice shall mean any of the practices, methods, and acts at a particular time which, in the exercise of reasonable judgment in the light of the facts, including, but not limited to, the practices, methods, and acts engaged in or approved by a significant portion of the electrical utility industry prior thereto, known at the time the decision was made, would have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety, and expedition. ~~In no event shall anything herein be deemed to authorize any~~ Unless specifically contracted otherwise by written agreement, no city or village shall become liable for and shall pay for any costs, expenses, or liabilities attributable to the undivided interest of any other participant in such electric generation or transmission facility, and unless specifically contracted otherwise by written agreement, no funds of such city or village may be used for any such purpose.

Sec. 10. Section 18-412.10, Reissue Revised Statutes of Nebraska, is amended to read:

18-412.10. If a city or village proposes to, and during such time as the city and village shall, plan, finance, acquire, construct, own, operate, maintain, ~~and~~ improve, and decommission jointly and in cooperation with others as contemplated by sections 18-412.07 to 18-412.10 facilities for the generation or transmission of electric power and energy located or to be located outside this state, such city or village may comply with all laws of the United States and of the state in which the facilities are or are to be located applicable to such facilities or applicable to any of the foregoing activities or applicable to the performance of any of such activities across state boundaries or in such state, including, without limiting the generality of the foregoing, submitting itself to any governmental body, board, commission, or agency having jurisdiction over such facilities or over any of such activities or over the performance of such activities and applying for and carrying out of all licenses, certificates, or other approvals required by such laws in order to enable the city or village to carry out the provisions of sections 18-412.07 to 18-412.10.

Sec. 11. Section 18-2451, Reissue Revised Statutes of Nebraska, is amended to read:

18-2451. The books and records of an agency created pursuant to sections 18-2426 to 18-2434 shall be public records and shall be kept at the principal place of business of such agency. The agency books and records shall be open to public inspection at reasonable times and upon reasonable notice. The agency shall annually cause to be filed with the Auditor of Public Accounts an audit of the books, records, and financial affairs of the agency. Such audit shall be made by a certified public accountant or firm of such accountants selected by the agency and shall be conducted in the manner prescribed in section 84-304.01. When the audit has been completed, written copies of the audit shall be placed and kept on file at the principal place of business of the agency and shall be filed with the Auditor of Public Accounts and the Nebraska Power Review Board within one hundred ~~twenty~~ eighty days

after December 31 of each year. If any agency created pursuant to sections 18-2426 to 18-2434 fails to file a copy of an audit within the time prescribed in this section, the books, records, and financial affairs of such agency shall, within one hundred eighty days after the close of the fiscal year of the agency, be audited by a certified public accountant or firm of accountants selected by the Auditor of Public Accounts. The cost of the audit shall be paid by the agency.

Sec. 12. Section 70-601, Reissue Revised Statutes of Nebraska, is amended to read:

70-601. For purposes of Chapter 70, article 6, unless the context otherwise requires:

(1) District means a public power district, public irrigation district, or public power and irrigation district, organized under Chapter 70, article 6, either as originally organized or as the same may from time to time be altered or extended, and includes, when applicable, rural public power districts organized under Chapter 70, article 8, and subject to Chapter 70, article 6;

(2) Municipality, when used in relation to the organization or charter of a public power district or to the election of successors to the board of directors of a public power district, means any county, city, incorporated village, or voting precinct in this state;

(3) Governing body, whenever used in relation to any municipality, means the duly constituted legislative body or authority within and for such municipality as a public corporation and governmental subdivision. When used with reference to a voting precinct, governing body means the county board of the county in which the precinct is located;

(4) Irrigation works means any and all sites, dams, dikes, abutments, reservoirs, canals, flumes, ditches, head gates, machinery, equipment, materials, apparatus, and all other property used or useful for the storage, diversion, damming, distribution, sale, or furnishing of water supply or storage of water for irrigation purposes or for flood control, or used or useful for flood control, whether such works be operated in conjunction with or separately from electric light and power plants or systems;

(5) Power includes any and all electrical energy and capacity generated, produced, transmitted, distributed, bought, or sold and ethanol produced for purposes of lighting, heating, power, and any and every other useful purpose whatsoever;

(6) Plant or system includes any and all property owned, used, operated, or useful for operation in the district's business, including the generation by means of water power, steam, or other means or in the transmission, distribution, sale, or purchase of electrical energy or ethanol for any and every useful purpose, including any and all irrigation works which may be owned, used, or operated in conjunction with such power plant or system; and

(7) Energy equipment includes, but is not limited to, equipment or facilities used or useful to generate, produce, transmit, or distribute power, heated or chilled water, or steam for use by the district or the district's commercial and industrial customers.

Sec. 13. Section 70-623, Reissue Revised Statutes of Nebraska, is amended to read:

70-623. The fiscal year of the district shall coincide with the calendar year. The board of directors, at the close of each year's business, shall cause an audit of the books, records, and financial affairs of the district to be made by a certified public accountant or firm of such accountants, who shall be selected by the district. The audit shall be conducted in the manner prescribed in section 84-304.01. When the audit has been completed, written copies of the audit shall be placed and kept on file at the principal place of business of the district and shall be filed with the Auditor of Public Accounts and the Nebraska Power Review Board within one hundred ~~twenty~~ eighty days after December 31 of each year.

Sec. 14. If any section in this act or any part of any section is declared invalid or unconstitutional, the declaration shall not affect the validity or constitutionality of the remaining portions.

Sec. 15. Original sections 18-412.06 to 18-412.10, 18-2451, 70-601, and 70-623, Reissue Revised Statutes of Nebraska, are repealed.

Sec. 16. Since an emergency exists, this act takes effect when passed and approved according to law.