

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FIFTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 660**

Introduced by Wayne, 13.

Read first time January 18, 2017

Committee: Natural Resources

- 1 A BILL FOR AN ACT relating to public power; to amend section 70-1014.02,
- 2 Revised Statutes Cumulative Supplement, 2016; to adopt the Nebraska
- 3 Retail Electricity Choice Act; to remove a restriction on the sale
- 4 or delivery of retail electricity by a private electric supplier; to
- 5 harmonize provisions; and to repeal the original section.
- 6 Be it enacted by the people of the State of Nebraska,

1           Section 1. Sections 1 to 5 of this act shall be known and may be  
2 cited as the Nebraska Retail Electricity Choice Act.

3           Sec. 2. The Legislature finds and declares that:

4           (1) Competition and retail choice are fundamental principles of  
5 America's free market economy;

6           (2) Nebraska retail electric customers have no choice in choosing  
7 their electricity service provider;

8           (3) Public power districts in Nebraska have monopolies of service in  
9 their respective service areas;

10           (4) Section 70-1001 states it is the policy of the state to prepare  
11 for an evolving retail electricity market if certain conditions are met  
12 which indicate that retail competition is in the best interests of the  
13 citizens of the state;

14           (5) Section 70-1003 provides review criteria for the Nebraska Power  
15 Review Board concerning conditions which indicate that retail electric  
16 competition would benefit Nebraska's citizens, including, but not limited  
17 to:

18           (a) Whether or not a viable regional transmission organization and  
19 adequate transmission exist in Nebraska or in a region which includes  
20 Nebraska;

21           (b) Whether or not a viable wholesale electricity market exists in a  
22 region which includes Nebraska;

23           (c) To what extent retail rates have been unbundled in Nebraska; and

24           (d) A comparison of Nebraska's wholesale electricity prices to the  
25 prices in the region;

26           (6) The criteria in section 70-1003 for retail competition have been  
27 met, since (a) there is a viable regional transmission organization that  
28 exists in a region which includes Nebraska, (b) there is a viable  
29 wholesale electricity market that exists in a region which includes  
30 Nebraska, (c) retail electric rates have not been unbundled to a  
31 significant extent in Nebraska, and (d) wholesale electric prices of some

1 Nebraska electric suppliers are higher than those of several utilities  
2 which provide service in the region. Despite the fact that these  
3 conditions have been met, the Nebraska Power Review Board has taken no  
4 steps to open up Nebraska's retail electric market to competition;

5 (7) Nebraska's retail electric rates have increased significantly  
6 from 2006 to 2016 and in some instances are higher than rates charged by  
7 comparable utilities in neighboring states;

8 (8) Nebraska retail electric customers should be given the  
9 opportunity to receive the benefits of retail electric competition; and

10 (9) It is appropriate for the Public Service Commission to engage in  
11 a review of electric rates and service in order to regulate a competitive  
12 electric market for the benefit of all Nebraska residents.

13 Sec. 3. The Public Service Commission shall establish criteria for  
14 retail electric competition in Nebraska. In order to establish such  
15 criteria, the commission shall hold a series of public hearings across  
16 the state and gather and review such information as necessary to make a  
17 thorough review of issues related to retail electricity choice,  
18 including, but not limited to, retail electricity choice provisions from  
19 other states. The commission shall adopt and promulgate rules and  
20 regulations necessary to carry out the purposes of the Nebraska Retail  
21 Electricity Choice Act. The commission shall file a report with the  
22 Governor and the Legislature on or before December 15, 2017, regarding  
23 the process of enabling retail electric choice to benefit the Nebraska  
24 residents, including, but not limited to, recommendations for any  
25 additional legislation necessary to carry out the purposes of the  
26 Nebraska Retail Electricity Choice Act.

27 Sec. 4. Beginning July 1, 2018, private electric suppliers shall be  
28 authorized to engage in the sale of electricity at retail for the benefit  
29 of Nebraska retail customers.

30 Sec. 5. Notwithstanding any other provision of law, no electric  
31 supplier as defined in section 70-1001.01 shall have the right to

1 exercise eminent domain over any facilities, real estate, or other  
2 property used for the purpose of providing electricity to retail  
3 customers pursuant to the Nebraska Retail Electricity Choice Act,  
4 including, but not limited to, facilities used for generation,  
5 transmission, or distribution of electricity.

6 Sec. 6. Section 70-1014.02, Revised Statutes Cumulative Supplement,  
7 2016, is amended to read:

8 70-1014.02 (1)(a) A privately developed renewable energy generation  
9 facility that meets the requirements of this section is exempt from  
10 sections 70-1012 to 70-1014.01 if no less than thirty days prior to the  
11 commencement of construction the owner of the facility:

12 (i) Notifies the board in writing of its intent to commence  
13 construction of a privately developed renewable energy generation  
14 facility;

15 (ii) Certifies to the board that the facility will meet the  
16 requirements for a privately developed renewable energy generation  
17 facility;

18 (iii) Certifies to the board that the private electric supplier will  
19 (A) comply with any decommissioning requirements adopted by the local  
20 governmental entities having jurisdiction over the privately developed  
21 renewable energy generation facility and (B) except as otherwise provided  
22 in subdivision (b) of this subsection, submit a decommissioning plan to  
23 the board obligating the private electric supplier to bear all costs of  
24 decommissioning the privately developed renewable energy generation  
25 facility and requiring that the private electric supplier post a security  
26 bond or other instrument, no later than the tenth year following  
27 commercial operation, securing the costs of decommissioning the facility  
28 and provide a copy of the bond or instrument to the board;

29 (iv) Certifies to the board that the private electric supplier has  
30 entered into or prior to commencing construction will enter into a joint  
31 transmission development agreement pursuant to subdivision (c) of this

1 subsection with the electric supplier owning the transmission facilities  
2 of sixty thousand volts or greater to which the privately developed  
3 renewable energy generation facility will interconnect; and

4 (v) Certifies to the board that the private electric supplier has  
5 consulted with the Game and Parks Commission to identify potential  
6 measures to avoid, minimize, and mitigate impacts to species identified  
7 under subsection (1) or (2) of section 37-806 during the project planning  
8 and design phases, if possible, but in no event later than the  
9 commencement of construction.

10 (b) The board may bring an action in the name of the State of  
11 Nebraska for failure to comply with subdivision (a)(iii)(B) of this  
12 subsection. Subdivision (a)(iii)(B) of this subsection does not apply if  
13 a local government entity with the authority to create requirements for  
14 decommissioning has enacted decommissioning requirements for the  
15 applicable jurisdiction.

16 (c) The joint transmission development agreement shall address  
17 construction, ownership, operation, and maintenance of such additions or  
18 upgrades to the transmission facilities as required for the privately  
19 developed renewable energy generation facility. The joint transmission  
20 development agreement shall be negotiated and executed contemporaneously  
21 with the generator interconnection agreement or other directives of the  
22 applicable regional transmission organization with jurisdiction over the  
23 addition or upgrade of transmission, upon terms consistent with prudent  
24 electric utility practices for the interconnection of renewable  
25 generation facilities, the electric supplier's reasonable transmission  
26 interconnection requirements, and applicable transmission design and  
27 construction standards. The electric supplier shall have the right to  
28 purchase and own transmission facilities as set forth in the joint  
29 transmission development agreement. The private electric supplier of the  
30 privately developed renewable energy generation facility shall have the  
31 right to construct any necessary facilities or improvements set forth in

1 the joint transmission development agreement pursuant to the standards  
2 set forth in the agreement at the private electric supplier's cost.

3 (2) Within ten days after receipt of a written notice complying with  
4 subsection (1) of this section, the executive director of the board shall  
5 issue a written acknowledgment that the privately developed renewable  
6 energy generation facility is exempt from sections 70-1012 to 70-1014.01.

7 (3) The exemption allowed under this section for a privately  
8 developed renewable energy generation facility shall extend to and exempt  
9 all private electric suppliers owning any interest in the facility,  
10 including any successor private electric supplier which subsequently  
11 acquires any interest in the facility.

12 (4) No property owned, used, or operated as part of a privately  
13 developed renewable energy generation facility shall be subject to  
14 eminent domain by a consumer-owned electric supplier operating in the  
15 State of Nebraska. Nothing in this section shall be construed to grant  
16 the power of eminent domain to a private electric supplier or limit the  
17 rights of any entity to acquire any public, municipal, or utility right-  
18 of-way across property owned, used, or operated as part of a privately  
19 developed renewable energy generation facility as long as the right-of-  
20 way does not prevent the operation of or access to the privately  
21 developed renewable energy generation facility.

22 (5) Only a consumer-owned electric supplier operating in the State  
23 of Nebraska may exercise eminent domain authority to acquire the land  
24 rights necessary for the construction of transmission lines and related  
25 facilities. The exercise of eminent domain to provide needed transmission  
26 lines and related facilities for a privately developed renewable energy  
27 generation facility is a public use.

28 ~~(6) Nothing in this section shall be construed to authorize a~~  
29 ~~private electric supplier to sell or deliver electricity at retail in~~  
30 ~~Nebraska.~~

31 (6) ~~(7)~~ Nothing in this section shall be construed to limit the

1 authority of or require a consumer-owned electric supplier operating in  
2 the State of Nebraska to enter into a joint agreement with a private  
3 electric supplier to develop, construct, and jointly own a privately  
4 developed renewable energy generation facility.

5       Sec. 7. Original section 70-1014.02, Revised Statutes Cumulative  
6 Supplement, 2016, is repealed.