

LEGISLATIVE BILL 139

Approved by the Governor March 22, 2005

Introduced by Schrock, 38

AN ACT relating to the public power industry; to amend sections 70-301, 70-601.01, 70-604, 70-604.02, 70-626, 70-628.01, 70-628.02, 70-628.03, 70-628.04, 70-631, 70-632, 70-636, 70-637, 70-646.01, 70-655, 70-667, 70-802, 70-1402, 70-1403, 70-1404, 70-1409, 70-1413, 70-1416, and 70-1417, Reissue Revised Statutes of Nebraska, and section 70-601, Revised Statutes Supplement, 2004; to authorize hydrogen production, storage, and distribution for use in fuel processes as prescribed; 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. Section 70-301, Reissue Revised Statutes of Nebraska, is amended to read:

70-301. Any public power district, corporation, or municipality ~~that is now or may hereafter be engaged~~ engages in the generation or transmission, or both, of electric energy for sale to the public for light and power purposes, the production, storage, or distribution of hydrogen for use in fuel processes, or the production or distribution, or both, of ethanol for use as fuel may acquire right-of-way over and upon lands, except railroad right-of-way and depot grounds, for the construction of pole lines or underground lines necessary for the conduct of such business and for the placing of all poles and constructions for the necessary adjuncts thereto, in the same manner as railroad corporations may acquire right-of-way for the construction of railroads. Such district, corporation, or municipality shall give public notice of the proposed location of such pole lines or underground lines with a voltage capacity of thirty-four thousand five hundred volts or more which involves the acquisition of rights or interests in more than ten separately owned tracts by causing to be published a map showing the proposed line route in a legal newspaper of general circulation within the county where such line is to be constructed at least thirty days before negotiating with any person, firm, or corporation to acquire easements or property for such purposes and shall consider all objections which may be filed to such location. After securing approval from the Public Service Commission and having complied with sections 70-305 to 70-310 and 86-701 to 86-707, such public power districts, corporations, and municipalities shall have the right to condemn a right-of-way over and across railroad right-of-way and depot grounds for the purpose of crossing the same. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

Sec. 2. Section 70-601, Revised Statutes Supplement, 2004, 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, hydrogen produced, stored, or distributed, 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, hydrogen, 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; and

(8) Public power industry means public power districts, public power and irrigation districts, municipalities, registered groups of municipalities, electric cooperatives, electric membership associations, joint entities formed under the Interlocal Cooperation Act, joint public agencies formed under the Joint Public Agency Act, agencies formed under the Municipal Cooperative Financing Act, and any other governmental entities providing electric service.

Sec. 3. Section 70-601.01, Reissue Revised Statutes of Nebraska, is amended to read:

70-601.01. (1) The Legislature finds and declares that:

~~(1)~~ (a) Nebraska has been and will continue to be a state which is dependent on a stable, income-producing farm sector;

~~(2)~~ (b) When agriculture fails to produce adequate income for farmers, ranchers, and agricultural business interests within this state, the economic well-being of the state and its citizens will be threatened;

~~(3)~~ (c) There currently exists a chronic grain surplus within the state because of underutilization of grain products, and prices for grain remain unreasonably low because of such surplus and underutilization;

~~(4)~~ (d) Enlargement of the ethanol industry within the state would result in additional utilization of surplus grain;

~~(5)~~ (e) Ethanol will be increasingly in demand in the marketplace because of its efficacy as an octane enhancer and fuel extender;

~~(6)~~ (f) The public power industry within the state is experienced in the production and transmission of electrical power; and

~~(7)~~ (g) The experience of the public power industry could be used in the development of the production and distribution of ethanol and in the enhancement of the economic well-being of this state.

(2) The Legislature further finds:

(a) Hydrogen production and distribution may serve as a viable alternative in the marketplace for use in fuel processes;

(b) The public power industry within the state is experienced in the production and transmission of electrical power; and

(c) The experience of the public power industry could be used in the development of the production, storage, and distribution of hydrogen for use in fuel processes and in the enhancement of the economic well-being of this state.

Sec. 4. Section 70-604, Reissue Revised Statutes of Nebraska, is amended to read:

70-604. The petition shall be addressed to the Nebraska Power Review Board and state in substance that it is the intent and purpose of the petitioners by such petition to create or amend the charter of a district subject to approval by the Nebraska Power Review Board. The petition shall state and contain:

(1) The name of the district, which name shall contain, if the district is to engage or is engaged in the electric light and power business, hydrogen production, storage, or distribution, or ethanol production and distribution, the words public power district. If the district is to engage or is engaged in the business of owning and operating irrigation works, the name shall include the words public irrigation district, except that if electric light and power are the major business of such district, it need not include these words in its name. A district may be organized to engage only in the electric light and power business, the production, storage, or distribution of hydrogen, and the production and distribution of ethanol, only in the business of owning and operating irrigation works, in any business identified in section 70-625, or in all of such businesses;

(2) The names of the municipalities constituting the district and the boundaries of such district;

(3) A general description of the nature of the business which the district intends to engage in and, for the original creation of a district, the location and method of operation of the proposed power plants and systems or irrigation works of the district;

(4) The location of the principal place of business of the district;

(5) A statement that the district shall not have the power to levy taxes nor to issue general obligation bonds;

(6) When the Nebraska Power Review Board finds from the evidence that subdivisions, from which directors are to be elected or appointed, are necessary or desirable, such subdivisions shall be of substantially equal population, except that no district shall be required to redistrict its subdivisions for purposes of equalizing population more frequently than every ten years following publication of the most recent federal decennial census; and

(7) Except in a district having within its boundaries twenty-five or more cities or villages, the names and addresses of the members of the board of directors of the district, not less than five nor more than twenty-one, who shall serve or continue to serve until their successors are elected and qualified. In any district having within its boundaries twenty-five or more cities and villages, (a) the original petition for creation shall set forth the number of directors of the district and shall provide that the board of directors, to serve until their successors are elected and qualified, shall be appointed by the Governor within thirty days after the approval of the formation of the district and (b) a petition to amend a charter shall set forth the names and addresses of the members of the board of directors of the district. In the petition the directors named or to be appointed by the Governor shall be divided as nearly as possible into three equal groups, the members of the first group to hold office until their successors, elected at the first statewide general ~~state~~ election thereafter, shall have qualified, the members of the second group to hold office until their successors, elected at the second statewide general ~~state~~ election thereafter, shall have qualified, and the members of the third group to hold office until their successors, elected at the third statewide general ~~state~~ election thereafter, shall have qualified. The group to which each proposed director belongs shall be designated in the petition or, for an original petition in case the district has within its proposed boundaries twenty-five or more cities and villages, shall be set forth in the order of appointment by the Governor.

Sec. 5. Section 70-604.02, Reissue Revised Statutes of Nebraska, is amended to read:

70-604.02. The operating area of a district, for purposes of establishing its chartered territory, is the geographical area in this state comprising:

(1) The district's retail distribution area, which is that area within which the district delivers electricity by distribution lines directly to those of its customers who consume the electricity; and

(2) The district's wholesale distribution area, which is the aggregate of those retail distribution areas of the public electric utilities which purchase electricity either directly or indirectly from the district for resale to their retail customers if the selling district has the responsibility, in whole or in part, of charging for and delivery of the electricity by transmission lines to the retail public electric utility distribution lines at one or more points of delivery pursuant to a power contract to deliver firm power and energy and having an original term of five years or more. To the extent that a selling district leases its plant or systems to another district to be operated by such other district, or produces electricity, hydrogen, or ethanol which other districts may purchase, and such other districts provide or operate the transmission lines to carry such electricity from the producer to such other districts, the retail and wholesale distribution areas of such other districts are not a part of the operating area of the selling district by reason alone of such leasing or production.

Sec. 6. Section 70-626, Reissue Revised Statutes of Nebraska, is amended to read:

70-626. Subject to the limitations of the petition for its creation and all amendments thereto, a district may own, construct, reconstruct, purchase, lease, or otherwise acquire, improve, extend, manage, use, or operate any electric light and power plants, lines, and systems, any hydrogen production, storage, or distribution systems, or any ethanol production or distribution systems, either within or beyond, or partly within and partly beyond, the boundaries of the district and may engage in or transact business or enter into any kind of contract or arrangement with any person, firm, corporation, state, county, city, village, governmental subdivision, or

agency, with the government of the United States, the Rural Electrification Administration or its successor, the Public Works Administration or its successor, or any officer, department, bureau, or agency thereof, with any corporation organized by federal law, including the Reconstruction Finance Corporation, ~~or any successor thereof or its successor~~, or with any body politic or corporate for any of the purposes ~~above~~ mentioned in this section, for or incident to the exercise of any one or more of the ~~foregoing~~ powers described in this section, or for the generation, distribution, transmission, sale, or purchase of electrical energy, hydrogen, or ethanol for lighting, power, heating, and any and every other useful purpose whatsoever, and for any and every service involving, employing, or in any manner pertaining to the use of electrical energy, by whatever means generated or distributed, or for the financing or payment of the cost and expense incident to the acquisition or operation of any such power plant or system, hydrogen production, storage, or distribution system, or ethanol production or distribution system, or incident to any obligation or indebtedness entered into or incurred by the district. In the case of the acquisition by purchase, lease, or any other contractual obligation of an existing electric light and power plant, lines, or system, hydrogen production, storage, or distribution system, or ethanol production or distribution system from any person, firm, association, or private corporation by any such district, a copy of the proposed contract shall be filed with the Nebraska Power Review Board and open to public inspection and examination for a period of thirty days before such proposed contract may be signed, executed, or delivered, and such proposed contract shall not be valid for any purpose and no rights may arise ~~thereunder~~ under such contract until after such period of thirty days has expired.

Sec. 7. Section 70-628.01, Reissue Revised Statutes of Nebraska, is amended to read:

70-628.01. (1) Such district shall have and may exercise any one or more of the powers, rights, privileges, and franchises mentioned in sections 70-625 to 70-628, either alone or jointly with one or more other districts. In any joint exercise of powers, rights, privileges, and franchises with respect to the construction, operation, and maintenance of electric generation or transmission facilities, hydrogen production, storage, or distribution facilities, or ethanol production or distribution facilities, each district shall own an undivided interest in each such facility and be entitled to the share of the output or capacity therefrom attributable to its undivided interest. Each district may enter into an agreement or agreements with respect to any electric generation or transmission facility, hydrogen production, storage, or distribution facility, or ethanol production or distribution facility with the other district or districts, ~~participating therein~~, and such agreement shall contain such terms, conditions, and provisions consistent with this section as the board of directors of the district shall deem to be in the interests of the district.

(2) The agreement may include, but not be limited to, (a) provisions for the construction, operation, and maintenance of an electric generation or transmission facility, a hydrogen production, storage, or distribution facility, or an ethanol production or distribution facility by any one of the participating districts, which shall be designated in or pursuant to such agreement as agent, on behalf of itself and the other participating districts or by such other means as may be determined by the participating districts and (b) provisions for a uniform method of determining and allocating among participating districts the costs of construction, operation, maintenance, renewals, replacements, and improvements with respect to such facility. In carrying out its functions and activities as the agent with respect to construction, operation, and maintenance of a facility, 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 participating districts.

(3) Notwithstanding the provisions of any other law to the contrary, pursuant to the terms of the agreement any participating district or districts may delegate its powers and duties with respect to the construction, operation, and maintenance of a facility to the participating district acting as agent, and all actions taken by such agent in accordance with the provisions of the agreement shall be binding upon each of such participating districts without further action or approval by their respective boards of directors. The district acting as the agent shall be required to exercise all such powers and perform its duties and functions under the agreement in a manner consistent with prudent utility practice. For purposes of 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 in this section be deemed to authorize any district to become liable for and to pay for any costs, expenses, or liabilities attributable to the undivided interest of any other district participating in such electric generation or transmission facility. Any district that is interested by ownership, lease, or otherwise in the operation of electric power plants, distribution systems, or transmission lines, hydrogen production, storage, or distribution facilities, or ethanol production or distribution facilities, either alone or in association with another district or districts, may sell, lease, combine, merge, or consolidate all or a part of its property with the property of any other district or districts with the approval of a majority of the board of directors of each district involved in the sale, lease, combination, merger, or consolidation.

Sec. 8. Section 70-628.02, Reissue Revised Statutes of Nebraska, is amended to read:

70-628.02. ~~It is hereby declared to be~~ The Legislature declares that it is in the public interest of the State of Nebraska that public power districts and public power and irrigation districts be empowered to participate jointly or in cooperation with municipalities 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, for the production, storage, and distribution of hydrogen located within this state, or for the production and distribution of ethanol located within this state in order to achieve economies and efficiencies in meeting the future 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 such districts, each such district shall have and may exercise its power and authority to plan, finance, acquire, construct, own, operate, maintain, and improve electric generation or transmission facilities located within or outside this state, hydrogen production, storage, or distribution facilities located within this state, or ethanol production or distribution facilities within this state jointly and in cooperation with one or more other such districts, cities, or villages of this state which own or operate electrical facilities or municipal corporations or other governmental entities of other states which own or operate electrical facilities. The powers granted under this section may be exercised with respect to any electric generation or transmission facility, hydrogen production, storage, or distribution facility, or ethanol production or distribution 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. 9. Section 70-628.03, Reissue Revised Statutes of Nebraska, is amended to read:

70-628.03. ~~It is hereby declared to be~~ The Legislature declares that it is in the public interest of the State of Nebraska that public power districts and public power and irrigation districts be empowered to participate 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 in the establishment and operation of facilities for the generation or transmission of electric power and energy located within or outside this state, for the production, storage, and distribution of hydrogen located within this state, or for the production and distribution of ethanol located within this state in order to achieve economies and efficiencies in meeting the future 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 districts, each such district shall have and may exercise its power and authority to plan, finance, acquire, construct, own, operate, maintain, and improve electric generation or transmission facilities, hydrogen production, storage, or distribution facilities, or ethanol production or distribution 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 district shall have and may exercise such power and authority with respect to electric generation or transmission facilities located outside of 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 power granted under this section may be exercised with respect to any electric generation or transmission facilities, hydrogen production, storage, or distribution facilities, or ethanol production or distribution facilities 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. 10. Section 70-628.04, Reissue Revised Statutes of Nebraska, is amended to read:

70-628.04. Any public power district or public power and irrigation district participating jointly and in cooperation with others in an electric generation or transmission facility, a hydrogen production, storage, or distribution facility, or an ethanol production or distribution facility shall own an undivided interest in such facility and be entitled to the share of the output or capacity from the facility attributable to such undivided interest. Such district may enter into an agreement or agreements with respect to each such electric generation or transmission facility, hydrogen production, storage, or distribution facility, or ethanol production or distribution facility with the other participants, ~~therein~~, and any such agreement shall contain such terms, conditions, and provisions consistent with the provisions of sections 13-803, 13-805, 13-2504, 13-2505, 70-628.02 to 70-628.04, and 70-1002.03 as the board of directors of such district shall deem to be in the interests of such district. The agreement may include, but not be limited to, provision for the construction, operation, and maintenance of such electric generation or transmission facility, hydrogen production, storage, or distribution facility, or ethanol production or distribution 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, and improvements with respect to such facility. In carrying out its functions and activities as such agent with respect to construction, operation, and maintenance 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 of such a facility, each of the participants may delegate its powers and duties with respect to the construction, operation, and maintenance 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 the agreement in a manner consistent with prudent utility practice. For purposes of this section, prudent utility practice means 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, hydrogen production industry, or ethanol production 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 in sections 13-803, 13-805, 13-2504, 13-2505, 70-628.02 to 70-628.04, and 70-1002.03 be deemed to authorize any district to become liable for and to pay for any costs, expenses, or liabilities attributable to the undivided interest of any other participant in such electric generation or transmission facility, and no funds of such district may be used for any such purpose.

Sec. 11. Section 70-631, Reissue Revised Statutes of Nebraska, is amended to read:

70-631. Any district organized under or subject to Chapter 70, article 6, shall have the power to borrow money and incur indebtedness for any corporate use or purpose upon such terms and in such manner as such district shall determine. Any and every indebtedness, liability, or obligation of such district for the payment of money, in whatever manner entered into or incurred, and whether arising from contract, implied contract, or otherwise, shall be payable solely (1) from revenue, income, receipts, and profits derived by the district from its operation and management of power plants, systems, irrigation works, hydrogen producing systems, ethanol producing systems, and from the exercise of its rights and powers with respect to utilization of radioactive material or the energy therefrom or (2) from the issuance or sale by the district of its warrants, notes, debentures, bonds, or other evidences of indebtedness, payable solely from such revenue, income, receipts, and profits, or from the proceeds and avails of the sale of property

of the district. Any such district may pledge and put up as collateral security for a loan any revenue debentures, notes, warrants, bonds, or other evidences of indebtedness, issued by it. Any district may arrange for, or put up as security for notes or other evidences of indebtedness of such district, the credit of any bank or other financial institution which has been approved by the directors of such district.

Sec. 12. Section 70-632, Reissue Revised Statutes of Nebraska, is amended to read:

70-632. Any district issuing revenue debentures, notes, warrants, bonds, or other evidences of indebtedness is hereby specifically authorized and empowered to pledge all or any part of the revenue which the district may derive from the sale of electrical energy, hydrogen produced for use in fuel processes, ethanol produced for fuel, storage of water, water for irrigation, radioactive material or the energy therefrom, or other service as security for the payment of the principal and interest thereon. Any such pledge of revenue shall be made by the directors of the district by resolution or by agreement with the purchasers or holders of such revenue debentures, notes, warrants, bonds, or other evidences of indebtedness.

Sec. 13. Section 70-636, Reissue Revised Statutes of Nebraska, is amended to read:

70-636. The directors of any district organized under or subject to Chapter 70, article 6, are authorized to agree with the holders of any such revenue debentures, notes, warrants, bonds, or other evidences of indebtedness as to the maximum or minimum amounts which such district shall charge and collect for water, electric energy, radioactive material or the energy therefrom, hydrogen, ethanol, or other service sold by the district.

Sec. 14. Section 70-637, Reissue Revised Statutes of Nebraska, is amended to read:

70-637. Before any district enters into any contract for the construction, reconstruction, remodeling, building, alteration, maintenance, repair, extension, or improvement of any power plant or system, any hydrogen production, storage, or distribution system, any ethanol ~~producing or distributing~~ production or distribution system, any irrigation works, or any part or section thereof for the use of the district or for the purchase of any materials, machinery, or apparatus to be used in such construction, reconstruction, remodeling, building, alteration, maintenance, repair, extension, or improvement, such district shall cause estimates of the cost thereof to be made by some competent engineer or engineers. If such estimated cost exceeds the sum of one hundred thousand dollars, no such contract shall be entered into without advertising for sealed bids, except that (1) the board may negotiate directly with sheltered workshops pursuant to section 48-1503 and (2) with respect to contracts entered into by a district in the exercise of its rights and powers relating to radioactive material or the energy therefrom, to any technologically complex or unique equipment contracts, or to any maintenance or repair contracts, if the engineer or engineers certify that by reason of the nature of the subject matter of the contract compliance with this section would be impractical and not in the public interest and the engineer's certification is approved by a two-thirds vote of the board, the provisions of sections 70-637 to 70-639 relating to sealed bids shall not apply and the district shall advertise notice of its intention to enter into such contract, the general nature of the proposed work, and the name of the person to be contacted for additional information by anyone interested in contracting for such work. Any contract for which the board has approved such engineer's certificate shall be advertised in three issues not less than seven days between issues in one or more newspapers of general circulation in the district and in such additional newspapers or trade or technical periodicals as may be selected by the board in order to give proper notice of its intention to enter into such contract, and any such contract shall not be entered into prior to twenty days after the last advertisement. With respect to contracts in excess of one hundred thousand dollars entered into for the purchase of any materials, machinery, or apparatus to be used in the construction, reconstruction, remodeling, building, alteration, maintenance, repair, extension, or improvement of any power plant or system, any hydrogen production, storage, or distribution system, any ethanol ~~producing or distributing~~ production or distribution system, any irrigation works, or any part or section thereof when the contract does not include onsite labor for the installation thereof, if, after advertising for sealed bids, no responsive bids are received or if the board of directors of such district determines that all bids received are in excess of the fair market value of the subject matter of such bids, sections 70-637 to 70-639 shall not apply.

Notwithstanding any other provision of sections 70-637 to 70-639, a district may, without advertising or sealed bidding, purchase replacement

parts or services relating to such replacement parts for any generating unit, transformer, or other transmission and distribution equipment from the original manufacturer of such equipment upon certification by an engineer or engineers that such manufacturer is the only available source of supply for such replacement parts or services and that such purchase is in compliance with standards established by the board. A written statement containing such certification and a description of the resulting purchase of replacement parts or services from the original manufacturer shall be submitted to the board by the engineer or engineers certifying the purchase for the board's approval. After such certification, but not necessarily before the board review, notice of any such purchase shall be published once a week for at least three consecutive weeks in one or more newspapers of general circulation in the district and published in such additional newspapers or trade or technical periodicals as may be selected by the board in order to give proper notice of such purchase. Notwithstanding any other provision of sections 70-637 to 70-639, a district may purchase used equipment and materials on a negotiated basis without advertising or sealed bidding upon certification by an engineer that such equipment is or such materials are in compliance with standards established by the board. A written statement containing such certification shall be submitted to the board by the engineer for the board's approval.

Sec. 15. Section 70-646.01, Reissue Revised Statutes of Nebraska, is amended to read:

70-646.01. Except as provided in sections 18-412.07 to 18-412.09, 70-628.02 to 70-628.04, or 70-644 to 70-653.02, the plant, property, or equipment of a public power district shall never, by sale under foreclosure, receivership, bankruptcy proceedings, outright sale, or lease, become the property or come under the control of any private person, firm, or corporation engaged in the business of generating, transmitting, or distributing electricity for profit. This restriction does not apply to: (1) The exercise by a district of its rights and powers with respect to radioactive material or the energy therefrom; (2) the sales of ethanol production or distribution facilities; (3) the sales of hydrogen production, storage, or distribution facilities; (4) joint participation in any electric generation or transmission facility pursuant to sections 18-412.07 to 18-412.09 and 70-628.02 to 70-628.04; or ~~(4)~~ (5) a nonprofit cooperative corporation that has provided financing for property, projects, or undertakings when such property is covered by a mortgage, pledge of revenue, or other hypothecation to secure the payment of a loan or loans made to a district. This restriction does not apply to a sale, transfer, or lease of property to a nonprofit electric cooperative corporation engaged in the retail distribution of electric energy in established service areas, which cooperative corporation is organized under the laws of the State of Nebraska or domesticated in the State of Nebraska, except that such property so acquired by a cooperative nonprofit corporation organized to provide financing or by a nonprofit electric cooperative corporation shall never become the property or come under the control of any person, firm, or corporation engaged in the business of generating, transmitting, or distributing electricity for profit. This section shall not be construed as an expansion of the authority of public power districts to engage in telecommunications services as may otherwise be authorized by statute.

Sec. 16. Section 70-655, Reissue Revised Statutes of Nebraska, is amended to read:

70-655. (1) Except as otherwise provided in this section, the board of directors of any district organized under or subject to Chapter 70, article 6, shall have the power and be required to fix, establish, and collect adequate rates, tolls, rents, and other charges for electrical energy, water service, water storage, and for any and all other commodities, including ethanol and hydrogen, services, or facilities sold, furnished, or supplied by the district, which rates, tolls, rents, and charges shall be fair, reasonable, nondiscriminatory, and so adjusted as in a fair and equitable manner to confer upon and distribute among the users and consumers of commodities and services furnished or sold by the district the benefits of a successful and profitable operation and conduct of the business of the district.

(2) The board of directors may negotiate, fix, establish, and collect rates, tolls, rents, and other charges for users and consumers of electrical energy and associated services or facilities different from those of other users and consumers. Any negotiated rates, tolls, rents, and other charges for a commercial or industrial customer shall be effective for no more than five years and in no case shall such rates, tolls, rents, and charges be less than the cost of supplying such services if (a) such customer has entered an agreement with the state or any political subdivision to provide an

economic development project pursuant to state or local law and (b) such economic development project has projected new or additional electrical load requirements greater than five hundred kilowatts and a minimum annual load demand factor of sixty percent during the applicable billing period. Any negotiated contract or agreement entered into pursuant to this section shall contain a provision stating that any general retail rate increase approved by the board of directors shall include the parties to a contract or agreement for a discounted rate. This subsection shall also apply to any nonprofit corporation organized for the purpose of furnishing electric service pursuant to the Electric Cooperative Corporation Act or the Nebraska Nonprofit Corporation Act.

(3) In order to facilitate the merger and consolidation of districts, the board of directors of a merged or consolidated district may negotiate, fix, establish, and collect rates, tolls, rents, and other charges for consumers in the service area of one or more of the predecessor districts which are different than rates, tolls, rents, and other charges for consumers in the remaining service area of the merged or consolidated district. Any different rates, tolls, rents, and other charges pursuant to this subsection shall be effective for no more than five years after the date of merger or consolidation and shall be based on cost of service or other rate studies showing that adoption of dissimilar rates for consumers in otherwise similar rate classes is needed to effectuate the merger or consolidation. This subsection shall also apply in the event of a merger or consolidation of any nonprofit corporation organized for the purpose of furnishing electric service pursuant to the Electric Cooperative Corporation Act or the Nebraska Nonprofit Corporation Act.

Sec. 17. Section 70-667, Reissue Revised Statutes of Nebraska, is amended to read:

70-667. All power plants and systems, all hydrogen production, storage, or distribution systems, all ethanol production or distribution systems, and all irrigation works constructed, acquired, used, or operated by any district organized under or subject to Chapter 70, article 6, or proposed by such district to be so constructed, acquired, owned, used, or operated are hereby declared to be works of internal improvement. All laws applicable to works of internal improvement and all provisions of law applicable to electric light and power corporations, irrigation districts, or privately owned irrigation corporations, the use and occupation of state and other public lands and highways, the appropriation, acquisition, or use of water, water power, water rights, or water diversion or storage rights, for any of the purposes contemplated in such statutory provisions, the manner or method of construction and physical operation of power plants, systems, transmission lines, and irrigation works, as herein contemplated, shall be applicable, as nearly as may be, to all districts organized under or subject to Chapter 70, article 6, and in the performance of the duties conferred or imposed upon them under such statutory provisions. Such laws, provisions of law, or statutory provisions are hereby made applicable to all irrigation works and facilities operated by irrigation divisions of public power and irrigation districts organized under Chapter 70, article 6, and shall include, but not be limited to, the right of such district to exercise the powers conferred upon districts by Chapters 31 and 46, relating to operation, maintenance, rehabilitation, construction, reconstruction, repairs, extension, recharge for ground water, and surface and subsurface drainage projects and the assessment of the cost thereof to the lands benefited thereby. The right to exercise the power of eminent domain is conferred, except that this power may not be exercised for the purpose of condemning property for use by a privately operated ethanol production or distribution facility or a privately operated hydrogen production, storage, or distribution facility. The procedure to condemn property shall be exercised in the manner set forth in Chapter 76, article 7.

Sec. 18. Section 70-802, Reissue Revised Statutes of Nebraska, is amended to read:

70-802. As used in Chapter 70, article 8, unless the context otherwise requires:

- (1) Board ~~shall mean~~ means the Nebraska Power Review Board;
- (2) The terms public power district and district as used in Chapter 70, article 8, ~~shall~~ each mean the same and also have the same meaning as the term public power district as applied to public corporations created under Chapter 70, article 6, and amendments thereof;
- (3) Petitioner ~~shall mean~~ means the corporation or association which presents a petition to the Nebraska Power Review Board for the creation of a public power district pursuant to Chapter 70, article 8;
- (4) Electric utility ~~shall mean~~ means the business of conducting or carrying on, in service to the public, any one or more of the functions or

operations of generation, transmission, distribution, sale, and purchase of electrical energy, hydrogen, or ethanol for purposes of lighting, power, heating, and any and every other useful purpose whatsoever, and any and all plants, lines, systems, and any and all other property owned, used, operated, or useful for such operation;

(5) Electric cooperative corporation ~~shall mean~~ means a corporation organized under Chapter 70, article 7; and

(6) Rural area ~~shall mean~~ means any area not included within the boundaries of any incorporated city or village.

Sec. 19. Section 70-1402, Reissue Revised Statutes of Nebraska, is amended to read:

70-1402. As used in the Joint Public Power Authority Act, unless the context otherwise requires:

(1) Agency shall mean any public body, authority, or commission which is engaged in the generation, transmission, or distribution of electric power and energy and which issues indebtedness;

(2) Bonds shall mean electric revenue bonds, notes, warrants, certificates, or other obligations of indebtedness of a joint authority issued under the Joint Public Power Authority Act and shall include refunding bonds and notes issued pending permanent revenue bond financing;

(3) Cost or cost of a project shall mean, but shall not be limited to, the cost of acquisition, construction, reconstruction, improvement, enlargement, or extension of any project, including the cost of studies, plans, specifications, surveys, and estimates of related costs and revenue; the cost of land, land rights, rights-of-way, easements, water rights, fees, permits, approvals, licenses, certificates, franchises, and the preparation of applications for and securing the same; administrative, legal, engineering, and inspection expenses; financing fees, expenses, and costs; working capital; initial fuel costs; interest on the bonds during the period of construction and for such reasonable period thereafter as may be determined by the joint authority; establishment of reserves; and all other expenditures of the joint authority incidental, necessary, or convenient to the acquisition, construction, reconstruction, improvement, enlargement, or extension of any project and the placing of such project in operation;

(4) Governing body shall mean the board of directors of a public power district;

(5) Joint authority shall mean a public body and body corporate and politic organized in accordance with the Joint Public Power Authority Act;

(6) Public power district shall mean a public power district organized under or subject to Chapter 70, article 6; and

(7) Project shall mean any system or facilities for the generation, transmission, and transformation, or any combination thereof, of electric power and energy by any means whatsoever including, but not limited to, any one or more electric generating units situated at a particular site or any interest in any of the foregoing or any right to the output, capacity, use, or services of such units, any system or facilities for the production, storage, or distribution of hydrogen, or any system or facilities for the production or distribution of ethanol.

Sec. 20. Section 70-1403, Reissue Revised Statutes of Nebraska, is amended to read:

70-1403. The Legislature hereby finds and determines that:

(1) Certain public power districts in this state which are empowered severally to engage in the generation, transmission, and distribution of electric power and energy have for many years owned and operated systems for the distribution of electric power and energy to customers in their respective service areas, have the resources and ability to facilitate the development of a hydrogen production and distribution industry, and have the resources and ability to facilitate the development of an ethanol production and distribution industry;

(2) Such public power districts owning electric distribution systems have an obligation to provide the inhabitants and customers of the district an adequate, reliable, and economical source of electric power and energy in the future;

(3) In order to enhance the economy within the state, to achieve the economies and efficiencies made possible by the proper planning, financing, and location of facilities for the generation and transmission of electric power and energy, the production, storage, and distribution of hydrogen, and the production and distribution of ethanol which are not practical for any public power district acting alone, and to ensure an adequate, reliable, and economical supply of electric power and energy, hydrogen, and ethanol to the people of this state, it is desirable for the state to authorize public power districts to jointly plan, finance, develop, own, and operate electric

generation and transmission facilities, hydrogen production, storage, or distribution facilities, and ethanol production and distribution facilities appropriate to their needs in order to provide for their present and future power requirements for all uses without supplanting or displacing the service at retail of other electric suppliers operating in this state;

(4) In order for public power districts of this state to secure long-term, supplemental, short-term, and interim financing for both capital projects and operational purposes, it is also desirable to authorize public power districts to join together to create joint authorities which can issue revenue bonds and other obligations and make loans to its member public power districts at less cost than if the individual public power district secured its own financing; and

(5) The creation of joint authorities by public power districts which own electric distribution systems, hydrogen production, storage, or distribution facilities, and ethanol production and distribution facilities for the joint planning, financing, development, ownership, and operation of electric generation and transmission facilities, hydrogen production, storage, or distribution facilities, and ethanol production and distribution facilities and the issuance of revenue bonds by such joint authorities for such purposes as provided by the Joint Public Power Authority Act is for a public use and for public purposes and is a means of achieving economies, adequacy, and reliability in the generation or transmission of electric power and energy and in the meeting of future needs of this state and its inhabitants.

Sec. 21. Section 70-1404, Reissue Revised Statutes of Nebraska, is amended to read:

70-1404. (1) A public power district may plan, finance, develop, acquire, purchase, construct, reconstruct, improve, enlarge, own, operate, and maintain an undivided interest as a tenant in common in a project situated within or without the state jointly with one or more public power districts in this state owning electric distribution facilities, hydrogen production, storage, or distribution facilities, or ethanol production or distribution facilities or with any political subdivision or agency of this state or of any other state and may make such plans and enter into such contracts not inconsistent with the Joint Public Power Authority Act as are necessary or appropriate, except that membership of public power districts in a joint authority shall consist only of public power districts located within this state.

(2) Nothing in the Joint Public Power Authority Act shall prevent public power districts from undertaking studies to determine whether there is a need for a project or whether such project is feasible.

Sec. 22. Section 70-1409, Reissue Revised Statutes of Nebraska, is amended to read:

70-1409. Each joint authority shall have all the rights and powers necessary or convenient to carry out and effectuate the purposes and provisions of the Joint Public Power Authority Act including, but not limited to, the right and power:

(1) To adopt bylaws for the regulation of the affairs and the conduct of its business and to prescribe rules, regulations, and policies in connection with the performance of its functions and duties;

(2) To adopt an official seal and alter the same at pleasure;

(3) To maintain an office at such place or places as it may determine;

(4) To sue and be sued in its own name and to plead and be impleaded;

(5) To receive, administer, and comply with the conditions and requirements respecting any gift, grant, or donation of any property or money;

(6) To acquire by purchase, lease, gift, or otherwise, or to obtain options for the acquisition of, any property, real or personal, improved or unimproved, including an interest in land less than an interest in fee;

(7) To sell, lease, exchange, transfer, or otherwise dispose of, or to grant options for any such purposes with respect to, any real or personal property or interest in such property;

(8) To pledge or assign any money, rents, charges, or other revenue and any proceeds derived by the joint authority from the sales of property, insurance, or condemnation awards;

(9) To issue bonds of the joint authority for the purpose of providing funds for any of its corporate purposes;

(10) To authorize the construction, operation, or maintenance of any project or projects by any person, firm, or corporation, including political subdivisions and agencies of any state or of the United States;

(11) To acquire by negotiated purchase or lease an existing project, a project under construction, or other property, either individually or

jointly, with one or more public power districts in this state or with any political subdivisions or agencies of this state or any other state or with other joint authorities created pursuant to the Joint Public Power Authority Act;

(12) To dispose of by negotiated sale or lease an existing project, a project under construction, or other property, either individually or jointly, with one or more public power districts in this state, with any political subdivisions or agencies of this state or any other state or, with other joint authorities created pursuant to the Joint Public Power Authority Act, except that no such sale or lease of any project located in this state shall be made to any private person, firm, or corporation engaged in the business of generating, transmitting, or distributing electricity for profit;

(13) To fix, charge, and collect rents, rates, fees, and charges for electric power or energy, hydrogen, or ethanol and other services, facilities, and commodities sold, furnished, or supplied through any project;

(14) To generate, produce, transmit, deliver, exchange, purchase, or sell for resale only electric power or energy, to produce, store, deliver, or distribute hydrogen for use in fuel processes, or to produce, deliver, or distribute ethanol and to enter into contracts for any or all such purposes, subject to sections 70-1410 and 70-1413;

(15) To negotiate and enter into contracts for the purchase, exchange, interchange, wheeling, pooling, or transmission of electric power and energy with any public power district, any other joint authority, any political subdivision or agency of this state or any other state, any electric cooperative, or any municipal agency which owns electric generation, transmission, or distribution facilities in this state or any other state;

(16) To negotiate and enter into contracts for the sale or use of electric power and energy, hydrogen, or ethanol with any joint authority, electric cooperative, any political subdivision or agency or any public or private electric utility of this state or any other state, any joint agency, electric cooperative, municipality, public or private electric utility, or any state or federal agency or political subdivision, subject to sections 70-1410 and 70-1413;

(17) To make and execute contracts and other instruments necessary or convenient in the exercise of the powers and functions of the joint authority under the Joint Public Power Authority Act, including contracts with persons, firms, corporations, and others;

(18) To apply to the appropriate agencies of the state, the United States, or any other state and to any other proper agency for such permits, licenses, certificates, or approvals as may be necessary to construct, maintain, and operate projects in accordance with such licenses, permits, certificates, or approvals, and to obtain, hold, and use the same rights granted in any licenses, permits, certificates, or approvals as any other person or operating unit would have under such documents;

(19) To employ engineers, architects, attorneys, appraisers, financial advisors, and such other consultants and employees as may be required in the judgment of the joint authority and to fix and pay their compensation from funds available to the joint authority. The joint authority may employ technical experts and such other officers, agents, and employees as it may require and shall assess their qualifications, duties, compensation, and term of office. The board may delegate to one or more of the joint authority's employees or agents such powers and duties as the board may deem proper;

(20) To make loans or advances for long-term, supplemental, short-term, and interim financing for both capital projects and operational purposes to those member districts on such terms and conditions as the board of directors of the joint authority may deem necessary and to secure such loans or advances by assignment of revenue, receivables, or other sums of the member district and such other security as the board of directors of the joint authority may determine; and

(21) To sell or lease its dark fiber pursuant to sections 86-574 to 86-578.

Any joint authority shall have the same power of eminent domain as the public power districts have under section 70-670.

Sec. 23. Section 70-1413, Reissue Revised Statutes of Nebraska, is amended to read:

70-1413. Excess capacity or output of a project not then required by any of the members of a joint authority shall be first offered for sale or exchange pursuant to section 70-626.01. Any sale of available capacity and energy from the joint authority's project shall only be for the period required for the joint authority to fully utilize the amount of capacity and energy originally purchased in the project. The limitations provided in this

section shall not apply to the temporary sale of excess capacity and energy without the state in cases of emergency or when required to fulfill obligations under any pooling or reserve-sharing agreements, except that sales of excess capacity or output of a project to electric cooperatives, electric or public utilities, and other persons, the interest on whose securities and other obligations is not exempt from taxation by the federal government, shall not be made in such amounts, for such periods of time, and under such terms and conditions as will cause the interest on bonds issued to finance the cost of a project to become taxable by the federal government. This section shall not apply to sales of ethanol or hydrogen.

Sec. 24. Section 70-1416, Reissue Revised Statutes of Nebraska, is amended to read:

70-1416. In the discretion of the board of directors of the joint authority, any bonds issued under the Joint Public Power Authority Act may be secured by a trust agreement by and between the joint authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the state. Such trust agreement or the resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders and of the trustee as may be reasonable and proper and not in violation of law and may restrict the individual right of action by bondholders. The trust agreement or the resolution providing for the issuance of such bonds may contain covenants including, but not limited to, the following:

(1) The pledge of all or any part of the revenue derived or to be derived from the project or projects to be financed by the bonds or from the electric system or facilities, hydrogen production, storage, or distribution facilities, or ethanol production or distribution facilities of a joint authority;

(2) The rents, rates, fees, and charges to be established, maintained, and collected and the use and disposal of revenue, gifts, grants, and funds received or to be received by the joint authority;

(3) The setting aside of reserves and the investment, regulation, and disposition of such reserves;

(4) The custody, collection, securing, investment, and payment of any money held for the payment of bonds;

(5) Limitations or restrictions on the purposes to which the proceeds of sale of bonds to be issued may be applied;

(6) Limitations or restrictions on the issuance of additional bonds, the terms upon which additional bonds may be issued and secured, or the refunding of outstanding or other bonds;

(7) The procedure, if any, by which the terms of any contract with bondholders may be amended, the percentage of bonds the holders of which must consent to, and the manner in which such consent may be given;

(8) Events of default and the rights and liabilities arising from such default, the terms and conditions upon which bonds issued under the Joint Public Power Authority Act shall become or may be declared due before maturity, and the terms and conditions upon which such declaration and its consequences may be waived;

(9) The preparation and maintenance of a budget;

(10) The retention or employment of consulting engineers, independent auditors, and other technical consultants;

(11) Limitations on or the prohibition of free service to any person, firm, or corporation, public or private;

(12) The acquisition and disposal of property, except that no project or part of such project shall be mortgaged by such trust agreement or resolution, except that the same may be mortgaged in the same manner as provided for a public power district by section 70-644;

(13) Provisions for insurance and for accounting reports and the inspection and audit of such reports; and

(14) The continuing operation and maintenance of the project.

Sec. 25. Section 70-1417, Reissue Revised Statutes of Nebraska, is amended to read:

70-1417. A two-thirds majority vote of the directors of the joint authority present, with each member casting the number of votes to which he or she is entitled, is authorized to fix, charge, and collect rents, rates, fees, and charges for electric power and energy, hydrogen, ethanol, and other services, related to the generation, transmission, and sale of electric energy, to the production, storage, or distribution of hydrogen, or to the production or distribution of ethanol. For so long as any bonds of a joint authority are outstanding and unpaid, the rents, rates, fees, and charges shall be so fixed as to provide revenue at least sufficient, together with

other available funds, to pay all costs of and charges and expenses in connection with the proper operation and maintenance of its projects and all necessary repairs, replacements, or renewals of such projects, to pay when due the principal of, premium, if any, and interest on all bonds payable from such revenue, to create and maintain reserves and comply with such covenants as may be required by any resolution or trust agreement authorizing and securing bonds, and to pay any and all amounts which the joint authority may be obligated to pay from such revenue by law or contract.

Any pledge made by a joint authority pursuant to the Joint Public Power Authority Act shall be valid and binding from the date the pledge is made. The revenue, securities, and other money so pledged and then held or thereafter received by the joint authority or any fiduciary shall immediately be subject to the lien of the pledge without any physical delivery of such pledge or further act, and the lien of the pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the member district or joint authority without regard to whether such parties have notice of such lien.

Sec. 26. 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. 27. Original sections 70-301, 70-601.01, 70-604, 70-604.02, 70-626, 70-628.01, 70-628.02, 70-628.03, 70-628.04, 70-631, 70-632, 70-636, 70-637, 70-646.01, 70-655, 70-667, 70-802, 70-1402, 70-1403, 70-1404, 70-1409, 70-1413, 70-1416, and 70-1417, Reissue Revised Statutes of Nebraska, and section 70-601, Revised Statutes Supplement, 2004, are repealed.

Sec. 28. Since an emergency exists, this act takes effect when passed and approved according to law.