

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 824

Introduced by McCollister, 20; Baker, 30; Brasch, 16; Davis, 43; Haar, 21; Kolowski, 31; Lindstrom, 18; Watermeier, 1.

Read first time January 08, 2016

Committee: Natural Resources

1 A BILL FOR AN ACT relating to public power; to amend section 70-670,
2 Reissue Revised Statutes of Nebraska, sections 70-1001.01, 70-1013,
3 70-1014, and 70-1015, Revised Statutes Cumulative Supplement, 2014,
4 and sections 70-1903 and 77-6203, Revised Statutes Supplement, 2015;
5 to provide, change, and eliminate definitions; to exempt certain
6 privately developed renewable energy generation facilities from
7 regulation as prescribed; to eliminate provisions related to
8 certified renewable export facilities; to harmonize provisions; to
9 repeal the original sections; and to outright repeal sections
10 70-1014.02 and 70-1028, Revised Statutes Cumulative Supplement,
11 2014.
12 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 70-670, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 70-670 (1) In addition to any other rights and powers hereinabove
4 conferred upon any district organized under or subject to Chapter 70,
5 article 6, each such district shall have and exercise the power of
6 eminent domain to acquire from any person, firm, association, or private
7 corporation any and all property owned, used, or operated, or useful for
8 operation, in the generation, transmission, or distribution of electrical
9 energy, including an existing electric utility system or any part
10 thereof. The procedure to condemn property shall be exercised in the
11 manner set forth in Chapter 76, article 7.

12 (2) In the case of the acquisition through the exercise of the power
13 of eminent domain of an existing electric utility system or part thereof,
14 the Attorney General shall, upon request of any district, represent such
15 district in the institution and prosecution of condemnation proceedings.
16 After acquisition of an existing electric utility system through the
17 exercise of the power of eminent domain, the district shall reimburse the
18 state for all costs and expenses incurred in the condemnation proceedings
19 by the Attorney General.

20 (3) A district may agree to limit its exercise of the power of
21 eminent domain to acquire a project which is a renewable energy
22 generation facility producing electricity with wind and any related
23 facilities.

24 (4) No power of eminent domain conferred by this section shall apply
25 to any property owned, used, or operated by, or useful for the operation
26 of, or generation, transmission, or distribution of electricity by, a
27 facility approved pursuant to section 70-1014.01, a facility exempt from
28 board approval pursuant to section 3 of this act, or a qualifying
29 facility as determined by the Federal Energy Regulatory Commission
30 pursuant to the federal Public Utility Regulatory Policies Act of 1978,
31 as such act existed on the effective date of this act.

1 Sec. 2. Section 70-1001.01, Revised Statutes Cumulative Supplement,
2 2014, is amended to read:

3 70-1001.01 For purposes of sections 70-1001 to 70-1027 and section 3
4 of this act, unless the context otherwise requires:

5 (1) Board means the Nebraska Power Review Board;

6 ~~(2) Certified renewable export facility means a facility approved~~
7 ~~under section 70-1014.02 that (a) will generate electricity using solar,~~
8 ~~wind, biomass, or landfill gas, (b) will be constructed and owned by an~~
9 ~~entity other than a municipality, a registered group of municipalities, a~~
10 ~~public power district, a public power and irrigation district, an~~
11 ~~electric cooperative, an electric membership association, or any other~~
12 ~~governmental entity, and (c) has a power purchase or similar agreement or~~
13 ~~agreements with an initial term of ten years or more for the sale of at~~
14 ~~least ninety percent of the output of the facility with a customer or~~
15 ~~customers located outside the State of Nebraska and maintains such an~~
16 ~~agreement or agreements for the life of the facility. Output sold~~
17 ~~pursuant to subdivision (2)(a)(iv) of section 70-1014.02 shall not be~~
18 ~~included when calculating such ninety percent. Certified renewable export~~
19 ~~facility includes all generating equipment, easements, and~~
20 ~~interconnection equipment within the facility and connecting the facility~~
21 ~~to the transmission grid;~~

22 ~~(2) Electric~~ (3) Except as expressly provided in section 70-1014.02,
23 electric suppliers or suppliers of electricity means any legal entity
24 supplying, producing, or distributing electricity within the state for
25 sale at wholesale or retail;

26 (3) Private electric supplier means an electric supplier that is not
27 a public power district, a public power and irrigation district, a
28 municipality, a registered group of municipalities, an electric
29 cooperative, an electric membership association, any other governmental
30 entity, or any combination thereof;

31 (4) Privately developed renewable energy generation facility means a

1 facility, including all necessary transmission and ancillary facilities
2 to interconnect the facility to the transmission grid or distribution
3 system, that (a) generates or stores electricity using solar, wind,
4 geothermal, biomass, or biogas, (b) is developed, constructed, and wholly
5 owned by one or more private electric suppliers, and (c) is not owned, in
6 whole or in part, by a public power district, a public power and
7 irrigation district, a municipality, a registered group of
8 municipalities, an electric cooperative, an electric membership
9 association, any other governmental entity, or any combination thereof;

10 (5 4) Regional transmission organization means an entity independent
11 from those entities generating or marketing electricity at wholesale or
12 retail, which has operational control over the electric transmission
13 lines in a designated geographic area in order to reduce constraints in
14 the flow of electricity and ensure that all power suppliers have open
15 access to transmission lines for the transmission of electricity;

16 (6 5) Representative organization means an organization designated
17 by the board and organized for the purpose of providing joint planning
18 and encouraging maximum cooperation and coordination among electric
19 suppliers. Such organization shall represent electric suppliers owning a
20 combined electric generation plant capacity of at least ninety percent of
21 the total electric generation plant capacity constructed and in operation
22 within the state;

23 (7 6) State means the State of Nebraska; and

24 ~~(7) Stranded asset means a generation or transmission facility owned~~
25 ~~by an electric supplier as defined in subsection (1) of section~~
26 ~~70-1014.02 which cannot earn a favorable economic return due to~~
27 ~~regulatory or legislative actions or changes in the market and, at the~~
28 ~~time an application is filed with the board under such section, either~~
29 ~~exists or has been approved by the board or the governing body of an~~
30 ~~electric supplier as defined in such subsection; and~~

31 (8) Unbundled retail rates means the separation of utility bills

1 into the individual price components for which an electric supplier
2 charges its retail customers, including, but not limited to, the separate
3 charges for the generation, transmission, and distribution of
4 electricity.

5 Sec. 3. (1) A privately developed renewable energy generation
6 facility is exempt from the requirements of sections 70-1012 to 70-1027
7 as provided in this section.

8 (2) To qualify for an exemption under this section, a private
9 electric supplier shall:

10 (a) Notify the board in writing of its intent to commence
11 construction of a privately developed renewable energy generation
12 facility no less than thirty days prior to the commencement of
13 construction;

14 (b) Certify that the facility will meet the requirements listed in
15 subdivision (4) of section 70-1001.01 for a privately developed renewable
16 energy generation facility; and

17 (c) Certify that the private electric supplier will comply with any
18 decommissioning requirements adopted by the local governmental entities
19 having jurisdiction over the privately developed renewable energy
20 generation facility and that all costs of decommissioning the privately
21 developed renewable energy generation facility will be borne by one or
22 more private electric suppliers.

23 (3) Within ten days after receipt of a written notice complying with
24 subsection (2) of this section, the executive director of the board shall
25 issue a written acknowledgement that the privately developed renewable
26 energy generation facility is exempt from the requirements of sections
27 70-1012 to 70-1027.

28 (4) The exemption allowed under this section for a privately
29 developed renewable energy generation facility shall extend to and exempt
30 all private electric suppliers owning any interest in the facility,
31 including any successor private electric supplier which subsequently

1 acquires any interest in the facility.

2 (5) No property owned, used, or operated by, or useful for the
3 operation of, a privately developed renewable energy generation facility
4 may be acquired by an electric supplier through eminent domain. Nothing
5 in this section shall be construed to grant the power of eminent domain
6 to a private electric supplier.

7 Sec. 4. Section 70-1013, Revised Statutes Cumulative Supplement,
8 2014, is amended to read:

9 70-1013 Upon application being filed under section 70-1012, the
10 board shall fix a time and place for hearing and shall give ten days'
11 notice by mail to such power suppliers as it deems to be affected by the
12 application. The hearing shall be held within sixty days unless for good
13 cause shown the applicant requests in writing that such hearing not be
14 scheduled until a later time, but in any event such hearing shall be held
15 not more than one hundred twenty days after the filing of the application
16 and the board shall give its decision within sixty days after the
17 conclusion of the hearing. Any parties interested may appear, file
18 objections, and offer evidence. The board may grant the application
19 without notice or hearing, upon the filing of such waivers as it may
20 require, if in its judgment the finding required by section 70-1014 or
21 70-1014.01 ~~or subdivision (2)(a) of section 70-1014.02~~ can be made
22 without a hearing. Such hearing shall be conducted as provided in section
23 70-1006. The board may allow amendments to the application, in the
24 interests of justice.

25 Sec. 5. Section 70-1014, Revised Statutes Cumulative Supplement,
26 2014, is amended to read:

27 70-1014 After hearing, the board shall have authority to approve or
28 deny the application. Except as provided in section 70-1014.01 for
29 special generation applications ~~and except as provided in section~~
30 ~~70-1014.02~~, before approval of an application, the board shall find that
31 the application will serve the public convenience and necessity, and that

1 the applicant can most economically and feasibly supply the electric
2 service resulting from the proposed construction or acquisition, without
3 unnecessary duplication of facilities or operations.

4 If the application involves a transmission line or related
5 facilities planned and approved by a regional transmission organization
6 and the regional transmission organization has issued a notice to
7 construct or similar notice or order to a utility to construct the line
8 or related facilities, the board shall also consider information from the
9 regional transmission organization's planning process and may consider
10 the benefits to the region, which shall include Nebraska, provided by the
11 proposed line or related facilities as part of the board's process in
12 determining whether to approve or deny the application.

13 Sec. 6. Section 70-1015, Revised Statutes Cumulative Supplement,
14 2014, is amended to read:

15 70-1015 ~~(1)~~—If any supplier commences the construction or finalizes
16 or attempts to finalize the acquisition of any generation facilities, any
17 transmission lines, or any related facilities, or any customers are
18 served in violation of the provisions of Chapter 70, article 10, such
19 construction, acquisition, or service of such customers shall be enjoined
20 in an action brought in the name of the State of Nebraska until such
21 supplier has complied with the provisions of Chapter 70, article 10.

22 ~~(2) If any person owning or operating a certified renewable export~~
23 ~~facility violates any provision of Chapter 70, article 10, or violates or~~
24 ~~disobeys any requirement imposed by the board pursuant to the board's~~
25 ~~jurisdiction established in section 70-1014.02 or the board enters an~~
26 ~~order decertifying the facility and the order becomes final, further~~
27 ~~operation of the facility may be enjoined or otherwise limited or have~~
28 ~~conditions put upon it in an action brought in the name of the State of~~
29 ~~Nebraska until such person rectifies the violation or disobedience of the~~
30 ~~order or the facility becomes recertified.~~

31 Sec. 7. Section 70-1903, Revised Statutes Supplement, 2015, is

1 amended to read:

2 70-1903 For purposes of the Rural Community-Based Energy Development
3 Act:

4 (1) C-BED project or community-based energy development project
5 means a new energy generation project using wind, solar, biomass, or
6 landfill gas as the fuel source that:

7 (a) Has at least twenty-five percent of the gross power purchase
8 agreement payments flowing to the qualified owner or owners or as
9 payments to the local community; and

10 (b) Has a resolution of support or zoning approval adopted:

11 (i) By the county board of each county in which the C-BED project is
12 to be located and which has adopted zoning regulations that require
13 planning commission, county board, or county commission approval for the
14 C-BED project; or

15 (ii) By the tribal council for a C-BED project located within the
16 boundaries of an Indian reservation;

17 (2) Electric utility means an electric supplier that:

18 (a) Owns more than one hundred miles of one-hundred-fifteen-kilovolt
19 or larger transmission lines in the State of Nebraska;

20 (b) Owns more than two hundred megawatts of electric generating
21 facilities; and

22 (c) Has the obligation to directly serve more than two hundred
23 megawatts of wholesale or retail electric load in the State of Nebraska;

24 (3) Gross power purchase agreement payments means the total amount
25 of payments during the first twenty years of the agreement;

26 (4) Payments to the local community include, but are not limited to:

27 (a) Lease and easement payments to property owners made as part of a
28 C-BED project;

29 (b) Contract payments for concrete, steel, gravel, towers, turbines,
30 blades, wire, or engineering, procurement, construction, geotechnical,
31 environmental, meteorological, or legal services or payments for other

1 components, equipment, materials, or services that are necessary to
2 permit or construct the C-BED project and that are provided by a company
3 that has been organized or incorporated in Nebraska under Nebraska law
4 and has employed at least five Nebraska residents for at least eighteen
5 months prior to the date of the project application for certification as
6 a C-BED project; and

7 (c) Payments that are for physical parts, materials, or components
8 that are manufactured, assembled, or fabricated in Nebraska and that are
9 not described in subdivision (a) or (b) of this subdivision.

10 Such payments need not be made directly from power purchase
11 agreement revenue and may be made from other funds in advance of
12 receiving power purchase agreement revenue; and

13 (5) Qualified owner means:

14 (a) A Nebraska resident;

15 (b) A limited liability company that is organized under the Nebraska
16 Uniform Limited Liability Company Act and that is made up of members who
17 are Nebraska residents;

18 (c) A Nebraska nonprofit corporation organized under the Nebraska
19 Nonprofit Corporation Act;

20 (d) A public power district, a public power and irrigation district,
21 a municipality, a registered group of municipalities, an electric
22 cooperative, or an electric membership association ~~An electric supplier~~
23 ~~as defined in section 70-1014.02~~, except that qualified ownership in a
24 single C-BED project is limited to no more than:

25 (i) Fifteen percent either directly or indirectly by a single
26 electric supplier; and

27 (ii) A combined total of twenty-five percent either directly or
28 indirectly by multiple electric suppliers;

29 (e) A tribal council;

30 (f) A domestic corporation organized in Nebraska under the Nebraska
31 Model Business Corporation Act and domiciled in Nebraska; or

1 (g) A cooperative corporation organized under sections 21-1301 to
2 21-1306 and domiciled in Nebraska.

3 Sec. 8. Section 77-6203, Revised Statutes Supplement, 2015, is
4 amended to read:

5 77-6203 (1) The owner of a renewable energy generation facility
6 annually shall pay a nameplate capacity tax equal to the total nameplate
7 capacity of the commissioned renewable energy generation facility
8 multiplied by a tax rate of three thousand five hundred eighteen dollars
9 per megawatt.

10 (2) No tax shall be imposed on a renewable energy generation
11 facility:

12 (a) Owned or operated by the federal government, the State of
13 Nebraska, a public power district, a public power and irrigation
14 district, an individual municipality, a registered group of
15 municipalities, an electric membership association, or a cooperative; or

16 (b) That is a customer-generator as defined in section 70-2002.

17 (3) No tax levied pursuant to this section shall be construed to
18 constitute restricted funds as defined in section 13-518 for the first
19 five years after the renewable energy generation facility is
20 commissioned.

21 (4) The presence of one or more renewable energy generation
22 facilities or supporting infrastructure shall not be a factor in the
23 assessment, determination of actual value, or classification under
24 section 77-201 of the real property underlying or adjacent to such
25 facilities or infrastructure.

26 (5)(a) The Department of Revenue shall collect the tax due under
27 this section.

28 (b) The tax shall be imposed beginning the first calendar year the
29 renewable energy generation facility is commissioned. A renewable energy
30 generation facility that uses wind as the fuel source which was
31 commissioned prior to July 15, 2010, shall be subject to the tax levied

1 pursuant to sections 77-6201 to 77-6204 on and after January 1, 2010. The
2 amount of property tax on depreciable tangible personal property
3 previously paid on a renewable energy generation facility that uses wind
4 as the fuel source which was commissioned prior to July 15, 2010, which
5 is greater than the amount that would have been paid pursuant to sections
6 77-6201 to 77-6204 from the date of commissioning until January 1, 2010,
7 shall be credited against any tax due under Chapter 77, and any amount so
8 credited that is unused in any tax year shall be carried over to
9 subsequent tax years until fully utilized.

10 (c)(i) The tax for the first calendar year shall be prorated based
11 upon the number of days remaining in the calendar year after the
12 renewable energy generation facility is commissioned.

13 (ii) In the first year in which a renewable energy generation
14 facility is taxed or in any year in which additional commissioned
15 nameplate capacity is added to a renewable energy generation facility,
16 the taxes on the initial or additional nameplate capacity shall be
17 prorated for the number of days remaining in the calendar year.

18 (iii) When a renewable energy generation facility is decommissioned
19 or made nonoperational by a change in law or ~~decertification from its~~
20 ~~status as a certified renewable export facility~~ during a tax year, the
21 taxes shall be prorated for the number of days during which the renewable
22 energy generation facility was not decommissioned or was operational.

23 (iv) When the capacity of a renewable energy generation facility to
24 produce electricity is reduced but the renewable energy generation
25 facility is not decommissioned, the nameplate capacity of the renewable
26 energy generation facility is deemed to be unchanged.

27 (6)(a) On March 1 of each year, the owner of a renewable energy
28 generation facility shall file with the Department of Revenue a report on
29 the nameplate capacity of the facility for the previous year from January
30 1 through December 31. All taxes shall be due on April 1 and shall be
31 delinquent if not paid on a quarterly basis on April 1 and each quarter

1 thereafter. Delinquent quarterly payments shall draw interest at the rate
2 provided for in section 45-104.02, as such rate may from time to time be
3 adjusted.

4 (b) The owner of a renewable energy generation facility is liable
5 for the taxes under this section with respect to the facility, whether or
6 not the owner of the facility is the owner of the land on which the
7 facility is situated.

8 (7) Failure to file a report required by subsection (6) of this
9 section, filing such report late, failure to pay taxes due, or
10 underpayment of such taxes shall result in a penalty of five percent of
11 the amount due being imposed for each quarter the report is overdue or
12 the payment is delinquent, except that the penalty shall not exceed ten
13 thousand dollars.

14 (8) The Department of Revenue shall enforce the provisions of this
15 section. The department shall adopt and promulgate rules and regulations
16 necessary for the implementation and enforcement of this section.

17 (9) The Department of Revenue shall separately identify the proceeds
18 from the tax imposed by this section and shall pay all such proceeds over
19 to the county treasurer of the county where the renewable energy
20 generation facility is located within thirty days after receipt of such
21 proceeds.

22 Sec. 9. Original section 70-670, Reissue Revised Statutes of
23 Nebraska, sections 70-1001.01, 70-1013, 70-1014, and 70-1015, Revised
24 Statutes Cumulative Supplement, 2014, and sections 70-1903 and 77-6203,
25 Revised Statutes Supplement, 2015, are repealed.

26 Sec. 10. The following sections are outright repealed: Sections
27 70-1014.02 and 70-1028, Revised Statutes Cumulative Supplement, 2014.