

## LEGISLATIVE BILL 53

Approved by the Governor March 5, 2009

Introduced by Fischer, 43; Giese, 17; Langemeier, 23.

FOR AN ACT relating to public power districts; to amend sections 70-603, 70-604.01, 70-604.05, and 70-681, Reissue Revised Statutes of Nebraska, and section 70-604.02, Revised Statutes Cumulative Supplement, 2008; to change provisions relating to formation, territory, and operating area of districts; to harmonize provisions; and to repeal the original sections.

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

Section 1. Section 70-603, Reissue Revised Statutes of Nebraska, is amended to read:

70-603 ~~(1)~~ A district may be organized and may amend its charter under Chapter 70, article 6, by filing in the office of the Nebraska Power Review Board a petition in compliance with requirements set forth in Chapter 70, article 6, and receiving the approval of the petition by the Nebraska Power Review Board.

~~(2)~~ The chartered territory of each district organized pursuant to Chapter 70, article 6, and engaged in the operation of electric generation, transmission, or distribution facilities, or any combination thereof, in more than fifty counties in this state shall include the entire state except ~~(a)~~ any county which has a population exceeding seventy-five thousand inhabitants in which the district does not sell power and energy directly to the largest incorporated municipality in such county and ~~(b)~~ any city of the first class, primary class, or metropolitan class ~~(i)~~ in which the district does not sell power and energy at retail, ~~(ii)~~ for which the district does not sell power and energy to another district or municipality for resale in such first-class, primary-class, or metropolitan-class city, or ~~(iii)~~ with which the district does not have a direct electrical interconnection and an interconnection agreement pursuant to which such city may purchase power and energy from such district.

~~(3)~~ For purposes of this section, the phrase sell power and energy directly to the largest incorporated municipality shall mean to sell to a municipally owned and operated electric utility system.

~~(4)~~ In order to establish charter boundary lines coincident with voting precinct lines, a district described in subsection ~~(2)~~ of this section may exclude from its chartered territory any precinct within or partly within any city which, pursuant to this section, is to be excluded from the chartered territory of the district. Any customer whose principal residence is not in the chartered territory but which residence is being served at retail by such district may be certified pursuant to section 70-604.03 to vote for and be eligible to hold office as a member of the board of directors of such district.

~~(5)~~ The chartered territory of each district organized pursuant to Chapter 70, article 6, and engaged in the operation of electric generation, transmission, or distribution facilities, or any combination thereof, in fifty counties or less in this state shall include the operating area of the district and such other areas as may be authorized by other provisions of Chapter 70, article 6.

Sec. 2. Section 70-604.01, Reissue Revised Statutes of Nebraska, is amended to read:

70-604.01 (1) Except as the same may be further limited or expanded by requirements in Chapter 70, article 6, the chartered territory of any district, organized pursuant to and existing by virtue of, or subject to the provisions of, Chapter 70, article 6, shall include the area in this state within which such district renders electric service of the nature defined in section 70-604.02 and termed its operating area. There may be included, within the chartered area of such district, areas which are outside the operating area as defined in section 70-604.02, but as to which inclusion is nevertheless authorized by other sections of Chapter 70, article 6.

(2) Subject to the requirements of section 70-662 and the approval of the Nebraska Power Review Board in accordance with sections 70-663 and 70-664, any district organized pursuant to Chapter 70, article 6, and engaged in the operation of electric generation, transmission, or distribution facilities, or any combination thereof, ~~in fifty counties or less in this state~~ may, in the discretion of the board of directors of such district and upon a finding by the board of directors of such district that the inclusion or exclusion thereof would be consistent with the best interests

of the district and its customers, either include within or exclude from the chartered area all municipalities which have a population of ~~less~~ fewer than one thousand five hundred inhabitants and which are within a county where such district provides electric service but are not otherwise in such district's operating area.

Sec. 3. Section 70-604.02, Revised Statutes Cumulative Supplement, 2008, 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, having an original term of five years or more, to deliver firm power and energy and ~~having an original term of five years or more.~~ that constitutes fifty percent or more of the purchasing public electric utility's annual energy requirements. 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. 4. Section 70-604.05, Reissue Revised Statutes of Nebraska, is amended to read:

70-604.05 When it appears that ~~a district or~~ one or more districts are in noncompliance with the provisions of Chapter 70, article 6, the corporate amendments required to comply shall be made generally in accordance with the procedures and requirements contained in Chapter 70, article 6. In the absence of voluntary amendment any time subsequent to six months after the publication of the first federal decennial census published after ~~July 17, 1986,~~ the effective date of this act, any person residing in the geographical area of alleged noncompliance, or any district or any two or more districts, may file a complaint with the Nebraska Power Review Board against one or more other districts alleging the area of noncompliance of such other districts. Upon receipt of such complaint, ~~whereupon~~ the Nebraska Power Review Board shall issue an order directed to the alleged noncomplying district, granting a hearing and requiring it to show cause why an amended petition for creation eliminating such noncompliance should not be filed for approval. Thirty-three days' notice of hearing, which includes mailing time, shall be given to such alleged noncomplying district by either registered or certified mail. The alleged noncomplying district may appear by answer or by petition for amended petition for creation of the district. The burden of proof of noncompliance shall be upon the complainant and of proposed amendments upon the petitioner. If the Nebraska Power Review Board finds that an amended petition for creation should be made and the alleged noncomplying district has not proposed an acceptable one, the Nebraska Power Review Board shall frame the amendment to be approved after continuing the hearing to receive such evidence as may be offered by the parties having appeared before the Nebraska Power Review Board regarding the contents of the amendment to be framed by the Nebraska Power Review Board.

The members of the board of directors of any noncomplying district, including any district failing to comply with an amended petition as framed by the Nebraska Power Review Board, shall each be liable for a civil penalty of fifty dollars for each day of noncompliance which continues after thirty days following final adjudication of noncompliance. Such penalty shall be recovered ~~for the benefit of the permanent school fund~~ in an action brought by the Attorney General in the district court for Lancaster County. Service of summons in such action may be had anywhere in the state. Any penalty collected pursuant to this section shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska. No member of any such board shall receive any compensation or reimbursement of expenses during the period for which he or she is liable ~~to~~ for such penalty, nor shall he or she be eligible as a candidate for

reelection.

Sec. 5. Section 70-681, Reissue Revised Statutes of Nebraska, is amended to read:

70-681 In order to provide for orderly compliance with Chapter 70, article 6, as amended by Laws 1986, LB 949, districts existing on ~~July 17, 1986,~~ the effective date of this act are hereby deemed to be properly constituted and incorporated and their directors duly elected and, notwithstanding any other provision of law, a district shall not be required to amend its charter in order to be in such compliance until six months after the publication of the first federal decennial census published after ~~July 17, 1986,~~ the effective date of this act. A director holding office at the time of any such amendment to a charter may continue to serve until the expiration of his or her term of office if such director meets the qualifications of section 70-619 for holding office under the charter as so amended.

Sec. 6. Original sections 70-603, 70-604.01, 70-604.05, and 70-681, Reissue Revised Statutes of Nebraska, and section 70-604.02, Revised Statutes Cumulative Supplement, 2008, are repealed.