

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 1048

Introduced by Natural Resources Committee: Langemeier, 23,  
Chairperson; Carlson, 38; Cook, 13; Dubas, 34;  
Fischer, 43; Haar, 21; McCoy, 39; Schilz, 47.

Read first time January 21, 2010

Committee: Natural Resources

A BILL

1 FOR AN ACT relating to power generation; to amend sections  
2 70-1001.01, 70-1013, 70-1014, 76-710.04, 77-103, 77-202,  
3 and 77-702, Reissue Revised Statutes of Nebraska; to  
4 define terms; to change provisions relating to hearings;  
5 to provide for approval of facilities as prescribed; to  
6 change provisions relating to eminent domain; to provide  
7 for a tax as prescribed; to harmonize provisions; to  
8 provide a duty for the Revisor of Statutes; and to repeal  
9 the original sections.

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

1           Section 1. Section 70-1001.01, Reissue Revised Statutes  
2 of Nebraska, is amended to read:

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

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

6           (2) Electric suppliers or suppliers of electricity means  
7 any legal entity supplying, producing, or distributing electricity  
8 within the state for sale at wholesale or retail;

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

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

24           (5) Renewable export facility means a generation facility  
25 approved under section 4 of this act that will sell at wholesale

1 or retail, outside the State of Nebraska, ninety percent or more of  
2 the electricity it produces;

3 ~~(5)~~ (6) State means the State of Nebraska; and

4 (7) Stranded asset means a generation or transmission  
5 facility which cannot earn a favorable economic return due to  
6 changes in the market; and

7 ~~(6)~~ (8) Unbundled retail rates means the separation of  
8 utility bills into the individual price components for which an  
9 electric supplier charges its retail customers, including, but not  
10 limited to, the separate charges for the generation, transmission,  
11 and distribution of electricity.

12 Sec. 2. Section 70-1013, Reissue Revised Statutes of  
13 Nebraska, is amended to read:

14 70-1013 Upon application being filed under section  
15 70-1012, the board shall fix a time and place for hearing and shall  
16 give ten days' notice by mail to such ~~alternate~~ power suppliers  
17 as it deems to be affected by the application. The hearing shall  
18 be had within ~~thirty~~ sixty days unless for good cause shown,  
19 the applicant shall request in writing that such hearing not be  
20 scheduled until a later time, but in any event such hearing shall  
21 not be more than ~~ninety~~ one hundred twenty days from the filing  
22 of the application, and the board shall give its decision within  
23 ~~thirty~~ sixty days after the conclusion of the hearing. Any parties  
24 interested may appear, file objections, and offer evidence, ~~but~~  
25 ~~Provided~~, the board may grant the application without notice or

1 hearing, upon the filing of such waivers as it may require, if in  
2 its judgment the finding required by section 70-1014 can be made  
3 without a hearing. Such hearing shall be conducted as provided in  
4 section 70-1006. The board may allow amendments to the application,  
5 in the interests of justice.

6 Sec. 3. Section 70-1014, Reissue Revised Statutes of  
7 Nebraska, is amended to read:

8 70-1014 After hearing, the board shall have authority  
9 to approve or deny the application. Except as provided in  
10 section 70-1014.01 for special generation applications and except  
11 as provided in section 4 of this act, before approval of an  
12 application, the board shall find that the application will serve  
13 the public convenience and necessity, and that the applicant  
14 can most economically and feasibly supply the electric service  
15 resulting from the proposed construction or acquisition, without  
16 unnecessary duplication of facilities or operations.

17 Sec. 4. (1) An entity which is not a municipality, a  
18 registered group of municipalities, a public power district, a  
19 public power and irrigation district, an electric cooperative,  
20 an electric membership association, or any other governmental  
21 entity may apply for board approval for a facility that will  
22 generate electricity using solar, wind, biomass, landfill gas, or  
23 methane gas. The board shall approve the application if it finds  
24 that (a) the facility will provide reasonably identifiable and  
25 quantifiable public benefits, including economic development, to

1 the residents of Nebraska or the local area where the facility  
2 will be located, (b) the facility will not have an unreasonably  
3 detrimental effect on the retail electric rates paid by the  
4 residents of Nebraska, (c) the facility will not create a  
5 substantial risk that any existing generation or transmission  
6 facilities owned by any of the electric suppliers listed in  
7 this subsection will become stranded assets, (d) the applicant  
8 has obtained the necessary interconnection authorizations from  
9 the appropriate regional transmission organization, and (e) the  
10 applicant has received notification from the relevant state and  
11 federal agencies that it has met all applicable standards for  
12 preservation, safety, and environmental protection established for  
13 the subject matter for which each agency is responsible.

14 (2) If an application for a transmission line or related  
15 facilities the primary purpose of which is to provide transmission  
16 services to an electric generation facility using solar, wind,  
17 biomass, landfill gas, or methane gas is filed by a municipality,  
18 a registered group of municipalities, a public power district, a  
19 public power and irrigation district, an electric cooperative, an  
20 electric membership association, or any other governmental entity  
21 and the entity filing the application will not own or operate the  
22 generation facility, the board shall approve the application if it  
23 makes the findings set out in subsection (1) of this section.

24 (3) If the applicant does not commence construction of  
25 the generation facility within six months after receiving approval

1 from the board under subsection (1) of this section, the approval  
2 is void. Upon written request filed by the applicant, the board  
3 may, for good cause shown, extend the time period during which  
4 an approval will remain valid. Good cause includes, but is not  
5 limited to, an applicant's inability to obtain authorization from  
6 other required governmental regulatory authorities despite the  
7 applicant's exercise of due diligence to obtain such approvals.

8 (4) The applicant shall remit an application fee of five  
9 thousand dollars with the application. The fee shall be remitted  
10 to the State Treasurer for credit to the Nebraska Power Review  
11 Fund. The board shall use the application fee to defray the  
12 board's expenses associated with reviewing and acting upon the  
13 application, including the costs of the hearing. If the board  
14 incurs expenses of more than five thousand dollars associated with  
15 the application, the board shall provide written notification to  
16 the applicant of the additional sum needed or already expended,  
17 after which the applicant shall promptly submit an additional sum  
18 sufficient to cover the board's anticipated or incurred expenses.  
19 If, after completion of the application process and any subsequent  
20 legal action, including appeal of the board's decision, the board's  
21 expenses associated with acting on the application do not equal  
22 the amount submitted by the applicant, the board shall return the  
23 unused funds to the applicant if the amount is fifty dollars or  
24 more. The applicant shall reimburse the board for any expenses the  
25 board incurs as a result of appeal of the board's decision.

1           (5) The board shall certify a generation facility  
2 approved under subsection (1) of this section as a renewable  
3 export facility if ninety percent or more of the electricity  
4 produced by the facility will be sold at wholesale or retail  
5 outside the State of Nebraska. No facility, or part of a facility,  
6 certified as a renewable export facility may be the subject of  
7 eminent domain proceedings brought by a municipality, a registered  
8 group of municipalities, a public power district, a public power  
9 and irrigation district, an electric cooperative, an electric  
10 membership association, or any other governmental entity.

11           (6) A municipality, a registered group of municipalities,  
12 a public power district, a public power and irrigation district,  
13 an electric cooperative, an electric membership association, or  
14 any other governmental entity may exercise its eminent domain  
15 authority to acquire the land rights necessary for the construction  
16 of transmission lines and related facilities in order to provide  
17 transmission services for a facility certified as a renewable  
18 export facility under subsection (5) of this section. The exercise  
19 of eminent domain to provide needed transmission lines and related  
20 facilities for a certified renewable export facility shall be  
21 considered a public use.

22           Sec. 5. Section 76-710.04, Reissue Revised Statutes of  
23 Nebraska, is amended to read:

24           76-710.04 (1) A condemner may not take property through  
25 the use of eminent domain under sections 76-704 to 76-724 if the

1 taking is primarily for an economic development purpose.

2 (2) For purposes of this section, economic development  
3 purpose means taking property for subsequent use by a commercial  
4 for-profit enterprise or to increase tax revenue, tax base,  
5 employment, or general economic conditions.

6 (3) This section does not affect the use of eminent  
7 domain for:

8 (a) Public projects or private projects that make all  
9 or a major portion of the property available for use by the  
10 general public or for use as a right-of-way, aqueduct, pipeline,  
11 transmission line, or similar use;

12 (b) Removing harmful uses of property if such uses  
13 constitute an immediate threat to public health and safety;

14 (c) Leasing property to a private person who occupies an  
15 incidental part of public property or a public facility, such as a  
16 retail establishment on the ground floor of a public building;

17 (d) Acquiring abandoned property;

18 (e) Clearing defective property title;

19 (f) Taking private property for use by a utility or  
20 railroad; ~~and~~

21 (g) Taking private property based upon a finding of  
22 blighted or substandard conditions under the Community Development  
23 Law if the private property is not agricultural land or  
24 horticultural land as defined in section 77-1359; ~~and-~~

25 (h) Taking private property for a transmission line



1 to serve a publicly developed or privately developed facility  
2 generating electricity using wind, solar, biomass, landfill gas,  
3 methane gas, or hydropower generation technology.

4           Sec. 6. Section 77-103, Reissue Revised Statutes of  
5 Nebraska, is amended to read:

6           77-103 Real property shall mean:

7           (1) All land;

8           (2) All buildings, improvements, and fixtures, except  
9 trade fixtures;

10           (3) Mobile homes, cabin trailers, and similar property,  
11 not registered for highway use, which are used, or designed to be  
12 used, for residential, office, commercial, agricultural, or other  
13 similar purposes, but not including mobile homes, cabin trailers,  
14 and similar property when unoccupied and held for sale by persons  
15 engaged in the business of selling such property when such property  
16 is at the location of the business;

17           (4) Mines, minerals, quarries, mineral springs and wells,  
18 oil and gas wells, overriding royalty interests, and production  
19 payments with respect to oil or gas leases; and

20           (5) Wind energy conversion systems with at least 10  
21 megawatts of nameplate generating capacity; and

22           ~~(5)~~ (6) All privileges pertaining to real property  
23 described in subdivisions (1) through ~~(4)~~ (5) of this section.

24           Sec. 7. Section 77-202, Reissue Revised Statutes of  
25 Nebraska, is amended to read:

1                   77-202 (1) The following property shall be exempt from  
2 property taxes:

3                   (a) Property of the state and its governmental  
4 subdivisions to the extent used or being developed for use by  
5 the state or governmental subdivision for a public purpose. For  
6 purposes of this subdivision, public purpose means use of the  
7 property (i) to provide public services with or without cost to the  
8 recipient, including the general operation of government, public  
9 education, public safety, transportation, public works, civil and  
10 criminal justice, public health and welfare, developments by a  
11 public housing authority, parks, culture, recreation, community  
12 development, and cemetery purposes, or (ii) to carry out the  
13 duties and responsibilities conferred by law with or without  
14 consideration. Public purpose does not include leasing of property  
15 to a private party unless the lease of the property is at fair  
16 market value for a public purpose. Leases of property by a public  
17 housing authority to low-income individuals as a place of residence  
18 are for the authority's public purpose;

19                   (b) Unleased property of the state or its governmental  
20 subdivisions which is not being used or developed for use for  
21 a public purpose but upon which a payment in lieu of taxes is  
22 paid for public safety, rescue, and emergency services and road  
23 or street construction or maintenance services to all governmental  
24 units providing such services to the property. Except as provided  
25 in Article VIII, section 11, of the Constitution of Nebraska,

1 the payment in lieu of taxes shall be based on the proportionate  
2 share of the cost of providing public safety, rescue, or emergency  
3 services and road or street construction or maintenance services  
4 unless a general policy is adopted by the governing body of the  
5 governmental subdivision providing such services which provides for  
6 a different method of determining the amount of the payment in  
7 lieu of taxes. The governing body may adopt a general policy by  
8 ordinance or resolution for determining the amount of payment in  
9 lieu of taxes by majority vote after a hearing on the ordinance  
10 or resolution. Such ordinance or resolution shall nevertheless  
11 result in an equitable contribution for the cost of providing such  
12 services to the exempt property;

13 (c) Property owned by and used exclusively for  
14 agricultural and horticultural societies;

15 (d) Property owned by educational, religious, charitable,  
16 or cemetery organizations, or any organization for the exclusive  
17 benefit of any such educational, religious, charitable, or cemetery  
18 organization, and used exclusively for educational, religious,  
19 charitable, or cemetery purposes, when such property is not  
20 (i) owned or used for financial gain or profit to either the  
21 owner or user, (ii) used for the sale of alcoholic liquors for  
22 more than twenty hours per week, or (iii) owned or used by  
23 an organization which discriminates in membership or employment  
24 based on race, color, or national origin. For purposes of this  
25 subdivision, educational organization means (A) an institution

1 operated exclusively for the purpose of offering regular courses  
2 with systematic instruction in academic, vocational, or technical  
3 subjects or assisting students through services relating to the  
4 origination, processing, or guarantying of federally reinsured  
5 student loans for higher education or (B) a museum or historical  
6 society operated exclusively for the benefit and education of the  
7 public. For purposes of this subdivision, charitable organization  
8 means an organization operated exclusively for the purpose of the  
9 mental, social, or physical benefit of the public or an indefinite  
10 number of persons; and

11 (e) Household goods and personal effects not owned or  
12 used for financial gain or profit to either the owner or user.

13 (2) The increased value of land by reason of shade and  
14 ornamental trees planted along the highway shall not be taken into  
15 account in the valuation of land.

16 (3) Tangible personal property which is not depreciable  
17 tangible personal property as defined in section 77-119 shall be  
18 exempt from property tax.

19 (4) Motor vehicles required to be registered for  
20 operation on the highways of this state shall be exempt from  
21 payment of property taxes.

22 (5) Business and agricultural inventory shall be exempt  
23 from the personal property tax. For purposes of this subsection,  
24 business inventory includes personal property owned for purposes  
25 of leasing or renting such property to others for financial gain

1 only if the personal property is of a type which in the ordinary  
2 course of business is leased or rented thirty days or less and  
3 may be returned at the option of the lessee or renter at any time  
4 and the personal property is of a type which would be considered  
5 household goods or personal effects if owned by an individual. All  
6 other personal property owned for purposes of leasing or renting  
7 such property to others for financial gain shall not be considered  
8 business inventory.

9 (6) Any personal property exempt pursuant to subsection  
10 (2) of section 77-4105 or section 77-5209.02 shall be exempt from  
11 the personal property tax.

12 (7) Livestock shall be exempt from the personal property  
13 tax.

14 (8) Any personal property exempt pursuant to the Nebraska  
15 Advantage Act shall be exempt from the personal property tax.

16 (9) Any personal property owned by an entity approved  
17 under section 4 of this act and used directly in the generation  
18 of electricity using wind as the fuel source shall be exempt  
19 from the personal property tax. Personal property used directly  
20 in the generation of electricity using wind as the fuel source  
21 includes, but is not limited to, wind turbines, rotors and blades,  
22 trackers, generating equipment, supporting structures or racks,  
23 inverters, towers, and other system components including wiring,  
24 control systems, switchgears, and generator step-up transformers.

25 Sec. 8. (1) Except as provided in subsection (2) of this

1 section, a generation tax shall be levied on all generation of  
2 electricity using wind as the fuel source generated in the State  
3 of Nebraska. Such tax shall be levied at the rate of xxx cents  
4 for each kilowatt of electricity generated for sale. The tax shall  
5 be independent of any assessment of costs for benefits received by  
6 an entity approved under section 4 of this act from projects for  
7 the construction, rehabilitation, relocation, or modification of  
8 electrical transmission lines and facilities.

9 (2) No tax shall be imposed upon generation of  
10 electricity using wind as the fuel source which is generated:

11 (a) By any electrical generating facility owned or  
12 operated by the federal government, the State of Nebraska, a  
13 county, a municipality, or any other political subdivision in this  
14 state;

15 (b) For the direct consumption of the entity approved  
16 under section 4 of this act; or

17 (c) By a customer-generator as defined in section 70-2002  
18 and sold to a public power entity pursuant to sections 70-2001 to  
19 70-2005.

20 (3) The Department of Revenue shall collect the tax due  
21 under this section.

22 (4) On March 1 of each year, every person or entity  
23 subject to the tax under subsection (1) of this section shall  
24 submit to the Department of Revenue a report of the total kilowatts  
25 of electricity generated using wind as the fuel source within the

1 state from January 1 through December 31 of the previous year. All  
2 taxes shall be due on the date of reporting and shall be delinquent  
3 if not paid on a quarterly basis on April 1 and each quarter  
4 thereafter. Failure to file a report required, filing such report  
5 late, failure to pay taxes due, or underpayment of such taxes shall  
6 result in a penalty of XXX percent of the amount due being imposed  
7 for each month the report is overdue or the payment is delinquent.

8 (5) The Department of Revenue shall adopt and promulgate  
9 rules and regulations to carry out this section.

10 Sec. 9. (1) All revenue derived from the tax levied under  
11 section 8 of this act shall be recorded by the Department of  
12 Revenue in a manner identifying the taxpayer which paid the tax.  
13 Within thirty days after receipt of such revenue, the department  
14 shall distribute the revenue derived from each taxpayer by paying  
15 over to the county treasurer of the county which, but for the  
16 personal property tax exemption described in subsection (9) of  
17 section 77-202, would have levied a tax on the taxpayer's personal  
18 property used directly in the generation of electricity using wind  
19 as the fuel source.

20 (2) The county treasurer shall distribute the revenue  
21 received from the Department of Revenue, within thirty days after  
22 receipt of such revenue, to local taxing entities which, but for  
23 such personal property tax exemption, would have levied a tax upon  
24 the depreciable personal property used directly in the generation  
25 of electricity using wind as the fuel source.

1           (3) A local taxing entity's status as eligible for  
2 distribution under subsection (2) of this section shall not be  
3 affected when and if the net book value of such property becomes  
4 zero. A local taxing entity's status as eligible for distribution  
5 under such subsection shall be affected by the disposal of all  
6 of the exempt depreciable personal property used directly in the  
7 generation of electricity using wind as the fuel source.

8           (4) The distribution to each eligible local taxing entity  
9 shall be calculated by determining the amount of taxes that the  
10 eligible local taxing entity levied during the taxable year and  
11 dividing this amount by the total tax levied by all of the  
12 eligible local taxing entities during the year. Each eligible  
13 entity's resulting fraction shall then be multiplied by the revenue  
14 distributed to the county treasurer by the department to determine  
15 the portion of such revenue due each local taxing entity.

16           (5) For purposes of this section, local taxing entity  
17 includes, but is not limited to, a county, a municipality, a school  
18 district, a rural or suburban fire protection district, a learning  
19 community, a sanitary and improvement district, a natural resources  
20 district, an educational service unit, and a community college.

21           Sec. 10. Section 77-702, Reissue Revised Statutes of  
22 Nebraska, is amended to read:

23           77-702 (1) Commencing with the expiration of the term  
24 of the Property Tax Administrator holding office on July 1, 1999,  
25 the Governor shall appoint a Property Tax Administrator with the



1 approval of a majority of the members of the Legislature. The  
2 Property Tax Administrator shall have experience and training in  
3 the fields of taxation and property appraisal and shall meet all  
4 the qualifications required for members of the Tax Equalization  
5 and Review Commission under subsections (1) and (2) and subdivision  
6 (6) (a) of section 77-5004. The Property Tax Administrator shall  
7 adopt and promulgate rules and regulations to carry out his or  
8 her duties through June 30, 2007. Rules, regulations, and forms of  
9 the Property Tax Administrator in effect on July 1, 2007, shall be  
10 valid rules, regulations, and forms of the Department of Revenue  
11 beginning on July 1, 2007.

12 (2) In addition to any duties, powers, or  
13 responsibilities otherwise conferred upon the Property Tax  
14 Administrator, he or she shall administer and enforce all  
15 laws related to the state supervision of local property tax  
16 administration and the central assessment of property subject  
17 to property taxation. The Property Tax Administrator shall also  
18 advise county assessors regarding the administration and assessment  
19 of taxable property within the state and measure assessment  
20 performance in order to determine the accuracy and uniformity of  
21 assessments. The Property Tax Administrator shall also promulgate,  
22 maintain, and enforce uniform standards for the assessment and  
23 taxation of wind energy conversion systems.

24 Sec. 11. The Revisor of Statutes shall assign section 4  
25 of this act within sections 70-1001 to 70-1027.

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1                   Sec. 12. Original sections 70-1001.01, 70-1013, 70-1014,  
2 76-710.04, 77-103, 77-202, and 77-702, Reissue Revised Statutes of  
3 Nebraska, are repealed.